

COUNTY OF MILWAUKEE
INTEROFFICE COMMUNICATION

DATE: June 17, 2019

TO: Theodore Lipscomb, Sr., Chairman, and Milwaukee County Board of Supervisors;
Anthony Staskunas, Chair, Milwaukee County Board of Supervisors, Judiciary, Safety, and General Services Committee

FROM: Teig Whaley-Smith, Director, Department of Administrative Services
Prepared by Erin Schaffer, Manager – Contracts (Self-Operation Project Manager)

SUBJECT: July 2019 Risk Report, CHCSO Project

REQUEST

Administration received a request from the Board to provide the Milwaukee County Board of Supervisors' Judiciary, Safety, and General Services Committee with an updated informational report on the status of the Correctional Health Care Self-Operation ("CHCSO") Project. This informational report is responsive to that request.

BACKGROUND

Background pertaining to the Christensen Consent Decree, Correctional Medical Services Contract, RFP for Correctional Medical Services, and Resolution authorizing and directing the County to provide a plan for self-operation of inmate medical care may be found in File #5 from the February 1, 2019 meeting of the Finance and Audit Committee, and in the October 18, 2018, November 16, 2018, and December 6, 2018 informational reports. Information from those reports is not included in this report.

Background pertaining to the CHCSO Project and Board Resolution 18-898 can be found in the December 6, 2018 informational report, January 22, 2019 informational reports, and March 19, 2019 report. Informational updates were also provided at the April 11, May 9, and June 6 meetings of the Judiciary, Safety, and General Services Committee. These updates were verbal and did not include written reports.

This report represents the draft language which will be edited and included in the September 2019 report to the County Board of Supervisors, Judiciary and General Services Committee for the area of Risk Management.

EXECUTIVE SUMMARY

Members of DAS staff have been directed to create a proposal for self-operation of correctional health care services at the House of Correction and Milwaukee County Jail. Risk Management is one of the DAS participants in this project.

The contribution the Risk Management Division provides is the ability to identify and determine insurance coverage gaps, availability and costs for Medical Malpractice, Cyber Liability, Workers Compensation, and additional Public Entity Liability Insurance exposures associated with this proposal.

The first step was to contact all available resources, both internal and external, which had access to Milwaukee County ("Milw. Cty.") historical loss history for the four main areas of concern listed above.

Medical Malpractice

Per the National Association of Insurance Commissioners ("NAIC"), **medical malpractice insurance**, known as "medical professional liability insurance", is a "type of professional liability insurance which protects physicians and other licensed health care professionals (e.g., dentist, nurse) from liability associated with wrongful practices resulting in bodily injury, medical expenses and property damage, as well as the cost of defending lawsuits related to such claims." (https://www.naic.org/cipr_topics/topic_med_mal.htm)

Medical malpractice history was requested from Armor, specific to their years of providing the correctional medical services for Milw. Cty. This request was largely unsuccessful. Research seeking internal medical malpractice records from years when Milw. Cty. had provided the inmate medical services was also largely unsuccessful. Requests for information pertaining to insurance were also sent to Waukesha and Dane Counties, who were extremely helpful. The Department of Corrections for the State of Wisconsin ("State DoC") was also a request recipient. To date, the State DoC has not responded to the request. If and when a response is provided, it will be included in this report.

Cyber Liability Insurance

Cyber Liability insurance is defined by the International Risk Management Institute, Inc. as "a type of insurance designed to cover consumers of technology services or products. More specifically, the policies are intended to cover a variety of both liability and property losses that may result when a business

engages in various electronic activities, such as selling on the internet or collecting data within its internal electronic network. Most notably, but not exclusively, cyber and privacy policies cover a business' liability for a data breach in which the firm's customers' personal information, such as Social Security or credit card numbers, is exposed or stolen by a hacker or other criminal who has gained access to the firm's electronic network. The policies cover a variety of expenses associated with data breaches, including: notification costs, credit monitoring, costs to defend claims by state regulators, fines and penalties, and loss resulting from identity theft." (<https://www.irmi.com/term/insurance-definitions/cyber-and-privacy-insurance>)

Cyber Liability is an insurance product applicable to the CHCSO Project because of the large amount of Personal Identifiable Information (PII) and Personal Health Information (PHI) required and stored in the electronic health record, or "E.H.R." system.

Milw. Cty. requires \$5 million limits from its current provider of correctional health care services, and this amount should be the benchmark for this project. Our current Public Entity Liability insurer (WCMIC) provides \$2 million in limits with a \$1 million deductible. WCMIC has responded they will not be able to provide the additional limits. Aon believes these limits are available and is looking for us to complete the application process to access the market.

Workers' Compensation

Workers' Compensation insurance is an insurance product providing wage replacement and medical benefits to employees injured in the course of their employment with Milw. Cty., typically in exchange for mandatory relinquishment of the employee's right to sue the County for the tort of negligence.

Workers' Compensation is an insurance product applicable to the CHCSO Project because the project represents an increase of between 150 and 200 employees to the County as an organization.

Workers' Compensation costs will increase as our employee population increases resulting from the Milw. Cty. eliminating the third-party employees and providing our own employees for this service.

Public Entity Liability

Public Entity Liability insurance provides coverage for a loss caused by a wrongful act committed by an individual or group while conducting duties by, or on behalf of, a public entity.

Public Entity Liability costs will increase as a result of the expiration of the correctional health care services provider's contract. The Milw. Cty. insurer for this product line is WCMIC. WCMIC has stated they will send this question to

their underwriting committee this summer. An answer providing the increase cost of insurance relative to this is not expected until then.

Self-Insurance

Self-insurance is a financing option available to organizations whereby losses are paid from a fund maintained by the organization, rather than paid by an insurance company through the purchase of insurance. This option takes multiple forms, including self-retention (losses are paid directly from the fund) and high deductible (losses are paid by an insurance company and reimbursed from the fund). Milwaukee County chooses to self-insure for a variety of reasons, including when insurance products are unavailable, costs for those products are too high, losses are very predictable, and for the benefit of improved cash flow.

Self-insurance is a good solution to liability exposures when the losses are predictable and not catastrophic. Today, the County self-insures our Workers' Compensation program because our losses in that area are very predictable. Predictable losses can be planned and budgeted for. However, predictable losses are still subject to variances caused by changing job duties, changing industries, new processes, etc. For example, in the spring of 2019, Milwaukee County experienced multiple snow and ice events. This increased the number of employee slip and falls, resulting in unexpected Workers' Comp. claims.

We use the high-deductible model for our Public Entity Liability because losses are fairly predictable and a lower deductible is not cost efficient. We are passively self-insuring any losses which exceed our insurance limits.

Choosing a Market Product vs. Choosing Self-Insurance

Risk Management addresses loss exposures by reviewing the following solutions:

- 1) Avoidance - can the exposure be avoided?
- 2) Transfer – can the exposure be transferred to another party?
- 3) Engineering – can the exposure be eliminated or reduced with Safety or engineering solutions?
- 4) Financing – is the exposure predictable, and do we have the needed resources to self-insure?
- 5) Insurance – Insurance is the last option reviewed as a solution for exposures.

Risk Management takes actions or makes recommendations for insurance products or self-insurance options based upon their review of the solutions above. Currently, Milwaukee County is self-insured in the following areas based on Risk's assessment of the loss exposures:

- **Workers’ Compensation.** Milwaukee County is presently self-insured for Workers’ Compensation due to predictability of claims and ability to reduce or avoid claims through County efforts.
- **Workers’ Compensation excess insurance.** Milwaukee County is presently self-insured for our WC excess insurance due to the high cost of market products and factors mentioned for WC insurance above.
- **Public Entity Liability Insurance.** Milwaukee County is presently insured through WCMIC for Public Entity Liability insurance through a high-deductible model.
- **Medical Malpractice.** Milwaukee County is presently self-insured for Medical Malpractice insurance because there is currently no market for this coverage available to us.
- **Cyber Liability.** Milwaukee County is presently self-insured for anything over \$2 million, primarily because there is currently no market for this coverage available to us.

Below are the exposures for which the County has opted to purchase commercial insurance, based on Risk’s review and assessment:

- Public Entity Liability: Wisconsin County Mutual Insurance Corporation
- Property: Travelers Insurance
- Energy Systems: Liberty Mutual
- Airport Liability: AIG
- Fidelity / Crime: Great American
- Fiduciary: Fine Arts: AXA

The following report will provide an insight into what coverages are needed, why they are needed and some cost projections. The cost projections cannot be heavily relied upon because the project implementation is two years in the future. During the next two years, the markets and carriers will change, and the County will also undergo changes which will affect the costs within the projections.

RECOMMENDATION

Risk Management recommends the following coverages*, and estimates the following approximate per-year costs for year 1 of self operation:

<u>Coverage Type</u>	<u>Estimated Year 1 Cost</u>
Medical Malpractice	\$750,000.00 (without tail coverage)
Cyber Liability Insurance	< \$75,000.00
Workers’ Compensation Insurance	\$130,000.00
Public Entity Liability	Unknown – likely to be significant
TOTAL COST:	\$955,000 (without PEL)

Additionally, Risk requests the addition of 1.0 FTE safety services professional dedicated to the medical services operation at the HOC and MCJ, and the addition of 1.0 FTE claims management assistant to manage the additional workload likely to arise from the self-operation of correctional health care services. These costs are estimated at **\$87,004.00** per position, including salary and benefits, for a total of **\$174,008.00** per year.

The total estimated cost of self-operation of correctional health care services from the Department of Administrative Services, Risk Management Division is **\$1,129,008.00**, not including the costs for Public Entity Liability insurance.

**Milwaukee County is self-insured for these coverages as described in the Executive Summary, above.*

AREAS OF REVIEW AND COST

Medical Malpractice

Medical Malpractice insurance provides coverage to doctors and other medical professionals for legal claims arising from allegation of medical negligence and malpractice resulting in patient injury or death. The coverage insures costs for legal expenses, arbitration costs, settlement costs, medical damages and Punitive and compensatory damages. It does not cover liability claims for sexual misconduct, illegal acts or inappropriate alteration of medical records.

Medical Malpractice insurance is needed to cover the inevitable claims associated with the provision of inmate medical services. The insurance carrier will also provide expert defense resources as well as training and mitigation resources.

Most Medical Malpractice insurance is written with limits of \$1 mil. per claim and a \$3 mil. policy aggregate. Risk Management would also recommend an excess policy with limits of \$5 mil. per claim and a \$5 mil policy aggregate. At this time, the total cost of this program could be in the \$800,000 range.

Risk Management has communicated with the WI Department of Corrections (WI DOC) to find a comparable entity with a similar exposure and benchmark a projected cost. The WI DOC provided ten (10) years of medical malpractice costs for their system, including all their facilities. We are presently still waiting for additional data, including whether the WI DOC has a third-party correctional health care provider, and what their total average daily population (ADP) is. While Risk is still awaiting the data, this conversation has provided the project team with ballpark figure for Medical Malpractice claims exposure. WI DOC self-insures its Medical Malpractice exposure and finds it has a "paid" claims amount

between \$500,000 - \$1,000,000 per year. These costs do not include tail coverage.

Projected Cost: \$750,000

Cyber Liability Insurance

Cyber liability insurance is designed to help an organization mitigate risk exposure by offsetting costs involved with recovery after a cyber-related security breach, cyber-attack or similar event such as:

- Security Breach Liability – pays losses and defense;
- Regulatory Proceedings – pays for defense, fines and penalty expense;
- Extortion and Ransom – pays for losses, does not pay ransom costs.

These types of claims can be very costly (estimated \$3 million per claim at large companies, and small companies at \$22,000 per claim) because of the PII and PHI of both historical and current populations. Cyber liability insurance can reduce the costs of recovery and provide resources to help mitigate any future breaches or attacks.

Cyber liability insurance is a product under consideration because of the unpredictability of Personal Health Information (PHI) and Personally Identifiable Information (PII) related events, and the associated costs of those events. The County does have cyber liability exposures in other Departments as well. Currently, the County has 2 million of insurance with a \$1.9 million deductible (essentially, we are self-insured for the first \$1.0 million). The additional exposures associated with self-administering the correctional health care program could have a substantial negative financial impact on the County if PHI or PII is negligently released, or the systems containing this data are “hacked” into.

The cyber liability coverage in the 2018 Inmate Medical Services RFP was \$5 million per occurrence and \$5 million aggregate. For the purposes of this project, a \$5 million per occurrence and \$5 million aggregate cyber policy as requested in the Inmate Medical RFP will act as our benchmark.

The only way to get a good projected cost is to submit a Cyber Liability Insurance Application to our insurance broker and have them access the markets. The insurance companies will review and submit proposals between two and four weeks after receipt. Risk Management has been working with IMSD to secure preliminary feedback from the insurance markets for a \$3.0 - \$5.0 million excess/umbrella cyber policy, which would sit atop our \$2.0 million primary insurance layer. The insurance markets will not offer this coverage specifically for

the HOC/Jail project. The markets will only provide preliminary feedback for a County-wide product covering all exposures. This is not unexpected. The insurance companies perceive anti-selection when products are bought to cover only certain exposures. Anti-selection means the insurance company believes they are only receiving the “unfavorable” risks.

Projected Cost: Less than \$75,000

Workers’ Compensation

Workers’ Compensation is state mandated and provides lost time and medical benefits to employees injured while working for the County. Because of the number of employees, this is historically the largest potential loss exposure for the County.

Presently, Workers’ Compensation is a self-insured program for the County. WCMIC is the County’s current Work. Comp. third-party administrator.

Self-insurance costs are likely to increase when bringing correctional health care in-house due to the projected additional County employees, and because of the nature of the work environment. Additional employees added to the payroll will result in additional claims and claim costs. This amount will differ depending on the actual number of additional County employees and third-party health providers. For the purposes of this County FTE’s. Additional costs are for claim processing, claim benefit costs and ancillary claim services (surveillance, nurse case management, defense, etc...).

We can fairly accurately predict our Workers’ Compensation costs based on job classifications and payroll for the 130 employees. This data is measured against the loss data from the House of Correction, Milwaukee County Jail, and BHD for similar job classifications and payroll(s). The preliminary estimated additional cost to the County is \$130,000.00 annually. This value may increase or decrease based on the frequency and severity of employee injuries in any given year.

Projected Cost: \$130,000

Public Entity Liability

Public Entity Liability (PEL) Insurance provides insurance coverage for Bodily Injury, Property Damage and Errors and Omissions including defense costs and settlements resulting from wrongful acts committed while County employees are performing duties by or on behalf of the County. For purposes of this project, PEL insurance protects our exposures associated with inmate lawsuits, law

enforcement activities, employment discrimination, and other wrongful acts of employees (primarily bodily injury and property damage of others).

Today, the County purchases this insurance from the Wisconsin County Mutual Insurance Corp. (WCMIC). Our PEL insurance is a broadly-written liability policy in a “pool of risks” structure, meaning there are fifty-one (51) other counties insured by WCMIC, all of which have similar risk exposures. The structure also pays dividends to policy holders when there is favorable experience. The Office of Corporation Counsel is on the panel of available attorney groups.

Claims are paid by WCMIC claims adjusters. Claims can be submitted up to three years after they occur, and sometimes later, depending upon circumstances. These types of claims can take many years to finally be adjudicated. For example, a claim can be submitted in 2019 for an incident which occurred in 2016. The claim could be denied, paid, or contested. If a claim is contested and a suit is filed, the legal proceedings can take an additional five years or more before conclusion. Legal expenses, settlements, and jury awards are included in the PEL policy.

Financial reserves are established in the year Milwaukee County receives notice of a claim, and is determined based on the potential severity of the claim. The reserves will be tracked until they are needed to pay out a claim, or the claim is closed and the reserve funds may be returned to other County accounts. Annually, an actuary completes an analysis and the reserve levels are shared with the Comptroller, who adjusts the reserves.

Medical Malpractice coverage is specifically excluded from the PEL policy.

The additional exposure associated with the County providing correctional health care services is the lost layer of insurance carried by the previous third-party service provider (Wellpath). During our most recent Public Entity Liability Insurance RFP, the insurance carriers were able to provide a price quote for the County, but specifically excluded the House of Correction and the Jail from their quotes. WCMIC has been the insurer for this for the past twenty years.

Risk has requested that WCMIC provide a range of costs which they may charge the County for potential increased claim activity associated with self-performance of our correctional medical services. At this time, no additional information has been received from WCMIC. WCMIC did advise us that our request may be brought up at the next WCMIC Board meeting and also with the Reinsurer for the program. This information may be available in July or August.

Based on the above, Risk does not presently have a projected cost for this coverage.

Projected Cost: Unknown, but could /will be significant

Safety Services

An onsite safety professional dedicated to this facility will be needed to cover both HOC and the Jail. This will minimize and mitigate the Workers Compensation costs as well as provide claims investigations. The safety professional would be responsible for safety practices at both HOC and the Jail.

Projected Cost: \$87,004.00 (salary and benefits for Safety Specialist, pay grade 25)

Risk Management Administration

The Risk Management Div. will take on additional claims processing associated with the In-House inmate medical services program. I project an additional 1.0 FTE for processing the Medical Malpractice claims, the increase in Work Comp., Public Entity Liability claims administrative time in both Safety and Claims mgmt. and staff time commitment.

Projected Cost: \$87,004.00 (salary and benefits for Claims Specialist, pay grade 25)

Approved by

Teig Whaley-Smith

Teig Whaley-Smith, Director
Milwaukee County Department of Administrative Services

cc: Theodore Lipscomb, Chairman, Milwaukee County Board of Supervisors
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