

REPORT TO THE LEGISLATIVE FINANCE COMMITTEE

Corrections Department: Follow-up Review, Report #09-05

December 10, 2008

EXECUTIVE SUMMARY

Review Team

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Review Objective

Assess the implementation status of recommendations from the 2007 LFC report on Facility Planning Efforts and Oversight of Private Prisons and Health Programs.

Table 1. Implementation of Recommendations

Status	Number
Implemented or Partially Implemented	13
Not Implemented	7
Total Recommendations	20

Authority for Review

The Legislative Finance Committee has the statutory authority under Section 2-5-3 NMSA 1978 to examine laws governing the finances and operations of departments, agencies and institutions of New Mexico, and make recommendations for change to the legislature.

Exit Conference

The LFC discussed the contents of this report with Joe Williams, Corrections Secretary; Jolene Gonzales, Deputy Secretary of Administration; Tim LeMaster, Deputy Secretary of Operations, and senior department staff on December 3, 2008. Appendix A includes the department's response to the report.

The mission of the New Mexico Corrections Department (department) is to provide a balanced systems approach for corrections. In 2007, the Legislative Finance Committee (Committee) staff issued a report on the department's prison planning and oversight functions, including private prisons and health programs. The report found private prisons cost more than they should due to poorly constructed contracts and lack of competitive procurement; and the state's approach to prison planning and financing was not in the taxpayer's best interest. In addition, improvements were needed in oversight of department health programs.

This follow-up review assessed the status of findings and implementation of recommendations made in the May 23, 2007 report: *Review of Facility Planning Efforts and Oversight of Private Prisons and Health Programs*. Overall, the department has implemented or partially implemented 13 of the report's significant recommendations shown in Table 1.

The 2007 report recommended changes that would result in saving over \$5 million per year by requiring contract amendments and recovering monies for services not performed. Other changes included proposing statutory changes, improving the medical services contract and collecting and reporting program outcome and performance information for addictions and mental health services. The department has taken action or initiated corrective action on several of the recommendations. However, no actions that would lower the cost of incarceration. The 2009 session will provide the legislature an opportunity to consider statutory changes to reform prison planning and financing.

Key Findings

- Modifications to agreements with counties and private contractors to improve contract pricing and better monitoring are still needed.
- The Clayton agreement still needs a modification to include standard lease-purchase language, and avoid paying \$132 million for a prison the state will never own.
- Statutory changes are still needed to improve prison planning and financing.
- Medical services contract performance measures, and mental health services reporting needs improvement to ensure each programs effectiveness.

Key Recommendations

- Implement recommendations included in Appendix A. Update the department's implementation plan and submit to the LFC no later than January 20, 2009.
- The Legislature may wish to consider statutory changes in the upcoming legislative session to reform prison planning and financing.
- The department should prepare a proposal for the legislature to consider a lease-purchase agreement for the Clayton facility in the upcoming legislative session.
- Amend the medical services contract to improve performance measures by emphasizing health care improvements based on the quality of services instead of failure to provide services.
- Mental health services should consider establishing a more comprehensive report that demonstrates the program's effectiveness.

Findings and Recommendations

The department has not restructured private prison agreements that would lower costs and assure savings from privatization.

The 2007 report estimated savings of about \$60 million over ten years. The department is currently reviewing and considering draft amendments for both Lea County Correctional Facility (LCCF) and Guadalupe County Correctional Facility (GCCF). However, the draft amendments do not address the department's ability to control cost increases. Well-written contracts and thorough monitoring will ensure high quality services and justify price increases of private prisons based on performance.

The department's contracts with Lea and Guadalupe counties still need changes to include a separate per diem for facility debt service or lease costs. Under a draft amendment, GEO proposed to remove the debt service portion of the per diem from any future CPI increases, but the remaining portions of the per diem would be subject to 100 percent CPI increases instead of 80 percent. The draft amendment does not reflect the three-tier per diem that would consider economies of scale generated by filling facilities to beyond 90 percent occupancy. The department is not pursuing a three-tier per diem rate with Corrections Corporation of America (CCA) at this time because the current contract expires at the end of the current fiscal year.

No changes to the agreements have occurred that would result in performance incentives for maintaining low vacancy rates. The department's contracts provide penalties for any unfilled positions

The department, nor the contracts, ensures LCCF and GCCF use price increases only for operational costs.

The current medical services contractor is providing monthly reports that improve management and oversight.

Current law limits the department's flexibility to obtain prison space at a more affordable price.

after 30 days, not just mandatory positions. Currently, contract monitors are providing staffing patterns for tracking vacancies that indicate vacancies are unsatisfactory. However, the department still has not enforced penalties.

The department has negotiated amendments with GEO to clarify contract language regarding mandatory posts and staff vacancy paybacks. The amendments are in the final stage of approval and negotiation. However, the amendments do not ensure that penalties for vacancy rates are specifically applied instead of at the sole discretion of the department.

Annual price increases still are not based on performance. The department stated withholding five percent of the total estimated contract amount as a performance incentive is not cost effective. According to the department, the private prisons already routinely meet all applicable performance measures, in part because of the liquidated damages penalties already in place in the contracts if they fail to meet the contractually required performance measures. The contract does not specify performance measures based on meeting targets. Non-compliance with the contract is the basis for liquidated damages penalties, not performance measures. As previously stated the department has not assessed any penalties for the staffing vacancies.

Sex offender treatment program payments continue to be overstated. The department has not recovered the \$456 thousand from GEO. In a separate billing dispute, the department withheld payment of \$88,711 for the sex offender treatment portion of the LCCF contract in May 2007, and has not made payments for seven months up to the termination of the program in December 2007.

In November 2007, the department requested GEO to provide documentation or information that would demonstrate the sex offender treatment program is being provided. GEO did not provide a response until September 2008. The response did not acknowledge a lack of service, instead provided a history of the program. The department is still working to resolve this issue.

Proposed statutory changes for reforming prison planning and financing are still appropriate for the upcoming (2009) legislative session. The department previously submitted proposed legislation for the 2008 session for the governor's office approval. The department was not approved to pursue the proposed legislation, and it did not completely fulfill the intent of the LFC recommended statutory changes.

The department has improved program outcome and performance information for behavioral health services.

The proposed legislation should provide an alternative way to finance prison construction through lease-purchase contracts; establish a single prison fund for financing future housing units or full prisons; and provide flexibility to the department in contracting for operation of prisons directly, rather than through counties, and require private prisons to cost less than if the state operated the same facility.

The Clayton agreement lease-purchase language still needs to be modified to ensure the state, if it chooses, will own the facility after twenty years or purchase the facility at any time. In September 2007, the department submitted a proposal the governor's office to pursue a lease-purchase option for the Clayton facility and apparently not approved. Because the current New Mexico law requires approval of the legislature before any lease-purchase agreement can be effectuated, the department needs to prepare the Clayton lease-purchase agreement for consideration in the upcoming legislative session.

Medical contract performance measures need improvement to ensure the results of health care services improve program effectiveness. The current performance measures are driven by sanctions for failure to provide services, instead of demonstrating outcomes that ensure program effectiveness and improvements are achieved. To date the department has imposed sanctions to one facility for failure to provide in-house dialysis.

Outcome measures are distinct from the activities of a program. For example, counting the number of vaccinations given to inmates is not an outcome measure (it is a process indicator), but measuring the incidence of disease in the inmate population is an outcome measure. Giving vaccinations is an activity (practice) that will improve inmate health (performance standard) that can be measured by the incidence of disease (outcome measure).

The current medical services contractor is providing the health services bureau monthly reports that improve management and oversight. The reports include but are not limited to information on staff hours worked, inpatient and outpatient activity, audits and inspections, pharmacy services, emergency room utilization, disease management and women's health. Currently, monthly billings are broken down by facility, summarizing expenses for pharmacy cost and equipment purchases but do not include staff vacancies by type of staff.

Automatic price increases for the medical contract should be based on meeting performance targets. The current contract limits the annual price increases to no more than the medical service CPI for western states. However, it does not provide incentives based on meeting performance targets. These performance measures and targets should include, at a minimum, those related to timely access to care; quality of care, such as adherence to clinical treatment guidelines; low staff turnover, vacancies and use of contract nurses; and meeting reporting requirements.

The department has taken action on numerous recommendations in the Spencer & Anno Report. The information is summarized in Appendix B. The LFC did not validate the actions taken.

The new medical services contactor appears to be forthcoming in providing the department information as specified in the contract in a timely manner and this indicate improvements have been made. Some of the information the medical service contractor provides could be useful in establishing improved performance measures.

The department has improved program outcome and performance information for behavioral health services, however, report data needs improvement.

The Addiction Services Bureau Quarterly Statistical Reports are capturing the program outcome and performance information for therapeutic communities (TC) as recommended. However, the percentages for TC participants testing positive for substance abuse and expelled for non-compliance are not evident, although the report includes the raw data.

Mental health statistical reports appear to provide some of the data for measuring program effectiveness. The Mental Health Services is collecting some of the relevant data to evaluate treatment effectiveness. However, the monthly report is primarily a compliance document, it is difficult to determine patient outcomes and not user friendly as an effective management tool. The department should consider establishing a more high-level management report that demonstrates the program's effectiveness.

APPENDIX A

New Mexico's Private Prisons cost more than other states, but improved contracts and better monitoring could save taxpayers millions.		
2007 LFC Recommendation	Status Per LFC	Corrections Department Response to LFC Status
Restructure per diems to take advantage of economies of scale and separate facility use fees.	<i>Not implemented</i> – The department is considering a draft amendment for both LCCF and GCCF. Under the amendment, GEO proposed to remove the debt service portion of the per diem from any future CPI increases, but the remaining portions of the per diem would be subject to 100% CPI increases instead of 80%.	<p>The department will probably be finalizing and implementing amendments to the Lea and Guadalupe county contracts that will remove the debt service portion of the per diem from any future CPI increases. While the LFC's May 2007 Report (pages 22 and 25) indicates that separating out construction or debt service costs from the rest of the per diem will control and lower costs by not providing inflation adjusted price increases on fixed costs, the Follow-up Review Report (page 2) surprisingly seems to indicate that these amendments will not control or lower costs at all. In this regard, the Follow-up Review Report is therefore erroneous or at least inconsistent with the original Report.</p> <p>The Follow-up Review Report, just like the original Report, continues to overlook that the general restrictions on the annual increases in the Lea and Guadalupe County agreements to 80 percent of the CPI rather than 100 percent of the CPI was the department's method of not paying an inflationary increase on construction costs. Further, to the extent that the LFC is continuing to criticize the department for not being able to negotiate lower per diem rates with the private prison operators, the department is not in a position to be able to negotiate these lower per diem rates without a resultant reduction in the level of inmate services. The department is making every reasonable effort not to reduce its services to inmates, even though it must comply with the Governor's directive to reduce its 2009 and 2010 budgets by five percent.</p> <p>Regarding the second tier (lower) per diem rates at the Lea and Guadalupe County facilities, the department had to eliminate those rates in 2001 to pay for the security and other upgrades required as a result of the riots/disturbances at those facilities and recommendations from the Independent Board of Inquiry (IBI) Report. The department is currently not in a position to be able to negotiate such rates at this time.</p>
Do not apply price increases to the separate debt service fee.	<i>Not Implemented</i> – See above.	
Withhold no less than five percent of the total estimated contract amount as a performance	<i>Not Implemented</i> – The department has not modified the contracts, and invoices do not include detailed staffing levels.	The department agrees that it has negotiated amendments with GEO to clarify contract language regarding mandatory posts and staff vacancy paybacks, these amendments are in the final stage of negotiation and approval, that its

<p>incentive for maintaining low vacancy rates. Modify contracts to automatically deduct penalty amount for unfilled security positions after 30 days. Require contractors to provide detailed invoices.</p>	<p>However, contract monitors provide staffing patterns for tracking vacancies, yet the department has not assessed penalties.</p>	<p>contracts with GEO provide for penalties for any unfilled positions after thirty days, that the department tracks staffing vacancies through its contract monitors, and that the department has exercised its discretion under the contracts not to enforce any staffing vacancy penalties to date.</p> <p>With all due respect to the LFC, the department believes that is reasonable for it to maintain its discretion to enforce or not enforce vacancy penalties against GEO, and therefore it does not intend to pursue contract amendments that would make such penalties automatic or mandatory. The department needs to maintain a good working relationship with GEO and all of its private prison operators, and automatic/mandatory penalties are not conducive to maintaining this relationship. GEO has worked diligently and in good faith to hire and retain staff at the Lea and Guadalupe county facilities. It has been particularly difficult for GEO to hire and retain staff in Lea County, due to job market factors well beyond its control. If the department ever comes to believe that GEO is not working in good faith to staff the Lea and Guadalupe county facilities or that staff shortages are to the point where prison safety and security are jeopardized in any way, it will certainly enforce the staff vacancy penalties already present in the contracts (and if needed, terminate the contracts for cause). However, penalizing a vendor for every technical violation of a contract is not reasonable, particularly when the department simply has no other vendor or vendors with prison bed space in New Mexico sufficient to house 1800 inmates should GEO exercise it rights to terminate the Lea and Guadalupe county contracts after giving sixty days notice. With all due respect, to the LFC, withholding five percent of the total estimated contract amount as a performance incentive is not cost effective and will cause the vendor's bids and costs to increase.</p>
<p>Require private prisons to justify annual price increases based on meeting performance measures.</p>	<p><i>Not Implemented</i> – The department has not drafted contract amendments.</p>	<p>The Follow-up Review Report continues to overlook the economic and other realities present in the GEO and CCA contracts. The CPI increases provided to these companies on a yearly basis are based on well-documented inflationary cost increases for labor and materials. Many contracts in this and other states allow for price increases based on the vendors' increased costs, and businesses ranging from child care facilities to restaurants typically raise their prices as their costs increase without improving their services.</p> <p>Performance is generally a separate issue. GEO and CCA must perform well under their contracts, or the department can and would enforce penalties based on their failure to meet contractually required performance measures. By meeting the performance measures, which GEO and CCA have</p>

		historically and consistently met, those companies are performing at or above industry standards. Further, should either company ever fail to perform at or above industry standards (including American Correctional Association accreditation standards) after being given a reasonable opportunity to cure their deficiencies, the department could and would terminate those contracts for cause. The department will not allow these companies to jeopardize the safety and security of staff or its inmates, and neither company has ever done so to date.
Reevaluate the base per diem costs for the Clayton facility and consider bringing it more line with GCCF.	<p><i>Partially Implemented</i> – The department indicated it reevaluated the Clayton per diem, but did not focus its analysis on the operating per diem.</p> <p>Because the department used GCCF as the benchmark for Clayton’s operating per diem, it appears to be paying an inflated rate to Clayton. GCCF per diem includes capital construction cost in the operating per diem, whereas Clayton has a separate facility per diem.</p>	The department respectfully disagrees with this finding because it has fully implemented this recommendation. The department has reevaluated the Clayton per diem, and has determined that most if not all of the difference between the Clayton and GCCF per diem rates was because of higher construction costs at Clayton. Further, the operating and other costs for Clayton were evaluated by certified public accountants hired by NMCD and Clayton. The accountants found the per diems and costs to be reasonable. Further, the LFC was made aware of this information at the time that the contracts were negotiated.
Require contractors to submit prior year actual expenditures and financial audits, a balance sheet, statement of income and expenditures, and statement of cash flow for each facility.	<p><i>Partially implemented</i> – CCA complied with the department’s request. GEO refused, claiming the requested information is proprietary.</p>	<p>GEO did let staff look briefly at one financial document on internal profit and loss information during negotiations but it was limited with information and not useful to the negotiations. <i>CCA did provide the requested information.</i></p> <p>It is not realistic for the LFC to believe that a private company such as GEO is going to disclose what it considers to be propriety information to the department when such a disclosure would likely turn the information into public information or records under New Mexico law.</p>
Require LCCF to refund \$456,239.88 to the state for non-performance of the sex offender treatment program.	<p><i>Not implemented</i> – The department has not recovered the \$456 thousand. However, the department withheld payments of \$88,711 for seven months billings for an unrelated billing dispute. A December 2007 amendment eliminated the Sex Offender Treatment Program from the LCCF contract.</p>	<p>The Follow-up Review Report correctly states that the department is still working to resolve this issue, and that the department withheld \$88,711 in payment for the sex offender treatment portion of the LCCF contract. The department also acknowledges the Report’s implicit finding that GEO was slow to provide the requested FTE information relevant to this issue.</p> <p>However, the Report overlooks the complexity of this issue. While the sex offender treatment program portion of the LCCF contract required GEO to initially provide four (and subsequently just two) staff members to provide treatment services, the contract also contemplated that the department would be able to provide 116 (and subsequently 58) offenders suitable for the treatment services. The department was not able to provide anywhere near this number of qualified or suitable offenders, and this was not the fault of</p>

		<p>GEO. The lack of suitable offenders for the treatment program ultimately led to the termination of the program.</p> <p>Simply requiring GEO to reimburse the department \$456,000 would appear to be an overly simplistic, inequitable solution. The department informed the evaluator of the complexity of this issue during the recent follow-up review, and requested additional guidance or input from the LFC. The department did receive some guidance or input from the LFC at its recent exit conference. The resolution of this issue needs to consider and account for the department's failure to provide sufficient offenders for the program as much as GEO's alleged failure to provide sufficient staffing for the program. The department will continue to work to try to resolve or settle this issue with GEO.</p>
New Mexico's approach to prison planning and construction is not in the taxpayers' best interest.		
2007 LFC Recommendation	Status Per LFC	Corrections Department Response to LFC Status
<p>Require the department to develop and implement a 10-year facility strategic plan and submit the plan to the Courts, Corrections and Justice Committee, the Legislative Finance Committee and the Department of Finance and Administration no later than November 1 of each even-numbered year.</p>	<p><i>Implemented</i> – The department developed a 10-year plan and will update it every two years if budget permits.</p>	
<p>The department should modify the Clayton agreement by adding a lease-purchase clause to ensure the state, if it chooses, will own the facility after 20 years or may purchase the facility at any time. The purchase should take into consideration past lease payments.</p>	<p><i>Not implemented</i> – The Clayton agreement was not modified to improve the lease-purchase clause. However, the department did submit a proposal to the governor's office for approval and apparently, it was not approved.</p>	<p>In 2007, the department did submit a proposal to the Governor's office regarding the potential lease-purchase of the Clayton facility. That proposal was never approved, and there is no indication that it would be approved at this time. The department cannot pursue the legislative approval of any lease-purchase agreement prior to receiving the approval of the Governor. It is not realistic for the LFC to believe that the department would pursue any proposed litigation without the explicit approval of the Governor.</p> <p>Of course, the members of LFC and other legislators are free to pursue any legislation in this regard that they see fit, and to discuss these matters with the Governor or his staff.</p> <p>See attachment regarding the department's response to the LFC's recommendations regarding proposed legislation.</p>

The department needs better oversight to contain medical costs and ensure the provision of adequate care.		
2007 LFC Recommendation	Status Per LFC	Corrections Department Response to LFC Status
Limit medical contract annual price increases to no more than the medical service CPI based for western states based on meeting certain performance targets. At a minimum, include those related to access to care; quality of care, such as adherence to clinical treatment guidelines; low staff turnover, vacancies and use of contract nurses; and meeting reporting requirements.	<i>Partially implemented</i> – The annual price increases are limited to the medical service CPI based for western states, but the contract performance measures do not ensure program effectiveness.	The department negotiated a contract amendment with the health services vendor to provide medical services to the Northeast New Mexico Detention Facility in Clayton at approximately 75 percent less the estimated cost. The amendment increased the contract for the new facility by \$863,000 or approximately \$4.50 per inmate per day compared to the \$20 cost for all the other prisons
Withhold no less than five percent of the total estimated contract amount as a performance incentive for maintaining low vacancy rates; and include automatic financial penalties for excessive staff vacancies, particularly for critical professions such as physicians and dentists.	<i>Not implemented</i> – See above.	
Require the medical vendor to provide monthly reports on medical spending by defined expense categories and staff vacancies by type of staff. These should be submitted with invoices.	<i>Partially implemented</i> – The medical vendor is providing monthly reports as requested and required by the contract. However, invoices do not include staffing vacancies by type of staff.	The NMCD Combined Health Services Bureaus meets monthly with Correctional Medical Services, of staff are discussed. However, the actual invoices do not include this information. The department believes that stipulating this information on the invoice would be redundant and unnecessary.
Begin addressing deficiencies in the CNMCF Geriatric housing unit immediately and develop a long-term housing plan for the inmates that meet their therapeutic and medical needs.	<i>Implemented</i> – A construction contract is in place and one of the units should be completed in the near future.	
Implement recommendations from Committee medical experts included in Appendix B (Spencer & Anno Report).	<i>Implemented</i> – However, LFC did not validate the actions taken.	

More information is needed to determine both the quality and effectiveness of the department inpatient addiction services.		
2007 LFC Recommendation	Status Per LFC	Corrections Department Response to LFC Status
<p>Begin collecting and reporting therapeutic communities (TC) program outcome and performance information for addictions and mental health services including the following:</p> <ul style="list-style-type: none"> • percent of TC participants testing positive for substance use (monthly); • percent of TC participants expelled for non-compliance (quarterly); • percent of TC participants completing treatment within 12 months (quarterly); • average cost per TC participant (quarterly); • recidivism rates for TC participants at 12, 24, and 36 months (quarterly); • recidivism rates for TC graduates at 12, 24, and 36 months (quarterly). <p>Include the data above in an annual report to the Committee and report progress to Committee staff on a quarterly basis during FY08.</p>	<p><i>Implemented</i> – The Addiction Services Bureau Quarterly Statistical Reports are capturing the data as recommended. However, the percentages for TC participants testing positive for substance abuse and expelled for non-compliance are not evident, although the report includes the raw data.</p>	
<p>Complete a plan for including a formal aftercare component to the therapeutic communities (TC) program no later than July 2008.</p>	<p><i>Implemented</i> – Targeted aftercare needs have been addressed when the Addiction Services and Behavioral Health Services Division completed a pilot project on reentry and transitional services for co-occurring inmates transitioning from TC programs.</p>	

<p>Conduct a CQI study in coordination with the Classification Bureau to identify how often TC participants are transferred during their treatment.</p>	<p><i>Implemented</i> – Addiction Services completed a study of Therapeutic Community transfers with the Classification Bureau and developed a profile of Therapeutic Community graduates.</p>	
<p>The department does not regularly assess the impact of mental health services on inmates' ability to function in a prison environment or society upon release.</p>		
<p>2007 LFC Recommendation</p>	<p>Status Per LFC</p>	<p>Corrections Department Response to LFC Status</p>
<p>Begin collecting and reporting the following system-wide outcome measures:</p> <ul style="list-style-type: none"> • Suicide rate; • Rate of suicide attempts resulting in serious injuries; • Percent of inmates discharged from MHTC who do not require crisis intervention services within six months; and • Percent of inmates discharged from MHTC who return within six months. 	<p><i>Partially Implemented</i> – The Mental Health Services Bureau monthly statistical report appears to provide some of the raw data but the outcomes are not evident. The report is primarily a compliance document and is not an effective management tool.</p>	<p>The Mental Health Services Bureau monthly statistical report, as well as our monthly Mental Health Services Bureau Performance Measures provides the data needed for two of the four LFC recommended areas. Those two areas are "<i>Suicide Rate</i>" and "<i>Percent of inmates discharged from MHTC who return within six months</i>". It should be noted that the two monthly reports provide the suicide data as a raw number; in other words the number of suicides which have occurred. We will also begin reporting that number as a percentage expressed as the suicide rate per 100,000 inmates, which is the traditional method of reporting prison suicide rates. Presentation of the suicide rates in that statistical format will allow the Legislature to directly compare NMCD suicide rates to national prison suicide statistics on a monthly basis.</p> <p>The other two LFC recommendations: "Rate of suicide attempts resulting in serious injuries" and "Percent of inmates discharged from MHTC who do not require crisis intervention services within six months" will be added to the monthly Mental Health Services Bureau Performance Measures effective February 1, 2009. This will be implemented through adding additional informational items to the <i>Incident Report / Crisis Intervention Form (CD-180101.1)</i>. These two data points already exist in the mental health files, however the lack of electronic medical records in NMCD necessitates the creation of additional paperwork funneled to the Quality Assurance Manager in order to extract precise percentages from the records.</p>
<p>Study, in coordination with the New Mexico Sentencing Commission (NMSC) the continuing need for NMCD to perform diagnostic evaluations, including an assessment of the results of existing evaluations;</p>	<p><i>Implemented</i> – The NMSC complete the study in November 2007.</p>	

<p>actual costs incurred by the department; other financing options; and alternative settings for the evaluation, such as county detention facilities.</p>		
<p>The department ensures basic compliance with policies but could improved prison operations further by increasing its focus on performance.</p>		
<p>2007 LFC Recommendation</p>	<p>Status Per LFC</p>	<p>Corrections Department Response to LFC Status</p>
<p>Require private facilities' contract monitors to conduct contract compliance audits to ensure that contracts comply with current contracts and provide services as required by the contract. Create a deficiency and corrective action plan database to analyze types of deficiencies reported on a regular basis and impact of corrective action plan on the facilities performance.</p>	<p><i>Partially implemented</i> – Contract monitors conduct quarterly audits, the department compiles the results and follow-up on deficiencies on a regular basis. The department has created a deficiency and corrective action plan database that is not fully implemented. In addition, the department has initiated a project plan for an automated system that will streamline, standardize and improve tracking ACA data to ensure state run facilities are accountable and prepared for re-accreditation.</p>	

Legislation Attachment

- The department did previously submit proposed legislation for the 2008 session to the Governor's office for approval or action. The department was not approved to pursue the proposed legislation, and has received no indication that such legislation would be approved for the 2009 session. Further, the department's proposed 2009 legislation focused on prison reform based on the findings of the Governor's Prison Reform Task Force. Therefore, the department did not submit its 2008 proposed legislation for reconsideration for the 2009 session.
- The department would not be opposed to pursuing its 2008 proposals in a subsequent legislative session, if given that authority by the Governor. However, it needs to clarify what those proposals would be. The department is not opposed to legislation that would amend Section 33-1-17 NMSA 1978 to remove the restriction on the location and type of adult male private correctional facilities. The department is not opposed to legislation that would amend Section 33-1-18 and 19 to consolidate the multiple construction funds listed there into only the New Mexico prison fund, and that would remove the current restrictions on the use of that fund (primarily for the purchase of the Central Office complex and for building/utilizing GCCF and LCCF). In fact, this is the legislation that was proposed by the department prior to the 2008 legislative session.
- However, the department would be opposed to any proposed legislation that would prevent it from using the prison fund monies for operational leases. The department needs to maintain the administrative flexibility to use the monies for any and all corrections purposes, including operational leases. It would simply not be in the department's best interests to place limits on the use of fund monies for payment of operational leases whenever it ongoing, substantive leases that require ongoing payments.
- The department would also be opposed to any proposed legislation that would prevent it from entering into agreements with a prison operator that also owns the facility. Such legislation is not feasible or practical, and not in the department's best interests. It would remove the department's administrative flexibility to house inmates in any facility where suitable bed space is available as needed, and overlooks the fact that prison operators often own the available facilities.
- While the LFC recommended legislation that would mandate that private prisons cost less than if the state operated the same facility, it is the department's position that private prisons already cost less. This position is based in part on the department's comparison of GCCF (2007) rates to those at the Southern New Mexico Correctional Facility (SNMCF). The GCCF per diem rates were 19% cheaper than those at SNMCF. Further, there is no guarantee that the department will ever be able to build or operate another state owned facility, and removing the option of housing inmates at private prisons (even more expensive ones) would not be in the best interests of the department if it were to ever need bed space beyond its current capacity.
- Of course, the members of LFC and other legislators are free to pursue any legislation regarding the above that they see fit, and to discuss these matters with the Governor or his staff.

APPENDIX B

Summary Status of Spencer and Anno Report Recommendations	
Issues	Resolution
1. There is an urgent need to fill the NMCD Medical Director position.	Resolved
2. The NMCD-Wexford contract has some requirements that are not all being fulfilled at all facilities. These include Wexford/NMCD meetings 10 times a year, quarterly Pharmacy and Therapeutics Committee meetings, electronic medical records, and penalties for staffing vacancies."	Resolved.
3. The present contract does not provide adequate authorized staffing positions. There is insufficient physician staffing at LCCF and WNMCF, insufficient dental staffing at LCCF, PNM, NMWCF and CNMCF, insufficient optometry staffing at CNMCF and PNM, insufficient clerical staffing at all facilities, and insufficient nursing (particularly RN) at all facilities."	Resolved.
4. Unsatisfactory vacancy rate for key medical staff positions	Resolved.
5. It is clear that there is a need for better systems for communication between NMCD and Wexford, and for closer monitoring.	Improved, excellent.
6. The Continuous Quality Improvement (CQI) program needs improvement in design and implementation. It should clearly be a multidisciplinary effort and involve NMCD staff, including the Warden or his representative, as well as the contractor's health care staff. In addition to carrying out the monitoring assignments of the corporate office, it should also identify suspected site-specific problems, study and monitor them, implement corrective measures, and evaluate subsequent outcome."	Improving.
7. There should be a standardized log or computer spreadsheet for documenting the components of the intake process, at RDC and NMWCF. This would make it easily possible to monitor the timeliness of the various procedures. Our review of samples of charts at RDC revealed that there are some failures to meet required time frames. Sampling charts is a very cumbersome way to determine compliance. This information should be readily available for routine CQI studies, from an activity log."	Log sheets standardized, computerization under consideration.
8. Likewise, there should be a standardized log for documenting timeliness of the sick call activity. There is a lack of consistency among the facilities in recording sick call requests for time received, time of encounter, and disposition of case, i.e. whether referred to practitioner, etc. This information also should be readily for routine CQI studies."	Standardized.
9. The contract calls for sick call triage and screening encounter to be done by a RN or mid-level provider (PA or NP). In actuality, these activities are being done mainly by LPNs. Several of the Wexford Nursing Treatment Protocols are not appropriate for implementation by LPNs, and it is essential that staffing provides that a RN (or a midlevel provider) is always on site when sick call is being conducted, to be called upon for serious medical problems that exceed the capability of the LPN."	Screening improved, now required as stated by CMS.
10. Although nurse sick call is held five days a week, inmates must have the opportunity daily to request health care. (National Commission on Correctional Health Care standard.) A nurse should collect and triage sick call requests daily, and this is not being done at LCCF."	Mandatory.
11. Sick call "no shows" should be re-scheduled, not dropped from the list. A "no show" may be due to a variety of causes, some serious, and deserves follow-up."	Mandatory.
12. The chronic illness clinic program is unsatisfactory system-wide. The logs or "Tracking System" are inaccurate and incomplete. There are innumerable examples of failure to follow nationally accepted guidelines, most of which are stated in the Wexford chronic care guidelines. However, the forms that are in	Active tracking meets CMS internal standards, and continues to

<p>use are NMCD forms, and they are less than satisfactory. Wexford's forms are better, and include disease-specific flow sheets that have brief reminders of the parameters to be followed. Such guideline reminders are essential in prison health care. The system now in place does not allow for a significant CQI monitoring of chronic illness care, because it lacks disease-specific criteria. This important aspect of care is not meeting quality standards. "</p>	<p>be reviewed.</p>
<p>13. Related to the chronic illness program is the fact that Pneumovax (pneumonia vaccine) is not available to patients with diabetes or chronic respiratory conditions, and it should be available."</p>	
<p>14. MMR (measles, mumps, rubella) vaccine should be offered to all women of child-bearing age who are not pregnant and do not have proof of immunity to rubella. This is a CDC recommendation that is not being followed."</p>	<p>Compliant</p>
<p>15. The off-site referral process needs better documentation. All components of this activity should be recorded on the same spread sheet, not on separate sheets of paper, and should include the denials, and the date of each step in the process. Although reportedly the "collegial review" process is now more responsive to the attending physicians' requests, there are still a significant number of denials, and insufficient means of tracking and evaluating these denials. The NMCD Medical Director should be able to attend the collegial review meetings, and at least should be notified of the denials, so that he can investigate them as part of his oversight responsibility."</p>	<p>There is no evaluation process for consultation – referrals are automatic.</p>
<p>16. Hobbs is a long distance from Albuquerque, where Wexford has identified its consultants. This constitutes a disincentive for patients and staff when consultations are recommended. Although Las Cruces is also distant, it is closer to Hobbs than Albuquerque, and it is suggested that the contractor identify appropriate consultants there."</p>	<p>We are actively working with CMS to have a broad range of providership.</p>
<p>17. The HIV screening and treatment program is operating very satisfactorily at the patient care level, with an agreement between the NMCD and the New Mexico Department of Health. However, the agreement requires the DOH to provide quarterly reports and an annual summary. Our efforts to obtain these were not successful, so we wonder whether they in fact are being provided."</p>	<p>Reviewed, stable.</p>
<p>18. The Hepatitis C virus (HCV) program, on the other hand, raises some questions. The UNM gastroenterologist who makes the clinical treatment recommendations is a nationally recognized authority on HCV. However, the procedure for determining eligibility for treatment is very cumbersome and lengthy, raising the question of whether he is being presented with all the cases deserving of treatment. Enthusiasm for such treatment seems to vary among clinicians at the several NMCD sites. Record keeping also varies, and the Clinic Nurse/HCV Coordinator at WNMCF has a model system for tracking these patients. There is a need for clarity regarding testing for HCV. Policy requires laboratory evidence of impaired liver function on two occasions, two months apart before HCV testing can be done. However, our information is that clinicians often order an HCV test on inmate request, without waiting for repeat liver function tests. CDC recommendations are that all inmates should be questioned regarding risk factors for HCV infection at the time of entry medical examinations, and those with risk factors should be tested. Only 23% of the approximately 6800 NMCD inmates have been identified as HCV infected, a figure considerably lower than prevalence</p>	<p>All inmates now screened for Hepatitis C virus (HCV) antibody – only corrections department in the US to do so.</p>
<p>19. Wexford's detoxification protocol is inadequate. Although detoxification is more frequently required in jails than prisons, the need does occasionally arise in prisons, and it can be a life or death matter. The contractor should adopt the CIWA protocol (Clinical Institute Withdrawal Assessment), which is readily available on line."</p>	<p>Policy consistent with MDC.</p>
<p>20. There are some space and equipment needs that should be addressed. These include the counter-therapeutic housing for elderly men at CNMCF, inadequate</p>	<p>Has been optimized with</p>

clinic space at the level II facility of PNM, additional computer stations at all clinics, extending the Pyxis medication program and equipment to all facilities, and the need for examining rooms at NMWCF that do not have to double as offices."	wardens.
21. The grievance process should record and track the informal grievances as well as the formal ones.	Two-track – grievance officer and also medical complaints
22. Dietitian counseling should be available to all chronically ill patients who require a special diet. This should be a component of patient education, an area that is neglected in the care of the chronically ill."	Reviewed with Correctional Medical Services, Inc. Medical Director, satisfactory.
23. Appropriate ADA diets for diabetic patients should be ordered and available.	Reviewed with CMS and dietary – diabetic diet satisfactory.
24. Where adequate on-site services are not available, diabetic patients should be sent off-site to ophthalmologists for their annual retinal examinations."	OK Protocol
25. At LCCF, there is a need for better coordination between the institutional mental health staff (GEO) and the contract psychiatrists, regarding scheduling, tracking and follow-up. This may be something deserving of attention at the other facilities as well. Consideration should also be given to routinely having the appropriate mental health staff attend the telemedicine psychiatry encounters. Since the patient is being cared for by mental health staff as well as by the psychiatrist, it would seem helpful to the communication process if both were present at these telemedicine visits."	Satisfactory.
26. Physical therapy should be available to inmates who need it at all facilities, not just CNMCF."	Satisfactory
27. Monthly health services reports at NMWCF should reflect the number of patients seen by the physician and the number seen by the physician's assistant, rather than lumping them together in one total figure."	Discussed, reviewed with Correctional Medical Services, Inc. for efficiency.
28. It is recommended that at each facility the responsibility of HCV Coordinator be assigned to one nurse. Likewise, it is recommended that at each facility the responsibility of chronic illness coordinator be assigned to one nurse. It is clear that spreading these responsibilities among several people does not result in as reliable a program."	In process with ECHO and Correctional Medical Services, Inc.
29. The timeliness and efficiency of off-site medical care is uncertain.	Stable, ongoing
30. New Mexico Corrections Department Health Services Bureau has no valid records regarding compliance with objective standards of care regarding chronic disease management of the incarcerated patient.	Reviewed with Correctional Medical Services, Inc.
31. Inmates wait a long period of time for dental care.	Monitored

Source: NMCD