

COUNTY OF MILWAUKEE
Inter-Office Communication

Date: August 7, 2012

To: Hector Colon, Director, Department of Health and Human Services
Paula Lucey, Administrator, Behavioral Health Division

From: Jerome J. Heer, Director of Audits
Audit Services Division, Office of the Comptroller

Subject: Review of Issues Related to Expenditures for BHD 2011 Contracted Pharmacy Services Exceeding Contract Authorization by \$650,000.

BACKGROUND

The Milwaukee County Behavioral Health Division (BHD) contracts with Roeschen's Omnicare Pharmacy (Omnicare) to provide pharmacy services to the following populations served by the division:

- Acute and long term inpatient medical pharmaceutical services for a 300 bed hospital serving primarily patients with a mental illness diagnosis;
- a 24 hour psychiatric crisis emergency room with an 18 bed observation unit;
- Community Support Programs; and
- Crisis Walk-In Clinic.

In a January 3, 2012 memo to the Chairman of the County Board, the Director of the Department of Health and Human Services (DHSS) reported that expenditures for contracted pharmacy services at BHD were expected to exceed the \$5,090,120 contract authorization by more than \$650,000. The memo noted that the Audit Services Division of the Office of the Comptroller (formerly the Department of Audit) would assist in reviewing the situation and that DHSS would return to the County Board to request additional expenditure authority if necessary. In the memo, the authors expressed hope that the review would identify some savings that would cover some or all of the 2011 overspending.

This review contains 12 recommendations directed at BHD management. BHD management's written response to the recommendations and comments in this review is attached as **Exhibit 2**. Omnicare reviewed a preliminary draft of this memo and had input in revisions to the draft but declined an offer to provide a separate written response.

ANALYSIS

Several factors influenced BHD's exceeding its 2011 authorization for contracted pharmacy services with Omnicare by approximately \$650,000:

- Full-year impact of transfer of drugs indirectly purchased by BHD through Medical College of Wisconsin Clinic to direct BHD purchase from Omnicare. Estimated 2011 fiscal impact = \$51,500.
- Budget assumptions. Estimated 2011 fiscal impact = approximately \$500,000.
- Pre-Authorization issues. Estimated 2011 fiscal impact = difficult to quantify, but addressing these issues could partially reduce an estimated \$445,000 in lost opportunities for third party reimbursements in 2011.
- Identification of third party payors. Estimated 2011 fiscal impact = insignificant but should be periodically monitored.
- Contract oversight issues. Estimated 2011 fiscal impact = comprises all previously noted estimates.

Transfer of Indirect Drug Purchases Through MCW Clinic Contract to Direct Drug Purchases

The 2010 contract authorization for BHD's pharmacy services with Omnicare was \$4,200,000. In 2010 and previous years, BHD had a separate Purchase of Service (POS) contract with the Medical College of Wisconsin (MCW) to provide outpatient medical care to BHD clients for whom BHD was the payor of last resort. The medical care, including pharmacy services, was provided at an MCW Clinic. The Medical College of Wisconsin had its own, independent contract with Omnicare to provide the pharmacy services included in the care provided by MCW under the POS contract. Complicating this arrangement further was an informal practice in which BHD would assume responsibility for directly paying MCW's pharmacy services (drugs) bills incurred under the POS contract when the Medical College had exhausted monies budgeted in the POS contract for drugs. In other words, BHD had included the cost of drugs in its POS contract with the Medical College of Wisconsin, but when the actual drug costs exceeded the amount budgeted within the POS contract, BHD would pay the additional drug costs directly to Omnicare. Under this informal arrangement, Omnicare would bill BHD directly for pharmacy services rendered to BHD outpatients seen at the MCW Clinic.

In 2010, BHD management requested County Board approval to separate the pharmacy services portion of the POS contract with the Medical College of Wisconsin and incorporate those services within the BHD contract with Omnicare. A fund transfer of \$667,590 (the pro-rated portion of the \$890,530 annual drug cost contained in the POS contract) was approved by the County Board, effective April 1, 2010, to make the cost of drugs supplied to BHD outpatients seen at the MCW Clinic a direct cost to BHD under its Omnicare contract, rather than an indirect cost under BHD's POS contract with the Medical College of Wisconsin. According to the language included in the fund transfer request:

For many years, BHD has purchased outpatient services for clients through the Medical College of Wisconsin. As part of that contract, pharmaceuticals were provided to clients and billed to BHD as part of the total annual contract amount. In 2010, BHD renegotiated with the Medical College of Wisconsin to reduce their Purchase of Service contract by \$667,590 (from \$1,980,165 to \$1,294,575) and increase the BHD drug allocation by the same amount. This change gives BHD more control over billing, opportunities for cost containment and better client tracking ability. This agreement took effect on April 1, 2010 and the fund transfer reflects the change. A Board Report is also being submitted to increase the contract with Roeschen's Omnicare Pharmacy in order to pay for the additional drugs. This fund transfer only realigns accounts; no net tax levy change results from this fund transfer.

It is clear from the language contained in the fund transfer request, as well as similar language in a report to the County Board and in an oral presentation to the Health and Human Needs Committee in May 2010, that the action requested contemplated no fiscal impact from the transfer itself. That is, no savings or additional expenditures were anticipated due strictly to the act of transferring the purchase of drugs and pharmacy services from one BHD contract (POS contract with the Medical College of Wisconsin) to another (the Omnicare contract). The transfer was described as a 'realignment of accounts' with no fiscal impact, but with strategic benefits for BHD including more control over billing, opportunities for cost containment and better client tracking ability.

Omnicare has provided background and context that suggests BHD negotiated the change in its POS contract with the Medical College of Wisconsin, which required a simultaneous and compatible change in BHD's contract with Omnicare, without the input or consent of Omnicare. ***Further, the lack of any savings calculations in the fiscal note accompanying the fund transfer indicates that BHD administration was unaware that MCW's contract with Omnicare included higher prices for brand name drugs than BHD's contract with Omnicare.***

According to Omnicare, when BHD initially added the MCW Clinic to its outpatient program, Omnicare was under contract with BHD but entered into a separate agreement with MCW because the patients were being treated at a separate facility. At that time, Omnicare executed the MCW agreement with the same rates as Omnicare's contract with BHD. However, in 2008, when BHD competitively awarded its pharmacy contract beginning in 2009, Omnicare lowered its prices for brand name prescription drugs from a 15% discount off of Average Wholesale Price (AWP-15%) plus a \$2 dispensing fee to an 18% discount off of AWP (AWP-18%) plus a \$1 dispensing fee. While the Omnicare's contract beginning in January 2009 (the current contract) had lower rates than the previous contract, Omnicare's separate contract with MCW for BHD clinic patients was never renegotiated.

Omnicare expressed confusion regarding the logic expressed by BHD in justifying its request to consolidate the pharmacy portion of its POS contract with the Medical College of Wisconsin and its Omnicare contract. During his oral presentation to the Health and Human Needs Committee, the former BHD administrator noted advantages associated with pooling the drug purchases for economies of scale and to help keep up with inflation. Omnicare noted that drugs purchased under both contracts are for dispensed prescription medications individualized per patient, not bulk purchases of medication from a manufacturer, and therefore would never result in such benefits.

[Note: The County often looks for opportunities to consolidate purchases, whether commodities or services, in hopes of attracting more and lower contract bids or proposals.] The record shows a lack of communication and a misunderstanding of terms on the part of BHD in May 2010, when the fund transfer (retroactively effective to April 1, 2010) was approved. However, the fact remains that BHD began paying Omnicare directly for pharmacy services and drugs provided to BHD clients at the MCW Clinic in June 2010 (for April services) and after several months, the Omnicare Area Director at the time signed a contract amendment (see **Exhibit 1**) dated October 13, 2010 that states, in part:

“...For patients not eligible for third party reimbursement, County will be billed at the rates set forth in the original contract.”

The original contract modified by the signed addendum was the January 2009 contract with BHD that was extended by mutual agreement of both parties for 2010.

We estimate the total drug and dispensing fees charged to BHD for MCW Clinic patients in excess of the County contractual rate for the period October 13, 2010 through April 30, 2012 is approximately \$78,500.

Omnicare has indicated that it has questions regarding the signed addendum and has not accepted the validity of the document at this time. Omnicare has also indicated that its separate contract with the Medical College of Wisconsin has never been formally terminated and thus the price differential would be covered by that agreement.

To address charges and payments for pharmacy services in excess of applicable contract rates, we recommend BHD management:

1. *Disallow \$78,500 in overpayments for drugs and pharmacy services rendered by Omnicare to BHD outpatients served at the Medical College of Wisconsin Clinic during the period October 13, 2010 through April 30, 2012.*

2. *Review Omnicare invoices subsequent to April 30, 2012 to ensure all charges for BHD outpatients served at the Medical College of Wisconsin Clinic are in compliance with applicable contract rates before approving payments.*

2011 Budget Assumptions

Due to budgetary pressures and expectations of unspecified cost containment savings, BHD established a 2011 contract authorization limit of \$5,090,120 for its contract with Omnicare for pharmacy services, the identical amount as the annualized 2010 contract after an amendment for increased services effective April 1, 2010. No allowance was made for inflationary increases in drug costs from 2010 to 2011.

According to the Department of Administrative Services (DAS) budget analyst for BHD, at the time the 2011 budget request was completed (June 2010), the expectation was that bringing the MCW drugs under the Omnicare contract would save money in the long run. The analyst also noted that, projecting off of 2010 data, there was a slight surplus in drugs, and a small cushion of approximately \$175,000 for potential contract increases, not specifically assigned to the pharmacy services contract, was included in the overall 2011 BHD budget. The cushion amounted to less than 2% of the total 2011 payments of approximately \$11.8 million for BHD drug, housekeeping and dietary contracts.

While not directly comparable, it is noteworthy that the inflationary assumption for prescription drug costs for the County's employee/retiree health care plan for the same time period was 10%. According to information provided by the County's employee benefits manager, Average Wholesale Prices (AWP) for prescription drugs (an industry standard upon which many contracts, including a portion of the BHD contract with Omnicare, are based) increased 13.2% from 2010 to 2011.

Proper budgeting would have included a projection based on an analysis of actual drug cost and utilization trends experienced by BHD under its Omnicare contract, incorporating factors such as anticipated average patient census and other variables such as reductions in the cost of brand name drugs when patent protections expire. Any anticipated savings should be attributed only to specified and supportable cost containment initiatives based on rational, documented assumptions. Information required to perform such detailed analysis was contractually required to be provided by Omnicare, but was not [see later subsection of this report on Contract Oversight]. Applying the 10% inflationary assumption used for the County's employee/retiree health care plan for prescription drugs to BHD's pharmacy contract cost estimate for 2011 would have required an increase of \$500,000.

To help reduce the likelihood of future shortfalls in pharmacy services expenditures related to insufficient budget estimates, we recommend BHD management:

3. *Base annual contract authorization limits for pharmacy services on detailed analyses of BHD's actual drug utilization, cost trends and other relevant factors.*
4. *Base any projected savings on specific, identifiable cost containment initiatives that are supported with rational and documented assumptions.*

Prior Authorization Issues

Third party payors, including many private insurers, Title 19 and Title 18, require Prior Authorization for various high-cost medications. For such medications, a window of time—typically 14 days according to Omnicare—is provided for prescribing psychiatrists to supply required documentation supporting the need for the particular drug prescribed, as opposed to a less expensive alternative. If the supporting documentation meets established criteria, the medication is retroactively approved for payment by the third party payor. If the Prior Authorization window has passed without the submission of required documentation, however, coverage is denied by the third party payor.

Based on data compiled by Omnicare for the first 45 days of 2012, BHD lost approximately \$55,000 in potential credits for lack of completing third party payor Prior Authorization documentation requirements. This equates to approximately \$445,000 on an annual basis, and is a conservative figure because it is calculated only on first fills (does not include subsequent refills of the same medications).

The BHD medical director noted that several factors can make it difficult to meet Prior Authorization documentation requirements within the allotted time frame. These include:

- Demands on staff psychiatrists' time. Obtaining the medical records for each patient for which a Prior Authorization is required, researching the circumstances of the patient's condition and reason for the prescribed medication, and completing the attendant paperwork can be a heavy demand on psychiatrists' extremely demanding schedules.
- Medications requiring Prior Authorization are often dispensed on a one-time, emergency basis. By the time the notification of a Prior Authorization requirement is communicated back to the attending psychiatrist, the patient may have been discharged and tracking down the paperwork required to complete the Prior Authorization request for a single dose may be too time-consuming to be cost effective for the authorizing psychiatrist.
- At BHD, where staff psychiatrists are in short supply, the prescribing psychiatrist may have been filling in for the patient's regular doctor. For instance, the medication might have been authorized in the middle of the night via a telephone consultation. Once again, the time

required to research the patient's medical chart and supply the required Prior Authorization documentation can be burdensome.

- There is no single formulary (standard list of medications requiring no Prior Authorization) for the various private insurance companies, Title 19 and myriad Medicare Advantage plans available to Title 18 patients. BHD staffing patterns, which include part time psychiatrists that work only weekend shifts, can include days between attending psychiatrists' shifts, effectively reducing the 14-day window to a much less practical time frame. It should be noted that Title 19 does maintain a standard formulary that is updated from time to time, but BHD has not adopted any formulary to use as a 'base' list of preferred medications for staff psychiatrists.

While it is unlikely that 100% compliance can be achieved, this is a lucrative area for cost containment. It is a complex issue which will require increased effort to manage on multiple fronts. BHD and Omnicare have recently collaborated to make improvements in this area. For instance, delays in communicating Prior Authorization requests have been reduced by Omnicare supplying a dedicated fax machine and faxing requests directly to a BHD staff person who is responsible for expediting Prior Authorization requests. Omnicare has also added the cost of claims requiring Prior Authorization to allow the BHD staff person to prioritize higher cost claims.

Omnicare has indicated it maintains and continuously updates a proprietary database of the various formularies for Title 19 and all Title 18 plans, which could be used prospectively by BHD to flag medications requiring Prior Authorizations on a real-time basis. Omnicare estimated the cost of this service to be approximately 30 cents per patient per month, but has recently offered to subsidize the cost of the service for use by BHD on a trial basis. Discussion with a consultant hired by BHD to implement a new Electronic Medical Records (EMR) system indicated that when the system is fully developed, it can be used to develop an internal BHD formulary and/or integrated with external systems such as Omnicare's product.

A BHD administrator also noted that once the EMR system is operational, patient histories will be much more readily accessible for psychiatrists and/or designees to conduct the necessary research and provide the type of documentation necessary to complete Prior Authorization forms more timely.

To reduce the substantial loss of potential credits due to Prior Authorizations, we recommend BHD management:

5. *Include strategies for containing costs associated with non-compliance with Prior Authorization documentation requirements of third party payors in developing and implementing BHD's new EMR system.*

6. *Review the Prior Authorization data compiled by Omnicare to develop a 'short list' of common, high-cost medications frequently requiring Prior Authorizations and disseminate this information to prescribing psychiatrists for purposes of (a) considering alternative medications, if appropriate, and (b) completing Prior Authorization documentation contemporaneously with writing the prescription.*

After reviewing a preliminary draft of this report, BHD management informed us that the Medical Director has recently taken steps to implement a protocol whereby BHD psychiatrists will automatically fill out appropriate Prior Authorization forms for three high-cost drugs that have frequently been denied third party reimbursement due to missing the 14-day Prior Authorization window.

Credits for Identification of Third Party Payors

BHD contracts with a private agency, Winged Victory, to screen BHD inpatient admissions (Acute Adult Inpatient units, Child and Adolescent Inpatient Services unit and both Hilltop and Central Long-Term Rehabilitative Care facilities) for private insurance as well as eligibility for Medicare (Title 18) and Medicaid (Title 19) coverage. Patients identified as eligible for Title 18 or Title 19 are assisted in applying for coverage. This means that coverage in these instances is retroactive and, for Title 19, often limited to dates of service for the immediate episode of care (“institutional” Title 19 coverage). Thus, if a patient is seen for three two-week episodes of care in a three-month period, Winged Victory must go through the application and verification process each time the patient is admitted. Once Winged Victory confirms that Title 19 coverage is approved, it notifies Omnicare. In addition, according to Omnicare, frequent checks are made for Title 19 coverage using an electronic database (Forward Health Portal)—typically upon admission, at the end of the month of admission, and a ‘sweep’ of all active patients approximately once every three months. When alternative coverage is identified, Omnicare bills the responsible party and provides appropriate credits to BHD.

Delays of several weeks for approval of Title 19 applications, and the retroactive nature of coverage determination makes monitoring of the appropriateness of credits issued to BHD challenging. Further complicating this task is the previously-mentioned issue of Prior Authorization requirements imposed by Title 19 for payment of certain high-cost drugs. Title 19 provides a 14-day window for prescribing physicians to complete additional paperwork providing justification for seeking approval of such drugs. In many instances, the 14-day window has passed before a patient is retroactively

approved for Title 19 coverage, so the cost of the drugs requiring Prior Authorization are not approved by Title 19, thus remaining a BHD responsibility.

We traced 25 patients from the Acute Adult Inpatient units identified by Winged Victory as approved for Title 19 coverage for episodes of care during the seven-month period January through July 2011, reviewing invoices from January 2011 through March 2012. We questioned approximately \$12,500 in charges that appeared to be potentially eligible for Title 19 payment and thus creditable to BHD. Omnicare reviewed those charges and provided justification for payment responsibility falling to BHD for all but about \$450, which they indicated would be billed to Title 19 and credited to BHD. Most of the remaining \$12,050 were not billable to Title 19 because they were charges for drugs requiring Prior Authorization and the 14-day window for seeking approval had lapsed before Title 19 eligibility was established. A minor amount of charges were for non-covered over-the-counter products or failed to meet other Title 19 restrictions.

While BHD has recently made efforts to better monitor Omnicare billings to prevent paying for BHD patients who have been approved for Title 18 or Title 19 coverage, there is no systematic review in place to identify missed opportunities to bill alternative payment sources. It should be noted that our review was for Acute Inpatient units only and only for patients identified by as Title 19 eligible during the first six months of 2011. This small test illustrates the complexities involved in monitoring credits due under this contract and the need to develop a protocol for at least a periodic spot-check to ensure BHD receives appropriate credits. It also suggests BHD should explore possible solutions to the problem of costs incurred as a result of missing Title 19's 14-day Prior Authorization window due to retroactive coverage determinations. The BHD Fiscal Director expressed interest in researching this issue.

To help ensure appropriate alternative payors are identified and billed, with appropriate credits applied to BHD payments, we recommend BHD management:

7. *Develop protocols to systematically review/spot-check Omnicare invoices for credits due based on follow-up monitoring of BHD patients identified by Winged Victory as approved for alternative payor coverage.*
8. *Explore opportunities to reduce costs associated with missing Title 19's 14-day Prior Authorization period for certain high-cost drugs due to delays in obtaining Title 19 coverage for likely candidates, particularly those with recent approved dates of coverage.*

Unnecessary BHD Expense Due to Lack of Third Party Payor Screening for MCW Clinic Patients

In a related issue, prior to 2010, the Medical College of Wisconsin screened BHD outpatients seen

at the MCW Clinic for Title 19 and other third party payors. According to Omnicare, MCW was very successful in its screening efforts. The Medical College of Wisconsin discontinued this practice in 2010 and Omnicare has suggested that no one from BHD filled this void, resulting in higher drug costs to BHD. Invoices for pharmacy and drug services for BHD clients at the MCW Clinic jumped from approximately \$700,000 in 2009 to approximately \$1,250,000 in 2010.

However, administrators from both the Medical College of Wisconsin and BHD confirmed that the MCW Clinic population mix changed during that time. In 2010, only those BHD clients for whom BHD is the payor of last resort are referred for treatment at the MCW Clinic. Since circumstances can change, it is prudent to regularly review alternative coverage at the Forward Health Portal. However, BHD administrators indicated they do not believe an aggressive pre-screening effort would yield results for this current population, all of which is referred through the BHD Access Walk-In Clinic.

An administrator at the Medical College of Wisconsin offered the following insight regarding ways the MCW Clinic attempted to manage the cost of drugs for BHD clients, noting that it was becoming increasingly difficult to do so:

- Manufacturer's drug samples. According to the administrator, the MCW Clinic was extremely aggressive in obtaining sample drugs from drug manufacturers and dispensing them to BHD clients, thus helping to reduce the cost of drug treatment for that population. In recent years, manufacturers have dramatically curtailed this activity, according to the administrator.
- Manufacturer's patient assistance programs. Similarly, the MCW Clinic placed great effort in assisting BHD clients with paperwork necessary to receive deep discounts from drug manufacturers. Such programs have also been curtailed in recent years, according to the administrator.
- Lack of a drug formulary at BHD. Many of the BHD clients seen at the MCW Clinic have previously been treated at BHD and have been prescribed expensive drugs that cannot be immediately converted to less expensive alternatives for therapeutic reasons. The BHD Medical Director has defended the concept of an "open formulary" (one that does not exclude the use of high-cost drugs when less expensive alternatives are available without specific, documented medical justification). He has stated that the County Acute Inpatient facility typically treats individuals with extreme mental illness issues and which have presented in crisis mode. Use of more expensive drugs, known to be effective, are often prescribed to stabilize a patient for a short-term stay with follow-up treatment in a less costly outpatient setting.

We discussed the potential cost-effectiveness of additional pre-screening efforts of BHD clients referred to the MCW clinic, as well as the previously-mentioned issue regarding the Title 19

application process and Prior Authorization restrictions with the BHD Fiscal Director. Based on those discussions and her recent review of Title 19 regulations concerning potential coverage for psychiatric patients of all ages that present as the result of an Emergency Detention (a majority of BHD inpatients), she has indicated an intention to review and assess the most cost-effective targeting of the pre-screening services provided by Winged Victory.

Contract Oversight

There is a general lack of detailed contract oversight/management by BHD, as evidenced by the following observations:

- BHD fiscal staff was not aware of the previously-described price differential for pharmacy services provided to BHD patients served at the Medical College of Wisconsin Clinic.
- BHD does not perform any systematic monitoring/review of credits for third party payors and returns of unused medications for appropriateness.
- BHD did not identify/question patient co-pays charged to BHD by Omnicare and a related compliance issue with Omnicare billing Title 19 and Title 18 directly for patients in BHD facilities reimbursed on a per diem basis [*See discussion of this issue in the following subsection of this report*].
- BHD did not hold Omnicare accountable for providing the following contractually required reports:
 - Monthly returns
 - Monthly total cost billed by payor source
 - Monthly invoices for operational costs billed by BHD
 - Total number of prescription orders filled in the prior month by program
 - Monthly average wholesale price for billed brands and generics
 - Monthly per prescriber per patient average cost
 - Monthly per prescriber per drug average dose
 - Monthly list of patients discharged on three or more antipsychotic agents
 - Monthly list of patients discharged per provider on total daily dosages of less than:
 - 10 mg Zyprexa
 - 80 mg Geodon
 - 300 mg Seroquel
 - 10 mg Abilify
 - 6 mg Invega
 - 1000 mg Depakote
 - Total per patient per month cost
 - Monthly total amount billed per payor source per program
 - Monthly listing of rejected billings by cause:
 - Non-formulary
 - Quantity limits
 - Failed prior authorization
 - Inaccuracy of billing data

- other
 - Monthly total of BHD recoupments after re-billing
 - Monthly top 10 lists of agents by cost and number of prescriptions
 - Monthly list of top 10 OTC medications by cost and number of prescriptions
 - Monthly savings realized by adherence to BHD formulary Smart Rules Utilization, reconciliation and billing for all contingency supply medications
 - Annual report on flu shots for patients and daily print out or copy of all antibiotic orders to include: patient name, admission, birth date, name of prescribing physician, patient unit number and patient medical record number
 - Monthly report of nursing station inspections on all units including contingency supply report, controlled substances report and report of use by unit/item/total

Omnicare has indicated that BHD showed little interest in reports that were initially provided, and noted that much of the required information is available for access by BHD administrators on the vendor's OmniView system. Omnicare also noted that those reports that are not available on the OmniView system could be produced upon request.

However, BHD administrators counter that Omnicare was slow to respond to special reports that were requested. A review of minutes from monthly meetings of the BHD Pharmacy and Therapeutic Committee, attended by Omnicare representatives, provide some support for this position. The BHD Medical Director also points out that the information contained in the OmniView system is not necessarily in a form conducive to executive level review and analysis. Rather, the system data must be extracted from someone trained and knowledgeable with the system in order to produce the specific types of reports identified in the pharmacy services contract. Without disparaging the usefulness of the OmniView system, we concur. For instance, when asked to confirm that each of the contractually required monthly reports could practically be accessed in OmniView, Omnicare told us that invoice data can be used to provide average cost by prescriber by patient. In other words, raw invoice data would have to be manually sorted and manipulated to derive the information called for in the contractually-required report. While the OmniView system may be comprehensive in its data capabilities and a useful tool for BHD management, the contract calls for the production of standard monthly reports, not access to a comprehensive data system.

BHD administrators indicated it intends to include a request for a full time staff pharmacist in its 2013 budget request to the County Executive. The staff pharmacist position would be used to help develop a BHD formulary as well as oversee the contract for pharmacy services. We believe the information contained in this review justifies the addition of such a position.

Responsibility for Patient Co-Pay Obligations

We estimate Omnicare has included patient co-payments, net of credits, totaling approximately

\$50,000 in its 2011 invoices. When asked by County auditors under what circumstances patient co-pays should be billed by Omnicare to Milwaukee County, rather than billed/collected from patients, Omnicare Indicated that BHD had directed the firm to do so when it initially began providing contracted pharmacy services for BHD (August 2004, according to County payment records). No documentation could be found regarding this instruction, but Omnicare notes that the population served is largely indigent and as such patient co-pay responsibilities fall to the County.

Omnicare notes that federal regulations prohibit them from waiving required co-payments from federally funded programs such as Title 19. The firm also notes a heavy administrative burden would be encountered to collect such co-pays, estimating a collection rate of approximately 10%.

Under current practice, patients receiving drugs at BHD through Omnicare are not being charged any co-pays. With neither Omnicare or BHD charging patients for their drug co-pay responsibilities, there is a question as to whether or not co-pays have effectively been waived.

Based on 2011 billings, a rough estimate of patient co-pays paid to Omnicare by BHD since August 2004 could approximate \$300,000.

To determine the appropriateness of BHD paying patient co-pays associated with drugs provided to BHD clients, we recommend BHD management:

- 10. Review the issue of patient co-payment responsibilities with the Office of Corporation Counsel and State Title 19 officials and take appropriate action.*

OTHER ISSUES

Clinical Issues

The Joint Commission (formerly the Joint Commission on Accreditation of Healthcare Organizations) is an independent, non-profit organization that evaluates and accredits health care organizations and programs in the United States. To determine and bestow accreditation status, the Joint Commission evaluates an organization's compliance with standards in the areas of Quality, Safety, Leadership, Management and Staff Practices. BHD formerly maintained Joint Commission accreditation, but discontinued participation in 2003, primarily for financial reasons. In 2009, preparations began to re-apply for TJC accreditation. Current planning targets 2012 for accreditation.

The pharmacy contract specifies that:

"...Contractor shall provide hospital pharmacy services in accordance with

the Joint Commission, CMS and the State of Wisconsin statutes governing pharmacy practice, American Correctional Association (ACA) and the National Commission on Correctional Health Care (NCCCHC)” [p. 9]

The BHD Medical Director brought to our attention a concern raised in June 2011 when it was discovered that an Omnicare pharmacist had not performed a routine drug interaction check on a prescription order. A corrective action plan was developed and implemented to re-educate all pharmacists on using the allergy module of dispensing equipment to make the routine drug interaction checks so as to address that problem.

Omicare indicated it has collectively spent approximately 180 hours working with BHD on its Policy and Procedures manual related to pharmacy services in preparation for BHD's upcoming Joint Commission accreditation application. On BHD's behalf, Omnicare enlisted the help of the Omnicare Clinical Services Division, which assigned the project to the Quality Standards Coordinator from Omnicare's Quality Assurance Services Department. The coordinator worked with both the BHD Pharmacy and Therapeutic Committee and its Joint Commission sub-committee, chaired by the BHD Medical Director. The BHD Administrator praised the coordinator's efforts and noted several positive changes have been implemented as a result of these efforts.

Medication Carts

Six medication carts in the Acute Adult Inpatient, CAIS and Observation Wards appear to be in disrepair and in need of replacement.

The pharmacy contract specifies that:

“Contractor shall supply medication carts, or automated dispensing equipment at no additional charge at the start of the contract or when existing carts become obsolete, unrepairable or inadequate.” [p.9]

Omicare's position is that the medication carts in question—those in the Acute Inpatient Hospital--are generally used for storage and other inappropriate uses for which Omnicare is not obligated to replace or pay for, especially at the end of the four-year contract. Both Omnicare and BHD staff indicated medication carts cost roughly \$2,000--\$3,000 each.

BHD administrators recall raising the medication cart issue early in the contract period, along with Joint Commission Certification compliance discussions. According to BHD staff, the medication carts in need of replacement are used in the exact same fashion as those deemed appropriately used by Omnicare. They also note that Omnicare's own Quality Standards Coordinator has stated the medication carts in question are not Joint Commission compliant.

Assuming an average cost of \$2,500 per medication cart, replacing the six carts in disrepair at BHD would cost a total of approximately \$15,000. That is, coincidentally, identical to the estimated cost for BHD to accommodate a request made by Omnicare regarding modifications to weekly patient information updates provided by BHD.

Patient Information Updates Provided by BHD to Omnicare

To assist in identifying alternative payors, BHD provides weekly updates to Omnicare for changes in patients' insurance or personal contact information. However, BHD provides this information in a bulk format that lists each inpatient served at its facility during the week, rather than only those patients with changes in their information. According to Omnicare, it requires approximately 40 hours of staff time each week to cull through the bulk information to extract the useful data needed. Omnicare indicated that when an inquiry was made regarding the possibility of BHD providing only the limited data required for Omnicare to pursue appropriate third party payments, BHD responded that it would not approve the estimated \$15,000 in costs for its computer support contractor to make the necessary programming changes.

Recent discussion with a technology consultant for BHD confirmed that he would not recommend additional costs be invested in the current system as BHD is in the process of developing and implementing an Electronic Medical Records system at the facility.

Given the relatively minor and equivalent costs involved in these two issues--medication cart replacements and BHD patient information update revisions--it appears there is an opportunity to reach a mutually agreeable resolution to both issues. Therefore, we recommend BHD management:

- 11. Work with Omnicare to negotiate a contract amendment to obtain six replacement medication carts and make appropriate programming modifications to provide the patient information update data to Omnicare in an edited form that can be utilized efficiently by the vendor.*

Use of Assisted Living Pharmacy Services for CSP Clients

Omnicare has suggested to us that it believes BHD may be illegally steering Community Support Program outpatient clients away from Omnicare towards pharmacy services provided by Assisted Living Pharmacy Services (ALPS). BHD staff we interviewed denied that they steered clients to ALPS and stated they cannot dictate where private pay or third party payor clients choose to purchase their drugs. They indicated ALPS provided a high level of service to clients, including home delivery and dispensing drugs in individual dose packaging for patients that often have

difficulty managing their daily drug regimens. According to the BHD Medical Director, Omnicare told him they cannot dispense drugs to outpatients in this fashion due to an inability to properly address drug recall situations.

Omicare told us it has a contractual right to provide drug services for all BHD clientele. We note that BHD has no contract with ALPS and a review of vendor payments from Milwaukee County's accounts payable system shows no payments from BHD to ALPS during the past decade.

To avoid ambiguity regarding pharmacy services for BHD Community Support Program clients, we recommend BHD management:

12. Work with Corporation Counsel to clarify contract language regarding pharmacy services provided to BHD Community Support Program clients.

Drug Manufacturer's Rebates

Drug manufacturers provide rebates to large scale purchasers of certain brand name drugs based on various factors that may include achieving market share goals or utilization percentages within certain therapeutic classes of drugs. For instance, Medco, a national Pharmacy Benefit Manager utilized by Milwaukee County to administer the drug component of its employee/retiree health care plan, obtains drug rebates and passes them on to Milwaukee County as part of its contractual pricing agreement. For 2011, Milwaukee County was rebated approximated 10% of its total plan drug cost, or about \$4 million.

In the 2008 Request for Proposal used to solicit proposals for its current pharmacy services contract, BHD included the following language:

VII. PRICING TERMS

3. Contractor is expected to provide a minimum guaranteed rebate for each brand medication.

However, according to Omnicare, federal and state regulations prohibit a pharmacy from participating in such rebate arrangements. Omnicare specifically cites Wisconsin Administrative Code provision Phar 10.03, which states:

Phar 10.03 Unprofessional conduct. *The following, without limitation because of enumeration, are violations of standards of professional conduct and constitute unprofessional conduct in addition to those grounds specified under s. 450.10 (1), Stats.:*

(14) *Participating in rebate of fee-splitting arrangements with health practitioners or with health care facilities;*

As a result, according to an Omnicare official, the vendor worked with BHD to reach agreement on the following contractual language in the BHD pharmacy services contract:

Contractor shall work with Milwaukee County to achieve a method of obtaining rebate reimbursement from drug manufacturers that are in compliance with the state and federal regulations (i.e., Safe Harbor Law, Private Securities Litigation Reform Act of 1995.) [p. 7]

We requested clarification of this issue from the legal staff of the Wisconsin Pharmacy Board. While careful to note that they would not provide legal advice or a legal opinion, they indicated that the intent of Wis. Admin. Code 10.03 (14) is to prohibit pharmacies from increasing consumers' cost of drugs by engaging in 'kickbacks' or fee-splitting arrangements whereby the pharmacy pays doctors or facilities to direct business their way. It is not the intent of the code provision to prohibit a transparent contractual clause clearly identifying a drug rebate as one component of a price structure that serves to reduce the ultimate cost to the consumer, according to the Pharmacy Board legal staff's clarification. The legal staff suggested any formal legal advice regarding this issue as it relates to the BHD pharmacy services contract should be sought from the Milwaukee County Corporation Counsel.

While the specific state regulation cited by Omnicare may or may not prohibit the practice of incorporating manufacturer's rebates into the pricing structure of the BHD pharmacy services contract, the current contract language does not place that obligation on Omnicare. Rather, the language requires Omnicare to work with BHD to achieve a legal means of obtaining rebates directly from drug manufacturers. Since BHD does not purchase the volume of drugs associated with drug wholesalers or vendors with a national book of business such as Omnicare, it is unlikely that drug manufacturers would entertain any such overture. Further, since BHD is purchasing the drugs through Omnicare, it is possible that Omnicare is already receiving the drug manufacturer's rebates BHD would be seeking. We note that Omnicare has made no efforts to comply with this apparently meaningless contract provision.

Ultimately, the inclusion of rebates in the pricing structure of BHD's pharmacy services contract may or may not reduce the cost of the contract. For instance, the current contract includes the following pricing terms:

Medication Charges:

	<u>Pharmaceutical Cost</u>	<u>Operational Cost</u>
Brand Name:	Average Wholesale Price (AWP)—18%	+ \$1.00 fee
Generic:	Maximum Allowable Cost (MAC)	+ \$1.00 fee

If deemed legal, Omnicare could have hypothetically proposed a pricing structure in which it would have passed through manufacturers' rebates and offset, or partially offset, Omnicare's resulting loss of revenue by proposing a lower discount applied to AWP and higher dispensing fees on brand name and generic drugs. In other words, if deemed legal, Omnicare could have altered its proposal to include the pass-through of manufacturer's rebates, without substantially changing the County's bottom-line cost for services rendered under the contract. Further, part of the motivation for manufacturers to offer rebates on brand name drugs is to increase their utilization relative to less expensive alternatives. Thus, increased rebates could be achieved at the added overall expense of replacing less costly generic drugs with more expensive brand name drugs. In a competitive public contract award situation, the form of the bid or proposal is not paramount; it is the resulting 'bottom line' cost of the pricing structure applied to actual utilization of services.

In reviewing this issue, we examined the County's Pharmacy Benefits Manager contract with Medco and noted that several items concerning its pricing structure were better defined and in greater specificity. For instance, there are various AWP's available in the industry. The Medco contract specifies which AWP will be used for pricing, whereas BHD's contract references AWP with no particular index specified.

BHD will be opening its pharmacy services contract to a competitive Request for Proposal process later this year. To strengthen future contract language regarding the pricing structure of BHD's pharmacy services contract, we recommend BHD management:

13. *Consult with the County's Employee Benefits Manager, Corporation Counsel and other sources in crafting pricing structure contract language for the BHD pharmacy services contract.*



Jerome J. Heer

JJH/cah

cc: Scott Manske, Milwaukee County Comptroller
Milwaukee County Board of Supervisors
Chris Abele, Milwaukee County Executive
Patrick Farley, Director, Department of Administrative Services
Kimberly Walker, Milwaukee County Corporation Counsel

Exhibit 1

Amendment Number Two

WHEREAS, Roehen's Omnicare Pharmacy ("Contractor") and Milwaukee County Department of Health and Human Services, Behavioral Health Division ("County") are parties to an Agreement dated the 1st day of January, 2009 for the provision of pharmaceutical services by Contractor to the County; and

WHEREAS, in 2010, BHD renegotiated with the Medical College of Wisconsin to reduce their purchase of service contract by \$667,590 and increase the BHD Roehen's Omnicare Pharmacy professional services contract by the same amount to a total of \$4,867,590; and

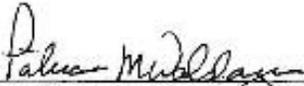
WHEREAS, the parties desire to amend said Agreement under the terms and conditions contained herein.

NOW, THEREFORE, the Agreement is amended as follows:

Per County Board Resolution 08-4767 (a)(b), the County agrees to pay the Contractor an amount not to exceed \$4,867,590 for the year 2010. Subsequent year's funding will be determined and approved through the annual County budget process or as agreed upon between County and Contractor. Payment for services under this agreement will be made upon presentation of a written, itemized and verified statement upon such terms and in such detail as may be required by County. As per the terms of the contract, the Contractor shall continue to bill third party payers for all patients eligible for such reimbursement. Any third party payment shall be accepted as payment in full. For patients not eligible for third party reimbursement, County will be billed at the rates set forth in the original contract.

IN WITNESS WHEREOF, the parties to the Agreement caused this instrument to be executed by their respective proper officers.

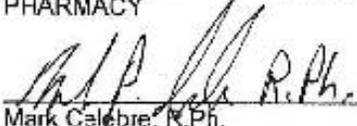
FOR MILWAUKEE COUNTY


Patricia Walslager, Associate Administrator - Fiscal
Milwaukee County Behavioral Health Division

Date

10/13/10

FOR ROECHEN'S OMNICARE
PHARMACY


Mark Calebre, R.Ph.
Area Director

Date

10/13/2010

**MILWAUKEE COUNTY
INTER-OFFICE MEMORANDUM**

DATE: August 6, 2012

TO: Jerome Heer, Director, Department of Audit

FROM: Héctor Colón, Director, Department of Health & Human Services
Paula A. Lucy, RN, MSW, Administrator, Behavioral Health Division

SUBJECT: Audit of BHD Contracted Pharmacy Services

The Behavioral Health Division, Department of Health and Human Services wishes to thank the Audit Department for agreeing to review the BHD Contracted Pharmacy Services. The report is thoughtful and thorough and addresses the major current concerns.

As you know, this contract will be in the RFP process this year. Many of the recommendations will be important inclusions in the RFP design and the creation of a subsequent contract.

While we agree with the recommendations and the report, we must highlight our frustration with Omnicare in two areas:

- First, related to reporting, the intent of the contractual language was that reports would be given to BHD so that it would be able to manage the pharmacy services in a data-driven approach. Those reports have not been forthcoming. Omnicare suggests that BHD is not interested in the reports when, in fact, we became fatigued at requesting them. The suggestion that the data can be gotten from the invoice may be true but it does not easily generate meaningful information for manageable and timely decision-making. As an example, we asked at several meetings for a report related to "BHD Smart Rules", which is a program to ensure that medications are ordered at appropriate dosage levels. This report has never been shared.
- Second, it is disturbing to see Omnicare point to 180 hours of work on the Pharmacy Policy and Procedure manual. They have had this contract for 8 years. It is logical and reasonable to expect that a policy and procedure manual would be in place and routinely updated over those 8 years. In fact, their own excellent consultant agreed with the need for the update. BHD's Joint Commission consultant has assisted the pharmacy with policies that should have been in place.

Moving forward, the recommendations will be helpful to us in our creation of the Request for Proposals, their evaluation and the development of a new contract. The request of a Pharmacy Director in the 2013 budget is intended to create a point person at BHD to manage this contract, ensure and document clear communication, and enhance clinical involvement of pharmacy services into patient care.

Again thank you for work and help in clarifying complex issues.



Héctor Colón



Paula A. Lucey, RN, MSW

cc: Douglas Jenkins
James Felde