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FIRST SEMI-ANNUAL REPORT OF THE INDEPENDENT MONITOR OF THE MEMORANDUM OF AGREEMENT BETWEEN THE UNITED STATES DEPARTMENT OF JUSTICE AND THE STATE OF DELAWARE REGARDING THE DELORES J. BAYLOR WOMEN'S CORRECTIONAL INSTITUTION, THE DELAWARE CORRECTIONAL CENTER, THE HOWARD R. YOUNG CORRECTIONAL INSTITUTION AND THE SUSSEX CORRECTIONAL INSTITUTION

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EXECUTIVE SUMMARY

This report is submitted pursuant to the Memorandum of Agreement between the United States Department of Justice ("DOJ") and the State of Delaware (the "State") regarding the Delores J. Baylor Women's Correctional Institution, the Delaware Correctional Center, the Howard R. Young Correctional Institution, and the Sussex Correctional Institution, which was entered into on December 29, 2006 (the "MOA"), and the Agreement between Joshua W. Martin III (the "Monitor") Individually and on Behalf of Potter Anderson & Corroon LLP and the State of Delaware, which was entered into on May 14, 2007 (the "Monitor Agreement").[1] The Monitoring Team's performance of its duties has commenced very recently. Therefore, the format of this report departs from the format of future reports, in that this report primarily summarizes the obligations of the State under the MOA, the preliminary observations and recommendations the Monitoring Team has regarding the State's compliance with the MOA, and the Monitoring Team's plan of action for the coming months.

The Monitoring Team has had the opportunity to make an initial visit to the Delores J. Baylor Women's Correctional Institution ("Baylor"), the Delaware Correctional Center ("DCC"), the Howard R. Young Correctional Institution ("Young"), and the Sussex Correctional Institution ("SCI," and together with Baylor, DCC and Young, the "Facilities") during the week of May 21, 2007. During those initial visits, the Monitoring Team toured the Facilities, with a particular focus on the facets of the Facilities that relate to the provision of medical and mental health services. These initial visits allowed the Monitoring Team to identify some of the challenges that the State will face in

[1] The Monitor has retained a team of medical and mental health experts, all of whom are identified in Appendix I. The Monitor, together with the individuals listed on Appendix I, are hereinafter referred to as the "Monitor Team."

complying with the MOA, and to provide some technical assistance to the medical staff on site. In addition to making the visits to the Facilities, the Monitoring Team has provided (and will continue to provide) technical assistance to the State in drafting its policies and procedures, which are to be presented to the DOJ for review and approval on or before July 5, 2007.

Future semi-annual reports by the Monitoring Team will include a more detailed description of the technical assistance provided by the Monitoring Team, and the State's progress with respect to achieving compliance with the MOA. At present, there are a few areas of concern that the Monitoring Team believes are appropriate to raise even at this preliminary stage.

First, the Monitoring Team is concerned with the clinic space and equipment available at each of the Facilities. It appears that the State is attempting to work within the structural and budgetary limits to the best of its ability. While the overall sanitation at the Facilities is good, the Monitoring Team found that the spaces that are used for the provision of medical and mental health services were the least sanitary spaces within the Facilities. There are various reasons for the disparity in sanitation, not the least of which is the security concern with regard to inmate workers taking advantage of the access to medical supplies. The Monitoring Team strongly recommends that the State take immediate action to improve the sanitation within all of the spaces within the Facilities that are used for providing medical and mental health services, even if the result is a greater burden for security staff in the supervision of inmate workers, or hiring an outside vendor.

Second, as is discussed at various points throughout the report, staffing by the State's medical vendor, Correctional Medical Services ("CMS"), of its leadership positions is a serious concern. Without adequate and consistent

leadership, it is very difficult for the State to implement and maintain the changes necessary to comply with the MOA. The Monitoring Team will be providing a more comprehensive staffing analysis in future reports that will address vacant leadership positions and vacant nursing positions; however, it is appropriate even at this preliminary stage to make a recommendation regarding staffing. It is the Monitoring Team's understanding that CMS has had difficulty finding appropriate individuals to fill leadership positions. The Monitoring Team also has received information that tends to indicate that CMS' regional or national management has not been willing to take such measures as offering relatively small increases in pay in order to attract and retain individuals that would be qualified to fill the vacant positions, nor has CMS' regional or national management been particularly supportive of facility-level CMS management regarding staffing concerns. CMS' national and regional management must commit to hiring and retaining appropriately qualified individuals for leadership positions, as well as supporting the efforts of its facility-level management in that regard.

Third, the Monitoring Team encourages the State to ensure that the Facilities are maintaining appropriate documentation of its administration of medical and mental healthcare services, so that there is a base line against which to measure the State's progress, and to assist with the identification of areas for improvement. The Monitoring Team's review of the State's Action Plan and initial visits to the Facilities revealed that the State had already taken steps to improve the Facilities' medical and mental health services prior to retaining the Monitor. For example, as noted within the text of the report, the Facilities have implemented some improvements with regard to the treatment of inmates with chronic illnesses.

There are several deadlines that occur in the very near future. Specifically, the State has indicated that its complete proposed policies and procedures will be submitted to the Monitoring Team on June 29, 2007, and then the policies and procedures containing additional input from the Monitoring Team will be submitted to the DOJ for approval on or before July 5, 2007. Also, the State must prepare and submit a compliance report to the DOJ by July 30, 2007. Finally, the State has already begun to implement changes to the design of the Delaware Automated Correction System ("DACS"), which should be final on October 30, 2007. The Monitoring Team looks forward to these deadlines, as each milestone that the State reaches provides an opportunity for the Monitoring Team to identify areas that require improvement, review the State's progress, and offer technical assistance as necessary.

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I. INTRODUCTION

On March 7, 2006, the DOJ notified the State of the DOJ's intent to investigate the adequacy of medical and mental health care services in five facilities operated by the State's Department of Correction (the "DOC") pursuant to the Civil Rights of Institutionalized Persons Act, 42 U.S.C. § 1997, to determine whether those services violated inmates' constitutional rights. The DOJ toured the John L. Webb Correctional Facility ("Webb"), and the Facilities on June 22, 2006, July 17-19, 2006 and August 14-16, 2006. In addition, DOJ staff, accompanied by consultants in medical care, mental health care and suicide prevention, toured Young on October 4-6, 2006, Baylor and Webb on October 23-25, 2006 and Baylor again on November 15-17, 2006. Then, on December 29, 2006, the DOJ issued a findings letter pursuant to 42 U.S.C. § 1997b(a)(1) which alleged that certain conditions at Baylor, DCC, Young, and Sussex violated the constitutional rights of Delaware inmates. It is the position of the DOJ that deficiencies in medical care, mental health care and suicide prevention at the Facilities were inconsistent with constitutional standards of care. The DOJ made no findings with respect to Webb.

Prior to the DOJ's investigation, the State already had initiated its own efforts to improve conditions at the Facilities. Also, during the DOJ investigation, the State commissioned an extensive internal review of the Facilities with the assistance of medical, mental health, and legal consultants, the detailed results of which they subsequently shared with the DOJ and the DOJ's consultants. Throughout the course of the investigation, the State and the staff at each of the Facilities cooperated thoroughly and indicated a willingness to proactively and voluntarily undertake measures to improve conditions throughout the system. Therefore, in an effort to utilize their resources in support of improving medical and mental health care at the

Facilities, on December 29, 2006, the DOJ and the State entered into the MOA. *See* Appendix II.

Pursuant to the MOA, the State and the DOJ agreed to work together to select an independent monitor of the State's compliance with the MOA. *MOA*, ¶ 67. The State and the DOJ jointly selected Joshua W. Martin III to serve as the monitor, and the Monitor and the State entered into the Monitor Agreement. The Monitor then retained a team of medical and mental health professionals to assist with the Monitor's duties. The medical and mental health professionals were also approved by the State and the DOJ. As provided in the MOA, the Monitor is responsible for reviewing and reporting on the State's implementation of, and assist with the State's compliance with, the MOA. *MOA*, ¶ 71. Further, the Monitor is required to offer the State technical assistance regarding compliance with the MOA. *MOA*, ¶ 72.

Although the period of time elapsing between the retention of the Monitor, the formation of the Monitoring Team, and timing of the requirement for this semi-annual report has been brief, the Monitoring Team, with the State's cooperation, has had the opportunity to commence its duties. Specifically, the Monitoring Team has had the opportunity to become oriented to the DOC,[2] and the Facilities. Additionally, the Monitoring Team has provided technical assistance to the State in developing its proposed policies and procedures as required by the MOA. *See MOA*, ¶ 54.

Summary of Orientation:

During the week of May 21, 2007, the Monitoring Team visited the Facilities. The purpose of the visits was to tour the Facilities, meet staff, and become familiar with current health care operations. Various employees of the

[2] For the purpose of this report, the term "State" is synonymous with "DOC."

DOC, the DOC's Office of Health Services (the "OHS"), and CMS accompanied the Monitoring Team during the tours of the Facilities, and provided assistance and information to the Monitoring Team during the visits.

Baylor:

During the visit to Baylor, the Monitoring Team received information regarding the facility in general, and the medical services provided by that facility. Baylor opened in 1991, and was designed for a capacity of 200 adult female inmates, and has seven housing units. At the time of the Monitoring Team's visit, Baylor housed 413 female inmates in seven housing units. At any given time, Baylor averages approximately 9 pregnant inmates within its population, and one birth per month. Approximately one-third of the inmate population are pretrial detainees and the remaining two thirds of the inmates have been sentenced. The pretrial and sentenced inmates are not separated. Baylor has one infirmary, which serves all of the facility's inmates.

Young:

During the visit to Young, the Monitoring Team received information regarding the facility in general, and the medical services provided by that facility. Young first opened in 1982. At the time of the Monitoring Team's visit, Young had approximately 1,750 inmates, including both pretrial detainees and sentenced inmates. Young processes approximately 60% of all intakes to the State's correctional system, which causes a great deal of added burden to the facility, and to the medical staff. Overall, Young houses a greater number of inmates than its original design capacity, which creates the potential for problems with clinic space and equipment, and other resources that would be helpful in providing mental and medical health services.

Structurally, the facility is divided into two buildings, the East Wing, and the West Wing. The facility also has a 40-bed juvenile unit. The

East Wing is newer, and was opened in 1992. The East Wing was designed for a capacity of 480 inmates but, at the time of the Monitoring Team's visit, housed approximately 680 inmates. The East Wing primarily contains sentenced inmates, although there is not a strict separation of pretrial detainees and sentenced inmates at Young. Inmates housed in East Wing have greater freedom of movement and privileges than those housed in the West Wing. With respect to the availability of medical and mental health services in the East Wing, the East Wing has a small satellite clinic where only selected health care activities can take place. Otherwise, inmates housed in the East Wing are taken to the West Wing for medical or mental health services.

The West Wing is the original structure, and was designed for a capacity of 360 pretrial detainees. The West Wing now has more than 1,000 inmates, most of whom are pretrial detainees. In the West Wing, all inmates must be escorted by a correctional officer. The main medical unit is located in this building.

***DCC*:**

During the visit to DCC, the Monitoring Team received information regarding the facility in general, and the medical services provided by that facility. The original DCC facility was built in 1971, and new buildings were added from 2000 to 2002. DCC houses both pretrial detainees, and sentenced inmates. DCC's population at the time of the Monitoring Team's visit was approximately 2,500. There are distinct security levels in the different areas of DCC, which range from pretrial detainee status to maximum security, which includes 17 inmates in the State who have been sentenced to death. DCC has an infirmary, which provides medical and mental health screening and treatment. DCC also has a 50-bed unit for inmates with limited mobility, a

mental health special needs unit, and the Greentree substance abuse treatment program, which is facilitated by the DOC.

***SCI*:**

SCI has a capacity of 1,200 inmates with a count of 1,180 at the time of the Monitoring Team's visit. Of this number, approximately 300 inmates are pretrial detainees, and 880 of the inmates are sentenced. SCI also has a boot camp with 90 males and 10 females,[3] a therapeutic community substance abuse program administered by an outside agency, and a substance abuse program administered by the DOC for inmates who are within 6 months of the end of their sentences.

***Areas that will be of Particular Focus in Future Reports*:**

During the visits to the Facilities, the Monitoring Team was able to make some assessments regarding areas that will be of particular focus in the future, as well as offer some technical assistance. For instance, the chronic care programs at each of the Facilities is an area of particular concern. As revealed by the visits to the Facilities, it appears that the Facilities have developed more organized chronic care programs than were previously in place. Although the Monitoring Team did not review records due to the introductory nature of these visits, in discussions with staff and through a review of databases that the Facilities have developed, it appears that patients with chronic diseases may, in fact, now be seen on a much more regular basis. In addition, the Monitoring Team has learned that the Facilities each have organized their chronic care programs such that there is at least one dedicated nurse working with the clinicians to ensure that the necessary chronic care is

[3] Any female not admitted to the boot camp program is sent to Baylor within 24 hours of arrival.

provided. The Monitoring Team also has learned that at each of the Facilities, patients returning from off-site doctor visits, including visits for specialty consultations, emergency room trips, and hospitalizations, are now brought back to the medical area in each of the Facilities prior to being returned to his or her cell, so that a nurse can begin the process of facilitating continuity of care. This area will be the focus of future record audits by the Monitoring Team.

Another specific area of concern relates to staffing. In addition to the Monitoring Team's concern that CMS is not staffing leadership positions adequately, the Monitoring Team observed that many activities such as the comprehensive intake screening and nursing sick call for inmates are frequently performed by licensed practical nurses ("LPNs"), whose training and skills are substantially less than that of registered nurses ("RNs"). The Monitoring Team will examine this staffing issue in relation to the requirements contained in the MOA, and make appropriate staffing recommendations in future reports.

The Monitoring Team will continue to provide technical assistance to the DOC, as well as monitoring the State's compliance with the MOA. The Monitoring Team will continue to work with DOC leadership in developing a set of policies and procedures for the DOC that will address all of the areas of concern listed in the MOA. The areas that will be addressed first will include access to care, sick call, chronic care, infirmary care, emergency care, specialty care, communicable diseases, reception processing, interfacility processing, medication management, mental health services (including suicide prevention planning), as well as other areas listed in the MOA.

In addition, the Monitoring Team will develop a standard for substantial compliance by the State with each of the requirements contained in

the MOA. As the State's policies are approved, implemented, and the State reaches substantial compliance with respect to individual requirements contained in the MOA, the Monitoring Team will monitor the State's compliance as well as continue to provide technical assistance as needed. In addition, a major area of responsibility will be to develop a comprehensive Quality Improvement Program so that a system of self-monitoring, both on-site by staff at each of the Facilities and by DOC health care team, will continually identify opportunities for improvement and successfully implement strategies resulting in improved performance.

II. COMPLIANCE ASSESSMENT

A. Definition of Substantial Compliance

Pursuant to paragraphs 71 and 72 of the MOA, the Monitor is required to review and report on the State's implementation of, and assist with the State's compliance with, the MOA. In order to complete this task, the Monitor must work with the State to determine whether the State has successfully complied with each requirement contained in the MOA. In order to meet these requirements, the Monitoring Team will, in consultation with the DOJ, develop a definition for "substantial compliance" for each requirement of the MOA.

B. Quality Assurance

1. Policies and Procedures

Pursuant to paragraph 54 of the MOA, the State is required to develop and implement written quality assurance policies and procedures to regularly assess and ensure compliance with the terms of the MOA. Those policies and procedures are to include provisions requiring an annual quality management plan and annual evaluation, quantitative performance measurement with tools to be approved in advance by DOJ, tracking and trending of data, creation of a multidisciplinary team, morbidity and mortality reviews with self-critical analysis, and periodic review of emergency room visits and hospitalizations for ambulatory-sensitive conditions.

2. Comprehensive Action Plan

Pursuant to paragraph 65 of the MOA, the State submitted to the DOJ a comprehensive action plan (the "Action Plan") on April 30, 2007, identifying the specific measures the State intends to take in order to bring the Facilities into compliance with the requirements of the MOA. *See* Appendix III. The State is required to prepare and submit the first of its reports regarding

compliance with the MOA ("Compliance Reports") on July 30, 2007, and then every six months thereafter.

III. MEDICAL AND MENTAL HEALTH CARE

A. Standard

Pursuant to paragraph 1 of the MOA, the State is required to ensure that the services offered to address the serious medical and mental health needs of all inmates meet generally accepted professional standards. According to section II., paragraph C. of the MOA, "generally accepted professional standards" means:

> [T]hose industry standards accepted by a significant majority of professionals in the relevant field, and reflected in the standards of care such as those published by the National Commission on Correctional Health Care (NCCHC). DOJ acknowledges that NCCHC has established different standards for jail and prison populations, and that the relevant standard that applies under this Agreement may differ for pretrial and sentenced inmates. As used in [the MOA], the terms "adequate," "appropriate," and "sufficient" refer to standards established by clinical guidelines in the relevant field. The Parties shall consider clinical guidelines promulgated by professional organizations in assessing whether generally accepted professional standards have been met.

In addition to carrying out its monitoring duties, the Monitoring Team is offering the State technical assistance, including such technical assistance as is necessary to assist the State in ensuring that the standard of the medical and mental health services offered in the Facilities conforms to generally accepted professional standards.

B. Policies and Procedures

Pursuant to paragraph 2 of the MOA, the State is required to develop and revise its policies and procedures including those involving intake, communicable disease screening, sick call, chronic disease management, acute care, infection control, infirmary care, and dental care to ensure that staff

provide adequate ongoing care to inmates that have been determined to need such care. Once such policies and procedures are approved by the DOJ, the State is required to ensure that the medical and mental health policies and procedures are readily available to relevant staff. At present, the Action Plan indicates that the DOC has planned specific actions with respect to each of these topics. As a part of the process to determine the definition of "substantial compliance" with the requirements of the MOA with regard to these topics (*see* Section II.A. above), the Monitoring Team will review the DOC's planned actions. In addition, the Monitoring Team has assisted the DOC with drafting appropriate policies and procedures that conform with NCCHC standards, and other generally accepted professional standards.

C. Record-Keeping

Pursuant to paragraph 3 of the MOA, the State is required to develop and implement a unitary record-keeping system to ensure adequate and timely documentation of health assessments and treatment, and adequate and timely access by medical and mental health care staff to documents that are relevant to the care and treatment of the inmates. According to the MOA, a unitary record-keeping system consists of a system in which all clinically appropriate documents for the inmate's treatment are readily available to each clinician. The State is required to maintain a unified medical and mental health file for each inmate, and all medical records, including laboratory reports, are required to be timely filed in an inmate's medical file. The medical records unit at each of the Facilities shall be adequately staffed to prevent significant delays in filing records in an inmate's medical file. The State is further required to maintain inmates' medical records such that persons providing medical or mental health treatment may gain access to the record as

needed. The MOA mandates that an inmate's medical record should be complete, and should include information from prior incarcerations.

At present, the Action Plan indicates that the DOC has planned specific actions with respect to record-keeping requirements. As a part of the process to determine the definition of "substantial compliance" with the requirements of the MOA with regard to these topics (*see* Section II.A. above), the Monitoring Team will review the DOC's planned actions. The Monitoring Team has had the opportunity to make a cursory review of each of the Facilities' record-keeping systems, and will provide technical assistance to the State with regard to improving the current record-keeping system. Additionally, the DOC has provided the Monitoring Team with a document containing the DOC's planned changes to DACS.

D. Medication and Laboratory Orders

Pursuant to paragraph 4 of the MOA, the State is required to develop and implement policies, procedures, and practices consistent with generally accepted professional standards to ensure timely responses to orders for medications and laboratory tests. The MOA requires that such policies, procedures, and practices shall be periodically evaluated to ensure that delays in inmates' timely receipt of medications and laboratory tests are prevented. At present, the Action Plan indicates that the DOC has planned specific actions with respect to each of these requirements. As a part of the process to determine the definition of "substantial compliance" with the requirements of the MOA with regard to avoiding medication and laboratory testing delays (*see* Section II.A. above), the Monitoring Team will review the DOC's planned actions.

E. Staffing and Training

Pursuant to paragraphs 5 through 9 of the MOA, the State is required to take action regarding the following areas of concern: (i) job descriptions and licensure; (ii) staffing; (iii) medical and mental health staff management; (iv) medical and mental health staff training; and (v) security staff training. At present, the Action Plan indicates that the DOC has planned specific actions with respect to each of these topics. As a part of the process to determine the definition of "substantial compliance" with the requirements of the MOA with regard to these topics (*see* Section II.A. above), the Monitoring Team will review the DOC's planned actions.

During the Monitoring Team's initial visits to the Facilities, it became clear that a major area of concern is the absence of experienced leadership, especially at the Young facility. At the time of the Monitoring Team's visit, CMS had only a part-time state contract manager, who was in the process of completing a transition from another system to Delaware. In addition, the State Director of Nursing position was and remains vacant. With respect to Young, the significant vacancies in CMS' leadership positions, coupled with the presence of a new Health Care Administrator who does not have experience within a correctional setting and a facility-level Director of Nursing position that is soon to be vacated, raise the concern about the ability of the State to bring Young into compliance with the MOA.

Anecdotally, the Warden at Young informed the Monitoring Team that the turnover of CMS leadership positions has been almost constant over the last few years. As a result, he has had difficulty with keeping up the security training of medical staff, and he has observed that there has not been the opportunity to implement, let alone sustain, any consistent changes. Given the nature of correctional medicine, it is vital that medical staff learn proper

security protocols, and medical and correctional staff work cooperatively. A lack of cooperation between medical and correctional security staff can cause difficulty in rendering adequate medical reception, and obtaining security escorts for outside doctor's appointments and hospital visits.

CMS not only must fill the vacant leadership positions, but also must fill these positions with people who have experience within a correctional setting, and CMS must avoid high turnover in these positions to the extent possible. A Health Service Administrator new to correctional medicine will be able to learn much more quickly if the facility's Director of Nursing position is filled by a person with correctional medicine experience. This is also true, of course, of filling the State Director of Nursing position and providing on-site a full-time state contract administrator.

F. Screening and Treatment

1. Medical Screening

Pursuant to paragraph 10 of the MOA, the State is required to ensure that all inmates receive an appropriate and timely medical screening by a medical staff member upon arrival at a facility. The State is also required to ensure that such screening enables staff to identify individuals with serious medical or mental health conditions, including acute medical needs, infectious diseases, chronic conditions, physical disabilities, mental illness, suicide risk, and drug and/or alcohol withdrawal. At present, the Action Plan indicates that the DOC has planned specific actions with respect to each of these topics. As a part of the process to determine the definition of "substantial compliance" with the requirements of the MOA with regard to medical screening (*see* Section II.A. above), the Monitoring Team will review the DOC's planned actions.

During the Monitoring Team's initial visits to the Facilities, the Monitoring Team was able to make some preliminary observations regarding

medical screening at the Facilities. At Baylor, the Monitoring Team reviewed that facility's policies regarding receiving health screening, health assessment and periodic physical examinations.[4] With respect to the medical screening policy, the Monitoring Team observed several items of note. First, the operative policy document has both a policy section and a procedural section, but the procedural information is contained in both sections. Also, the policy document does not specify the minimum staffing levels to perform this function or provide any timelines for completion of actions. For example, the policy does not specify the timelines for obtaining chest x-rays for detainees who are newly or previously tuberculosis ("TB") skin test positive or have TB symptoms. The policy states only that the health administrator is to be notified if the chest x-ray is not obtained within a two-week period. Ideally, chest x-rays should be obtained within 72 hours of identification of a positive TB skin test so that patients with active disease are promptly identified. Finally, the Monitoring Team observed that the Intake Screening Report, which is the form upon which medical screening information is recorded in DACS, combines medical screening and the medical history and is repetitive in some areas. The Monitoring Team has agreed to provide technical assistance regarding that form.

By way of background, Baylor receives approximately 70 inmates per week, and accepts inmates 24 hours per day, seven days per week. Baylor also receives female detainees transferred from SCI. Upon arrival, pretrial detainees are booked into the facility and subsequently undergo medical screening, usually by an LPN. The nurse provides a verbal and written

[4] The policies reviewed by the Monitoring Team were CMS policies. As mentioned throughout this report, the State is proposing its own policies and procedures, which will be implemented after the DOJ has approved them.

orientation, obtains vital signs, and performs TB skin testing. The nurse also asks the detainee a series of medical, mental health and dental questions and enters the results onto a computerized screen in DACS.

Baylor's medical screening process includes not only medical screening questions, but also a more comprehensive medical and mental health history. If the nurse identifies positive responses to the questions, further exploration is to be performed and documented. However, LPNs typically do not have appropriate education and training to perform the exploration of medical symptoms, and it is the Monitoring Team's opinion that an RN or clinician would be more appropriate in this role. Aside from TB skin testing, the medical evaluation process does not include any other infectious disease testing such as gonorrhea, chlamydia, HIV or syphilis, unless the detainee is symptomatic. Because this population is at high risk for these infectious diseases and some patients may be asymptomatic, this represents a missed opportunity for the State to identify and treat detainees with infectious diseases. Implementing infectious disease testing provides a benefit not only to the inmates, but also to public health as well. Although the State is not necessarily out of compliance with the MOA by not conducting this type of proactive testing, the Monitoring Team suggests exploring this opportunity for testing further, and considering the implementation of a pilot program to determine the prevalence of these infections among the detainees.

In addition, Baylor's current policy on health assessment states that registered nurses may perform the physical examination, and although this is consistent with NCCHC standards, it is not the actual practice at the facility. Baylor actually exceeds the NCCHC standards by using clinicians for the physical examination. The Monitoring Team understands that the State is in the process of developing its own policies and procedures, and the

Monitoring Team recommends that such policies and procedures should reflect the intended practices at each facility.

Baylor's policy has a deficiency in that it does not include a requirement that, at the conclusion of the history and physical examination, the clinician develop a medical problem list, and develop a diagnostic and treatment plan for each active problem. The Monitoring Team recommends that the DOC include such a policy at Baylor. Further, Baylor's policy on periodic health assessment is somewhat limited and general, and does not identify what standards are used as the basis for conducting periodic examinations (e.g., U.S. Preventive Services Task Force, etc.) or examinations that are recommended based upon age or other risk factors (e.g., breast, cervical and colon cancer screening, cholesterol screening, etc.).

2. Privacy

Pursuant to paragraph 11 of the MOA, the DOC is required to take action with respect to inmate privacy. Specifically, the MOA requires that the DOC make reasonable efforts to ensure inmate privacy when conducting medical and mental health screening, assessments, and treatment. The MOA mandates, however, that inmate privacy be subject to legitimate security concerns and emergency situations. This topic is addressed in Section III.F.9. (clinic space and equipment) below, because, based upon the review conducted to date, the Monitoring Team believes that the availability of clinic space and equipment has the greatest impact on the State's ability to comply with this requirement.

3. Health Assessments

Pursuant to paragraph 12 of the MOA, the State is required to ensure that all inmates receive timely medical and mental health assessments. Upon intake to a facility, the State is required to ensure that a medical

professional identifies those persons with a chronic illness. The MOA further requires that any inmate identified as having a chronic illness must receive a full health assessment between one and seven days of intake, depending upon the inmate's physical condition. The State is required to track inmates with a chronic illness in a standardized fashion.

With regard to those inmates who do not have a chronic illness, the State is required to ensure that those inmates receive a full health assessment within fourteen days of intake to a facility. Also, with respect to inmates who have been re-admitted or transferred from another facility, have received a documented, full health assessment within the previous twelve months, and whose medical screening during the new intake shows no change in health status, the State is not required to provide a new full medical and mental health assessment. The State is only required to review such an inmate's prior records and update tests and examinations as needed in that situation.

During the initial visits to the Facilities, the Monitoring Team had the opportunity to learn about the steps that the DOC is taking to comply with those requirements. The Monitoring Team's observations at Baylor in that regard are contained in section III.F.1., and will be reviewed in greater detail in future reports. At present, the Action Plan indicates that the DOC has planned specific actions with respect to health assessments. As a part of the process to determine the definition of "substantial compliance" with the requirements of the MOA with regard to these health assessments (*see* Section II.A. above), the Monitoring Team will review the DOC's planned actions.

4. Referrals for Specialty Care

Pursuant to paragraph 13 of the MOA, the State is required to ensure that inmates whose serious medical or mental health needs exceed the

services available at a facility are referred in a timely manner to appropriate outside medical or mental health care professionals, the findings and recommendations of such outside professionals are tracked and documented in inmates' medical files, and the treatment recommendations of such outside professionals are followed as indicated. At present, the Action Plan indicates that the DOC has planned specific actions with respect to referrals for specialty care. As a part of the process to determine the definition of "substantial compliance" with the requirements of the MOA with regard to referrals for specialty care (*see* Section II.A. above), the Monitoring Team will review the DOC's planned actions.

5. Treatment or Accommodation Plans

Pursuant to paragraph 14 of the MOA, the State is required to create special needs plans for inmates with special needs (as that term is defined within the MOA), including appropriate discharge planning if the inmate has been at a facility for at least thirty days. At present, the Action Plan indicates that the DOC has planned specific actions with respect to treatment or accommodation plans. As a part of the process to determine the definition of "substantial compliance" with the requirements of the MOA with regard to treatment or accommodation plans (*see* Section II.A. above), the Monitoring Team will review the DOC's planned actions.

6. Drug and Alcohol Withdrawal

Pursuant to paragraph 15 of the MOA, the State is required to develop and implement appropriate written policies, protocols, and practices, consistent with standards of appropriate medical care, to identify, monitor, and treat inmates at risk for, or who are experiencing, drug or alcohol withdrawal. The State is also required to implement appropriate withdrawal and detoxification programs. The State is required to offer methadone maintenance

programs for pregnant inmates who were addicted to opiates and/or participating in a legitimate methadone maintenance program when they entered a facility. At present, the Action Plan indicates that the DOC has planned specific actions with respect to this requirement. As a part of the process to determine the definition of "substantial compliance" with the requirements of the MOA with regard to drug and alcohol withdrawal (*see* Section II.A. above), the Monitoring Team will review the DOC's planned actions.

7. Pregnant Inmates

Pursuant to paragraph 16 of the MOA, the State is required to develop and implement appropriate written policies and protocols for the treatment of pregnant inmates, including appropriate screening, treatment, and management of high risk pregnancies. At present, the Action Plan indicates that the DOC has planned specific actions with respect to this requirement. As a part of the process to determine the definition of "substantial compliance" with the requirements of the MOA with regard to pregnant inmates (*see* Section II.A. above), the Monitoring Team will review the DOC's planned actions.

8. Communicable and Infectious Disease Management

Pursuant to paragraph 17 of the MOA, the State is required to adequately maintain statistical information regarding contagious disease screening programs and other relevant statistical data necessary to adequately identify, treat, and control infectious diseases. At present, the Action Plan indicates that the DOC has planned specific actions with respect to this requirement. As a part of the process to determine the definition of "substantial compliance" with the requirements of the MOA with regard to

communicable and infectious disease management (*see* Section II.A. above), the Monitoring Team will review the DOC's planned actions.

9. Clinic Space and Equipment

Pursuant to paragraph 18 of the MOA, the State is required to ensure that all face-to-face nursing and physician examinations occur in settings that provide appropriate privacy and permit a proper clinical evaluation including an adequately-sized examination room that contains an examination table, an operable sink for hand-washing, adequate lighting, and adequate equipment, including an adequate microscope for diagnostic evaluations. At present, the Action Plan indicates that the DOC has planned specific actions with respect to this requirement. As a part of the process to determine the definition of "substantial compliance" with the requirements of the MOA with regard to clinic space and equipment (*see* Section II.A. above), the Monitoring Team will review the DOC's planned actions.

During the initial visits, the Monitoring Team had the opportunity to make some preliminary observations regarding clinic space and equipment.

a. Preliminary Observations Regarding Clinic Space and Equipment at Young

At Young, the Monitoring Team toured the booking area where medical reception is conducted. There is a room located in a somewhat noisy area where an LPN conducts medical screening. During the medical screening process, the inmate stands outside the room at a half-door where the nurse takes vital signs and plants a TB skin test. The nurse then sits at a desk approximately 6 to 8 feet away, asking medical questions of the inmate who is standing outside the door. This arrangement does not permit medical privacy and is not conducive to obtaining an adequate medical history.

The main medical clinic is in the West Wing. This area contains an inmate waiting area, infirmary/medical observation unit, treatment rooms and offices. Sanitation throughout this area is poor. The treatment room is located in the inmate waiting area where nurses triage patients and labs are drawn. Often there are two inmates in this area; this arrangement can affect inmates' privacy. In the back area there is a hallway with work stations and a few offices and treatment rooms. It is cramped and has inadequate space for health care staff. Outside the main medical clinic there are offices for the health administrator, infection control nurse and mental health staff. The facility's Director of Nurses had an office at one time, but, at CMS' request, the office is no longer designated for that purpose. This is a serious obstacle to recruitment and filling the responsibilities of the position. The office designated for the infection control nurse is filled with medical record files such that there is room only for a small desk in this area. The Monitoring Team strongly recommends that the Warden at Young provide support to store these medical records in another location and commit to re-establishing an office for the facility Director of Nurses.

In the East Wing there is a satellite clinic where nurses administer medications and conduct nursing sick call. In this area there are two rooms that could be used to conduct patient examinations. The back room is filled with boxes of medical files and medical equipment and currently is not being used. The front room has an examination table, but no medical equipment or supplies were in view.

b. Preliminary Observations Regarding Clinic Space and Equipment at DCC

At DCC, the Monitoring Team observed that, upon entry into the medical clinic, there is an inmate waiting room of adequate size. Through a

doorway into the main clinic area, two medical assistants are posted and assigned to take vital signs of inmates brought into the clinic. There are three examination areas that have no doorway. Only one privacy screen is available; this arrangement raises concerns about privacy.

The infirmary has 43 infirmary beds. Ten of the beds are designated for mental health patients, four of the beds are located in respiratory isolation rooms, and there is a three-bed room for end-of-life patients. There is also a room with three dialysis machines for the seven patients housed at the facility who require dialysis. Sanitation throughout the infirmary was poor.

c. Preliminary Observations Regarding Clinic Space and Equipment at SCI

At SCI, the Monitoring Team toured the booking area, which has a room designated for medical screening. The room was spacious and appeared to have adequate equipment and supplies. The sanitation in the room was poor.

SCI has two areas devoted to medical treatment. One of the areas is in the pretrial detention area and the other area is located in the main infirmary in the older part of the facility. In both areas space is limited, particularly in the main infirmary. The area is cramped and cluttered and sanitation is poor. The infirmary has six beds, which are contained in three single-bed rooms, and one three-bed room.

The Monitoring Team will provide technical assistance to the State to gain compliance with paragraph 18 of the MOA, keeping in mind the limited space available in the Facilities for the provision of medical and mental health care.

G. Access to Care

1. Access to Medical and Mental Health Services

Pursuant to paragraph 19 of the MOA, the State is required to ensure that all inmates have an adequate opportunity to request and receive medical and mental health care. The MOA requires that appropriate medical staff shall screen all written requests within twenty-four hours of submission, and see patients within the next 72 hours, or sooner if medically appropriate. The State is required to maintain sufficient security staff to ensure that inmates requiring treatment are escorted in a timely manner to treatment areas. The State is required to develop and implement a sick call policy and procedure which includes an explanation of the order in which to schedule patients, a procedure for scheduling patients, where patients should be treated, the requirements for clinical evaluations, and the maintenance of a sick call log. At present, the Action Plan indicates that the DOC has planned specific actions with respect to each of these requirements. As a part of the process to determine the definition of "substantial compliance" with the requirements of the MOA with regard to access to care (*see* Section II.A. above), the Monitoring Team will review the DOC's planned actions.

During the Monitoring Team's initial visits to the Facilities, the Monitoring Team had the opportunity to learn about each of the Facilities' procedures for nursing sick call. For instance, at Young, the Monitoring Team observed that the security staff brings inmates to the medical unit by housing location rather than by the type of service requested. The Monitoring Team believes that this method of transport results in inefficiency and decreased productivity for health care staff.

Also, at SCI, nursing sick call is conducted by an RN or an LPN. The nurses utilize nursing protocols and assessment forms. Staff reported that

they receive approximately 16 to 30 request forms per day, of which 50% are from inmates with symptoms (as opposed to requests for information, lab tests, etc.). Staff reported that inmates are generally seen one day following submission of their request. The Monitoring Team was informed that all intake screenings and sick call performed by an LPN are reviewed promptly by an RN.

2. Isolation Rounds

Pursuant to paragraph 20 of the MOA, the State is required to ensure that nursing staff make rounds at least three times a week, to give inmates in isolation adequate opportunities to contact and discuss medical and mental health concerns with medical staff and mental health professionals in a setting that affords as much privacy as security will allow. At present, the Action Plan indicates that the DOC has planned specific actions with respect to this requirement. As a part of the process to determine the definition of "substantial compliance" with the requirements of the MOA with regard to isolation rounds (*see* Section II.A. above), the Monitoring Team will review the DOC's planned actions.

3. Grievances

Pursuant to paragraph 21 of the MOA, the State is required to develop and implement a system to ensure that medical grievances are processed and addressed in a timely manner. The State shall ensure that medical grievances and written responses thereto are included in inmates' medical files, and that grievances and their outcomes are logged, reviewed, and analyzed on a regular basis to identify systemic issues in need of redress. The State also is required to develop and implement procedures for discovering and addressing all systemic problems raised through the grievance system. At present, the Action Plan indicates that the DOC has planned specific actions with respect to grievances. As a part of the process to determine the definition

of "substantial compliance" with the requirements of the MOA with regard to grievances (*see* Section II.A. above), the Monitoring Team will review the DOC's planned actions.

During the initial visits to the Facilities, the Monitoring Team was able to learn about each of the Facilities' grievance systems. Each of the Facilities has a grievance procedure in place. Some of the Facilities have a higher rate of grievances than others. For instance, at SCI, staff reported a multitude of grievances, primarily related to co-pay and medications. Medication grievances relate to the type of medication ordered and not receiving the medication as ordered.

H. Chronic Disease Care

1. Chronic Disease Management Program

Pursuant to paragraph 22 of the MOA, the DOC is required to take action with respect to chronic disease care at the Facilities. The MOA requires that the DOC develop and implement a written chronic care disease management program, consistent with generally accepted professional standards, which provides inmates suffering from chronic illnesses with appropriate diagnosis, treatment, monitoring, and continuity of care. At present, the Action Plan indicates that the DOC has planned specific actions with respect to this topic. As a part of the process to determine the definition of "substantial compliance" with the requirements of the MOA with regard to chronic disease management programs (*see* Section II.A. above), the Monitoring Team will review the DOC's planned actions.

As noted in the Introduction, each of the Facilities already has taken steps to comply with the MOA with regard to the chronic disease management program. For instance, at DCC, staff reported there are approximately 650 inmates at the facility enrolled in the program. With respect

to consultation services, staff reported that there are no issues with transport of inmates to outside appointments, although transport requires a significant use of correctional officer overtime. At SCI, staff reported that there were approximately 460 to 480 inmates in the chronic disease management program. Of that number, 22 were HIV-infected patients. SCI plans to assign a nurse to manage this clinic.

2. Immunizations

Pursuant to paragraph 23 of the MOA, the State is required to take action to ensure that the Facilities are making reasonable efforts to obtain immunization records for all juveniles who are detained at the Facilities for more than one month, and that medical staff updates the immunizations for such juveniles in accordance with nationally recognized guidelines and state school admission requirements. Further, if a physician determines that such immunization is medically inappropriate, he or she shall properly record such determination in the inmate's medical record. Finally, the State is required to develop policies and procedures to ensure that inmates for whom influenza, pneumonia, and Hepatitis A and B vaccines are medically indicated are offered these vaccines. At present, the Action Plan indicates that the DOC has planned specific actions with respect to each of these topics. As a part of the process to determine the definition of "substantial compliance" with the requirements of the MOA with regard to these topics (*see* Section II.A. above), the Monitoring Team will review the DOC's planned actions.

I. Medication

1. Medication Administration

Pursuant to paragraph 24 of the MOA, the State is required to ensure that all medications, including psychotropic medications, are prescribed appropriately and administered in a timely manner to adequately address the

serious medical and mental health needs of inmates. The State is required to ensure that inmates who are prescribed medications for chronic illnesses that are not used on a routine schedule, including inhalers for the treatment of asthma, have access to those medications as medically appropriate. The State must develop and implement adequate policies and procedures for the medication administration and adherence. Further, the State is required to ensure that the prescribing practitioner is notified if a patient misses a medication dose on three consecutive days, and shall document that notice. The MOA requires that the State's formulary not unduly restrict medications. The State is required to revise its medication administration policies and procedures and make any appropriate revisions. Finally, the State is required to ensure that medication administration records ("MARs") are appropriately completed and maintained in each inmate's medical record. At present, the Action Plan indicates that the DOC has planned specific actions with respect to each of these requirements. As a part of the process to determine the definition of "substantial compliance" with the requirements of the MOA with regard to medication administration (*see* Section II.A. above), the Monitoring Team will review the DOC's planned actions.

During the initial visits to the Facilities, the Monitoring Team learned about each of the Facilities' current methods for medication administration. Each of the Facilities has a separate system for administering medication to inmates, depending upon the level of security needed at each facility and the physical limitations of each structure. Each of the Facilities has a medication window. Inmates form a line outside of the window at set times each day, provide identification to the nurse inside of the "pharmacy," and the nurse administers a pre-measured medication to each inmate. Depending upon the circumstances, a physical examination of the inmate's

mouth may be required in order to ensure that a patient has actually taken the medication. Additionally, each of the Facilities has a method for taking medication directly to the inmates in order to administer medication. Most of the Facilities use a medication cart, which a nurse walks around the facility, administering medication to the inmates. Finally, each of the Facilities administers medication directly to the inmates housed in the infirmaries.

a. Preliminary Observations Regarding Medication Administration at Young

At Young, the Monitoring Team identified a potential problem due to a significant gap in time between administration of morning insulin to diabetic inmates, and the diabetic inmates' access to meals. The Monitoring Team raised that issue, and the medical staff at Young agreed to work with the Warden to ensure that diabetic inmates are fed within an appropriate time period after receiving insulin.

b. Preliminary Observations Regarding Medication Administration at DCC

At DCC, the Monitoring Team learned that medications are administered four times daily both by directly observed therapy and self-administration. Nurses administer medications mostly by going out to the housing units. An Inmate Activity Schedule showed that medication administration begins at 0300 or 0400 hours, and meals are served from 0430 to 0600 hours. This is an unusual arrangement to have medications and meals served this early. The Monitoring Team raised the concern that the early time of the inmate medication administration and feeding may have an impact on medication adherence, and recommends further exploration of this issue.

c. Preliminary Observations Regarding Medication Administration at SCI

At SCI, medications are administered four times daily. For two of the medication administration passes, nurses take the medication to the housing units. Inmates come to the medical clinic at other times to pick up medications. The Monitoring Team learned that during the medical screening portion of the inmate intake process, if the detainee has any medications on his or her person, the medications are destroyed regardless of whether they are in a properly labeled container or not. Staff reported that inmates are provided prescription medication adequate for 30 days of use upon release to afford the inmates an adequate time to obtain health care and medication refills upon release.

2. Continuity of Medication

Pursuant to paragraph 25 of the MOA, the State is required to ensure that arriving inmates who report that they have been prescribed medications shall receive the same or comparable medication as soon as is reasonably possible, unless a medical professional determines such medication is inconsistent with generally accepted professional standards. If the inmates' reported medication is ordered discontinued or changed by a medical professional, a medical professional must conduct a face-to-face evaluation of the inmate as medically appropriate. At present, the Action Plan indicates that the DOC has planned specific actions with respect to each of these requirements. As a part of the process to determine the definition of "substantial compliance" with the requirements of the MOA with regard to continuity of medication (*see* Section II.A. above), the Monitoring Team will review the DOC's planned actions.

3. Medication Management

Pursuant to paragraph 26 of the MOA, the State is required to develop and implement guidelines and controls regarding the access to, and storage of, medication as well as the safe and appropriate disposal of medication and medical waste. At present, the Action Plan indicates that the DOC has planned specific actions with respect to this requirement. As a part of the process to determine the definition of "substantial compliance" with the requirements of the MOA with regard to medication management (*see* Section II.A. above), the Monitoring Team will review the DOC's planned actions.

J. Emergency Care

Pursuant to paragraphs 27 and 28 of the MOA, the State is required to take action with respect to access to emergency care and first responder assistance. At present, the Action Plan indicates that the DOC has planned specific actions with respect to this requirement. As a part of the process to determine the definition of "substantial compliance" with the requirements of the MOA with regard to emergency care (*see* Section II.A. above), the Monitoring Team will review the DOC's planned actions.

K. Mental Health Care

Pursuant to paragraphs 29 through 40 of the MOA, the following mental health care topics require action by the State: (i) treatment; (ii) psychiatrist staffing; (iii) administration of mental health medications; (iv) mental illness training; (v) mental health screening; (vi) mental health assessment and referral; (vii) mental health treatment plans; (viii) crisis services; (ix) treatment for seriously mentally ill inmates; (x) review of disciplinary charges for mental illness symptoms; (xi) procedures for mentally ill inmates in isolation or observation status; and (xii) mental health services logs and documentation. At present, the Action Plan indicates that the DOC

has planned specific actions with respect to each of these topics. As a part of the process to determine the definition of "substantial compliance" with the requirements of the MOA with regard to these topics (*see* Section II.A. above), the Monitoring Team will review the DOC's planned actions.

The Monitoring Team will provide technical assistance in order to ensure compliance with these goals. The Monitoring Team is offering assistance with regard to drafting the DOC's policies regarding the above topics, and Drs. Roberta Stellman and Jeffrey Metzner, psychiatrists who are members of the Monitoring Team, will be visiting the Facilities in July 2007, in order to make a more comprehensive review of each of these topics.

IV. SUICIDE PREVENTION

Pursuant to paragraphs 41 through 53 of the MOA, the following suicide prevention topics require action by the State: (i) suicide prevention policy; (ii) suicide prevention training curriculum; (iii) staff training; (iv) intake screening/assessment; (v) mental health records; (vi) identification of inmates at risk of suicide; (vii) suicide risk assessment; (viii) communication; (ix) housing; (x) observation; (xi) "step-down observation;" (xii) intervention; and (xiii) mortality and morbidity reviews. At present, the Action Plan indicates that the DOC has planned specific actions with respect to each of these topics. As a part of the process to determine the definition of "substantial compliance" with the requirements of the MOA with regard to these topics (*see* Section II.A. above), the Monitoring Team will review the DOC's planned actions.

The Monitoring Team will provide technical assistance to the DOC in order to assist the DOC in reaching compliance with the MOA regarding the above areas of concern. The Monitoring Team currently is offering assistance with regard to drafting the DOC's policies and procedures in general, and Drs. Roberta Stellman and Jeffrey Metzner, psychiatrists who are members of the

Monitoring Team, will be visiting the Facilities in July 2007, in order to make a more comprehensive review of each of these topics.