

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,	)	
	)	
PLAINTIFF,	)	
	)	
v.	)	
	)	
ERIE COUNTY, NEW YORK,	)	
	)	Civil No. 09-cv-0849
DEFENDANT.	)	
	)	
	)	
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Eighth Monitoring Report  
US Department of Justice v. Erie County New York

Report of Technical Compliance Consultant Ronald Shansky, M.D.

June 2015

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## Eighth Monitoring Report

### US Department of Justice v. Erie County New York

This report reviews the status of the medical program conditions at the time of the eighth monitoring visit which took place from June 1 through June 5, 2015. This review occurred shortly after the departure of the prior Director of Correctional Health Services and the occurrence of his replacement through the promotion of the Director of Nursing. Thus, at the time of this visit, the Director of Correctional Health also wore the hat of the Director of Nursing. The Chief Medical Officer position remains vacant now exceeding 18 months. Despite the prolonged vacuum of clinical leadership for the medical program, several staff led by the current Director of Correctional Health/Director of Nursing have invested substantial energy in an effort to maintain services as they have been.

This has been a challenge due to the vacancy of some of the primary care clinician positions as well as use of leave time against a backdrop of a staffing matrix that may not be sufficient to provide a timely service response based on service needs. As indicated later in this report, critical scheduled visits are at times cancelled due to inadequate clinician resource availability. In addition, in my tours of the facilities and my discussion with staff, it was extremely frequent that the staff member I interacted with had been brought in from an agency. One of my recommendations will be to provide me a staffing analysis that is based on a methodology that calculates the volume of service demands and takes into account the time it takes to perform the required tasks and also accounts for scheduled and unscheduled leave time including call-in time.

We met with the person responsible for recruitment of the Chief Medical Officer position who is employed by Catholic Medical Partners. He appeared knowledgeable and experienced in his field and committed to successfully accomplishing his task. We had a good discussion that included many of the challenges and obstacles to successful recruitment. The monitor has offered to help in any way and a suggestion was made that the monitor appear for a recruiting session during which he could present the reasons that a prospective physician could find this assignment quite rewarding. Nonetheless, it was clear to everybody that until the Chief Medical Officer position has been filled with the right candidate the likelihood of significant progress toward achieving substantial compliance is substantially reduced.

Recently, two additional positions were approved by the legislature. One was for a Quality Improvement Coordinator and the other for an Assistant Director of Nursing. The compensation attached to each position appears woefully inadequate. However, the monitor understands the need to comply with the personnel regulations with regard to posting and attempting to fill these positions. If, as is likely the case, adequate candidates do not present themselves for this compensation package, alternative strategies including contracting through an external entity

such as Catholic Health should be considered. With these additional positions the correctional health leadership team should be centralized in an office space closer to the jail. I understand that such space has been identified in a building on Eagle Street. The Commissioner of Health and the County's Department of Public Works – Building & Grounds should facilitate this relocation as soon as possible. It is very important that the team develop not only close working relationships but also spend much time in the Holding Center.

## **B. Medical Care**

### **1. Policies and Procedures**

**Compliance Status: Partial compliance.**

#### **Findings**

The new Director of Correctional Health Services provided a set of policies which had been promulgated about 13 years ago, before the jail's medical service was placed under the supervision of the Department of Health. These policies needed substantial revision. Subsequently, the Director of Correctional Health provided a later set of policies which were developed under the leadership of the former Chief Medical Officer. Many of these policies appeared much closer to what the monitor was seeking. The state has indicated that the policies should better reflect the collaboration between the medical leadership, the mental health leadership and leadership of the Sheriff's department. Although this monitor has witnessed the three programs work remarkably well together, a task force reflecting leadership from each area should be created to review and sign off on each of the health care policies. The challenge will be to accomplish this despite the vacancy in the CMO position.

#### **Recommendations**

1. Create a task force consisting of leadership from the medical program, the mental health program and the sheriff's department to review and approve all policies that address sections of this agreement, such as medical autonomy, privacy, management of health records, training of custody staff, medication administration, access to care, etc. These policies should address all sections of the agreement. The monitor remains available for technical assistance.
2. By September 15, 2015, provide a staffing analysis in anticipation of our next visit that uses a methodology that takes into account the documented volume of service demands in relationship to the amount of time it takes to accomplish the required tasks. This staffing analysis must provide for scheduled leave time as well as account for the issue of unscheduled leave time. The staffing matrix should include the minimum numbers per shift at each facility by credential, such as RNs, LPNs, nurse practitioners and clerical staff.
3. Continue to aggressively pursue the efforts to fill the Chief Medical Officer position.

4. Pursue the efforts to fill the Quality Improvement Coordinator position and the Assistant Director of Nursing position with an eye towards using creative strategies if the compensation does not attract adequate candidates.
5. The Commissioner of Health should relocate the correctional health leadership team so they can all be in a single space closer to the ECHC.

## **2. Medical Autonomy**

**Compliance Status: Unable to assess.**

### **Findings**

This particular section addresses the interaction of the Chief Medical Officer and the Sheriff's jail leadership. The fact that the Chief Medical Officer position has remained vacant for more than 18 months precludes an assessment of the status. I was not able to interview practitioners with regard to their perceptions of their ability to perform their clinical responsibilities. However, the vacuum in the CMO position also creates conflicts with the Sheriff's Office, as there is no clinician that they can interact with to make final determinations. Therefore, I remain unable to assess this area until the CMO position is filled.

### **Recommendations**

1. Fill the Chief Medical Officer position.

## **3. Privacy**

**Compliance Status: Substantial compliance.**

### **Findings**

The areas in which health care is provided do afford appropriate privacy for the clinical interaction. We identified two new rooms on the second floor of the correctional facility which may be utilized by nursing staff for their sick call triage. The rooms do afford adequate privacy; however, neither room contains an exam table. The Director of Correctional Health Services as well as the Head Nurse at the Correctional Facility will have to monitor the types of symptoms addressed in these rooms to insure that where an exam is required the patient is moved to a more clinically appropriate professional setting in order for the exam to be completed. It is very important that nurses not compromise their professional skills in order to perceive that they are accommodating the available space.

### **Recommendations**

1. When using the second floor rooms for nurse triage, the head nurse should review a sample of the problems addressed in that space in order to provide feedback to the nurses when cases are identified that should have been examined in an appropriate clinical exam room.

#### **4. Training of Custody Staff**

This area has been in compliance for more than 18 months.

#### **5. Management of Health Records**

**Compliance Status: Partial compliance.**

##### **Findings**

We had a good meeting with the IT company that is responsible for installing the electronic record software. They have utilized the Erie County forms to customize the software so that it accommodates the entry forms required by Erie County. We became aware that the Sheriff's Office needed the EMR software to communicate alerts with regard to statuses necessary to protect certain inmate needs. This is being investigated by the IT company in communication with Black Creek. It is possible that the electronic record may be implemented either prior to or just after our next visit. We also toured the record area at the Holding Center and found that the loose filing of active records was quite up-to-date and the loose filing of records of inmates released from custody had been decreased since our last visit.

##### **Recommendations**

1. Move forward with the conversion to the electronic record, including procedures to insure that relevant documents are scanned into the electronic record timely after they have been reviewed and initialed and dated by the clinicians.
2. Continue the work with the selected vendor in order to facilitate the implementation of the electronic record.

#### **6. Medication Administration**

**Compliance Status: Substantial compliance.**

##### **Findings**

We observed the medication administration process, both in the morning and the evening. In the morning we observed the medication pass on Echo South and Bravo and in the evening we observed the medication pass on F North and A Long. In all four areas the nurse administering the medication performed in a manner that was consistent with the policies and procedures. These nurses made certain that all inmates who were to receive medications were contacted. In addition, they performed the process to correctly identify the patients. They removed the medications into the small pill cups and provided the medications to the inmates, who immediately ingested the medications and cooperated with making their mouths observable to insure ingestion had occurred. They then documented the ingestion on the medication administration records. The performance was appropriate. Given that the current arrangements with the local pharmacy insure that medicines are delivered to the facilities twice daily, there should be an expectation that these deliveries occur within the first 24 hours after the order is

initiated and the medication should also be available to the patients generally within 24 hours of the initiation of the order. It is important to perform a study that looks at both medications ordered as a result of the intake process as well as medications ordered at the time chronic disease medications are needing renewal as well as medications newly ordered during one's stay in the facilities. The studies should measure from the time of the order to the time of the receipt of the medications by the patient. We do not expect precise times to be recorded at the time of the order by the clinicians but that it is clear when those orders are received and the timeframe in which the patient receives the medication. We discussed utilizing a Pyxis-type machine, especially in the booking area, in order to insure availability of medications without maintaining a large stock inventory. This should over time prove cost efficient. The issue was raised as to whether the state allows controlled substances, including psychotropics, to be maintained in Pyxis-type machines. The monitor has never heard of a state being concerned about the security of Pyxis machines since in some ways they are more secure than other forms of medication storage.

### **Recommendations**

1. Perform a study looking at intake medications, chronic disease continuity medications and newly initiated medications to determine whether the time of order to the time of the receipt of the medications by the patient occurs within 24 hours and when this level of timeliness is not achieved, what is the timeframe for receipt of medications. Indicate the percentages of successful accomplishment of 24 and 48 hours.
2. Determine whether there is in fact some state issue with utilizing Pyxis-type machines for "controlled" medications. Communicate with the monitor as to the finding.

## **7. Access to Care**

**Compliance Status: Partial compliance.**

### **Findings**

We have continued to see that patients who have submitted sick call requests were usually seen in a face-to-face assessment within one day. The professional performance, however, remains a work in progress. Examples include patients with complaints related to specific organ systems did not have those organ systems assessed during a physical assessment and also the subjective data collected was insufficient to accurately determine the nature of the probable cause for the symptom. These types of performance issues are likely to be exacerbated with frequent use of agency nurses who may not have received feedback on their performance. The program has begun to provide feedback to nursing staff and for this they are to be commended. This process is likely to be a slow one and will take time to improve the performance. However, the strategy utilized is encouraging.

### **Recommendations**

1. Continue to provide organized review and feedback to the nurses performing the sick call task.
2. It may be useful to organize the types of opportunities for improvement identified such as in the subjective area, the objective area, the assessment and the plan and provide a group training session in which examples of each category of types of performance issues are summarized.
3. Continue to monitor the timeliness of sick call assessments from the time of receipt to the time of assessment.
4. Even if the nurses performing sick call believe that the requested issues are so complex as to require an advanced level practitioner referral, they should still perform the sick call face-to-face assessment. The reason for this is that given the current shortage of advanced level providers, there is no way to insure the timeliness of the advanced level provider assessment occurring within the expected timeframe of the nurse assessment, that is within 48 hours of receipt of the request. Thus, there should be no instances of a nurse skipping the nurse assessment because of an anticipated need for an advanced level provider assessment.

## **8. Emergency Care**

**Compliance Status: Substantial compliance.**

### **Findings**

We again reviewed seven records and found that the timeliness and appropriateness of the initial assessments was satisfactory. In addition, when patients were sent to the hospital, the emergency room reports were available in the record and the patients were seen for a follow-up assessment in which the status of the patient as well as the findings and plan from the offsite service document were discussed.

### **Recommendations**

1. The QI program should continue to monitor these unscheduled offsite service encounters, both those that do not result in sending the patient offsite and those that do result in an emergency room trip. This review should include both the initial response as well as any follow up.

## **9. Follow-Up Care**

**Compliance Status: Partial compliance.**

### **Findings**

We were quite chagrined to learn that the scheduled offsite service provider ECMCC has since our last visit implemented a new procedure. Under this new procedure, the jail is not able to call ECMCC and receive an appointment. Instead, after receiving a communication from the jail, the

ECMCC scheduler notifies jail staff of an appointment scheduled for usually around 90 days in the future. This is completely unacceptable and if not resolved before our next visit will result in a compliance status assessment of noncompliance. This clear delaying strategy is based on the presumption that a high percentage of patients from the jail will be released before 90 days and therefore the services will not have to be provided. This appears to be a method on the part of ECMCC to avoid providing necessary services. This must be immediately rectified.

### **Recommendations**

1. Resolve and correct the current ECMCC strategy designed to create the illusion of appointments and if that proves impossible, find an alternative offsite service provider. The current arrangements are consistent with an assessment of noncompliance.
2. The QI program should continue to track the timeliness of receipt of appointments, the timeliness of availability of offsite service documents and the timeliness of follow-up visits with an advanced level provider in which the findings and plan are discussed with the patient.

## **10. Chronic Disease**

**Compliance Status: Partial compliance.**

### **Findings**

Not surprisingly in the absence of a Medical Director, the performance with regard to chronic disease professional performance demonstrated significant need for performance improvement. Among the problems identified were delays in initiating the chronic disease program as well as inappropriate responses to poorly controlled diseases. Finally, in some instances the response to poorly controlled disease lacked the urgency that the absence of good control warranted. Additionally, some patients with chronic diseases never had their laboratory work performed even though they were housed in the system for a sufficient period of time to have received those laboratory studies. Additionally, the clinicians continue to fail to query diabetics regarding their age of onset of the disease in order to be able to differentiate between type 1 and type 2 pathology. We also reviewed the record of a patient who appeared to have type 1 disease in which the clinician checked that the physical exam should be performed urgently but then circled that the exam could be performed within one week. Another patient whose blood pressure was 180/120 was referred for her physical exam within the timeframe of a patient who was well controlled. Although the patient was given medication that could have more quickly reduced the blood pressure, there was no recheck to determine the effectiveness of this intervention. This should always be done.

### **Recommendations**

1. Patients whose blood pressure or finger stick is consistent with poor control should be monitored and treated aggressively in order to achieve good control as expeditiously as is



clinically appropriate. Their history and physical and first chronic disease visit should be performed within 24 hours. The second visit should be performed within one week or less. Patients in fair control should have their second visit within two weeks or less and only patients who were in good control at the time of the intake exam conducted within the first week should have their second visit within the first 30 days of incarceration. After the second visit the follow-up visits should be based on disease control also. Good control may be followed up within 90 days, fair control may be followed up within 60 days and poor control may be followed up within 30 days.

2. The timeliness of these responses should be monitored by the QI program.
3. Whenever blood sugar or blood pressure is urgently treated nurses should be trained to follow up within an hour of the intervention in order to determine the effectiveness of the intervention.

## **11. Dental Care**

**Compliance Status: Substantial compliance.**

### **Findings**

Data from the month of May for each facility reflects a rate of patients scheduled who had been seen at greater than 90%. In addition, although in some months at the ECCF the data demonstrates a ratio of restorations to extractions of one to one, there is great variation from month to month. In most months the number of extractions significantly exceeds the number of restorations. In the worst month the number of extractions was 20 and the number of restorations was two. Fortunately this was atypical. Both facilities should provide monthly reports not only on the percentage of scheduled patients seen but also on the ratio of restorations to extractions. The target should be at least a ratio of one to one restorations to extractions.

### **Recommendations**

1. Provide a monthly report of both percentage of scheduled patients seen as well as the ratio of restorations to extractions.

## **12. Care for Pregnant Prisoners**

**Compliance Status: Substantial compliance.**

### **Findings**

The program performed some studies looking at whether pregnant inmates were tested on intake, whether pregnant inmates received appropriate vitamins and diet orders, whether they received a timely advanced level provider assessment and finally whether they received an offsite OB service in a timely manner and whether the documentation was available in the record. The performance in these areas was good and was validated by our own review. Their study, which we confirmed, showed opportunities for improvement with regard to the timeliness of a follow-

up visit upon return from the obstetrician's office. This did occur timely two-thirds of the time but not in one-third of the cases. The QI program is to be commended for not only initiating these studies but also for correctly performing them.

The night before the last day of our visit, a patient delivered a baby in the jail, having been seen by the obstetrician within the prior week. The patient made no contact with health services regarding contractions and the timeframe for contacting medical and the delivery of the baby was so short that the ambulance had not yet arrived. Nonetheless, the staff, including the Director of Correctional Health, are to be commended for the appropriateness and professionalism which they demonstrated under trying circumstances. At last report, both baby and mother were doing well.

### **Recommendations**

1. Continue the QI program monitoring of these services.

### **13. Dietary Allowances and Food Service**

**Compliance Status: Substantial compliance.**

### **Findings**

We did not have time to talk with the Dietician on this visit, but since this area has been in substantial compliance for the last three visits we assessed substantial compliance. We still would like to be able to discuss a few items with the dietician and hope to have that discussion at our next visit.

**Recommendations** None.

### **14. Health Screening of Food Service Workers**

This area remains in sustained compliance.

### **15. Treatment and Management of Communicable Diseases**

**Compliance Status: Partial compliance.**

### **Findings**

Although we were notified during this visit that the legislature has approved a Quality Improvement Nurse who will also be responsible for the coordination of the infection control program, we were chagrined to learn that the position was approved with a grossly inadequate compensation program. Thus it is unlikely that a person with appropriate experience and skill will be attracted. We are aware that the process requires posting internally and then externally in an effort to find suitable candidates and only once this strategy has been utilized can an entity within the County look to more creative strategies that may be more likely to achieve success.

Once these strategies have been exhausted the County must consider utilizing an outside of the box strategy, such as contracting for these services with an outside entity.

### **Recommendations**

1. Despite the inadequate compensation, go through the process required by the County to fill the position.
2. When this strategy proves unsuccessful, consider outside of the box approaches.
3. Insure that there is sufficient administrative support for the Director of Clinical Health for not only the quality improvement program and the infection control program but correctional health services in general.

### **16. Sexual Abuse**

**Compliance Status: Substantial compliance.**

#### **Findings**

We again had a discussion with the Sexual Abuse Prevention Coordinator who has begun tracking both the receipt of the SANE exam as well as the provision of crisis services and the recommended follow up where indicated. Since the program is now monitoring these elements actively, in our view they have achieved substantial compliance. All instances of sexual abuse allegation are being investigated and for this the institution deserves credit. The Sexual Abuse Prevention Coordinator for the jail appears quite conscientious and has developed a well-run program.

**Recommendations** None.

### **17. Quality Management**

**Compliance Status: Partial compliance.**

#### **Findings**

There has been a significant increase in the quality improvement activity and for this, even without a Quality Improvement Nurse, the program is to be commended. Some of the areas for which I have seen studies or data include the timeliness of the nurse intake screen as assessed from booking time to completion of the nurse screen. In the slowest month, the average time was three hours and 14 minutes. This is excellent performance for which both custody and the nursing staff are to be commended. Additionally, the performance on the pregnancy audit tool was generally quite good. The section on pregnancy reviews the types of data assessed. There was also a study with regard to nurse sick call in which the sick call process was reviewed, beginning with symptomatic complaints being seen face-to-face and whether the nursing note correlates with the patient complaint written on the slip. When the patient was referred for a nurse face-to-face assessment was there a documented note in the chart and was that note

adequate. These studies with feedback to the staff become the hallmark of an adequate QI program. There was also an emergency care audit in which the performance was generally good, with the exception of the timeliness of follow-up visits after return from the hospital. There was also a study of the completeness of the CIWA monitoring and we discussed strategies to improve the data summary. There was also a study of the intake process and whether required elements were completed and also completed correctly. Unfortunately, we did not have the time to replicate some of these later studies in order to validate the results. Finally, there was a medication administration study which we would also like to have been able to review. All this activity in the absence of a QI Nurse and the absence of a CMO demonstrates to us that the leadership team, especially the head nurses and the Director of Correctional Health Services, are putting forth a maximum effort to improve the program. With the addition of the Quality Improvement Nurse who will also perform infection control responsibilities as well as the Assistant Director of Nursing and the filling of the Director of Nursing position along with, of course, the Chief Medical Officer position, this program has the potential to become an excellent program. We will do whatever we can to provide technical assistance and any other support in order to facilitate that outcome.

### **Recommendations**

1. Do what is necessary to attract excellent candidates for both the Quality Improvement Nurse position and the Assistant Director of Nursing position. Hopefully these will be filled before our return visit so that we can begin working with them.
2. To the extent that we can be provided a summary of the QI activities we can plan our visit in an effort to validate many of these studies.

### **18. Review of Clinical Care by Responsible Physician**

**Compliance Status: Noncompliance.**

### **Findings**

All agree that the 18-month clinical leadership vacuum has compromised the County's ability to achieve substantial compliance. We will not see improvements in custody's ability to work with the clinical leadership, in the performance of the clinicians, in the appropriateness of responses of the nurses, especially to critical vital sign abnormalities, until this leadership is in place. No program can adequately meet the needs of the patients while a prolonged clinical leadership vacuum exists.

### **Recommendations**

1. Fill the CMO position.

## **III. Protection from Harm**

## **E. Training of Officers with Regard to Sexual Abuse and Policy on Handling Sexual Abuse**

**Compliance Status:** Sustained substantial compliance.

### **Findings**

Both the policy and the training are consistent with the continuation of substantial compliance.

**Recommendations** None.

## **I. Training of Medical and Mental Health Staff**

**Compliance Status:** Sustained Substantial compliance.

## **J. Suicide Prevention Program**

### **e. Privacy**

**Compliance Status:** Sustained substantial compliance.

### **f. Assessment of Inmates in Detoxification**

**Compliance Status:** Sustained substantial compliance.

## **D. Training of Officer Staff with Regard to Suicide Prevention Training**

**Compliance Status:** Sustained substantial compliance.

## **3. Detoxification Training Program**

**Compliance Status:** Sustained substantial compliance.

## **Summary of Findings**

This visit, the absence of clinical leadership in the form of a Chief Medical Officer persisted despite efforts by the County, most recently working with Catholic Health, to recruit and fill the position. There is no question that the vacuum in this position creates a disability which is impossible to overcome. However, despite that fact, the new Director of Correctional Health has performed yeoman work in pulling the team together and initiating the quality improvement program without the benefit of a Quality Improvement Nurse or for that matter an Assistant Director of Nursing. These critical vacancies need to be filled. Although the legislature has created the positions, our sense is they are fatally undercompensated and thus County procedures must be exhausted before serious efforts can be made to fill these positions. We were extremely disturbed to see a newly implemented strategy by ECMCC in which, in their responsibility to provide scheduled offsite services, they have and are trying to avoid that responsibility by scheduling visits at a 90-day increment, hoping for the services not to be provided because the patient has already been released. This problem must be corrected as soon as possible, either by

ECMCC or by establishing a relationship with an alternative source. The CMO position does need to be filled, the Director of Nursing position does need to be filled, the Assistant DON position does need to be filled and the Quality Improvement Nurse position does need to be filled, and also the three nurse practitioner positions need to be filled. With all of these elements in place this program and its leadership team will enhance the performance so that substantial compliance is in fact achieved. The implementation of the electronic record once fully implemented will facilitate that accomplishment.

Respectfully submitted,

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Medical Monitor

RS/kh