



## LEGISLATIVE BUDGET BOARD

# **Correctional Managed Health Care for State Incarcerated Adult Offenders in Texas**

## **Legislative Policy Report**

**LEGISLATIVE BUDGET BOARD STAFF**

**SUBMITTED TO THE 83RD TEXAS LEGISLATURE**

**FEBRUARY 2013**

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# CORRECTIONAL MANAGED HEALTH CARE FOR STATE INCARCERATED ADULT OFFENDERS IN TEXAS

The Texas Department of Criminal Justice (TDCJ) is responsible for the security and safety of approximately 152,000 adult offenders incarcerated in 111 different correctional facilities statewide. A vital segment of those daily responsibilities includes the provision and management of health care to state incarcerated offenders, which cost more than \$435.0 million per fiscal year. The agency ensures the delivery of health care services through a model typically referred to as “correctional managed healthcare (CMHC).”

## FACTS AND FINDINGS

- ◆ The Eighty-second Legislature, Regular Session, 2011, established new CMHC requirements and limitations within the 2012–13 General Appropriations Act related to correctional unit staffing models and to inpatient and outpatient reimbursement rates.
- ◆ The Eighty-second Legislature, First Called Session, 2011, made various statutory changes affecting CMHC, one of which was transferring the authority to contract for offender health services from the Correctional Managed Health Care Committee to TDCJ.
- ◆ The Eighty-second Legislature, Regular Session, 2011, reduced TDCJ’s 2012–13 biennial appropriations for CMHC by 12 percent compared to the 2010–11 biennial spending level.

## CONCERN

- ◆ The Eighty-second Legislature, 2011, made significant CMHC funding and fiscal policy changes within the 2012–13 General Appropriations Act and statute. Additional modifications or adjustments may be necessary to maximize the efficiency and effectiveness of the CMHC system.

## RECOMMENDATIONS

- ◆ **Recommendation 1:** For purposes of the 2014–15 introduced General Appropriations Bill, fund TDCJ’s 2014–15 biennial CMHC appropriations at the 2012–13 biennial base expenditure level of \$902,325,413 in All Funds. Any funding adjustments would be considered and

decided through the legislative appropriations process during the Eighty-third Legislative Session, 2013.

- ◆ **Recommendation 2:** Modify TDCJ Rider 55, Correctional Managed Health Care, to clarify that TDCJ may enter into a contract with any entity to provide CMHC services. Where applicable, modify TDCJ Rider 55 references to specific contract providers to include other entities.
- ◆ **Recommendation 3:** Modify TDCJ Rider 55, Correctional Managed Health Care, to clarify into which TDCJ funding strategy and in what estimated amounts the statutorily authorized inmate health care fees are appropriated.
- ◆ **Recommendation 4:** Modify TDCJ Rider 55, Correctional Managed Health Care, to eliminate a specific bed utilization requirement at Hospital Galveston.
- ◆ **Recommendation 5:** For transparency purposes, modify TDCJ Rider 55, Correctional Managed Health Care, to indicate that CMHC-related appropriations are made in other Articles of the General Appropriations Act and not exclusively in TDCJ’s budget.
- ◆ **Recommendation 6:** Modify TDCJ Rider 55, Correctional Managed Health Care, to prohibit the use of TDCJ appropriations for payment of Correctional Managed Health Care Committee (CMHCC) staff salaries and related operating expenses.

## CORRECTIONAL MANAGED HEALTH CARE DESCRIPTION

Correctional managed health care (CMHC) was established by the Texas Legislature in 1993. Key provisions of the legislation included statutory requirements as follows:

- establish the Managed Health Care Advisory Committee to TDCJ;
- develop a managed health care plan for TDCJ inmates;

- establish a managed care network of physicians and hospitals to serve TDCJ inmates;
- integrate, to the extent possible, Texas' public medical schools into the established managed care network;
- initiate a competitive bidding process for contracts with other medical care providers for services the public medical schools cannot provide; and
- develop a managed health care plan that reduced the cost for state inmate medical services.

Since 1993, the initial CMHC model the state enacted has further evolved due to various statutory and policy changes. Currently, the direct delivery of health care services to offenders incarcerated within TDCJ correctional facilities primarily involves two state entities: The University of Texas Medical Branch (UTMB) and the Texas Tech University Health Sciences Center (TTUHSC). Administration and oversight of those direct offender health care services is primarily the responsibility of two other state entities: the Correctional Managed Health Care Committee (originally known as the Managed Health Care Advisory Committee) and TDCJ's Health Services Division. The following sections within this report provide details on each of those entities' roles as it relates to CMHC.

#### **CORRECTIONAL MANAGED HEALTH CARE COMMITTEE**

The statutory authority, requirements, and composition of the Correctional Managed Health Care Committee (CMHCC) are found in the Texas Government Code, Chapter 501, Subchapter E (see Appendix A). The Eighty-second Legislature, First Called Session, 2011, made various statutory changes affecting the CMHCC through Senate Bill 1, including altering the composition of the committee. The CMHCC now consists of five voting members and one nonvoting member as follows:

- one member employed full-time by TDCJ (appointed by TDCJ's executive director);
- one member who is a physician and employed full-time by UTMB (appointed by UTMB's president);
- one member who is a physician and employed full-time by TTUHSC (appointed by the university's president);
- two public members who are not affiliated with TDCJ or with any entity the CMHCC has contracted with to provide correctional health care services (each

appointed by the Governor and one of whom is designated the CMHCC presiding officer by the Governor); and

- the state Medicaid director (serves ex officio as a nonvoting member).

The CMHCC indicates its mission is to develop a statewide managed health care network to address three key goals:

- providing TDCJ offenders with timely access to care consistent with correctional standards;
- maintaining a quality of care that meets accepted standards of care; and
- managing the costs of delivering comprehensive health care services to a growing and aging offender population.

Statutory requirements of the CMHCC primarily include the following:

- The committee shall meet at least once in each quarter of the calendar year and at any other time at the call of the presiding officer.
- The committee shall pay necessary costs for its operation from funds appropriated by the Legislature to TDCJ for correctional health care.
- The committee shall develop a managed health care plan (see Appendix B) for all persons confined by TDCJ that includes:
  - establishment of a managed health care provider network of physicians and hospitals that will serve TDCJ as the exclusive health care provider for persons confined in institutions operated by TDCJ;
  - cost containment studies;
  - care case management and utilization management studies performed for TDCJ; and
  - concerning the establishment of criteria for hospitals, home health providers, or hospice providers, a provision requiring the managed health care plan to accept certification by the Medicare program under Title XVIII, Social Security Act (42 U.S.C. Section 1395 et seq.), and its subsequent amendments, as an alternative to accreditation by the Joint Commission on Accreditation of Healthcare Organizations.

- The committee shall evaluate and recommend to the Texas Board of Criminal Justice sites for new medical facilities that appropriately support the managed health care provider network.
  - The committee shall establish a procedure for monitoring the quality of care delivered by the health care providers.
  - The committee shall maintain a file on each written complaint filed with the committee by a member of the general public, and:
    - make information available describing its procedures for complaint investigation and resolution; and
    - at least quarterly until final disposition of the complaint, shall notify the person filing the complaint and each person who is a subject of the complaint of the status of the investigation unless the notice would jeopardize an undercover investigation.
  - The committee shall develop and implement policies that provide the public with a reasonable opportunity to appear before the committee and to speak on any issue under the jurisdiction of the committee.
  - The committee shall develop and implement a policy to encourage the use of appropriate alternative dispute resolution procedures to assist in the resolution of internal and external disputes under the committee's jurisdiction.
  - The committee shall implement a policy requiring the committee to use appropriate technological solutions to improve the committee's ability to perform its functions. The policy must ensure that the public is able to interact with the committee on the Internet.
  - The committee shall ensure that the following information is available to the public and shall make the information available on the committee's website and, on request, in writing:
    - contracts between TDCJ, the committee, and health care providers, and other information concerning the contracts;
    - the formulary used by correctional health care personnel in prescribing medication to inmates;
    - correctional managed care policies and procedures;
    - quality assurance statistics and data, to the extent permitted by law;
    - information concerning the costs associated with correctional health care;
    - aggregate statistical information concerning inmate deaths and the prevalence of disease among inmates;
    - the process for the filing of inmate grievances concerning health care services provided to inmates;
    - general statistics on the number and types of inmate grievances concerning health care services provided to inmates filed during the preceding quarter;
    - contact information for a member of the public to submit an inquiry to or file a complaint with the department or a health care provider;
    - information concerning the regulation and discipline of health care professionals, including contact information for the Health Professions Council and a link to the council's website;
    - unit data regarding health care services, including hours of operation, available services, general information on health care staffing at the unit, statistics on an inmate's ability to access care at the unit in a timely manner, and, if the unit is accredited by a national accrediting body, the most recent accreditation review date; and
    - dates and agendas for quarterly committee meetings and the minutes from previous committee meetings.
- General powers and duties of the CMHCC that are authorized in statute are:
- The committee may hire a managed health care administrator, who may employ personnel necessary for the administration of the committee's duties. (NOTE: If the committee chooses to hire committee staff, the committee shall pay necessary costs of hiring the personnel and shall develop and implement policies that clearly separate the policy-making responsibilities of the committee and the management responsibilities of the staff of the committee.)

- The committee may develop statewide policies for the delivery of correctional health care.
- The committee may communicate with TDCJ and the Legislature regarding the financial needs of the correctional health care system.
- The committee may, in conjunction with TDCJ, monitor the expenditures of UTMB and TTUHSC to ensure that those expenditures comply with applicable statutory and contractual requirements.
- The committee may serve as a dispute resolution forum in the event of a disagreement relating to inmate health care services between TDCJ and the health care providers or UTMB and TTUHSC.
- The committee may address problems found through monitoring activities by TDCJ and health care providers, including requiring corrective action if care does not meet expectations as determined by those monitoring activities.
- The committee may identify and address long-term needs of the correctional health care system.
- The committee may report to the Texas Board of Criminal Justice at the board's regularly scheduled meeting each quarter on the committee's policy recommendations, the financial status of the correctional health care system, and corrective actions taken by or required of TDCJ or the health care providers.
- The committee may contract with an individual for financial consulting services and may make use of financial monitoring of the managed health care plan to assist the committee in determining an accurate capitation rate.
- The committee may contract with an individual for actuarial consulting services to assist the committee in determining trends in the health of the inmate population and the impact of those trends on future financial needs.
- The committee may provide student loan repayment assistance for medical and mental health care physicians and other staff providing correctional managed health care. Not later than December 1 of each state fiscal year, the committee shall submit a

report to the Legislative Budget Board (LBB) and the Governor on the use of funds for student loan repayment assistance for the preceding fiscal year.

The CMHCC members serve without compensation but are entitled to reimbursement for actual and necessary expenses incurred in the performance of the CMHCC duties. The CMHCC employs three full-time staff, including an executive director, finance manager, and administrative associate. The fiscal year 2012 operating budget for the CMHCC and its staff was approximately \$673,000, and the funding for the committee's annual budget comes from appropriations to TDCJ. UTMB provides administrative support for the CMHCC, including fund accounting services, administering salary and benefits of committee personnel, performing purchasing and licensing functions, and providing information technology services.

Additional details about the CMHCC are available at [www.cmhcc.state.tx.us/the\\_cmhcc.htm](http://www.cmhcc.state.tx.us/the_cmhcc.htm), or in the following state publications, which are available at [www.lbb.state.tx.us/PubSafety\\_CrimJustice/Reports/Correctional\\_Managed\\_Health\\_Care\\_Corner.htm](http://www.lbb.state.tx.us/PubSafety_CrimJustice/Reports/Correctional_Managed_Health_Care_Corner.htm):

- Sunset Advisory Commission Staff Report with Commission Decisions, September 2012
- State Auditor's Office Report, March 2007
- Sunset Advisory Commission Staff Report, October 2006
- State Auditor's Office Report, October 2006
- State Auditor's Office Report, November 2004
- State Auditor's Office Report, January 1998
- Sunset Advisory Commission Staff Report, 1998

#### **TEXAS DEPARTMENT OF CRIMINAL JUSTICE'S HEALTH SERVICES DIVISION**

The Texas Department of Criminal Justice (TDCJ) and its policy-making body, the Texas Board of Criminal Justice (TBCJ) were established in 1989 to bring the state's prison, parole supervision, and adult probation (now known as community supervision) functions under a single governing board and agency structure. TDCJ's agency structure is organized into multiple divisions and organizational units. One of those divisions is TDCJ's Health Services Division (TDCJ-HSD).

TDCJ defines the mission of TDCJ-HSD as follows:

“... to work with health care contractors and the Correctional Managed Health Care Committee (CMHCC) to ensure health care services are provided to incarcerated offenders in the custody of the Texas Department of Criminal Justice (TDCJ). The Health Services Division has statutory authority (state law) to ensure access to care, monitor quality of care, investigate medical grievances, and conduct operational review audits of health care services at TDCJ facilities.”

TDCJ–HSD is divided into the following five departments, with 66 total divisional employees and its fiscal year 2012 budget was approximately \$4.6 million:

- Office of Health Services Monitoring;
- Office of Professional Standards;
- Office of Health Services Liaison;
- Office of Public Health; and
- Office of Mental Health Monitoring and Liaison.

The Office of Health Services Monitoring (OHSM) provides the agency with clinical expertise and guidance. OHSM physicians, dentists, nurses, and psychologists handle issues and inquiries requiring clinical investigation or monitoring. OHSM clinical and administrative staff perform Operational Review Audits. Also, the OHSM coordinates the Quality Improvement Program, which TDCJ, UTMB, and TTUHSC jointly administer. The intent of the program is to provide an integrated, clinically driven system that adds value to the quality of health care services provided to TDCJ offenders.

The Office of Professional Standards (OPS) investigates medical-related grievances from offenders. The Office of Health Services Liaison (OHSL) investigates medical-service complaints from third parties. Other OPS duties include the performance of Sick Call Request Verification Audits by its nurses and investigators.

In addition to investigating third-party complaints concerning medical services, OHSL coordinates the transfer of offenders who require intake and or reassignment for medical purposes. OHSL is also responsible for conducting medical screenings of offenders who are entering TDCJ facilities or programs where specific medical criteria must be met.

The Office of Public Health (OPH) is responsible for monitoring and reporting on the incidence of offender

infectious diseases, sexually transmitted diseases, and other communicable diseases. OPH provides training to TDCJ facility health services staff. In addition to its CMHC responsibilities, OPH also coordinates and formulates policy for all TDCJ employee health care programs.

The Office of Mental Health Monitoring and Liaison (OMHML) monitors the mental health services provided to TDCJ offenders. The OMHML provides mental health expertise and guidance to other TDCJ divisions. Also, the OMHML acts as a liaison between TDCJ and other state and local agencies in matters related to mental health issues.

The Texas Government Code, Section 501.150, requires TDCJ to monitor the quality of care CMHC service providers deliver, including investigating medical grievances, ensuring access to medical care, and conducting periodic operational reviews of medical care provided at TDCJ units. Further statutory requirements are that TDCJ and the health care providers shall cooperate in monitoring quality of care. The clinical and professional resources of the health care providers shall be used to the greatest extent feasible for clinical oversight of quality of care issues. TDCJ may require the health care providers to take corrective action if the care provided does not meet expectations as determined by quality of care monitoring. Both TDCJ and the health care providers must communicate the results of their monitoring activities and any corrective actions required of the health care providers to the CMHCC and the TBCJ.

Additional details about TDCJ–HSD are available on TDCJ’s website at [www.tdcj.state.tx.us/divisions/hs/index.html](http://www.tdcj.state.tx.us/divisions/hs/index.html), or on the LBB’s website at [www.lbb.state.tx.us/PubSafety\\_CrimJustice/Reports/Correctional\\_Managed\\_Health\\_Care\\_Corner.htm](http://www.lbb.state.tx.us/PubSafety_CrimJustice/Reports/Correctional_Managed_Health_Care_Corner.htm).

#### **THE UNIVERSITY OF TEXAS MEDICAL BRANCH**

The University of Texas Medical Branch (UTMB) is one of the primary providers of health care services to TDCJ offenders, serving the eastern and southern areas of the state.

UTMB is a component institution of higher education of the University of Texas System responsible for the education of health care professionals. UTMB, through its Correctional Managed Care Division, provides managed care for offenders in more than 100 adult and juvenile correctional facilities, including TDCJ, the Texas Juvenile Justice Department, the Federal Bureau of Prisons, and numerous county jails within Texas. Specifically related to adult offenders incarcerated in TDCJ, UTMB provides medical, dental, nursing, and

mental health services to approximately 120,000 offenders, or about 78 percent of TDCJ's incarceration population.

The various UTMB health services provided to TDCJ offenders are through a contractual arrangement between TDCJ and UTMB. The Eighty-second Legislature, First Called Session, 2011, made various statutory revisions affecting CMHC (through Senate Bill 1), one of which was transferring the authority to contract for offender health services from the CMHCC to TDCJ. The correctional health services contract between TDCJ and UTMB for fiscal year 2013 (through May 2013) includes detailed provisions for physician services, unit services, pharmacy services, outpatient hospital services (at UTMB facilities), inpatient hospital services (at Hospital Galveston), mental health, and other contracted services. The CMHCC's Offender Health Services Plan (see Appendix B) is a required component to the TDCJ/UTMB contract. A copy of the TDCJ/UTMB contract is available at [www.cmhcc.state.tx.us/contract\\_documents.htm](http://www.cmhcc.state.tx.us/contract_documents.htm).

Hospital Galveston is a secure prison hospital jointly operated by UTMB and TDCJ. The facility is located adjacent to UTMB's John Sealy Hospital in Galveston, Texas. TDCJ provides all necessary security for the prison hospital, while UTMB provides the medical personnel. The hospital includes operating room facilities, a pharmacy, radiology services, physical and occupational therapy services, a clinical laboratory, specialty clinics, and an outpatient department.

UTMB's pharmacy services include drug distribution, formulary management, disease management evaluations, and educational programs. UTMB is one of the entities in Texas that can purchase prescription drugs at discounted costs pursuant to the federal Public Service Act, Section 340B.

Dental services UTMB provides include diagnostic, preventive, restorative, periodontal, and exodontic procedures. UTMB's Texas-licensed dentists and registered dental hygienists and assistants adhere to infection control procedures when treating offenders.

UTMB's Correctional Managed Care Mental Health Department provides a wide range of services to TDCJ offenders including individual and group psychotherapy, psychometric and psychological assessments, crisis intervention counseling, psychopharmacology, inpatient hospitalization, psychiatric evaluations, and other services.

Additional details about UTMB's Correctional Managed Care services are available on UTMB's website at [www.mackenzie-media.com/chs/index.html#CMC](http://www.mackenzie-media.com/chs/index.html#CMC), or in CMHC-related state publications at [www.lbb.state.tx.us/PubSafety\\_CrimJustice/Reports/Correctional\\_Managed\\_Health\\_Care\\_Corner.htm](http://www.lbb.state.tx.us/PubSafety_CrimJustice/Reports/Correctional_Managed_Health_Care_Corner.htm). Also, contracts for CMHC services UTMB provided are available on the CMHCC website at [www.cmhcc.state.tx.us/contract\\_documents.htm](http://www.cmhcc.state.tx.us/contract_documents.htm).

#### **THE TEXAS TECH UNIVERSITY HEALTH SCIENCES CENTER**

The Texas Tech University Health Sciences Center (TTUHSC) is the primary provider of health care services to TDCJ offenders in the western and northern regions of the state.

TTUHSC is one of the institutions of higher education that comprise the Texas Tech University System. TTUHSC, through its School of Medicine's Correctional Managed Health Care Division, provides managed health care for approximately 31,000 TDCJ offenders, or about 20 percent of TDCJ's incarcerated population.

The health services provided to TDCJ offenders by TTUHSC are through a contractual arrangement between TDCJ and TTUHSC. The correctional health services contract between TDCJ and TTUHSC for fiscal years 2012 and 2013 includes detailed provisions for physician services, unit services, pharmacy services, hospital services, mental health, and other contracted services. The CMHCC's Offender Health Services Plan (see Appendix B) is a required component to the TDCJ/TTUHSC contract. A copy of the TDCJ/TTUHSC contract are available at [www.cmhcc.state.tx.us/contract\\_documents.htm](http://www.cmhcc.state.tx.us/contract_documents.htm).

TTUHSC's correctional health services are provided through three primary approaches: On-Site Health Services, Off-Site Health Services, and Correctional Telemedicine. The On-Site Health Services address medical, dental, and mental health needs on the correctional units. The Off-Site Health Services are through an extensive network of negotiated contracts with community medical resources, and typically provide for outpatient, emergency room, and inpatient care. Before the implementation of TTUHSC's Correctional Telemedicine, many inmates needing medical care were taken out of prison to visit a specialist, hospital, or other facility. With telemedicine, many of these trips have been eliminated.

Additional details about TTUHSC's correctional health services are available on TTUHSC's website at [www.ttuhscc.com](http://www.ttuhscc.com).

edu/som/cmhc/, or in CMHC-related state publications at [www.lbb.state.tx.us/PubSafety\\_CrimJustice/Reports/Correctional\\_Managed\\_Health\\_Care\\_Corner.htm](http://www.lbb.state.tx.us/PubSafety_CrimJustice/Reports/Correctional_Managed_Health_Care_Corner.htm). Also, contracts for CMHC services TTUHSC provided are available on the CMHCC website at [www.cmhcc.state.tx.us/contract\\_documents.htm](http://www.cmhcc.state.tx.us/contract_documents.htm).

### TRANSITIONS WITHIN CORRECTIONAL MANAGED HEALTH CARE

As previously mentioned, the Eighty-second Legislature, First Called Session, 2011, made various statutory changes affecting CMHC (through Senate Bill 1), one of which was transferring the authority to contract for offender health services from the CMHCC to TDCJ. Beginning in fiscal year 2012, UTMB and TTUHSC directly contract with TDCJ to provide CMHC services to approximately 98 percent of TDCJ's incarcerated population. The provision of CMHC services for the remaining 2 percent of TDCJ's incarcerated population is the responsibility of private prison contractors and their health care subcontractors.

During fiscal year 2012, TDCJ began broadening its contract network of health care providers. In March 2012, TDCJ entered into a contract with the Walker County Hospital District-Huntsville Memorial Hospital (HMH) for the remainder of the 2012–13 biennium to provide various

inpatient and outpatient hospital services. The CMHCC's Offender Health Services Plan (see Appendix B) is a required component to the TDCJ/HMH contract. A copy of the TDCJ/HMH contract is available on the CMHCC website at: [www.cmhcc.state.tx.us/contract\\_documents.htm](http://www.cmhcc.state.tx.us/contract_documents.htm).

During fiscal year 2012, TDCJ also sent correspondence to all Texas medical schools regarding potential CMHC opportunities, and had discussions with multiple local private hospitals around the state. TDCJ has consistently indicated that it will proceed with broadening the CMHC service delivery network to find cost-effective alternatives as determined and directed by the Texas Legislature.

### CORRECTIONAL MANAGED HEALTH CARE APPROPRIATIONS AND EXPENDITURES

Appropriations to TDCJ specifically for CMHC services are provided through three distinct funding strategies for the 2012–13 biennium. Those three funding strategies are “Unit and Psychiatric Care”, “Hospital and Clinical Care,” and “Pharmacy” and are shown in **Figure 1**. The 2012–13 biennial appropriations to TDCJ for CMHC total \$871.8 million. This amount includes \$13.5 million in initially projected inmate health care fees to be collected during the biennium. Inmate health care fees are statutorily imposed on

**FIGURE 1**  
**TDCJ'S CORRECTIONAL MANAGED HEALTH CARE**  
**EXPENDITURES HISTORY FOR FISCAL YEARS 2004–2011 AND APPROPRIATIONS FOR FISCAL YEARS 2012–2013**  
**(IN MILLIONS)**

| FISCAL YEAR | PSYCHIATRIC | UNIT AND PSYCHIATRIC** | HEALTH CARE | HOSPITAL AND CLINICAL CARE** | PHARMACY** | FISCAL YEAR TOTAL | BIENNIAL TOTAL | BIENNIAL PERCENTAGE CHANGE |
|-------------|-------------|------------------------|-------------|------------------------------|------------|-------------------|----------------|----------------------------|
| 2004        | \$43.1      | N/A                    | \$295.5     | N/A                          | N/A        | \$338.6           |                |                            |
| 2005        | \$43.1      | N/A                    | \$331.1     | N/A                          | N/A        | \$374.2           | \$712.8        | N/A                        |
| 2006        | \$43.1      | N/A                    | \$331.3     | N/A                          | N/A        | \$374.4           |                |                            |
| 2007        | \$43.1      | N/A                    | \$345.6     | N/A                          | N/A        | \$388.7           | \$763.1        | 7.1%                       |
| 2008        | \$43.1      | N/A                    | \$370.3     | N/A                          | N/A        | \$413.4           |                |                            |
| 2009        | N/A         | \$265.9                | N/A         | \$159.9                      | \$51.6     | \$477.4           | \$890.8        | 16.7%                      |
| 2010        | N/A         | \$247.9                | N/A         | \$172.3                      | \$49.9     | \$470.1           |                |                            |
| 2011        | N/A         | \$276.2                | N/A         | \$188.6                      | \$55.7     | \$520.5           | \$990.6        | 11.2%                      |
| 2012*       | N/A         | \$244.9                | N/A         | \$137.9                      | \$54.1     | \$436.9           |                |                            |
| 2013*       | N/A         | \$244.3                | N/A         | \$137.2                      | \$53.4     | \$434.9           | \$871.8        | (12.0%)                    |

\*Fiscal years 2012 and 2013 are appropriation amounts for correctional managed health care, not actual expenditures. Also, the amounts exclude appropriations made elsewhere in the General Appropriations Act related to state employee insurance and other benefits costs, and for TDCJ–HSD.

\*\*A TDCJ budget structure change was made by the Eighty-second Legislature, 2011, which impacts the presentation of expenditures starting with fiscal year 2009. Expenditure figures for fiscal years 2004 to 2011 also exclude costs related to state employee insurance and other benefits costs, and for TDCJ–HSD.

SOURCES: Legislative Budget Board; Texas Department of Criminal Justice.

an offender confined in a TDCJ facility who initiates a visit to a health care provider. The fee is \$100 annually and covers all visits to a health care provider for one year.

**Figure 1** provides a comparison, by fiscal year and biennium, of expenditures for fiscal years 2004 to 2011 and appropriations for fiscal years 2012 and 2013. The Eighty-second Legislature, 2011, changed the TDCJ budget structure, which affects the presentation of expenditures starting with fiscal year 2009.

**Figure 2** shows the CMHC expenditures for fiscal years 2004 to 2011 and appropriations for fiscal years 2012 and 2013 as cited in **Figure 1**. From fiscal years 2004 to 2011, CMHC expenditures increased resulting in a 53.7 percent overall increase during that period.

The 53.7 percent expenditure increase from fiscal years 2004 to 2011 was paid for each biennium from appropriation authority granted in regular and supplemental appropriation bills. Each biennium, CMHC providers did not deliver CMHC services within the original level of appropriations established by the Legislature. Details related to those expenditures are provided in the *Correctional Managed Health Care Fiscal Management and Contract Issues* section of this report. **Figure 3** provides a biennial breakdown of approximately \$184.3 million of supplemental appropriations made to TDCJ from fiscal years 2004 to 2011 to cover costs and charges, as reported by CMHC service providers that exceeded regular appropriations.

The Eighty-second Legislature, 2011, decreased CMHC 2012–13 biennial appropriations by 12 percent compared to

**FIGURE 3**  
**TDCJ'S CORRECTIONAL MANAGED HEALTH CARE:**  
**HISTORY OF REGULAR AND SUPPLEMENTAL**  
**APPROPRIATIONS, AND EXPENDITURES, 2004–05 TO**  
**2010–11 BIENNIA**  
**(IN MILLIONS)**

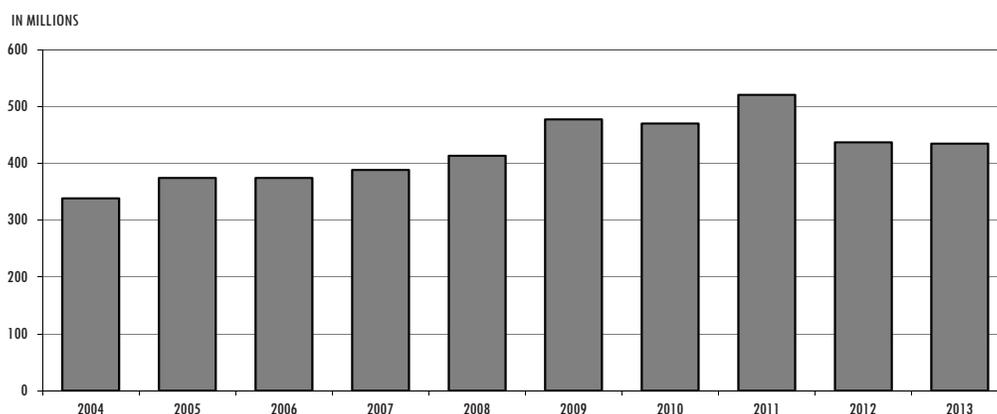
| BIENNium | TOTAL EXPENDITURES FOR CMHC | REGULAR APPROPRIATIONS FOR CMHC | SUPPLEMENTAL APPROPRIATIONS FOR CMHC |
|----------|-----------------------------|---------------------------------|--------------------------------------|
| 2004–05  | \$712.8                     | \$662.1                         | \$66.3                               |
| 2006–07  | \$763.1                     | \$747.5                         | \$12.9                               |
| 2008–09  | \$890.8                     | \$848.6                         | \$48.1                               |
| 2010–11  | \$990.6                     | \$934.7                         | \$57.0                               |

SOURCES: Legislative Budget Board; Texas Department of Criminal Justice.

2010–11 biennial expenditures as shown in **Figure 1**. The decrease in CMHC funding was the result of various fiscal and policy changes, that are detailed in the *Fiscal Years 2012–13 Issues* section of this report.

While most of the 2012–13 biennial funding for CMHC services to TDCJ offenders is appropriated in TDCJ's three CMHC funding strategies (Unit and Psychiatric Care, Hospital and Clinical Care, and Pharmacy), other CMHC-related appropriations are made elsewhere in the 2012–13 General Appropriations Act (GAA) (see **Figure 4**). When accounting for all funding related to CMHC, the 2012–13 biennial projected expenditures total approximately \$1.0 billion. That anticipated level of biennial spending equates to a cost per day of \$9.26 per TDCJ incarcerated offender served.

**FIGURE 2**  
**TDCJ'S CORRECTIONAL MANAGED HEALTH CARE EXPENDITURES FOR FISCAL YEARS 2004 TO 2011 AND APPROPRIATIONS FOR FISCAL YEARS 2012 AND 2013**



SOURCES: Legislative Budget Board and Texas Department of Criminal Justice

**FIGURE 4**  
**CORRECTIONAL MANAGED HEALTH CARE (CMHC) RELATED FUNDING, 2012–13 BIENNIUM**  
**(ALL FUNDS, IN MILLIONS)**

|  | 2012–13<br>BIENNIAL<br>COSTS | AVERAGE CMHC COST<br>PER DAY FOR<br>2012–13 BIENNIUM |
|--|------------------------------|--|
| TDCJ's CMHC Appropriations:*<br>(Includes General Revenue in TDCJ Strategy C.1.7. Unit and Psychiatric Care; TDCJ Strategy C.1.8. Hospital and Clinical Care; and TDCJ Strategy C.1.9. Managed Health Care–Pharmacy. Excludes initially projected inmate health care fees. Includes costs for the CMHC committee staff.)   | \$858.3                      | \$7.72   |
| Expected Inmate Health Care Fee Collections:**   | 5.0                          | 0.04   |
| Remaining Balance of Fiscal Year 2011 Supplemental Appropriation for CMHC:<br>(funds used to address CMHC's fiscal year 2012 shortfall)  | 6.3                          | 0.06   |
| Anticipated Fiscal Year 2013 Supplemental Appropriation Need for CMHC:<br>(funds used to address CMHC's fiscal year 2013 shortfall)  | 39.0                         | 0.35   |
| TDCJ's Health Services Division Appropriations:<br>(administration, CMHC monitoring, training, inmate classification)  | 9.2                          | 0.08   |
| UTMB/TTUHSC State Reimbursement Benefits:*<br>(Teacher Retirement System of Texas)   | 22.2                         | 0.20   |
| UTMB/TTUHSC State Reimbursement Benefits:*<br>(Optional Retirement Program)  | 2.9                          | 0.03   |
| UTMB/TTUHSC State Reimbursement Benefits:*<br>(Higher Education Group Insurance)   | 53.4                         | 0.48   |
| UTMB/TTUHSC Benefits:*<br>(Social Security)  | 31.1                         | 0.28   |
| UTMB State Reimbursement Benefits:*<br>(Employees Retirement System of Texas)  | 1.0                          | 0.01   |
| <b>Total</b>   | <b>\$1,028.4</b>             | <b>\$9.26</b>  |
| *University of Texas Medical Branch (UTMB) and Texas Tech University Health Sciences Center (TTUHSC) employ staff who deliver TDCJ-contracted CMHC services. UTMB and TTUHSC receive General Revenue in state reimbursements for a portion of the benefits provided to these employees. This funding is provided through the various state agencies/systems that administer benefits for higher education employees, and is projected to total approximately \$110.5 million for the 2012–13 biennium. |                              |  |
| **Inmate health care fees were initially projected to be \$13.5 million for the 2012–13 biennium. Actual collections are estimated to be \$5.0 million for the 2012–13 biennium.   |                              |  |
| SOURCES: Legislative Budget Board; Texas Department of Criminal Justice; University of Texas Medical Branch; Texas Tech University Health Sciences Center.   |                              |  |

To date, the two primary contract service providers of CMHC are UTMB and TTUHSC, both of which employ various medical service personnel and related administrative and support staff. The state-funded benefits for those UTMB and TTUHSC employees are paid through a combination of state reimbursements and from the CMHC contracts with TDCJ. The state reimbursements to UTMB and TTUHSC, for employee benefits of university staff that provide CMHC, come from the various state agencies and systems that administer benefits for Texas' higher education employees as noted in **Figure 4** (Teacher Retirement System of Texas, Optional Retirement Program, Higher Education Group Insurance, Social Security, and Employees Retirement System of Texas).

**Figure 4** also identifies appropriations made to TDCJ for the agency's Health Services Division (TDCJ–HSD). While TDCJ–HSD provides services in support of various TDCJ functions (inmate intake and classification, program criteria medical screenings, TDCJ employee training, etc), TDCJ–HSD has essential roles in monitoring the quality of CMHC services and investigating medical health care complaints.

**Figure 4** cites an estimated \$39.0 million appropriations shortfall for CMHC in the 2012–13 biennium. The estimate is based on TDCJ's analyses of CMHC expenditures and spending trends as summarized in the *Financial Report on Offender Health Care* that is compiled pursuant to TDCJ Rider 55, 2012–13 GAA (see Appendix C – TDCJ Rider 55, section “g. Reporting Requirements”). Additional details about the projected \$39.0 million CMHC shortfall are

provided in a later section of this report (see *Fiscal Years 2012–13 Issues* section).

## **CORRECTIONAL MANAGED HEALTH CARE FISCAL MANAGEMENT AND CONTRACT ISSUES**

Since the creation of correctional managed health care (CMHC) in Texas by the Seventy-third Legislature, 1993, the CMHC system has, in whole or part, been audited and reviewed numerous times by the state. The reports resulting from the primary state audits and reviews of CMHC are available on the Legislative Budget Board's (LBB) website at [www.lbb.state.tx.us/PubSafety\\_CrimJustice/Reports/Correctional\\_Managed\\_Health\\_Care\\_Corner.htm](http://www.lbb.state.tx.us/PubSafety_CrimJustice/Reports/Correctional_Managed_Health_Care_Corner.htm):

- Sunset Advisory Commission Staff Report with Commission Decisions, September 2012
- State Auditor's Office Report, February 2011, UTMB
- State Auditor's Office Report, February 2011, TTUHSC
- State Auditor's Office Report, March 2007
- Sunset Advisory Commission Staff Report, October 2006
- State Auditor's Office Report, October 2006
- State Auditor's Office Report, November 2004
- State Auditor's Office Report, January 1998
- Sunset Advisory Commission Staff Report, 1998

Those state reports contain detailed information and analyses on the overall CMHC system, the Correctional Managed Health Care Committee (CMHCC), the primary health care providers (University of Texas Medical Branch [UTMB] and Texas Tech Health Sciences Center [TTUHSC]), and TDCJ's Health Services Division (TDCJ-HSD). In addition to the CMHC-related reports posted on the LBB's website, useful information is available in contracts for CMHC service delivery, which is available on the CMHCC website at [www.cmhcc.state.tx.us/contract\\_documents.htm](http://www.cmhcc.state.tx.us/contract_documents.htm).

The State Auditor's Office (SAO) and Sunset Advisory Commission (SAC) have dedicated significant staff resources in auditing and reviewing the CMHC system since its inception. SAO and SAC findings and recommendations prior to the Eighty-second Legislature, 2011, led to significant CMHC fiscal and policy changes, which are

discussed in the *Fiscal Years 2012–13 Issues* section of this report. Notable findings and recommendations within the most recent SAO and SAC reports, particularly in the areas of fiscal management and contract issues, are highlighted in the following sections of this report.

### **SUNSET ADVISORY COMMISSION STAFF REPORT WITH COMMISSION DECISIONS, SEPTEMBER 2012**

SAC's September 2012 Staff Report With Commission Decisions focused on changes made by the Eighty-second Legislature, 2011, related to CMHC statute and CMHC requirements specified in the 2012–13 General Appropriations Act. The SAC report indicated the Legislature significantly altered the state's approach in providing health care to incarcerated offenders, particularly in the area of contracting authority. Before the Eighty-second Legislature, 2011, CMHC contracting authority had been vested with the CMHCC, a statutorily created independent entity with one of its primary purposes being the procurement and management of CMHC contracts. As part of the 2011 statutory revisions, the Legislature transferred the CMHCC's contracting authority to TDCJ. In addition to removing the CMHCC's contracting authority, the Legislature modified the CMHCC's membership structure. Previously, the CMHCC contained nine voting members, which was statutorily reduced to five voting members and one nonvoting member effective November 30, 2011.

SAC staff presented three major findings, along with three recommendations for statutory changes, in the September 2012 staff report:

- SAC Staff Finding 4.1: Statutory provisions guiding the offender healthcare contracting process are overly prescriptive and potentially inconsistent, limiting TDCJ's ability to adjust its approach in providing offender health care.
- SAC Staff Recommendation 4.1: Clarify [in statute] TDCJ's authority to contract with any provider for offender health care, to include, but not be limited to, specifically named university providers.
- SAC Staff Recommendation 4.1, Key Elements:
  - Provide TDCJ with necessary flexibility to enter into CMHC contracts as circumstances demand to achieve the best outcome for the State.
  - Expressly authorize TDCJ to enter into a contract with any entity to provide CMHC services,

- including public medical schools, governmental entities, and any other appropriate provider.
- Remove statutory references to contracting with specific health care providers.
  - Continue to require TDCJ to make efforts to contract with entities that participate in the federal Public Health Service Act's 340B Program (discount prescription drugs), but remove current specificity that limits those contracts to UTMB.
- SAC's Decision on Staff Recommendation 4.1: Adopted.
  - SAC Staff Finding 4.2: New to its role in healthcare contracting, TDCJ lacks the necessary framework to mitigate the State's future risk in contracting for offender healthcare services.
  - SAC Staff Recommendation 4.2: Require TDCJ [in statute] to adhere to standard contracting requirements for offender healthcare services contracts, and report healthcare cost and use information to state leadership.
  - SAC Staff Recommendation 4.2, Key Elements:
    - Require TDCJ to adhere to the State of Texas Contract Management Guide, published by the Comptroller of Public Accounts, when entering into CMHC contracts.
    - Codify language currently in TDCJ Rider 55 that requires TDCJ to submit quarterly CMHC reports to the LBB and the Governor's Office, and the required areas of the report that are specified in the language.
  - SAC's Decision on Staff Recommendation 4.2: Adopted with modification to require TDCJ to include in its quarterly reports to state leadership information relating to any cost savings associated with contracting with a healthcare provider other than UTMB or Texas Tech.
  - SAC Finding 4.3: TDCJ's increased involvement in healthcare contracting coupled with the Committee's limited purpose negates the need for a separate agency structure.
- SAC Recommendation 4.3: Restructure [in statute] the Correctional Managed Health Care Committee as a committee to the Texas Board of Criminal Justice, instead of maintaining an independent state agency.
  - SAC Recommendation 4.3, Key Elements:
    - Abolish the CMHCC as an independent state agency and establish a restructured advisory committee responsible for developing and approving the Health Care Plan and providing medical expertise and advice to TDCJ and its Board as needed.
    - The advisory committee would receive all its administrative support from TDCJ, similar to how other advisory committees are presently working with TDCJ. Accordingly, the restructured advisory committee would no longer have committee staff and the statutory authorization to hire staff would be removed.
    - Travel expenses for the advisory committee to attend meetings would continue to be authorized, contingent on legislative appropriations.
    - The membership of the restructured advisory committee would be modified as follows:
      - \* two physicians representing university health science centers, selected on a rotating basis among the eight current Texas medical schools (appointed by the Governor);
      - \* two public members, one of which must be a physician who serves as the Chair (appointed by the Governor);
      - \* a TDCJ employee (appointed by TDCJ's executive director); and
      - \* the State Medicaid Director, or other Health and Human Services Commission designee, who serves as an ex officio nonvoting member.
  - SAC's Decision on Staff Recommendation 4.3: Adopted except for the SAC staff recommendation to reconstitute the CMHCC as an advisory committee to TDCJ. The CMHCC is to continue as an independent state agency with authorization to hire its own staff. The CMHCC's membership composition would still be modified as laid out in the SAC staff recommendation.

The SAC's September 2012 Staff Report With Commission Decisions concluded that:

"As TDCJ adjusts to its new role in offender healthcare contracting, it must balance several factors in deciding the appropriate and most cost-effective delivery model, including taking into account legislative guidance and historical preference, the current university contractors' willingness to provide ongoing services, and the cost and availability of other potential providers."

#### **STATE AUDITOR'S OFFICE REPORTS, FEBRUARY 2011**

In February 2011, the SAO issued two audit reports related to CMHC, one pertaining to TTUHSC and the other to UTMB. Both SAO reports focused primarily on CMHC fiscal matters and financial management within the respective university systems. The SAO's major findings and recommendations related to fiscal matters were as follows:

Major SAO findings related to TTUHSC:

- In fiscal years 2009 and 2010, TTUHSC charged its CMHC contract for indirect costs totaling \$11.8 million. TTUHSC did not provide adequate support for how it calculated the administrative costs.
- While projecting a fiscal year 2010 deficit for CMHC, TTUHSC awarded \$1.1 million in salary increases (e.g., merits, equity adjustments, pay plan adjustments) to its CMHC staff.
- TTUHSC had support for almost all expenditures auditors tested related to TTUHSC's reported deficits.
- In fiscal year 2010, TTUHSC spent at least \$52,465 for employee benefits not authorized by the CMHC contract.
- Due to a lack of clear guidance in the CMHC contract, auditors were unable to determine if \$159,082 in fiscal year 2010 expenditures were reasonable and necessary for the provision of offender health care.

Major SAO recommendations related to TTUHSC:

- TTUHSC should maintain documentation to support indirect costs calculations and ensure that only reasonable and authorized direct and indirect expenditures are charged to the CMHC contract. The SAO did note that the Legislature may wish to consider determining the extent to which appropriations for CMHC should be used to pay indirect costs.

- TTUHSC should obtain approval from the LBB before charging any indirect costs to the CMHC contract.
- TTUHSC should seek prior approval from the CMHCC and/or LBB before awarding salary increases to TTUHSC employees from funds appropriated for CMHC.
- Regarding the determination of reimbursement amounts for professional services, local community hospitals, and other contracted hospital services, TTUHSC should annually provide proposed reimbursement amounts, the methodology applied, and related supporting documentation to:
  - the CMHCC for review and approval;
  - the Health and Human Services Commission for its review and approval; and
  - the LBB for its review and approval prior to expending any appropriated funds for CMHC.

Major SAO findings related to UTMB:

- In fiscal year 2010, UTMB physician reimbursement amounts exceeded standard Medicare, Medicaid, and a major private insurance carrier's reimbursement amounts. The UTMB reimbursement amount for physician billing services was, on average, 135 percent of the standard Medicare reimbursement amount. Additionally, reimbursement amounts exceeded standard Medicare reimbursement amounts for each type of hospital service, including inpatient and outpatient services.
- While projecting fiscal year deficits for CMHC, UTMB authorized \$14.1 million in salary increases for its CMHC staff during fiscal years 2008 through 2010.
- UTMB may be charging its CMHC Division for a disproportionate amount of UTMB's indirect costs because UTMB charged CMHC indirect costs in three ways. The shared services costs (indirect costs) charged in fiscal years 2009 and 2010 totaled \$16.2 million and included costs that were not directly related to providing CMHC.
- Auditors tested a sample of UTMB's CMHC expenditures from September 2008 through April 2010, and found that overall, the expenditures tested were adequately supported. However from an

allowability perspective, UTMB charged more than \$6.6 million for costs specifically prohibited by the CMHC contract or state requirements. Auditors also found a net \$220,113 in overcharges to the CMHC contract.

- Due to a lack of clear guidance in the CMHC contract, auditors were unable to determine if \$17.9 million in expenditures (from September 2008 through April 2010) were reasonable and necessary for the provision of offender health care. Auditors also identified expenditures that were not properly classified which could prevent costs from being adequately overseen.

Major SAO recommendations related to UTMB:

- Regarding the determination of reimbursement amounts for physician, inpatient, and outpatient services, UTMB should annually provide proposed reimbursement amounts, the methodology applied, and related supporting documentation to:
  - the CMHCC for review and approval;
  - the Health and Human Services Commission for its review and approval; and
  - the LBB for its review and approval prior to expending any appropriated funds for CMHC.
- UTMB should seek prior approval from the LBB before granting any salary increases, merits, market adjustments, and pay-by-letter arrangements to UTMB employees from funds appropriated for CMHC.
- UTMB should ensure that indirect cost categories it charges to the CMHC contract are only for services that are reasonable and necessary for the provision of offender health care. Further, UTMB should obtain prior approval from the LBB before charging any indirect costs to the CMHC contract. The SAO did note that the Legislature may wish to consider determining the extent to which appropriations for CMHC should be used to pay indirect costs.
- UTMB should strengthen controls over CMHC expenditures to ensure that only authorized expenditures are charged to the CMHC contract, and ensure adequate supporting documentation is maintained.

- UTMB should accurately classify all CMHC financial transactions so that management can make decisions based on accurate information.

SAO did indicate, in both the TTUHSC and UTMB audit reports on CMHC, that the respective university's management did not agree with the SAO recommendations cited in the audit reports. Also noted was that management's responses did not cause SAO to modify the reports' recommendations.

#### **FISCAL YEARS 2012 AND 2013 ISSUES**

As previously mentioned, compared to 2010–11 biennial expenditures, the 2012–13 biennial appropriations for CMHC were decreased by 12 percent by the Eighty-second Legislature, 2011. The decrease in CMHC funding was the result of various fiscal changes and new requirements for CMHC that were specified in the 2012–13 GAA, pursuant to TDCJ Rider 55 (see Appendix C). Those changes and requirements were, in large part, made in response to the various findings and recommendations made by previous SAO audits and SAC reviews.

The more notable CMHC fiscal changes and new requirements for the 2012–13 biennium are:

- The CMHC staffing model and services for TDCJ correctional units shall conform to the available annual appropriation in TDCJ's Unit and Psychiatric Care funding strategy;
- TTUHSC and UTMB shall provide unit medical and psychiatric care based on the TDCJ-approved CMHC staffing model and services for TDCJ correctional units;
- Regarding inpatient and applicable hospital outpatient services, UTMB shall be reimbursed at an amount no greater than UTMB's Medicaid Tax Equity and Fiscal Responsibility Act (TEFRA) rates. UTMB's hospital outpatient services not subject to TEFRA reimbursement rates shall be reimbursed at an amount not to exceed Medicaid rates;
- UTMB's physician services shall be reimbursed at a rate not to exceed cost;
- TTUHSC and UTMB shall provide inpatient and outpatient hospital services through contract providers at a rate not to exceed 100 percent of Medicare reimbursement rates;

- TDCJ may pay a rate in excess of Medicare reimbursement rates only with LBB approval; and
- TDCJ shall reimburse TTUHSC and UTMB for actual costs, including indirect administrative services based on generally accepted accounting principles. The total reimbursements shall not exceed amounts appropriated to TDCJ for CMHC, unless prior approval is provided by the LBB.

During an August 24, 2012 House Appropriations Committee, executive staff from TTUHSC and UTMB testified to adjustments made within their respective CMHC delivery systems as a result of reduced CMHC funding and new requirements pursuant to the 2012–13 GAA.

TTUHSC indicated the reduced CMHC funding has necessitated reduced operations, staffing, and offender health services for the 2012–13 biennium. The cost saving initiatives implemented by TTUHSC were identified as follows:

- reduction in force resulting in 77.4 full-time-equivalent positions being terminated;
- reduction in clinic operational hours;
- health care services reduced to Level I and II of the Offender Health Services Plan (medically mandatory and medically necessary);
- closure of a four-bed Intensive Care Unit at TDCJ's Montford Unit;
- strict adherence to TTUHSC payment rate structure with contracted hospitals for offsite care services based upon Medicare methodology;
- reduced capital purchases;
- limited travel expenses;
- eliminated hepatitis B vaccination except for high risk patients;
- ceased providing hepatitis B vaccine for TDCJ employees; and
- ceased funding meals for TDCJ correctional officers at local hospitals.

UTMB also indicated the decreased CMHC funding has resulted in reduced operations and staffing. UTMB identified the following management actions taken in fiscal year 2012:

- reduction in force resulting in 165 full-time-equivalent positions being terminated;

- reduced facility hours of operation;
- health care services reduced to Level I and II of the Offender Health Services Plan (medically mandatory and medically necessary);
- reduction in Hospital Galveston capacity and clinic volumes (focus is on emergent and urgent services, expedited infirmary discharges, improved hospital discharge process, decreased hospital lengths of stay);
- maximized formulary management, 340B pricing, and reclamation (includes development of new hepatitis C treatment guidelines which requires significant cost increases for the current treatment population);
- elimination of major capital purchases (e.g., radiology equipment, computer hardware, medical transportation vehicles);
- implementation of TDCJ Rider 55 free world payment terms (e.g., all contracted hospitals to accept Medicare reimbursement unless otherwise approved by the LBB);
- consolidated six districts into three regional management teams;
- reduced mental health services;
- eliminated training positions;
- reduced facility medical support personnel; and
- reduced Hospital Galveston human resources, fiscal services, and operational support staff.

Both TTUHSC and UTMB executive staff testified at the August 2012 House Appropriations Committee on various CMHC concerns. Pharmacy costs are escalating in general and health care costs for offenders over age 55 are increasing. Any additional reductions in CMHC funding would likely require more reductions in force, which would cause significant hardship on the delivery of adequate CMHC services.

The 2012–13 GAA requires TTUHSC and UTMB to provide unit medical and psychiatric care based on a TDCJ-approved model for CMHC staffing and services for TDCJ correctional units. The GAA also requires that the TDCJ-approved unit staffing and services model conform to the available annual appropriation in TDCJ's Unit and Psychiatric Care funding strategy. In July 2012, TDCJ

requested LBB approval to transfer funds between the agency's CMHC funding strategies pursuant to GAA requirements, and the request was approved. The TDCJ funds transfer request indicated the fiscal year 2012 appropriation level for TDCJ's Unit and Psychiatric Care funding strategy was adequate to sustain the TDCJ-approved unit staffing and services model, with approximately \$7.6 million available for transfer in fiscal year 2012.

The 2012–13 GAA also requires that total CMHC reimbursements to TTUHSC and UTMB not exceed TDCJ's CMHC appropriations. TDCJ's July 2012 transfer request included moving \$7.6 million from the Unit and Psychiatric Care strategy to the Hospital and Clinical Care strategy. At the time of the agency's transfer request, TDCJ projected Hospital and Clinical Care spending to exceed available appropriations by \$26.1 million for fiscal year 2012. Pharmacy costs were also anticipated to be \$0.7 million greater than fiscal year 2012 appropriations.

In order to fully address the entire projected fiscal year 2012 shortfall (a net \$19.2 million), TDCJ's July 2012 request also sought LBB approval to transfer \$10.2 million from fiscal year 2013 CMHC appropriations to fiscal year 2012 pursuant to GAA authority. Other fiscal actions taken to fully address the fiscal year 2012 shortfall were to utilize \$2.5 million in inmate health care fees collected in fiscal year 2012, and to use \$6.5 million in unexpended balances from the fiscal year 2011 supplemental appropriation for CMHC. In October 2012, TDCJ requested LBB approval to utilize up to \$10 million in unspent fiscal year 2012 substance abuse aftercare treatment funds to offset the need to transfer fiscal year 2013 CMHC appropriations to fiscal year 2012. TDCJ's October 2012 request was approved.

TDCJ anticipates an appropriations shortfall for CMHC for fiscal year 2013, estimated to be \$39.0 million. The estimate is based on TDCJ's analyses of CMHC expenditures and spending trends by TTUHSC and UTMB as summarized in the *Financial Report on Offender Health Care* that is compiled pursuant to TDCJ Rider 55, 2012–13 GAA (see Appendix C – TDCJ Rider 55, section “g. Reporting Requirements”). Any fiscal year 2013 projected CMHC shortfall would be considered and addressed by the Eighty-third Legislature, 2013, through the supplemental appropriations process.

## **MEDICAID FOR INMATES AND THE FEDERAL PATIENT PROTECTION AND AFFORDABLE CARE ACT**

Current federal law prohibits Medicaid payments for inmates of public secure institutions, such as prisons. However, Medicaid reimbursement for inmate health care expenses is available under certain limited circumstances specified in federal law and regulation. While the federal Patient Protection and Affordable Care Act of 2010 allows states to expand eligibility for Medicaid to lower income persons in general, it does not expressly address or alter the current federal limitations in place that specifically affect prison inmates.

### **ELIGIBILITY STANDARDS**

The process for receiving Medicaid reimbursement for inmate health care is two-fold. First, an inmate must meet state and federal Medicaid eligibility standards. Second, an eligible person must receive health care services under the limited conditions specified by the federal Centers for Medicare and Medicaid Services (CMS). Under Texas' current Medicaid standards, only incarcerated offenders who are pregnant, elderly, or under age 18 and who meet qualifying income criteria are potentially eligible for Medicaid. Blind and disabled inmates, who would be eligible for Medicaid if they were not incarcerated, are ineligible under the eligibility system in place in Texas. This determination is because Texas Medicaid eligibility for blind and disabled people is conditioned on eligibility for Supplemental Security Income or Temporary Assistance for Needy Families. Incarcerated persons are ineligible for those programs, and therefore cannot be eligible for Texas Medicaid while imprisoned.

### **PROHIBITION ON MEDICAID PAYMENTS FOR INMATES OF PUBLIC INSTITUTIONS**

Regardless of Medicaid eligibility, the federal Social Security Act prohibits Medicaid payments for care or services for an inmate of a public institution. Federal regulations define public institutions as institutions over which a governmental entity exercises administrative control, but excludes medical institutions and intermediate care facilities.

### **LIMITED EXCEPTION TO PROHIBITION ON MEDICAID PAYMENT**

Title 42, Code of Federal Regulations, Section 435.1009, clarifies that the Social Security Act's prohibition on Medicaid payment reimbursement does not apply “during that part of

the month in which the individual is not an inmate of a public institution...”. The Social Security Act provides an exception to inmate Medicaid reimbursement for periods in which a Medicaid-eligible inmate is admitted for inpatient stay in a medical institution. Federal regulations define *inpatient* as a patient who is admitted to a non-secure medical institution for a stay that is to be at least 24 hours.

The federal CMS has also interpreted the Medicaid payment prohibition to apply to private health care providers or private correctional institutions because governmental control continues to exist when a private entity is a contractual agent of the state. A 2010 letter from CMS to the North Carolina State Auditor clarifies that such a medical institution may not be “under the control of the corrections system.”

The Disproportionate Share Program (DSH) is a supplemental Medicaid payment made to states by the federal government. The DSH program is intended to partially reimburse hospitals for expenses resulting from providing uncompensated or indigent care. In January 2012, CMS published a proposed DSH program rule in the *Federal Register* changing the definition of the term *uninsured* for the purpose of a certain payment within the Disproportionate Share Hospital program. The proposed rule specifies that people who are inmates of a public institution “or are otherwise involuntarily in secure custody as a result of criminal charges” are considered to have third-party coverage because the corrections system is responsible for providing their health care. The proposal’s preamble explains the intent of the rule as it applies to the inmate exception:

“We interpret this exception to be limited to when the individual is no longer in secure custody by the law enforcement or a corrections agency. . . This is consistent with the fact that hospitals, or other institutional facilities cannot, within the scope of their conditions of participation, subject patients to restraints or seclusion.”

Although the proposed rule provides some clarification on the CMS interpretation of the circumstances of the inmate exception in a particular Medicaid calculation, until the rule is finally adopted, it is not binding.

### **RECOMMENDED CHANGES TO THE 2012–13 GENERAL APPROPRIATIONS ACT**

Since its inception, the CMHC system has undergone changes and improvements. Operational and policy issues have been addressed and modified over the years by TDCJ and CMHC providers. The Legislature has required system

improvements at various times and in different ways. Most recently the Eighty-second Legislature, 2011, made significant CMHC changes both in the GAA and in CMHC-related statutes.

In consideration of audits and reviews completed by the State Auditor’s Office (SAO) and Sunset Advisory Commission (SAC) staff, as well as observation and analyses of CMHC issues and operations, the following changes to the 2012–13 General Appropriations Act are recommended:

Recommendation 1: For purposes of the 2014–15 introduced General Appropriations Bill, fund TDCJ’s 2014–15 biennial CMHC appropriations at the fiscal years 2012–13 base expenditure level of \$902,325,413 in All Funds. Any funding adjustments would be considered and decided through the legislative appropriations process during the Eighty-third Legislative Session, 2013.

Recommendation 1 takes into account TDCJ’s 2012–13 biennial CMHC spending level, continues an anticipated \$39.0 million supplemental appropriation for a projected fiscal year 2013 CMHC funding shortfall, and utilizes \$5.0 million in inmate health care fees projected to be collected in fiscal years 2014 and 2015. Issues to be considered during the legislative session’s appropriations process as identified in TDCJ’s Legislative Appropriations Request are:

- a request of an additional \$86.0 million in General Revenue Funds to address base level cost increases;
- a request of an additional \$32.0 million General Revenue Funds for market level salary adjustments for health care provider staff employed by the University of Texas Medical Branch (UTMB) and Texas Tech University Health Sciences Center (TTUHSC);
- a request of \$10.0 million in General Revenue Funds for replacing critical capital equipment owned and operated by UTMB and TTUHSC; and,
- a request of \$13.0 million General Revenue Funds for restoration of key health care provider positions previously employed by UTMB and TTUHSC (e.g., nurses, etc.).

Recommendation 2: Modify TDCJ Rider 55, Correctional Managed Health Care, to clarify that TDCJ may enter into a contract with any entity to provide CMHC services. Where applicable, modify TDCJ Rider 55 references to specific contract providers to include other entities.

The Sunset Advisory Commission's (SAC) Staff Report With Commission Decisions (September 2012) indicates that current law is not clear regarding TDCJ's authority to contract directly with providers outside of UTMB and TTUHSC for correctional health care services. That SAC report recommends various changes in statute that would assist in clarifying that TDCJ may enter into contracts with any entity to provide needed correctional health care services. In addition to the recommended statutory changes laid out in the SAC report, the LBB staff recommendation adds the following text to TDCJ Rider 55:

"TDCJ may enter into a contract with the Texas Tech University Health Sciences Center, the University of Texas Medical Branch, and/or other entities to provide correctional managed health care services, including public medical schools, governmental entities, and any other health care provider as appropriate." (see Appendix D).

Recommendation 3: Modify TDCJ Rider 55, Correctional Managed Health Care, to clarify into which TDCJ funding strategy and in what estimated amounts the statutorily authorized inmate health care fees are appropriated.

During the Eighty-second Legislature, First Called Session, 2011, Senate Bill 1 authorized an inmate health care services fee in the Texas Government Code to "pay the cost of correctional health care". Senate Bill 2 appropriated the collected fees to TDCJ for the 2012–13 biennium. For 2014–15 biennial appropriation purposes, the recommendation adds the following text to TDCJ Rider 55:

"Receipts from inmate health care fees collected from offenders in accordance with Government Code, Section 501.063, are appropriated above in Strategy C.1.7, Managed Health Care - Unit and Psychiatric Care, estimated to be \$2,500,000 in General Revenue Funds in fiscal year 2014 and estimated to be \$2,500,000 in General Revenue Funds in fiscal year 2015. Any receipts collected in excess of \$2,500,000 in fiscal year 2014 and \$2,500,000 in fiscal year 2015 are hereby appropriated to the department to pay the cost of correctional health care." (see Appendix D).

Recommendation 4: Modify TDCJ Rider 55, Correctional Managed Health Care, to eliminate a specific bed utilization requirement at Hospital Galveston.

TDCJ Rider 55(d)(5) requires UTMB to maintain at least 100 inpatient beds at Hospital Galveston for CMHC purposes. This requirement reduces TDCJ's flexibility to

contract with other hospital providers if situations arise that could be more cost-effective. During fiscal year 2012, the demand for Hospital Galveston beds ranged between 62 and 76 beds. The recommendation provides that utilization of beds at Hospital Galveston be driven by actual health care demands and need for services (see Appendix D).

Recommendation 5: For transparency purposes, modify TDCJ Rider 55, Correctional Managed Health Care, to indicate that CMHC-related appropriations are made in other Articles of the GAA and not just in TDCJ's budget.

UTMB and TTUHSC employ staff that deliver TDCJ-contracted CMHC services. UTMB and TTUHSC receive General Revenue Funds in state reimbursements for a portion of the benefits provided to these university employees. This funding is provided through the various state agencies/systems that administer benefits for higher education employees, and is projected to total approximately \$110.5 million for the 2012–13 biennium. During a July 2012 Senate Finance Committee hearing, members raised concerns about the level of transparency regarding CMHC costs because of the benefits appropriations made outside of TDCJ's budget. The recommendation adds the following text in TDCJ Rider 55:

"Informational Item – In addition to the CMHC appropriations made above in TDCJ, other CMHC-related appropriations are made elsewhere in the General Appropriations Act. Certain University of Texas Medical Branch (UTMB) and Texas Tech University Health Sciences Center (TTUHSC) employees deliver TDCJ-contracted CMHC services. UTMB and TTUHSC receive General Revenue Funds in state reimbursements for a portion of the benefits provided to these university employees. This funding is provided through the various state agencies/systems that administer benefits for higher education employees." (see Appendix D).

Recommendation 6: Modify TDCJ Rider 55, Correctional Managed Health Care, to prohibit the use of TDCJ appropriations for payment of Correctional Managed Health Care Committee (CMHCC) staff salaries and related operating expenses.

The Eighty-second Legislature, 2011, transferred the authority to contract for offender health services from the CMHCC to TDCJ, which shifted various duties and responsibilities to TDCJ as well. Also, staff recommendations within the Sunset Advisory Commission's Staff Report with Commission Decisions (September 2012) include statutorily

changing the CMHC committee from being an independent state agency to being an advisory committee, and removing statutory authorization to hire committee staff. The Sunset Advisory Commission (SAC) members did not adopt this specific SAC staff recommendation.

TDCJ Rider 55(b)(1) currently reads as follows: “From funds appropriated above in Strategy C.1.7, Managed Health Care – Unit and Psychiatric Care, the Department of Criminal Justice shall pay salaries, operating expenses, and travel expenses for staff of the Correctional Managed Health Care Committee.” LBB staff Recommendation 6 replaces that text with the following: “None of the funds appropriated above shall be used for payment of salaries, operating expenses, or travel expenses for staff of the Correctional Managed Health Care Committee.”

### **FISCAL IMPACT OF THE RECOMMENDATIONS**

The CMHC baseline funding level for the 2014–15 biennium as discussed in Recommendation 1, and the recommended rider modifications cited in Recommendations 2 through 5 are included in the 2014–15 introduced General Appropriations Bill (see Appendix D).

Recommendation 6 would save \$917,836 in General Revenue Funds during the 2014–15 biennium, as shown in **Figure 5**. This savings eliminates funding for the Correctional Managed Health Care Committee staff’s operating budget. The 2014–15 introduced General Appropriations Bill does not implement Recommendation 6.

**FIGURE 5**  
**FIVE-YEAR FISCAL IMPACT OF THE RECOMMENDATIONS,**  
**FISCAL YEARS 2014 TO 2018**

| <b>FISCAL YEAR</b> | <b>PROBABLE SAVINGS/(COST)<br/>IN GENERAL REVENUE FUNDS</b> |
|--------------------|---|
| 2014               | \$458,918   |
| 2015               | \$458,918   |
| 2016               | \$458,918   |
| 2017               | \$458,918   |
| 2018               | \$458,918   |

SOURCE: Legislative Budget Board.

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## APPENDIX A: TEXAS GOVERNMENT CODE, CHAPTER 501, SUBCHAPTER E

### *SUBCHAPTER E. MANAGED HEALTH CARE*

*Sec. 501.131. DEFINITION. In this subchapter, "committee" means the Correctional Managed Health Care Committee.*

*Added by Acts 1999, 76th Leg., ch. 1190, Sec. 1, eff. Sept. 1, 1999.*

*Sec. 501.132. APPLICATION OF SUNSET ACT. The Correctional Managed Health Care Committee is subject to review under Chapter 325 (Texas Sunset Act) regarding the committee's role and responsibilities. The committee shall be reviewed during the period in which the Texas Department of Criminal Justice is reviewed.*

*Added by Acts 1999, 76th Leg., ch. 1190, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1112, Sec. 4.01, eff. Sept. 1, 2003.*

*Amended by:*

*Acts 2005, 79th Leg., Ch. 1227, Sec. 1.02, eff. September 1, 2005.*

*Acts 2007, 80th Leg., R.S., Ch. 1308, Sec. 25, eff. June 15, 2007.*

*Sec. 501.133. COMMITTEE MEMBERSHIP. (a) The committee consists of five voting members and one nonvoting member as follows:*

*(1) one member employed full-time by the department, appointed by the executive director;*

*(2) one member who is a physician and employed full-time by The University of Texas Medical Branch at Galveston, appointed by the president of the medical branch;*

*(3) one member who is a physician and employed full-time by the Texas Tech University Health Sciences Center, appointed by the president of the university;*

*(4) two public members appointed by the governor who are not affiliated with the department or with any entity with which the committee has contracted to provide health care services under this chapter, at least one of whom is licensed to practice medicine in this state; and*

(5) *the state Medicaid director, to serve ex officio as a nonvoting member.*

(b) *An appointment to the committee shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee.*

*Added by Acts 1999, 76th Leg., ch. 1190, Sec. 1, eff. Sept. 1, 1999.*

*Amended by:*

*Acts 2011, 82nd Leg., 1st C.S., Ch. 4, Sec. 42.01, eff. September 28, 2011.*

*Sec. 501.134. PUBLIC MEMBER ELIGIBILITY. A person may not be a public member of the committee if the person or the person's spouse:*

*(1) is employed by or participates in the management of a business entity or other organization regulated by or receiving money from the department or the committee;*

*(2) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by or receiving money from the department or the committee; or*

*(3) uses or receives a substantial amount of tangible goods, services, or money from the department or the committee other than compensation or reimbursement authorized by law for committee membership, attendance, or expenses.*

*Added by Acts 1999, 76th Leg., ch. 1190, Sec. 1, eff. Sept. 1, 1999.*

*Sec. 501.135. MEMBERSHIP AND EMPLOYEE RESTRICTIONS. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.*

*(b) A person may not be an appointed member of the committee and may not be a committee employee employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.) and its subsequent amendments if:*

*(1) the person is an officer, employee, or paid consultant of a Texas trade*

*association in the field of health care or health care services; or*

*(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of health care or health care services.*

*(c) A person may not be a member of the committee or act as the general counsel to the committee if the person is required to register as a lobbyist under Chapter 305 because of the person's activities for compensation on behalf of a profession related to the operation of the committee.*

*Added by Acts 1999, 76th Leg., ch. 1190, Sec. 1, eff. Sept. 1, 1999.*

*Amended by:*

*Acts 2011, 82nd Leg., 1st C.S., Ch. 4, Sec. 42.02, eff. September 28, 2011.*

*Sec. 501.136. TERMS OF OFFICE FOR PUBLIC MEMBERS. Committee members appointed by the governor serve staggered four-year terms, with the term of one of those members expiring on February 1 of each odd-numbered year. Other committee members serve at the will of the appointing official or until termination of the member's employment with the entity the member represents.*

*Added by Acts 1999, 76th Leg., ch. 1190, Sec. 1, eff. Sept. 1, 1999.*

*Amended by:*

*Acts 2011, 82nd Leg., 1st C.S., Ch. 4, Sec. 42.03, eff. September 28, 2011.*

*Sec. 501.137. PRESIDING OFFICER. The governor shall designate a public member of the committee who is licensed to practice medicine in this state as presiding officer. The presiding officer serves in that capacity at the will of the governor.*

*Added by Acts 1999, 76th Leg., ch. 1190, Sec. 1, eff. Sept. 1, 1999.*

*Amended by:*

*Acts 2007, 80th Leg., R.S., Ch. 1308, Sec. 27, eff. June 15, 2007.*

*Sec. 501.138. GROUNDS FOR REMOVAL. (a) It is a ground for removal from the committee that a member:*

(1) does not have at the time of taking office the qualifications required by Section 501.133;

(2) does not maintain during service on the committee the qualifications required by Section 501.133;

(3) is ineligible for membership under Section 501.134 or 501.135;

(4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or

(5) is absent from more than half of the regularly scheduled committee meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the committee.

(b) The validity of an action of the committee is not affected by the fact that it is taken when a ground for removal of a committee member exists.

(c) If the managed health care administrator has knowledge that a potential ground for removal exists, the administrator shall notify the presiding officer of the committee of the potential ground. The presiding officer shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the managed health care administrator shall notify the next highest ranking officer of the committee, who shall then notify the governor and the attorney general that a potential ground for removal exists.

*Added by Acts 1999, 76th Leg., ch. 1190, Sec. 1, eff. Sept. 1, 1999.*

*Sec. 501.139. MEETINGS. (a) The committee shall meet at least once in each quarter of the calendar year and at any other time at the call of the presiding officer.*

*(b) The committee may hold a meeting by telephone conference call or other video or broadcast technology.*

*Added by Acts 1999, 76th Leg., ch. 1190, Sec. 1, eff. Sept. 1, 1999.*

*Sec. 501.140. TRAINING. (a) A person who is appointed to and qualifies for office as a member of the committee may not vote, deliberate, or be counted as a member in attendance at a meeting of the committee until the person completes a training program that complies with this*

*section.*

*(b) The training program must provide the person with information regarding:*

- (1) the legislation that created the committee;*
- (2) the programs operated by the committee;*
- (3) the role and functions of the committee;*
- (4) the rules of the committee with an emphasis on the rules that relate to disciplinary and investigatory authority;*
- (5) the current budget for the committee;*
- (6) the results of the most recent formal audit of the committee;*
- (7) the requirements of:*
  - (A) the open meetings law, Chapter 551;*
  - (B) the public information law, Chapter 552;*
  - (C) the administrative procedure law, Chapter 2001; and*
  - (D) other laws relating to public officials, including conflict-of-interest laws;*

*and*

*(8) any applicable ethics policies adopted by the committee or the Texas Ethics Commission.*

*(c) A person appointed to the committee is entitled to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.*

*Added by Acts 1999, 76th Leg., ch. 1190, Sec. 1, eff. Sept. 1, 1999.*

*Sec. 501.141. COMPENSATION; REIMBURSEMENT. A committee member serves without compensation but is entitled to reimbursement for actual and necessary expenses incurred in the performance of the duties of the committee.*

*Added by Acts 1999, 76th Leg., ch. 1190, Sec. 1, eff. Sept. 1, 1999.*

*Sec. 501.142. ADMINISTRATION; PERSONNEL. The committee may hire a managed health care administrator, who may employ personnel necessary for the administration of the committee's duties. The committee shall pay necessary costs for its operation, including costs of hiring the managed health care administrator and other personnel, from funds appropriated by the legislature to the department for correctional health care.*

*Added by Acts 1999, 76th Leg., ch. 1190, Sec. 1, eff. Sept. 1, 1999.*

*Sec. 501.143. DIVISION OF RESPONSIBILITIES. The committee shall develop and implement policies that clearly separate the policy-making responsibilities of the committee and the management responsibilities of the managed health care administrator and staff of the committee.*

*Added by Acts 1999, 76th Leg., ch. 1190, Sec. 1, eff. Sept. 1, 1999.*

*Sec. 501.144. QUALIFICATIONS AND STANDARDS OF CONDUCT INFORMATION. The managed health care administrator or the administrator's designee shall provide to members of the committee and to committee employees, as often as necessary, information regarding the requirements for office or employment under this subchapter, including information regarding a person's responsibilities under applicable laws relating to standards of conduct for state officers or employees.*

*Added by Acts 1999, 76th Leg., ch. 1190, Sec. 1, eff. Sept. 1, 1999.*

*Sec. 501.145. EQUAL EMPLOYMENT OPPORTUNITY POLICY. (a) The managed health care administrator or the administrator's designee shall prepare and maintain a written policy statement that implements a program of equal employment opportunity to ensure that all personnel decisions are made without regard to race, color, disability, sex, religion, age, or national origin.*

*(b) The policy statement must include:*

*(1) personnel policies, including policies relating to recruitment, evaluation, selection, training, and promotion of personnel, that show the intent of the committee to avoid the unlawful employment practices described by Chapter 21, Labor Code; and*

*(2) an analysis of the extent to which the composition of the committee's personnel*

*is in accordance with state and federal law and a description of reasonable methods to achieve compliance with state and federal law.*

*(c) The policy statement must:*

- (1) be updated annually;*
- (2) be reviewed by the state Commission on Human Rights for compliance with Subsection (b)(1); and*
- (3) be filed with the governor's office.*

*Added by Acts 1999, 76th Leg., ch. 1190, Sec. 1, eff. Sept. 1, 1999.*

*Sec. 501.146. MANAGED HEALTH CARE PLAN. (a) The committee shall develop a managed health care plan for all persons confined by the department that includes:*

- (1) the establishment of a managed health care provider network of physicians and hospitals that will serve the department as the exclusive health care provider for persons confined in institutions operated by the department;*
- (2) cost containment studies;*
- (3) care case management and utilization management studies performed for the department; and*
- (4) concerning the establishment of criteria for hospitals, home health providers, or hospice providers, a provision requiring the managed health care plan to accept certification by the Medicare program under Title XVIII, Social Security Act (42 U.S.C. Section 1395 et seq.), and its subsequent amendments, as an alternative to accreditation by the Joint Commission on Accreditation of Healthcare Organizations.*

*(b) To implement the managed health care plan, The University of Texas Medical Branch at Galveston and the Texas Tech University Health Sciences Center, for employees who are entitled to retain salary and benefits applicable to employees of the Texas Department of Criminal Justice under Section 9.01, Chapter 238, Acts of the 73rd Legislature, Regular Session, 1993, may administer, offer, and report through their payroll systems participation by those employees in the Texas employees group benefits program and the Employees Retirement System of Texas.*

*Added by Acts 1999, 76th Leg., ch. 1190, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.514, eff. Sept. 1, 2003.*

*Sec. 501.147. DEPARTMENT AUTHORITY TO CONTRACT. (a) The department may enter into a contract to fully implement the managed health care plan under this subchapter. A contract entered into under this subsection must include provisions necessary to ensure that The University of Texas Medical Branch at Galveston is eligible for and makes reasonable efforts to participate in the purchase of prescription drugs under Section 340B, Public Health Service Act (42 U.S.C. Section 256b).*

*(b) The department may contract with other governmental entities for similar health care services and integrate those services into the managed health care provider network.*

*(c) In contracting for implementation of the managed health care plan, the department, to the extent possible, shall integrate the managed health care provider network with the public medical schools of this state and the component and affiliated hospitals of those medical schools. The contract must authorize The University of Texas Medical Branch at Galveston to contract directly with the Texas Tech University Health Sciences Center for the provision of health care services. The Texas Tech University Health Sciences Center shall cooperate with The University of Texas Medical Branch at Galveston in its efforts to participate in the purchase of prescription drugs under Section 340B, Public Health Service Act (42 U.S.C. Section 256b).*

*(d) For services that the public medical schools and their components and affiliates cannot provide, the department shall initiate a competitive bidding process for contracts with other providers for medical care to persons confined by the department.*

*(e) The department, in cooperation with the committee, may contract with an individual or firm for a biennial review of, and report concerning, expenditures under the managed health care plan. The review must be conducted by an individual or firm experienced in auditing the state's Medicaid expenditures and other medical expenditures. Not later than September 1 of each even-numbered year, the department shall submit a copy of a report under this section to the health care providers that are part of the managed health care provider network established under this subchapter, the Legislative Budget Board, the governor, the lieutenant governor, and the speaker of the house of representatives.*

*Added by Acts 1999, 76th Leg., ch. 1190, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 236, Sec. 1, eff. Sept. 1, 2001.*

*Amended by:*

*Acts 2011, 82nd Leg., 1st C.S., Ch. 4, Sec. 42.04, eff. September 28, 2011.*

*Sec. 501.148. GENERAL POWERS AND DUTIES OF COMMITTEE.*

*(a) The committee may:*

- (1) develop statewide policies for the delivery of correctional health care;*
  - (2) communicate with the department and the legislature regarding the financial needs of the correctional health care system;*
  - (3) in conjunction with the department, monitor the expenditures of The University of Texas Medical Branch at Galveston and the Texas Tech University Health Sciences Center to ensure that those expenditures comply with applicable statutory and contractual requirements;*
  - (4) serve as a dispute resolution forum in the event of a disagreement relating to inmate health care services between:*
    - (A) the department and the health care providers; or*
    - (B) The University of Texas Medical Branch at Galveston and the Texas Tech University Health Sciences Center;*
  - (5) address problems found through monitoring activities by the department and health care providers, including requiring corrective action if care does not meet expectations as determined by those monitoring activities;*
  - (6) identify and address long-term needs of the correctional health care system; and*
  - (7) report to the Texas Board of Criminal Justice at the board's regularly scheduled meeting each quarter on the committee's policy recommendations, the financial status of the correctional health care system, and corrective actions taken by or required of the department or the health care providers.*
- (b) The committee shall evaluate and recommend to the board sites for new medical facilities that appropriately support the managed health care provider network.*
- (c) The committee may contract with an individual for financial consulting services and may make use of financial monitoring of the managed health care plan to assist the committee in determining an accurate capitation rate.*
- (d) The committee may contract with an individual for actuarial consulting services to assist the committee in determining trends in the health of the inmate population and the impact of those trends on future financial needs.*

*Added by Acts 1999, 76th Leg., ch. 1190, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 236, Sec. 2, eff. Sept. 1, 2001.*

*Amended by:*

*Acts 2007, 80th Leg., R.S., Ch. 1308, Sec. 28, eff. June 15, 2007.*

*Acts 2011, 82nd Leg., 1st C.S., Ch. 4, Sec. 42.05, eff. September 28, 2011.*

*Sec. 501.1485. CORRECTIONS MEDICATION AIDES. (a) The department, in cooperation with The University of Texas Medical Branch at Galveston and the Texas Tech University Health Sciences Center, shall develop and implement a training program for corrections medication aides that uses a curriculum specific to administering medication in a correctional setting.*

*(b) In developing the curriculum for the training program, the department, The University of Texas Medical Branch at Galveston, and the Texas Tech University Health Sciences Center shall:*

*(1) consider the content of the curriculum developed by the American Correctional Association for certified corrections nurses; and*

*(2) modify as appropriate the content of the curriculum developed under Chapter 242, Health and Safety Code, for medication aides administering medication in convalescent and nursing homes and related institutions to produce content suitable for administering medication in a correctional setting.*

*(c) The department shall submit an application for the approval of a training program developed under this section, including the curriculum, to the Department of Aging and Disability Services in the manner established by the executive commissioner of the Health and Human Services Commission under Section 161.083, Human Resources Code.*

*Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 4, Sec. 65.04, eff. September 28, 2011.*

*Sec. 501.149. DISEASE MANAGEMENT SERVICES. (a) In this section, “disease management services” means services to assist an individual manage a disease or other chronic health condition, such as heart disease, diabetes, respiratory illness, end-stage renal disease, HIV infection, or AIDS, and with respect to which the committee identifies populations requiring disease management.*

*(b) A managed health care plan provided under this chapter must provide disease management services in the manner required by the committee, including:*

- (1) *patient self-management education;*
- (2) *provider education;*
- (3) *evidence-based models and minimum standards of care;*
- (4) *standardized protocols and participation criteria; and*
- (5) *physician-directed or physician-supervised care.*

*Added by Acts 2003, 78th Leg., ch. 589, Sec. 6, eff. June 20, 2003.*

*Sec. 501.150. QUALITY OF CARE MONITORING BY THE DEPARTMENT AND HEALTH CARE PROVIDERS. (a) The committee shall establish a procedure for monitoring the quality of care delivered by the health care providers. Under the procedure, the department shall monitor the quality of care delivered by the health care providers, including investigating medical grievances, ensuring access to medical care, and conducting periodic operational reviews of medical care provided at its units.*

*(b) The department and the medical care providers shall cooperate in monitoring quality of care. The clinical and professional resources of the health care providers shall be used to the greatest extent feasible for clinical oversight of quality of care issues. The department may require the health care providers to take corrective action if the care provided does not meet expectations as determined by quality of care monitoring.*

*(c) The department and the medical care providers shall communicate the results of their monitoring activities, including a list of and the status of any corrective actions required of the health care providers, to the committee and to the Texas Board of Criminal Justice.*

*Added by Acts 1999, 76th Leg., ch. 1190, Sec. 1, eff. Sept. 1, 1999.*

*Amended by:*

*Acts 2007, 80th Leg., R.S., Ch. 1308, Sec. 29, eff. June 15, 2007.*

*Sec. 501.151. COMPLAINTS. (a) The committee shall maintain a file on each written complaint filed with the committee by a member of the general public. The file must include:*

- (1) *the name of the person who filed the complaint;*
- (2) *the date the complaint is received by the committee;*

(3) *the subject matter of the complaint;*

(4) *the name of each person contacted in relation to the complaint;*

(5) *a summary of the results of the review or investigation of the complaint; and*

(6) *an explanation of the reason the file was closed, if the committee closed the file without taking action other than to investigate the complaint.*

(b) *The committee shall make information available describing its procedures for complaint investigation and resolution.*

(c) *The committee, at least quarterly until final disposition of the complaint, shall notify the person filing the complaint and each person who is a subject of the complaint of the status of the investigation unless the notice would jeopardize an undercover investigation.*

*Added by Acts 1999, 76th Leg., ch. 1190, Sec. 1, eff. Sept. 1, 1999.*

*Amended by:*

*Acts 2007, 80th Leg., R.S., Ch. 1308, Sec. 30, eff. June 15, 2007.*

*Sec. 501.152. PUBLIC PARTICIPATION. The committee shall develop and implement policies that provide the public with a reasonable opportunity to appear before the committee and to speak on any issue under the jurisdiction of the committee.*

*Added by Acts 1999, 76th Leg., ch. 1190, Sec. 1, eff. Sept. 1, 1999.*

*Sec. 501.153. ALTERNATIVE DISPUTE RESOLUTION. (a) The committee shall develop and implement a policy to encourage the use of appropriate alternative dispute resolution procedures under Chapter 2009 to assist in the resolution of internal and external disputes under the committee's jurisdiction.*

(b) *The committee's procedures relating to alternative dispute resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.*

(c) *The committee shall designate a trained person to:*

(1) *coordinate the implementation of the policy adopted under Subsection (a);*

(2) *serve as a resource for any training needed to implement the procedures for*

*alternative dispute resolution; and*

*(3) collect data concerning the effectiveness of those procedures, as implemented by the committee.*

*Added by Acts 2007, 80th Leg., R.S., Ch. 1308, Sec. 31, eff. June 15, 2007.*

*Sec. 501.154. USE OF TECHNOLOGY. The committee shall implement a policy requiring the committee to use appropriate technological solutions to improve the committee's ability to perform its functions. The policy must ensure that the public is able to interact with the committee on the Internet.*

*Added by Acts 2007, 80th Leg., R.S., Ch. 1308, Sec. 31, eff. June 15, 2007.*

*Sec. 501.155. AVAILABILITY OF CORRECTIONAL HEALTH CARE INFORMATION TO THE PUBLIC. (a) The committee shall ensure that the following information is available to the public:*

*(1) contracts between the department, the committee, and health care providers, and other information concerning the contracts, including a description of the level, type, and variety of health care services available to inmates;*

*(2) the formulary used by correctional health care personnel in prescribing medication to inmates;*

*(3) correctional managed care policies and procedures;*

*(4) quality assurance statistics and data, to the extent permitted by law;*

*(5) general information concerning the costs associated with correctional health care, including at a minimum:*

*(A) quarterly and monthly financial reports; and*

*(B) aggregate cost information for:*

*(i) salaries and benefits;*

*(ii) equipment and supplies;*

*(iii) pharmaceuticals;*

*(iv) offsite medical services; and*

(v) *any other costs to the correctional health care system;*

(6) *aggregate statistical information concerning inmate deaths and the prevalence of disease among inmates;*

(7) *the process for the filing of inmate grievances concerning health care services provided to inmates;*

(8) *general statistics on the number and types of inmate grievances concerning health care services provided to inmates filed during the preceding quarter;*

(9) *contact information for a member of the public to submit an inquiry to or file a complaint with the department or a health care provider;*

(10) *information concerning the regulation and discipline of health care professionals, including contact information for the Health Professions Council and a link to the council's website;*

(11) *unit data regarding health care services, including hours of operation, available services, general information on health care staffing at the unit, statistics on an inmate's ability to access care at the unit in a timely manner, and, if the unit is accredited by a national accrediting body, the most recent accreditation review date; and*

(12) *dates and agendas for quarterly committee meetings and the minutes from previous committee meetings.*

(b) *The committee shall make the information described by Subsection (a) available on the committee's website and, on request, in writing. The committee shall cooperate with the department and the health care providers to ensure that the committee's website:*

(1) *is linked to the websites of the department and the health care providers;*

(2) *is accessible through the State of Texas website; and*

(3) *can be located through common search engines.*

(c) *In determining the specific information to be made available under this section, the committee shall cooperate with the department to ensure that public disclosure of the information would not pose a security threat to any individual or to the criminal justice system.*

*Added by Acts 2007, 80th Leg., R.S., Ch. 1308, Sec. 31, eff. June 15, 2007.*

*Sec. 501.156. STUDENT LOAN REPAYMENT ASSISTANCE. (a) From funds appropriated for purposes of correctional managed health care, the committee may provide student loan*

*repayment assistance for medical and mental health care physicians and other staff providing correctional managed health care. The repayment assistance may be applied to any student loan received through any lender for education at a public or accredited private institution of higher education in the United States, including loans for undergraduate, graduate, and medical education.*

*(b) The committee may adopt rules to implement this section, including rules governing eligibility for the loan repayment assistance and the terms of contracts between the committee and recipients of the loan repayment assistance. In adopting those rules, the committee shall consider the requirements of Subchapter J, Chapter 61, Education Code, and the rules of the Texas Higher Education Coordinating Board adopted under that subchapter.*

*(c) A physician may not receive loan repayment assistance under both this section and Subchapter J, Chapter 61, Education Code.*

*(d) Not later than December 1 of each state fiscal year, the committee shall submit a report to the Legislative Budget Board and the governor on the use of funds under this section for the preceding fiscal year.*

*Added by Acts 2011, 82nd Leg., R.S., Ch. 295, Sec. 3, eff. June 17, 2011.*



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**APPENDIX B: CORRECTIONAL MANAGED HEALTH CARE  
COMMITTEE'S OFFENDER HEALTH SERVICES PLAN –  
SEPTEMBER 2011**

**Correctional Managed  
Health Care Committee**

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**Offender Health Services Plan**

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**Adopted September 2003**

(Reviewed August 2005)

(Reviewed and Updated June 2007)

(Reviewed and Updated August 2009)

(Reviewed and Updated September 2011)

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# **Offender Health Services Plan**

## Correctional Managed Health Care Committee

### **Introduction**

The Offender Health Services Plan describes the level, type and variety of health care services made available to offenders incarcerated within the Texas Department of Criminal Justice. This Plan is adopted pursuant to Section 501.148 of the Texas Government Code. In this Plan health care services are delivered through a cooperative arrangement between TDCJ, the University of Texas Medical Branch at Galveston and the Texas Tech University Health Sciences Center under the direction of the Correctional Managed Health Care Committee.

### Definition of Health Care Services

Health Care, for the purposes of this Plan, is defined as health-related actions taken, both preventive and medically necessary, to provide for the physical and mental well-being of the offender population. Health care, among other aspects, includes medical services, dental services, and mental health services.

### Access to Care

All offenders shall have equal access to health care services. Each facility within TDCJ has written procedures which describe the process for offenders to gain access to the care needed to meet their medical, dental and mental health needs. Offenders are provided information at intake and upon receipt at their unit of assignment on the procedures for obtaining health care services.

### Classification of Levels of Care

For purposes of this Plan, health care services can be prioritized into the following classifications:

**Level I Medically Mandatory:** Care that is essential to life and health and without which rapid deterioration is expected. The recommended treatment intervention is expected to make a significant difference or is very cost effective.

- *Care at Level I is authorized and provided to all inmates.*

**Level II Medically Necessary:** Care that is not immediately life threatening, but without which the patient could not be maintained without significant risk of serious deterioration or where there is a significant reduction in the possibility of repair later without treatment.

- *Care and treatment of conditions at Level II is provided to all inmates but evolving standard and practice guidelines controls the extent of service.*

### Utilization Management and Review

Utilization management and review is a physician-driven system for making individual evaluations as to medical necessity. The review process entails consulting national accepted standards of care and comparing the individual circumstances of each case. Referrals for certain types of care require prior authorization through the utilization review process. Determinations made through the utilization management and review process may be appealed by the referring provider for additional review and decision in accordance with established procedures.

### Formulary and Disease Management Guidelines

A standard statewide formulary is maintained by the Pharmacy and Therapeutics Committee and updated as needed and at least annually. This committee meets regularly to review the use of drugs within the health care system, evaluate agents on the formulary

and consider changes to the available medications. All medications prescribed for offenders must be listed in the formulary, unless specific medical necessity exists for authorizing a non-formulary medication. In such circumstances, a request for non-formulary approval will be processed and evaluated. Non-formulary determinations may be appealed by the referring provider for additional review and decision in accordance with established procedures.

In addition to the formulary, the Pharmacy and Therapeutics Committee develops and maintains disease management guidelines that outline recommended treatment approaches for management of a variety of illnesses and chronic diseases. These guidelines are reviewed regularly and updated as necessary. Disease management guidelines focus on disease-based drug therapy and outline a recommended therapeutic approach to specific diseases. They are typically developed for high risk, high volume, or problem prone diseases encountered in the patient population. The goal is to improve patient outcomes and provide consistent, cost-effective care, which is based on national guidelines, current medical literature, and has been tailored to meet the specific needs of the patient population served.

Disease management guidelines are just that. They are guidelines. They represent pathways that will help practitioners provide care for the majority of patients in the middle portion of a bell shaped curve. Pathways do not replace sound clinical judgment nor are they intended to strictly apply to all patients.

### **Complaints and Grievances About Health Care**

If an offender believes that he/she has not received medical care that is necessary and appropriate for his/her medical condition, the following mechanisms are available:

- First, asking questions of the treating professionals in the medical department in order to understand what is being done to address the issue;
- If the issue remains unresolved, the next step is to complete an I-60 Request to Official form and send it to the facility medical complaints coordinator at the medical department for informal resolution;
- An offender also has the right to file a grievance in accordance with the appropriate offender grievance procedures.

### **Offender Co-payment Requirements**

In accordance with state law, if a visit to a health care provider meets offender health care co-payment criteria, the offender may be assessed a \$100.00 annual co-payment fee. Offenders will be afforded access to health care services regardless of their ability to pay this fee.

## Offender Health Services Plan

*All services are subject to a determination of medical necessity.*

### Medical Services And Supplies Provided By Physicians And Other Health Care Professionals

| Service Description   |
|---|
| <p><b>Diagnostic and treatment services</b></p> <p>Professional services of providers</p> <ul style="list-style-type: none"> <li>■ In provider's office or department</li> <li>■ Consultations by specialists when indicated</li> <li>■ Office medical consultations</li> <li>■ During a hospital stay</li> <li>■ During an infirmary stay</li> </ul> |
| <p><b>Laboratory, X-ray and other diagnostic tests</b></p> <p>Tests, including but not limited to:</p> <ul style="list-style-type: none"> <li>■ Blood tests</li> <li>■ Urinalysis</li> <li>■ Pathology</li> <li>■ X-rays</li> <li>■ Mammograms</li> <li>■ Cat Scans/MRI</li> <li>■ Ultra sound</li> <li>■ Electrocardiogram and EEG</li> </ul>        |

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|---|
| <p><b>Treatment Therapies</b></p> <ul style="list-style-type: none"><li>■ Chemotherapy and radiation therapy</li><li>■ Respiratory and inhalation therapy</li><li>■ Dialysis—hemodialysis and peritoneal dialysis</li><li>■ Intravenous (IV)/infusion therapy</li></ul>   |
| <p><b>Physical and Occupational Therapies</b></p> <p>Services for each of the following:</p> <ul style="list-style-type: none"><li>■ Qualified physical therapists</li><li>■ Occupational therapists</li><li>■ Rehabilitation therapy and exercise</li></ul> <p>Notes: Physical and occupational therapy is limited to services that assist the member to achieve and maintain self-care and improved functioning in other activities of daily living.</p> <p>Cardiac rehabilitation is provided subject to the limitations below.</p> <p>Therapy to restore bodily function is provided only when there has been a total or partial loss of bodily function due to injury or illness.</p> <p>Services are limited to those that continue to meet or exceed the treatment goals established by the provider. For the physically disabled—maintenance of functioning or prevention of or slowing of further deterioration.</p> |
| <p><b>Hearing Services</b></p> <ul style="list-style-type: none"><li>■ Audiogram if medically indicated</li><li>■ Placement of hearing aid when medically necessary</li></ul>   |

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| <p><b>Vision Services</b></p> <ul style="list-style-type: none"> <li>■ Eye examination (vision screening) to determine the need for vision correction</li> <li>■ Ocular prosthesis if medically indicated</li> <li>■ Optometry services</li> <li>■ Corrective lenses as medically indicated</li> </ul>   |
| <p><b>Foot Care</b></p> <ul style="list-style-type: none"> <li>■ Corrective orthopedic shoes, arch supports, braces, splints or other foot care items if medically indicated</li> </ul>  |
| <p><b>Orthopedic and prosthetic devices</b></p> <ul style="list-style-type: none"> <li>■ Artificial limbs and eyes; stump hose</li> <li>■ Terminal devices</li> <li>■ Braces for arms, legs, back or neck</li> <li>■ External cardiac pacemaker</li> <li>■ Internal prosthetic devices, such as artificial joints, pacemakers</li> <li>■ Foot orthotics when medically necessary</li> </ul>        |
| <p><b>Durable Medical Equipment</b></p> <p>Provision of necessary durable medical equipment, including repair and adjustment, as prescribed by the provider, such as:</p> <ul style="list-style-type: none"> <li>■ Hospital beds</li> <li>■ Standard wheelchairs</li> <li>■ Crutches</li> <li>■ Walkers</li> <li>■ Blood glucose monitors</li> <li>■ Suction machines</li> <li>■ Oxygen</li> </ul> |

**Educational Material, Classes or Programs**

Health education material, classes and programs are provided

**Preventive Health Care Services**

| Service Description   |
|---|
| <p><b>Routine Immunizations</b></p> <p>Limited to Td, MMR, influenza (over age 54), pneumococcal vaccine (over age 64)</p>  |
| <p><b>Medically Indicated Immunizations</b></p>   |
| <p><b>Hepatitis A vaccination for Occupational Risk</b></p>   |
| <p><b>Hepatitis B vaccinations will be administered according to correctional managed health care infection control policy and protocol</b></p>   |
| <p><b>Post-exposure testing and prophylaxis for offender non-occupational bloodborne pathogen exposure</b></p>  |
| <p><b>TB Related Services</b></p> <ul style="list-style-type: none"> <li>■ Annual TB screening tests</li> <li>■ Treatment of Latent TB infection</li> <li>■ Directly observed therapy for TB disease</li> <li>■ Treatment for TB, including respiratory isolation when indicated</li> <li>■ Contact investigation around active TB cases</li> <li>■ Specialty Consultation for drug-resistant TB cases</li> </ul> |

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| <p><b>HIV Related Services</b></p> <ul style="list-style-type: none"> <li>■ HIV testing and counseling upon intake and prior to release as required by state law</li> <li>■ HIV testing and counseling upon request (no more than every 6 months)</li> <li>■ Antiretroviral therapy for HIV according to correctional managed health care policy and protocol</li> <li>■ Opportunistic infection prophylaxis</li> <li>■ Infectious disease consultation for HIV infection</li> </ul> |
| <p><b>Partner elicitation and referral for Sexually Transmitted Diseases, including HIV</b></p>  |
| <p><b>Syphilis screening upon intake</b></p>   |
| <p><b>Testing for communicable diseases when clinically indicated</b></p>  |
| <p><b>Treatment of chronic Hepatitis B and C according to correctional managed health care policies and protocols</b></p>  |
| <p><b>Hepatitis C antibody testing upon offender request</b></p> <p style="padding-left: 40px;">No greater than once per year</p>  |
| <p><b>Post-exposure prophylaxis for varicella when medically indicated</b></p>   |
| <p><b>Post-exposure Prophylaxis for meningitis when clinically indicated</b></p>   |
| <p><b>Periodic medical assessments as required for certain job assignments involving excessive noise exposure or use of a respirator</b></p>   |
| <p><b>Access to personal hygiene supplies as described in correctional managed health care policy and protocol</b></p>   |
| <p><b>Periodic physical examination, according to frequency designated in policy</b></p>   |
| <p><b>Annual fecal occult blood test over age 50</b></p>   |
| <p><b>Health education services</b></p>  |

**Mammogram Services for Females**

- Baseline mammogram at age 40
- Mammogram every 1-2 years for ages 40-49; annually from age 50 and higher

**For females, annual pelvic exam and Pap smear**

Frequency may be adjusted by the provider when clinically indicated

**Obstetrical Services**

- Prenatal and postnatal care, including medically indicated vitamins and nutritional care
- Delivery and complications of pregnancy

Note: Elective termination of pregnancy is not covered. Medical care of the newborn infant is not covered.

**Surgical and Anesthesia Services provided by Providers and other Health Care Professionals**

*Facility Providers must obtain precertification for all offsite surgical procedures.*

| Service Description  |
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| <p><b>Surgical Procedures</b></p> <p>A comprehensive range of services, such as:</p> <ul style="list-style-type: none"><li>■ Operative procedures</li><li>■ Treatment of fractures, including casting</li><li>■ Normal pre- and post-operative care by the surgeon</li><li>■ Endoscopy procedures</li><li>■ Biopsy procedures</li><li>■ Removal of tumors and cysts</li><li>■ Insertion of internal prosthetic devices</li></ul> |

**Services Provided by an Infirmary, Hospital or Other Facility and Ambulance Services**

*Facility physicians must obtain precertification for hospital stays. All services are subject to a finding of medical necessity.*

| Service Description  |
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| <p><b>Infirmary Care</b></p> <p>Health care services at TDCJ facilities with infirmaries for an illness or diagnosis that requires limited observation and/or management by a registered nurse, but does not require admission to a licensed hospital.</p>   |
| <p><b>Inpatient Hospital</b></p> <p>Room and Board</p> <ul style="list-style-type: none"> <li>■ General Nursing Care</li> <li>■ Meals and Special Diets</li> </ul> <p>Other Hospital Services, such as:</p> <ul style="list-style-type: none"> <li>■ Operating, recovery, obstetrical and other treatment rooms</li> <li>■ Prescribed drugs and medicines</li> <li>■ Diagnostic laboratory tests and X-rays</li> <li>■ Administration of blood and blood products</li> <li>■ Blood or blood plasma</li> <li>■ Dressings, splints, casts and sterile tray services</li> <li>■ Medical supplies and equipment, including oxygen</li> <li>■ Anesthetic services as necessary</li> </ul> |

**Hospice Care**

Supportive and palliative care for the terminally ill is provided in a designated hospice facility. Services include inpatient and outpatient care. These services are provided by a multidisciplinary team under the direction of the facility provider who certifies the terminal stages of illness, with a life expectancy of approximately six months or less. Services include appropriate support services at the correctional unit for the offender's family as outlined in policy.

**Ambulance**

Local professional ambulance service when medically necessary

**Medical Emergency Services**

A medical emergency is the sudden and unexpected onset of a condition or an injury that your facility provider believes endangers your life or could result in serious injury or disability, and requires immediate medical or surgical care.

## Mental Health Services

| Service Description   |
|---|
| <p><b>Mental Health Care</b></p> <p>Diagnostic and treatment services recommended by a qualified mental health provider, including:</p> <ul style="list-style-type: none"> <li>■ Professional services such as medication monitoring and management</li> <li>■ Outpatient services</li> <li>■ Psycho-social services as indicated</li> <li>■ Inpatient services provided by a correctional health care approved facility, including as necessary, diagnostic evaluation, acute care, transitional care and extended care</li> <li>■ Crisis management/Suicide Prevention</li> <li>■ Continuity of care services</li> <li>■ Specialized mental health programs                             <ul style="list-style-type: none"> <li>■ Program for the Aggressive Mentally-Ill Offender</li> <li>■ Mentally Retarded Offender Program</li> <li>■ Administrative Segregation step-down program</li> <li>■ Program for the chronic self-injurious</li> </ul> </li> <li>■ Emergency mental health services are available 24 hours a day, seven days per week.</li> </ul> |

## Pharmacy Services

| Service Description  |
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| <p>Medically necessary medications are provided to offenders when clinically indicated.</p> <ul style="list-style-type: none"><li>■ Over the counter medications as specified by the formulary and policy</li><li>■ Formulary prescription medications</li><li>■ Non-formulary medications must have prior authorization through the non-formulary approval process</li><li>■ Maintenance medications are dispensed as a 30-day supply with up to 11 refills authorized</li><li>■ Acute medications (e.g., antibiotics) are dispensed as a course of therapy and may not be refilled without obtaining a new prescription from the provider</li><li>■ Certain medications may be provided KOP (Keep on Person) based on policy</li></ul> |

**Dental Services**

**Eligibility for Dental Services:**

- All offenders are eligible for emergency or urgent needs
- After 6 months of incarceration and demonstration of satisfactory oral hygiene self care—interception and stabilization, i.e., temporary fillings, gross scalings
- After 12 months of incarceration and demonstration of satisfactory oral hygiene—corrective care, i.e., fillings
- Referrals for evaluation and treatment by specialists will be subject to utilization review process and require prior authorization
- Dentists may request variation from the guidelines regarding eligibility and scope of services for the protection of patients judged to have special dental needs jeopardizing overall health.

| Service Description  |
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| <p><b>Diagnostic/Preventive Dentistry by Primary Dentist</b></p> <ul style="list-style-type: none"> <li>■ Initial/Periodic oral examination</li> <li>■ Development of treatment plan</li> <li>■ Oral cancer examination</li> <li>■ Visual aids</li> <li>■ Consultations</li> </ul> |
| <p><b>Dental X-rays</b></p> <ul style="list-style-type: none"> <li>■ Bitewing</li> <li>■ Single</li> <li>■ Other X-rays                             <ul style="list-style-type: none"> <li>■ Full Mouth</li> <li>■ Panoramic</li> </ul> </li> </ul>                                |

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| <p><b>Prophylaxis</b></p> <ul style="list-style-type: none"> <li>■ Oral hygiene instruction</li> <li>■ Fluoride treatment</li> <li>■ Sealant treatment (per tooth)</li> <li>■ Infection control</li> </ul>   |
| <p><b>Restorative (fillings) by Primary Dentist</b></p> <ul style="list-style-type: none"> <li>■ Amalgam (silver) restorations: primary or permanent (1, 2, 3 or more surfaces)</li> <li>■ Composite resin (white) restorations on anterior teeth only (1, 2, 3 or more surfaces)</li> <li>■ Acid etch bonding for repair of incisal edge</li> </ul> |
| <p><b>Endodontics (Root Canal Therapy) by Primary Dentist</b></p>  |
| <p><b>Oral Surgery by Primary Dentist</b></p> <ul style="list-style-type: none"> <li>■ Single tooth extraction</li> <li>■ Surgical extraction-erupted tooth</li> <li>■ Surgical extraction-soft tissue impaction</li> <li>■ Surgical extraction-partial bony impaction</li> <li>■ Surgical extraction-full bony impaction</li> </ul>                 |
| <p><b>Periodontics (Gum treatment) by Primary Dentist</b></p> <ul style="list-style-type: none"> <li>■ Occlusal Adjustment-Limited</li> <li>■ Occlusal Adjustment-Complete</li> </ul> <p>Periodontal scaling and root planing (per quadrant)</p>   |
| <p><b>Major restorative dentistry by Primary Dentist</b></p> <ul style="list-style-type: none"> <li>■ Re-cement crown/bridge</li> <li>■ Post for crown</li> <li>■ Stainless steel crown</li> </ul>   |

**Prosthodontics (dentures) by Primary Dentist**

- Complete dentures (upper or lower)
- Partial denture
- TMJ Appliance

University Providers will demonstrate best effort to comply with a 30-90 day time frame for delivery of those qualifying for oral prosthetics.

The Offender Health Services Plan is intended to serve as a guide for determining the health care services provided to offenders. It is not intended to represent an all-inclusive list of services to be provided nor to replace sound clinical judgment of the health care providers. In addition, the Plan is intended to work in conjunction with other tools provided to health care providers such as the approved formulary and disease management guidelines adopted by the program.

The Plan should also be considered a work in progress. As necessary and at least annually, the Plan will be updated to reflect changes in policy, practice, and standards of care. The Plan was developed in a cooperative effort of the three medical directors involved in the correctional managed health care program, along with the input of management in various health care disciplines. The Plan also draws heavily on a number of reference documents, most notably, the Oregon Department of Corrections Health Care Plan and the HMO Blue Texas Plan.



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## APPENDIX C: TEXAS DEPARTMENT OF CRIMINAL JUSTICE, RIDER 55, 2012–13 GENERAL APPROPRIATIONS ACT

**55. Correctional Managed Health Care.** The use of appropriated funds to the Department of Criminal Justice for managed health care for offenders in custody shall be governed by the specific limitations included in this rider.

a. Managed Health Care Staff Loan Repayment

1. None of the funds appropriated above shall be used for loan repayment assistance for medical and mental health care staff without prior approval of the Legislative Budget Board.

b. Correctional Managed Health Care Committee

1. From funds appropriated above in Strategy C.1.7, Managed Health Care - Unit and Psychiatric Care, the Department of Criminal Justice shall pay salaries, operating expenses, and travel expenses for staff of the Correctional Managed Health Care Committee.

2. From funds appropriated above, the Department of Criminal Justice may provide reimbursement of travel expenses incurred by the members of the Correctional Managed Health Care Committee with prior approval of the Legislative Budget Board.

c. Strategy C.1.7, Managed Health Care - Unit and Psychiatric Care

1. Together with the Texas Tech University Health Sciences Center and the University of Texas Medical Branch, the Department of Criminal Justice shall approve a staffing model and services by unit that conforms to the available annual appropriation in Strategy C.1.7, Managed Health Care - Unit and Psychiatric Care, before the beginning of each fiscal year.

2. Texas Tech University Health Sciences Center and the University of Texas Medical Branch shall provide unit medical and psychiatric care based on the jointly developed staffing model and services approved by the Department of Criminal Justice.

3. To the extent possible, the Department of Criminal Justice shall maintain at least one Correctional Officer or other staff that is a licensed health care professional on duty per unit at all times.

d. Strategy C.1.8, Managed Health Care - Hospital and Clinical Care

1. The University of Texas Medical Branch shall provide inpatient and outpatient hospital services and physician services at the University of Texas Medical Branch Hospital Galveston for offenders in the custody of the Department of Criminal Justice. Inpatient and applicable hospital outpatient services shall be reimbursed at an amount no greater than the University of Texas Medical Branch's Medicaid Tax Equity and Fiscal Responsibility Act (TEFRA) rates. Hospital outpatient services not subject to Medicaid TEFRA reimbursements shall be reimbursed at an amount not to exceed the published Medicaid fee schedules for such services. Physician services shall be reimbursed at a rate not to exceed cost.

2. The Texas Tech University Health Sciences Center and the University of Texas Medical Branch shall provide inpatient and outpatient hospital services through contract hospital providers for offenders in the custody of the Department of Criminal Justice at a rate not to exceed 100% of what would be paid for similar services according to the Medicare reimbursement methodology.

3. The Department of Criminal Justice may pay a rate in excess of Medicare reimbursement rates only after receiving prior written approval from the Legislative Budget Board.

4. The Department of Criminal Justice may provide for a medical review of the appropriateness of non-emergency medical procedures provided by the University of Texas Medical Branch Hospital Galveston.

5. The University of Texas Medical Branch will maintain at least 100 inpatient beds at Hospital Galveston to be staffed based on average weekday census.

e. Transferability

1. The Department of Criminal Justice shall not transfer any funds between Strategies C.1.7, Managed Health Care - Unit and Psychiatric Care; C.1.8, Managed Health Care - Hospital and Clinical Care, and C.1.9, Managed Health Care - Pharmacy, without prior approval of the Legislative Budget Board. The request shall be considered approved unless the Legislative Budget Board issues a written disapproval within thirty calendar days of receipt of the recommendation prepared by Legislative Budget Board staff.

2. This transferability limitation extends to the Texas Tech University Health Sciences Center and the University of Texas Medical Branch upon receipt of funding from the Department of Criminal Justice.

f. Reimbursement to Institutions

1. At the beginning of each quarter, the Department of Criminal Justice shall prepay Texas Tech University Health Sciences Center and the University of Texas Medical Branch one quarter of the annual appropriation for services to be rendered under contract.

2. The Department of Criminal Justice shall reimburse the Texas Tech University Health Sciences Center and the University of Texas Medical Branch for actual costs, including indirect administrative services based on generally accepted accounting principles. The total reimbursements shall not exceed amounts appropriated above in Strategies C.1.7, Managed Health Care - Unit and Psychiatric Care, C.1.8, Managed Health Care - Hospital and Clinical Care, and C.1.9, Managed Health Care - Pharmacy, unless prior approval is provided by the Legislative Budget Board.

g. Reporting Requirements

1. The Department of Criminal Justice is required to submit quarterly to the Legislative Budget Board and the Office of the Governor a report detailing:

- i. correctional managed health care actual and projected expenditures for unit and psychiatric care, hospital and clinical care, and pharmacy;
- ii. health care utilization and acuity data; and
- iii. other health care information determined by the Office of the Governor and the Legislative Budget Board.

2. The Texas Tech University Health Sciences Center and the University of Texas Medical Branch shall provide the Department of Criminal Justice with necessary documentation to fulfill the reporting requirements contained in this section.

h. Managed Health Care Operational Shortfalls

1. If deemed necessary by the Department of Criminal Justice, appropriations may be transferred into Strategies C.1.7, Managed Health Care - Unit and Psychiatric Care, C.1.8, Managed Health Care - Hospital and Clinical Care, and C.1.9, Managed Health Care - Pharmacy, with prior approval of the Legislative Budget Board. The request shall be considered approved unless the Legislative Budget Board issues a written disapproval within thirty calendar days of receipt of the recommendation prepared by Legislative Budget Board staff.

2. In addition to transfer authority provided elsewhere in this Act, the Department of Criminal Justice may transfer appropriations made in Strategies C.1.7, Managed Health Care - Unit and Psychiatric Care, C.1.8, Managed Health Care - Hospital and Clinical Care, and C.1.9, Managed Health Care - Pharmacy, for fiscal year 2013 to fiscal year 2012 with prior approval of the Legislative Budget Board. The request shall be considered approved unless the Legislative Budget Board issues a written disapproval within thirty calendar days of receipt of the recommendation prepared by Legislative Budget Board staff.

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## APPENDIX D: RECOMMENDED MODIFICATIONS TO TEXAS DEPARTMENT OF CRIMINAL JUSTICE, RIDER 55, 2012-13 GENERAL APPROPRIATIONS ACT

**55. Correctional Managed Health Care.** The use of appropriated funds to the Department of Criminal Justice for managed health care (CMHC) for offenders in custody shall be governed by the specific limitations included in this rider.

a. Managed Health Care Staff Loan Repayment

1. None of the funds appropriated above shall be used for loan repayment assistance for medical and mental health care staff without prior approval of the Legislative Budget Board.

b. Correctional Managed Health Care Committee

1. ~~From None of the funds appropriated above in Strategy C.1.7, Managed Health Care - Unit and Psychiatric Care, the Department of Criminal Justice shall be used for payment of pay-salaries, operating expenses, and or travel expenses for staff of the Correctional Managed Health Care Committee.~~

2. From funds appropriated above, the Department of Criminal Justice may provide reimbursement of travel expenses incurred by the members of the Correctional Managed Health Care Committee with prior approval of the Legislative Budget Board.

c. Strategy C.1.7, Managed Health Care - Unit and Psychiatric Care

1. ~~Together with the Texas Tech University Health Sciences Center and, the University of Texas Medical Branch, and any other contracted CMHC health care providers, the Department of Criminal Justice shall approve a staffing model and services by unit that conforms to the available annual appropriation in Strategy C.1.7, Managed Health Care - Unit and Psychiatric Care, before the beginning of each fiscal year.~~

2. ~~The Texas Tech University Health Sciences Center and, the University of Texas Medical Branch, and any other contracted CMHC health care providers shall provide unit medical and psychiatric care based on the jointly developed staffing model and services approved by the Department of Criminal Justice.~~

3. To the extent possible, the Department of Criminal Justice shall maintain at least one Correctional Officer or other staff that is a licensed health care professional on duty per unit at all times.

4. Receipts from inmate health care fees collected from offenders in accordance with Government Code, Section 501.063, are appropriated above in Strategy C.1.7, Managed Health Care - Unit and Psychiatric Care, estimated to be \$2,500,000 in General Revenue Funds in fiscal year 2014 and estimated to be \$2,500,000 in General Revenue Funds in fiscal year 2015. Any receipts collected in excess of \$2,500,000 in fiscal year 2014 and \$2,500,000 in fiscal year 2015 are hereby appropriated to the department to pay the cost of correctional health care.

d. Strategy C.1.8, Managed Health Care - Hospital and Clinical Care

1. The University of Texas Medical Branch shall provide inpatient and outpatient hospital services and physician services at the University of Texas Medical Branch Hospital Galveston for offenders in the custody of the Department of Criminal Justice. Inpatient and applicable hospital outpatient services shall be reimbursed at an amount no greater than the University of Texas Medical Branch's Medicaid Tax Equity and Fiscal Responsibility Act (TEFRA) rates. Hospital outpatient services not subject to Medicaid TEFRA reimbursements shall be reimbursed at an amount not to exceed the published Medicaid fee schedules for such services. Physician services shall be reimbursed at a rate not to exceed cost.

2. ~~The Texas Tech University Health Sciences Center and, the University of Texas Medical Branch, and any other contracted CMHC health care providers shall provide inpatient and outpatient hospital services through contract hospital~~

providers for offenders in the custody of the Department of Criminal Justice at a rate not to exceed 100% of what would be paid for similar services according to the Medicare reimbursement methodology.

3.—The Department of Criminal Justice may pay a rate in excess of Medicare reimbursement rates only after receiving prior written approval from the Legislative Budget Board.

~~3.~~ 4.—The Department of Criminal Justice may provide for a medical review of the appropriateness of non-emergency medical procedures provided by the University of Texas Medical Branch Hospital Galveston.

5.—The University of Texas Medical Branch will maintain at least 100 inpatient beds at Hospital Galveston to be staffed based on average weekday census.

e. Transferability

1. The Department of Criminal Justice shall not transfer any funds between Strategies C.1.7, Managed Health Care - Unit and Psychiatric Care; C.1.8, Managed Health Care - Hospital and Clinical Care, and C.1.9, Managed Health Care - Pharmacy, without prior approval of the Legislative Budget Board. The request shall be considered approved unless the Legislative Budget Board issues a written disapproval within thirty calendar days of receipt of the recommendation prepared by Legislative Budget Board staff.

2. This transferability limitation extends to the Texas Tech University Health Sciences Center ~~and~~ the University of Texas Medical Branch, and any other contracted CMHC health care providers upon receipt of funding from the Department of Criminal Justice.

f. Reimbursement to ~~Institutions~~ Contracted Health Care Providers

1. At the beginning of each quarter, the Department of Criminal Justice shall prepay the Texas Tech University Health Sciences Center ~~and~~ the University of Texas Medical Branch, and any other contracted CMHC health care providers one quarter of the annual appropriation for services to be rendered under contract.

2. The Department of Criminal Justice shall reimburse the Texas Tech University Health Sciences Center ~~and~~ the University of Texas Medical Branch, and any other contracted CMHC health care providers for actual costs, including indirect administrative services based on generally accepted accounting principles. The total reimbursements shall not exceed amounts appropriated above in Strategies C.1.7, Managed Health Care - Unit and Psychiatric Care, C.1.8, Managed Health Care - Hospital and Clinical Care, and C.1.9, Managed Health Care - Pharmacy, unless prior approval is provided by the Legislative Budget Board.

3. The Department of Criminal Justice may enter into a contract with the Texas Tech University Health Sciences Center, the University of Texas Medical Branch, and/or other entities to provide CMHC services, including public medical schools, governmental entities, and other health care providers as appropriate.

4. Informational Item – In addition to the CMHC appropriations made above in TDCJ, other CMHC- related appropriations are made elsewhere in the General Appropriations Act. Certain University of Texas Medical Branch (UTMB) and Texas Tech University Health Sciences Center (TTUHSC) employees deliver TDCJ- contracted CMHC services. UTMB and TTUHSC receive General Revenue Funds in state reimbursements for a portion of the benefits provided to these university employees. This funding is provided through the various state agencies/systems that administer benefits for higher education employees.

g. Reporting Requirements

1. The Department of Criminal Justice is required to submit quarterly to the Legislative Budget Board and the Office of the Governor a report detailing:

- i. correctional managed health care actual and projected expenditures for unit and psychiatric care, hospital and clinical care, and pharmacy;
- ii. health care utilization and acuity data; and
- iii. other health care information determined by the Office of the Governor and the Legislative Budget Board.

2. The Texas Tech University Health Sciences Center ~~and~~, the University of Texas Medical Branch, and any other contracted CMHC health care providers shall provide the Department of Criminal Justice with necessary documentation to fulfill the reporting requirements contained in this section.

h. Managed Health Care Operational Shortfalls

1. If deemed necessary by the Department of Criminal Justice, appropriations may be transferred into Strategies C.1.7, Managed Health Care - Unit and Psychiatric Care, C.1.8, Managed Health Care - Hospital and Clinical Care, and C.1.9, Managed Health Care - Pharmacy, with prior approval of the Legislative Budget Board. The request shall be considered approved unless the Legislative Budget Board issues a written disapproval within thirty calendar days of receipt of the recommendation prepared by Legislative Budget Board staff.

2. In addition to transfer authority provided elsewhere in this Act, the Department of Criminal Justice may transfer appropriations made in Strategies C.1.7, Managed Health Care - Unit and Psychiatric Care, C.1.8, Managed Health Care - Hospital and Clinical Care, and C.1.9, Managed Health Care - Pharmacy, for fiscal year ~~2013~~2015 to fiscal year ~~2012~~2014 with prior approval of the Legislative Budget Board. The request shall be considered approved unless the Legislative Budget Board issues a written disapproval within thirty calendar days of receipt of the recommendation prepared by Legislative Budget Board staff.

