



Montana Legislative Services Division
Legal Services Office

TO: Law and Justice Interim Committee

FROM: David S. Niss, Staff Attorney

RE: No. 5 - State Prison Mental Health Care Standards and Formal Direction for DOC to Comply With Mental Health Program Accreditation Standards - Options for Committee

DATE: June 13, 2008

I
INTRODUCTION

At its April 11, 2008, meeting, the Law and Justice Interim Committee (Committee) asked the Committee staff to prepare legislation containing a "formal direction" to the Department of Corrections (DOC) to implement the standards for mental health care of inmates as contained in the standards of the National Commission on Correctional Health Care (NCCHC). The Committee also asked to see what other states are doing in this area. This memo examines prison health care standards in other jurisdictions and explains two options available to the Committee for requiring compliance with private accreditation standards for the Montana State Prison (MSP).

II
DISCUSSION

a. State prison standards in other jurisdictions

Just as some states adopt their own mandatory state standards for local jails, some states also adopt state standards for prisons. Most of the states adopting state prison standards do so in administrative rules adopted pursuant to statute. The mental health program rules typically address the delivery of services to inmates with mental health issues, the need for individualized treatment plans, documentation, and followup care. For example, the Virginia Legislature has established the Board of Corrections in state statute and delegated to the Board the duty and authority to adopt rules governing state, local, and community correctional facilities (Code of Virginia sec. 53.1-5). Pursuant to that statute, the Board of Corrections has adopted 6 VAC 15-31-240 (Mental Health Services), applicable to all of those types of facilities. Subsection E of that section of the Virginia Administrative Code provides:

Written procedure and practice shall ensure a suicide prevention and intervention plan. The plan shall address the identification and assessment of potentially suicidal inmates and the housing,

monitoring, and referral of these inmates.

Other examples exist in the regulations of the New York State Commission of Corrections, the Maryland Commission on Correctional Standards, and the policies of the Delaware Department of Corrections.¹ In some instances, such as the policies of the Delaware Department of Corrections that apply to state facilities, the state policies cross reference the analogous standards of the two private, voluntary corrections accreditation organizations, the American Correctional Association (ACA) and the NCCHC. In some states, the states have adopted the voluntary private accreditation standards (see part b below) as the state standards.²

b. Private accreditation standards for prisons

The two principal private accreditation organizations for accreditation of state prison programs are the ACA and the NCCHC. As with jails, the prison standards, including health and mental health program standards, can be used informally by state prisons to establish a goal for a prison or the institution can formally apply to the ACA or NCCHC for accreditation. Also, as with standards for local jails, many more prisons use the private, voluntary standards informally as guides than are actually accredited.³ The ACA and NCCHC standards applicable to mental health treatment programs in state prisons are very similar to the standards applicable to local jails.⁴ In some states with state prison standards, facilities also seek accreditation by one of the private accrediting associations.⁵

The ACA has never had, and does not now have, an accreditation program applicable only to mental health programs at prisons or local jails. That organization accredits

¹Unfortunately, the National Institute of Corrections, which published "Jail Standards and Inspection Programs, Resource and Implementation Guide" (Guide) cited in another Committee memorandum, does not publish a separate directory of which states have adopted their own standards for the state prison system, although some of this information can be gleaned from the Guide.

²Telephone conversation with Mr. Tom Reid, Correctional Specialist, National Institute on Corrections, U.S. Department of Justice, on June 21, 2008 (hereafter Reid conversation). Mr. Reid was previously employed as an ACA compliance auditor.

³Reid conversation.

⁴*Id.*

⁵*Id.*

mental health programs only as part of accreditation of health care programs generally.⁶ Prior to this year, the NCCHC did not have an accreditation program applicable only to mental health care programs. This year, however, NCCHC will begin a program of accreditation of mental health care programs only, scheduled to begin next month (information from the NCCHC website attached). The standards for accreditation will be contained in a new NCCHC publication, Standards for Mental Health Services in Correctional Facilities, available from the NCCHC beginning in July, but the table of contents for which is attached.⁷

c. Direct costs of accreditation

The direct cost of accreditation, not including any costs of compliance with the accreditation standards, depends, generally, upon the size of the facility seeking accreditation. For accreditation by the NCCHC for a 1,500 bed prison, there would be a nonrefundable application fee of \$250, an accreditation survey (onsite) fee of approximately \$3,000, and, thereafter, an annual fee of approximately \$1,100.⁸ Accreditation fees by the ACA for the accreditation of the MSP entire health care program would be higher.⁹

⁶Telephone conversation with Mr. Mark Flowers, Director of Standards and Accreditation for the American Correctional Association (ACA) on May 20, 2008 (hereafter Flowers conversation).

⁷Telephone conversation with Dr. R. Scott Chavez, Vice President (executive director) of NCCHC on June 4, 2008 (hereafter Chavez conversation). Dr. Chavez informed the writer that the NCCHC has never used the publication Correctional Mental Health Care as direct accreditation standards, but only as a guideline for the application of the NCCHC health care accreditation standards to mental health care programs.

⁸Chavez conversation.

⁹Flowers conversation. Mr. Flowers estimated that the cost for ACA accreditation would be the accreditation survey (site visit) fee of approximately \$6,000 if the survey could be accomplished in 2 days, plus expenses. The ACA accreditation lasts for 3 years, after which that survey, including the survey fee and expenses, would occur again.

d. Options available to the Committee

Because the Committee did not specify the content of the "formal direction" by the Legislature to the DOC, Committee staff presents two options to be contained in a bill draft.¹⁰

(1) Option 1: require the MSP to comply with private accreditation standards for prison mental health programs only. Under this option, the DOC would determine which standards apply, because there would be no enforcement agency, and determine whether the MSP meets the applicable standards. This option may require a fiscal note because of any costs of compliance by the MSP.

(2) Option 2: require the DOC to seek, obtain, and maintain accreditation by an accrediting body for mental health programs only. Under this option, the accrediting body would determine which standards apply and whether the MSP meets those standards. This option will require a fiscal note because of both direct accrediting costs and, additionally, any costs of compliance.

Whichever option is chosen, staff recommends that the law also provide that no private right of action to enforce the standards be granted by the law and that any noncompliance with any state or NCCHC standard may not be used to prove negligence on the part of the DOC in any civil action brought by an inmate or relative of an inmate (see jail standards memorandum). Also, whichever option is chosen, it will have to be determined whether any penalty is appropriate for failure to seek, obtain, or maintain the chosen standard (see jail standards memorandum and chart attached to that memorandum).

III CONCLUSION

State prison standards used in other states show that in writing a formal direction for the MSP to comply with the mental health care program standards of a private accrediting organization, the Legislature has the option of directing compliance with those standards or directing the MSP to seek, obtain, and maintain accreditation by a private accrediting organization. Fiscal notes will differ between these options because of the direct costs of accreditation. The NCCHC has begun a program this year to accredit only the mental health care programs of state correctional institutions. This new NCCHC program standards could be the subject of either option.

¹⁰Because a joint resolution can be used only to request compliance by an agency, Committee staff does not consider it an option to direct, by joint resolution, compliance with mental health care program standards. See Montana Legislative Services Division 2008 Bill Drafting Manual, section 7-2.

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- * Some states adopt mental health program standards for their state prisons. If adopted, those standards take the form of policies of a Department of Corrections or administrative rules adopted pursuant to statute.
- * The two principal private accrediting organizations for prison health care programs are the American Correctional Association (ACA) and the National Commission on Correctional Health Care (NCCHC). The NCCHC has a stand-alone mental health care accreditation program, but the ACA does not.
- * There are two options available to the Committee to require compliance with a private accreditation program standard: require compliance by statute or require that a facility seek, obtain, and maintain accreditation by one of the organizations. The fiscal note will differ with each option.