

**Department of State Health Services Rider 63, HB 1, 82<sup>nd</sup> Legislature**  
**Report on Privatization of a State Mental Health Hospital**

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**I. Purpose**

This report is intended to notify the Governor and Legislative Budget Board on the progress to date in implementing Rider 63. The Department of State Health Services (DSHS) through the Health and Human Services Commission (HHSC) posted a Request for Information seeking certain information that would assist DSHS and HHSC in developing a Request for Proposal (RFP) and to assess the level of interest among private entities in operating one of the state hospitals currently managed by DSHS. A public hearing was held and the feedback obtained from stakeholders and vendors is summarized in this report. DSHS is currently developing an RFP that incorporates the feedback received from the public hearing.

**II. DSHS Assumptions**

- There are private entities interested in operating a state mental health hospital.
- Health and Human Services Enterprise Contract and Procurement Services will assist in RFP development.
- Regulation and oversight regarding allegations of abuse, neglect and exploitation will remain under the purview of the Department of Family and Protective Services.
- A privatized hospital will continue to serve the population of patients currently served by the state hospital.
- A privatized hospital will be a part of the DSHS Hospital System Governing Body organizational structure.
- A privatized hospital will be accredited by The Joint Commission as a hospital; certified by the Centers for Medicare and Medicaid Services, dependent upon population served; and will abide by the applicable sections of the Texas Administrative Code (TAC).
- The privatization process will be transparent to the patients served in the affected hospital.

**III. Request for Information**

A request for information was posted on August 26, 2011. There were five respondents: MHM Services, Inc., Geo Care, Inc., El Paso MHMR, Liberty Healthcare Corporation (Liberty) and Vodastra Solutions.

MHM indicated an interest in an initial contract of three to five years to provide clinical program staffing and management services, preferably in a forensic hospital. They recommend the state continue to manage the physical plant or that another contractor

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provide this service. MHM proposes to provide on-site medical services but not be liable for off-site medical costs.

El Paso MHMR indicated an interest in managing El Paso Psychiatric Center for a minimum of five years.

Liberty stated interest in a four-year contract with three additional two-year options. Liberty described their expertise in treating the forensic population. They expressed a direct interest in operating Kerrville State Hospital.

Geo Care expressed an interest in a four-year or longer contract (preferably five) to operate San Antonio, Austin or North Texas State Hospital.

Vodastra Solutions sent a letter of inquiry about providing pharmacy management services to an inpatient setting, but has not shared any other details of interest to date.

**IV. Public Hearing:**

Rider 63 directs DSHS to “take into account feedback from relevant internal and external stakeholders” regarding strategies to minimize adverse effects to patients and to staff, and to decide which hospitals in the DSHS state hospital system are the best candidates for privatization. Accordingly, a public hearing was held on Monday, October 17, 2011, to elicit feedback.

There were more than 58 participants who appeared in person, some to provide comment and others to observe. As the timeline of this project precluded traveling to elicit regional responses, participants from all over the state were invited to provide comment and feedback in writing, by phone or email.

Hearing attendees who signed in included:

Austin State Hospital Staff (employees presenting as self, not for hospital, using vacation time)

Austin Travis County Integral Care  
Bluebonnet Trails Community Services  
Central Health  
Disability Rights, Texas  
El Paso MHMR  
Federation of Texas Psychiatry  
Hillco Partners  
Hogg Foundation  
Mental Health Association of Texas

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Mental Health Management  
National Alliance on Mental Illness-Texas  
North Texas State Hospital  
Public Consulting Group  
San Antonio State Hospital  
Santos  
Senate Committee on Health and Human Services  
Terrell State Hospital (employees presenting as self, not for hospital, using vacation time)  
Texas Council for Developmental Disabilities  
Texas Medical Association  
Texas State Employees Union

Letters were received from the following agencies:

Disability Rights Texas  
Mental Health America of Texas  
Center for Public Policy Priorities  
Mental Health America of Abilene  
Mental Health America of Greater Dallas  
Mental Health America of Greater Houston  
Mental Health America of Southeast Texas  
National Alliance of the Mentally Ill (Collin County)  
National Alliance of the Mentally Ill (Gulf Coast)  
National Association of Social Workers/Texas  
Methodist Healthcare Ministries of South Texas, Inc.  
Texans Care for Children  
Texas Council for Developmental Disabilities

As appropriate, stakeholder feedback is integrated into the strategies delineated in the subsequent sections.

**V. Stakeholder Feedback on Strategies to minimize adverse effects on hospital residents:**

- Regulation, oversight procedures and patient rights protections should be the same in a privatized facility as in the state hospital system:
  - Current state hospital regulatory framework and requirements should apply to the privatized hospital to assure quality care.
  - Allegations of abuse, neglect, and exploitation should remain under the purview of Department of Family and Protective Services with 24 hour/7 day per week hotline and reporting capability.

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- Patient Rights handbooks should be comprehensive and available in various languages (Spanish, etc.). This and all other rights, including hotline notification, should be applicable to the privatized facility.
  
- Continuity of care:
  - Local mental health authorities (LMHA) should continue to have the same access to privatized hospital bed days and services.
  - Patients should have the same access to hospital beds and services.
  - Patients should have the same aftercare access and follow up if hospitalized in privatized facility.
  - Continuity of care should remain an emphasis across all state hospitals, including privatized facility, and local mental health authorities. This would be best achieved with privatized hospital as part of system.
  
- Fiscal Issues: Stakeholders expressed concerns that the DSHS state hospital system currently operates under a minimal budget and that an attempt to enforce further savings (10%) would adversely affect client care. Multiple stakeholders emphasized that any realized savings in the privatization should be reinvested in client care. Furthermore, stakeholders discussed unbudgeted services and expenses embedded in the system that would risk impeding on patient care funds if not explicitly assumed by the vendor. Comments included:
  - The rider specifies that a savings of at least 10% of FY11 budget levels be realized annually for 4 years. If the minimum guaranteed savings are not realized for each year of the contract, the successful bidder must refund to the state hospital system by check, the difference between the realized and actual documented savings. This would follow present precedent of this type of “performance based contracting” within the HHS system as well as within other state and federal government entity programs.
  - The vendor of the privatized facility should assume liability for all services that the facility currently provides. For example, if a state hospital provides laundry services for a state supported living center, the contract with the private entity should provide the same laundry services for the state supported living center or the actual cost of this service is paid by the vendor to the state supported living center so it can get those laundry services done elsewhere.
  - Other financial responsibilities that should be assumed by the vendor include, but are not limited to: costs for routine and major maintenance of facilities and grounds, costs for vehicles, capital expenditures, and other machinery and supplies used to maintain the facilities and grounds, costs for software, IT, furniture, fire extinguishers, fire alarms and equipment, cost of staff training as available before privatization which might include providing training to other agencies.

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- Any realized savings should be reinvested in clinical care, infrastructure or increased capacity, especially given the overcapacity problem in the state hospital system at this time.
- Clinical Care provided by privatized hospital will be of similar quality:
  - Privatized hospital should be Joint Commission accredited as a hospital and Medicare certified.
  - Privatized hospital should be required to meet the same standards of clinical assessments, testing, and documentation as facilities in the state hospital system.
  - Length of stay in privatized hospital should be based on patient's clinical needs.
  - Drug formulary in privatized hospital should be compatible to the ones used by state hospitals currently to ensure compatible care and continuity across system. Privatized hospital should be required to seek approval from the LMHA before beginning a more costly drug regimen.
  - Relocation of patients or buildings should be prohibited for at least eight years at which time reassessment would ensure that contractor is not abandoning hospital and leaving the state system without an infrastructure.
  - Texas Administrative Code Rules to include the Rights Rule (Chapter 404E), Electric Convulsive Therapy (Rule 405E), Admissions Continuity and Discharge (Rule 412D), Consent to Treatment with Psychoactive Medication (Rule 414I), Interventions in Mental Health Programs - restraint/seclusion (Rule 415F). Department of State Health Services Privacy Rule and Life Sustaining Guidelines should apply to the privatized facility.
- Contractual Issues and Contingency Planning:
  - The contracting and subcontracting of multiple companies could add unnecessary administrative and oversight costs and, therefore, result in less funding for high-quality patient care.
  - Provisions should be deliberated to anticipate problems such as potential for premature depletion of contracted funding by the vendor and, possibly including penalties or the ability to terminate the contract or collect a refund of contracted amount.
  - Penalties should be specified in the contract to anticipate the possibility of vendor abandonment of contract responsibilities prematurely.
  - Stakeholders requested that a group of individuals be assembled at each facility to determine the overall costs of operations and the benefits provided to other state and local entities. This group of individuals should include hospital administrators, hospital staff, and representatives from other agencies or organizations who use the facility in some way. Each agency/organization can then estimate their costs for moving or finding services/space elsewhere. This same group should help with drafting the emergency plan for takeover and related costs, penalties and timeframes.

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- Stakeholders requested that a stakeholder group should be used to develop as many aspects of the contracting relationship as feasible.
  - Stakeholders requested that before a contract is signed, DSHS determine an emergency plan for providing hospital care with an estimate of the costs for the taking back operations from the vendor. They further suggest that an amount should be held in reserve from the contracted amount paid to the contractor.
  - Stakeholders recommended that provisions be stipulated in the terms of the contract for the state to recoup expenses from the contracted entity if the contracted entity hospital terminates the contract before the four years have passed or substandard care is provided to patients. The contract should set very firm timeframes for remedying care deficits.
  - Stakeholders requested making open records information available on the DSHS website and not requiring the effort and delay of open records requests.
  - Stakeholders recommended that electronic medical records be HIPAA compliant. The vendor’s system would have to be able to provide all of the data necessary to review their performance in a format compatible with DSHS health information exchange (HIE).
  - Stakeholders recommended that the vendor use electronic medical records in a manner compliant with HIPAA. Patient privacy policies and procedures should be included in the contract.
- Other administrative concerns that could affect patient care:
    - Privatized facility should not be able to recruit professional staff from hospitals other than the one being privatized, to ensure the other hospitals do not lose critical staffing which is already compromised due to low salaries. This could be seen as a threat to patient care and safety throughout the state hospital system.
    - The agency should allow only one primary contractor to avoid diffusion of responsibility.

**VI. Stakeholder Feedback on Strategies to minimize adverse effect on the hospital staff**

- Current employees of privatized hospital should be offered priority status by the vendor when hiring staff.
- Extensions of state benefits should be allowed to current employees of hospital to be privatized as many have endured sub-market salaries for their work with the expectation of these benefits:
  1. Fully funded health insurance and 50% funded for employee dependents.
  2. Leave accruals at the same rate as state employees.
  3. “Carry over” for all leave liability accrued by employee at time of conversion to private entity.

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4. Holiday schedule comparable to state holiday schedule.

- All affected hospital employees should be given an option for state employment placement similar to mechanism used when reduction in force (RIF) plan is implemented.
  1. Prioritize state employment options based on years of service and retirement eligibility.
  2. Provide transfer option for affected employees to system-wide, Enterprise-wide vacancies.

**VII. Stakeholder Feedback on Strategies to determine which hospitals to consider for privatization**

The following considerations represent stakeholder suggestions on how to privatize a hospital in a manner that would cause the least disruption in the system and allow for a successful transition:

- North Texas State Hospital and Rio Grande State Center are not suitable for privatization due to specialized programming at each facility.
- Avoid privatization of the busiest hospital.
- Avoid privatization of North Texas State Hospital as they have specialty knowledge and care for patients determined to be manifestly dangerous.
- Avoid privatization of any hospital where there are insufficient resources or alternative community resources for emergency civil admissions.
- The request for information yielded several responses indicating an interest in providing services for the forensic population.
- Stakeholders identified contraindications to prioritizing the San Antonio State Hospital (SASH) include the following:
  1. Space is leased to the Center for HealthCare Services for housing programs.
  2. Space is leased to the Adult Probation Department to house and treat 100 inmates with drug and alcohol issues. Food service and maintenance services are provided at cost.
  3. San Antonio State Supported Living Center (SASSLC) is located on the grounds of SASH. There is an extensive contract between SASH and SASSLC (in excess of \$6,000,000) for services provided to the SASSLC at cost including, but not limited to, maintenance, food service, risk management, safety, life safety, security, pharmacy, management of the environment of care and emergency preparedness.
  4. Texas Center for Infectious Diseases is co-located on the grounds of SASH. Many functions are shared by both facilities. These include but are not limited to: general administration, financial services, warehousing, maintenance,

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grounds keeping, training and professional development, risk management, safety, life safety, security, pharmacy, management of the environment of care and emergency preparedness.

5. SASH provides professional training opportunities for virtually all clinical disciplines. These services would also have to be assumed by the vendor to ensure the patients can benefit from the interns and the cost effective supplemental clinical services that result from this training.
6. SASH provides maintenance to the DSHS Women's Health Lab.
7. SASH provides or contracts for all clinical care as well as all other support services at Operation of Casa Amistad (just over 150 miles from SASH). It would not be financially advantageous for the privatized hospital to maintain this facility, but the loss of this facility would leave the Laredo community with a void of crisis services.

### **VIII. Summary Statement**

At this time, there are four vendors interested in operating, or partially operating, one of the state hospitals. An additional vendor, Vodastra Solutions, expressed interest in providing pharmacy management. El Paso MHMR is not considered eligible because it is a publically-funded organization. MHM is interested in providing clinical and management services for a forensic facility, hoping to find a complimentary vendor, or possibly the state, to support the physical plant. MHM specifically states they do not feel they should be liable for off-site medical costs. Liberty Healthcare is interested in operating a forensic facility. Lastly, Geo Care expressed interest in operating one of the larger facilities, such as ASH, SASH or North Texas State Hospital.

Many stakeholders expressed concerns for the oversight and regulation of the privatized facility. All who spoke requested that the facility remain under the public hospital system with access to Department of Family and Protective Services' 24 hour per day, 7 day per week oversight and hotline access for patients' support. Many specifically noted their concerns that continuity of care be protected for patients and that the Texas Administrative Code rules apply to the privatized facility. Stakeholders expressed strong desire that profits realized be reinvested in patient care.

Stakeholders expressed concern for employees. The hospital system has traditionally paid their professionals' and employees' salaries significantly under market pay. This has been an issue for recruitment in all professional and non-professional areas of the state hospitals. However, many employees have remained dedicated despite the salary issue with their career plans based partially on retirement benefits. For this reason, the stakeholders recommend minimizing adverse effects to current staff by allowing vested employees to keep their benefits.

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Finally, three of the four organizations wishing to operate a facility have expressed interest in a forensic facility specialty. Stakeholders have expressed concern in regard to avoiding privatization of busier civil hospitals and ensuring LMHAs and patients have the same access to crisis and acute beds as currently available.

**IX. Plan**

An RFP will be developed by March 15, 2012, and will include criteria as follows:

- The vendor must be able to achieve a savings of at least 10% of FY11 budget levels and that savings must be realized annually for 4 years.
- The vendor must be a private entity.
- The hospital must remain under the regulation and oversight of the Department of Family and Protective Services for investigation of abuse, neglect and exploitation.
- The hospital will continue to serve the population of patients currently served by that hospital.
- The hospital will continue to be a part of the DSHS Hospital System Governing Body organizational structure.
- The hospital will be accredited by The Joint Commission as a hospital; certified by Centers for Medicare and Medicaid Services, dependent upon population served; and will abide by applicable sections of the Texas Administrative Code.
- The vendor of the facility will assume liability for all services that the facility currently provides. For example, if a state hospital provides laundry services for a state supported living center, the contract with the private entity should provide the same laundry services for the state supported living center or the actual cost of this service is paid by the vendor to the state supported living center so it can get those laundry services done elsewhere.
- The hospital will continue to allow agencies and organizations currently using spaces and offices at the state facility to continue to do so at no cost.
- The contractor will continue to assume costs currently assumed by the state hospital to include, but not limited to: costs for routine and major maintenance of facilities and grounds, costs for vehicles, capital expenditures, and other machinery and supplies used to maintain the facilities and grounds, costs for software, IT, furniture, fire extinguishers, fire alarms and equipment, cost of staff training as available before privatization which might include providing training to other agencies.
- The contractor will not assume ownership of the state hospital property.

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The privatization will follow the schedule with milestones schedule of implementation as follows:

| <b>Major Milestones</b>   | <b>Target Dates</b> |
|---|---------------------|
| Request for Information completed   | June 30, 2011       |
| Request for Information issued  | August 26, 2011     |
| Public Hearing for Internal and External Stakeholders                       | October 17, 2011    |
| Privatization Plan sent to Governor and Legislative Budget Board for review | November 30, 2011   |
| Project Status Report sent to the Governor and Legislative Budget Board     | January 31, 2012    |
| Posting of Preliminary Request for Proposal                                 | March 1, 2012       |
| Request for Proposal completed and issued                                   | March 15, 2012      |
| Public Conference for Request for Proposal                                  | April 1, 2012       |
| Deadline for Request for Proposal Responses to be received                  | April 15, 2012      |
| Project Status Report sent to the Governor and Legislative Budget Board     | April 30, 2012      |
| Vendor selected   | May 15, 2012        |
| Contract completed  | July 15, 2012       |
| Contract approved by Governor and Legislative Budget Board                  | August 1, 2012      |
| Project Status Report sent to the Governor and Legislative Budget Board     | July 31, 2013       |

The next step will be the development of the RFP based on the information in this report. The hospitals will also provide tours to the vendors that express interest in bidding.