


Options for Governance

**NASMHPD Legal Division
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The Climate for Decision-making

State Hospitals are not alone:

- A survey by the American Hospital Association showed that half of the hospitals in America have reduced staff, 20% have cut some subsidized community services, 80% have cut capital spending, and 95% say their capital situation has not improved.
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Contract for Management – or Privatization?

How much control is contracted to a private party?

- **"Privatize"** means to enter into contract for the performance of a duty or function which is currently being performed by a state employee.
See Okla. Stat. Ann. Tit. 74, 588-590.
 - May contract for operation of only one aspect of a facility's work, of only one unit or service, or of the entire facility, including all staffing.
 - Privatization may include building a new facility, or moving to an existing one not owned by the state.
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Contract for Management – or Privatization?

How much control is contracted to a private party?

- Contracts for management provide for an outside entity to put an administrator in place, often with a management team, to manage the day to day operations of a facility.
 - All staffing and operations below top management may remain in place, depending on the agreement between the parties.
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Contract for Management – or Privatization?

- By 2000, just under 15% of nonfederal community hospitals operated under management contracts.
 - This number has been on the rise since the 1970's, especially during the 1980's.
 - Hospitals with management contracts:
 - Smaller
 - Rural
 - Government-owned
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Contract for Management – or Privatization?

For general hospitals:

- ❑ Competition sometimes leads to unnecessary duplication of services.
- ❑ Contracted management tends to reduce services that are duplicated in the community.
- ❑ Federal funding aids rural hospitals in hiring clinicians, but not managers.

How do these factors impact your state hospital and its goal and needs?



Contract for Management – or Privatization?

- Expect stages of change and accomplishment of goals and needs.
 - Contracted management progresses:
 - From initial financial stabilization
 - To recruitment and retention of quality staff
 - To strategic planning and marketing
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Contract for Management or Privatization: Why?

Frequent reasons cited:

- Reduce costs
 - “Private sector does it better”
 - Expertise, efficiency
 - State agency has failed
 - Reduce government
 - Flexibility
 - Speedy implementation
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Contract for Management or Privatization: Issues?

- Long-term view: ensure safe and appropriate services of high quality for your population.
 - Flexibility and responsiveness to changing healthcare needs (deinstitutionalization, increasing coordination primary healthcare, growth in forensic services).
 - The facility's most viable and valuable health care role, now and later.
 - The facility's position in the regional health care continuum.
 - Strengths and assets of the facility, and those needed.
 - Types of management and operating resources required for the facility to meet its future needs.
 - How should the facility be structured to meet the mental health care needs of the community?
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Contract for Management or Privatization: State's concerns

Public purpose

- Should the state provide MH services indirectly?
- Should there be a safety net?

Public accountability

- A shift in responsibility, or just a shift in roles?
- Due Process

Public disclosure

- Participation, discussion, selection of societal preferences
 - A check on performance and accountability
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Contract for Management or Privatization: State's concerns

Impact on consumers

Will the poor really have a choice?

Distribution of resources, power

Poverty, homelessness in MH population

"Voice" of persons with mental illness or developmental disability

Quality of care: does contracting reinforce perceptions that gov't. can't perform well?

Fiscal duty: state still must pay the contractor

Will there be competition? Lower costs?



Contract for Management or Privatization: State's concerns

Potential advantages to contracting:

- ❑ Continued government ownership
 - ❑ Governing autonomy and preservation of flexibility
 - ❑ Management company provides best practices in management and/or direct care
 - ❑ Easy, immediate access to resources (personnel or other) offers quick assistance
 - ❑ Opportunity to exchange information with other managed facilities
 - ❑ Flexibility to terminate the contract
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Contract for Management or Privatization: State's concerns

Potential disadvantages of contracting:

- ❑ Loss of decision-making autonomy and flexibility
 - ❑ Potential dependence on management company's resources, making reversion to state difficult
 - ❑ Potential to lessen the state's or facility's sense of fiduciary responsibility and accountability
 - ❑ Management company's chief loyalty is to the management company, impacting future opportunities
 - ❑ Paying for access to a broad range of services the state won't need or utilize
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Contract for Management or Privatization: Checklist

State laws governing privatization

- What may be privatized
 - Privatization board or commission
 - Who must be notified, involved, or give approval
 - “Evidence” required by the state department
 - ***Cost-benefit analysis***
 - “Evidence” required by the contractor
 - Required contract terms
 - Protections to existing employees
 - Required monitoring
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Contract for Management or Privatization: Checklist

- The Joint Commission Standards

LD 04.03.09 Care, treatment or services provided through contractual arrangements are provided safely and effectively.



Contract for Management or Privatization: Checklist

TJC's suggestions for evaluating contracted services:

- Review contractor's TJC accreditation or certification
 - Direct observation of the provision of care
 - Audit of documentation, including clinical/case records
 - Review of incident reports
 - Review of periodic reports submitted by contractor
 - Collection of data that address the efficacy of services
 - Review of reports on required performance indicators
 - Input from staff and clients
 - Review of client satisfaction studies
 - Review of results of risk management activities
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Contract for Management or Privatization: Checklist

- Additional TJC standards:
 - EC.01.10 The organization manages safety risks.
 - EC.02.10, The organization identifies and manages its security risks.
 - PI. Performance Improvement.
 - HR. Standards generally apply to contracted staff.

 - Elements of Performance may specifically address requirements under contracts.
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Contract for Management or Privatization: Checklist

You can't manage what you can't measure

- Build an assessment tool for an assessment team to use in monitoring
 - Legal staff
 - Privacy Officer
 - Subject matter experts
 - Administrative authority
 - Other? Review your needs, goals.
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Contract for Management or Privatization: Checklist

- Fundamental understanding of the needs of the parties, goals of each
 - Be concrete
 - Clarify what you want to avoid
 - Strong framework for communication on a regular basis
 - Build communication into the contract
 - Communication can help catch problems early
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Contract for Management or Privatization: Checklist

- Communication includes
 - Governor and Legislature
 - Board
 - Statutory oversight including consumer advocates,
 - Non-governmental advocates
 - Most of all, consumers
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