December 2014

AUDIT OF CORRECTIONAL HEALTH SERVICES AND INMATE MEDICAL COSTS JANUARY 1, 2011 THROUGH DECEMBER 31, 2013

HON. STEFAN I. MYCHAJLIW

Erie County Comptroller
95 Franklin Street
Room 1100
Buffalo, NY 14202-3971

Hon. Stefan I. Mychajliw
Erie County Comptroller,
Division of Audit and Control
95 Franklin Street
Room 1100
Buffalo, NY 14202-3971

December 30, 2014

The Honorable
Erie County Legislature
92 Franklin Street, 4th Floor
Buffalo, New York 14202

Dear Honorable Members:

The Erie County Comptroller's Office has completed a performance audit of Correctional Health Services and inmate medical costs at both the Erie County Correctional Facility (Correctional Facility) and the Erie County Holding Center (Holding Center) for the period January 1, 2011 to December 31, 2013.

We conducted our audit in accordance with Generally Accepted Government Auditing Standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions. Our objectives were to: (1) evaluate internal control over activities related to medical care for incarcerated individuals; (2) evaluate internal controls over inmate medical costs; (3) document the trend in the costs associated with inmate medical care for the period of our audit; (4) evaluate the impact of grievances on medical costs, and (5) document the specific areas and costs where inmate medical care was provided. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Management of both the Erie County Sheriff's Office (Sheriff's Office) and the Erie County Health Department (Health) are responsible for establishing and maintaining a system of internal control within their respective areas of responsibility. The objectives of such a system are to provide management with reasonable, but not absolute, assurance that transactions are executed in accordance with management's authorization and are recorded properly. Because of inherent limitations in any system of internal control, errors or irregularities may nevertheless occur and not be detected.

In our opinion, internal controls within Health over the processing of inmate medical costs are adequate. Additionally, the internal controls in place with the Sheriff's Office in 2011 governing financial processing of costs to medical care were adequate. However with respect to inmate grievances and the impact of those grievances on overall medical costs, we do not express an opinion (see finding on page 6).

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BACKGROUND

In 1976, the U.S. Supreme Court set forth major guidelines for prison and jail health care systems. This case affirmed that providing inmates with health care is a constitutional requirement, making inmates the only class of people constitutionally given the right to health care. But, delivering medical care to inmates and ensuring continuity of care after release are logistically complex and costly endeavors.

For the 57 counties outside of New York City, jail medical care was delivered by local providers in 40 counties (70%), correctional medical corporations in 8 other counties (14%), and public providers in the remaining 9 counties (16%). The majority of the jail medical care in Erie County is rendered by public providers.

The challenge of providing health care to inmates over the past few years has been a systemic problem which impacts departmental budgets, union negotiations and legislative oversight. While it is now changing, for many years there had been little external oversight for inmate health care by the New York State Commission on Corrections (COC). In addition, management was faced with non-competitive salaries so that medical personnel were compensated far below their counterparts outside the prisons. That being said, improvements are being made, but at an increasing cost both here in Erie County as well as state wide making New York the 13th among all states in spending for inmate care.

Over the last several years Erie County (County), the Health Department (Health) and the Sheriff's Office (Sheriff) have been subject to mandates established by the Department of Justice (DOJ). These mandates were the direct result of DOJ investigations that were prompted by multiple inmate suicides and suicide attempts. The DOJ investigations into the conditions at the Holding Center and Correctional Facility resulted in a lawsuit against the County alleging that conditions at the facilities violated the constitutional rights of the inmates. The lawsuit was subsequently settled through a Stipulated Settlement Agreement and Order Concerning Suicide Prevention and Related Mental Health Issues between the DOJ and the County in June of 2010, as well as a Stipulated Order of Dismissal between the parties in August 2011. Prior to these agreements, the Health Department took control over the medical services provided at the Holding Center and the Correctional Facility in 2009 following a health service study requested by the Health Department of the National Commission on Correctional Health Care (NCCHC).

As a result of this study, the NCCHC made numerous staffing recommendations to enhance health care at both the Erie County Holding Center and the Erie County Correctional Facility. These changes included the placing of a Registered Nurse (RN) as Director of Nursing at the Holding Center and Correctional Facility; increasing the number of RN positions at the Holding Center and Correctional Facility; designating a central medical clearance/intake process at the Holding Center; and hiring a medical records clerk at both the Holding Center and Correctional Facility. Starting in 2012 all invoicing related to inmate medical costs went to Health which in turn later billed the Sheriff interdepartmentally.

In the interest of confidentiality, The Department of Health initially redacted documents provided for testing in accordance with the Health Insurance Portability and Accountability Act (HIPAA). Following discussions it was determined more information was needed so the Division of Audit, Health, and the Sheriff worked with the County Attorney to prepare and sign a non-disclosure agreement pertaining to any confidential information which was disclosed.

FINDINGS

HEALTH DEPARTMENT

Inadequate Expense Tracking

In our review of vendor invoices for 2012 and 2013, we noted that the Health Department ("Health") maintains a spreadsheet tracking invoices received for services. This spreadsheet includes the patient identification, dates of service, date the bills were received, date the bill was paid, and the procedure code which explains what services the inmate received and for which the County was billed. This tracking mechanism is important for Health to monitor the payment of invoices, as well as a tool to track the exact costs and types of services provided to inmates.

While reviewing Health's spreadsheet, we found that the vast majority of invoices totaling $2,898,788 from the Erie County Medical Center (ECMC) were not detailed by type of expense. While the patient information, service dates, and billing totals were on the sheet, there was no procedure code. Instead of a specific code, ECMC had merely input "99999" as a generic code. The ECMC invoices represent 50% of all the inmate medical costs for 2012 and 2013 but yet Health did not feel that it was necessary to breakdown the charges by using procedure codes.

To get a full look at how much was being spent on each service for this audit, we requested any reports from Health with regard to the individual medical costs incurred from ECMC detailing how much had been spent on each type of procedure (such as clinical visits, diagnostic testing, emergencies, pharmacy, and surgical procedures). They were unable to provide us with a comprehensive listing of this information, and as a result, any concern management may have with respect to monitoring and controlling costs could only be based on estimates or historical percentages as opposed to the exact dollar amount for each procedure.

We ultimately were able to determine this information by individually reviewing the itemized invoices from ECMC for each year of the audit period. This data was combined with other data that we obtained from Health and the Sheriff and the results can be found in Charts 3-11.

We issued an Interim Audit Memorandum (IAM) to Health regarding this issue on April 28, 2014. On May 7th, Health sent a letter responding to our IAM regarding this finding. However, their response did not sufficiently address our concerns raised during the Audit. **WE RECOMMEND** that Health revise their data input procedures and properly itemize and code all services received by inmates at ECMC. This revised process coupled with the related expenses will help to properly track the overall cost as well as the cost of individual services.

SHERIFF'S OFFICE

Failure to Produce Requested Documents

At the outset of our audit, one of our objectives was to review inmate grievances with respect to the various aspects associated with healthcare. We had planned to determine what percentage of grievances were related to healthcare and how they were settled. It was our intent to indicate how many such grievances were addressed at the local level and how many were forwarded to the New York State Commission of Corrections' Citizen's Policy and Complaint Review Council (CPCRC) for final disposition. In so doing, we could conclude as to how many grievances had no merit and how many were sustained as valid. Lastly, we had planned to determine what changes, if any, had to be made to eliminate or reduce the number of health care grievances forwarded to the CPCRC for disposition.

Upon inquiry for information regarding these grievances, we were initially provided some documentation from both the Correctional Facility and the Holding Center. However after repeated requests for additional information to both locations no further data was provided and we were unable to complete our testing in this area.

Because we were unable to perform compliance and substantive testing over the grievances, we could reach no conclusion as to the results of Jail Management's operation in this regard. As a result, we reserve the right to audit this documentation in the future to assess the impact, if any, on the overall health care costs of inmates. Therefore, **WE RECOMMEND** that the Sheriff take the steps necessary to ensure that these records be made available to us upon request.

AUDIT RESULTS

Personnel Costs

The direct personnel costs for inmate healthcare rose sharply from 2011 to 2012 by $1,108,746 (57.8%) due to the COC and DOJ mandated staffing requirements where the number of County employees grew from 41 to 70. In that same period other personnel costs for contracted services showed a dramatic increase of $1,439,885 (102.4%) due to similar mandated changes. These same costs have stabilized in 2013 with the biggest savings being realized in contracted services.

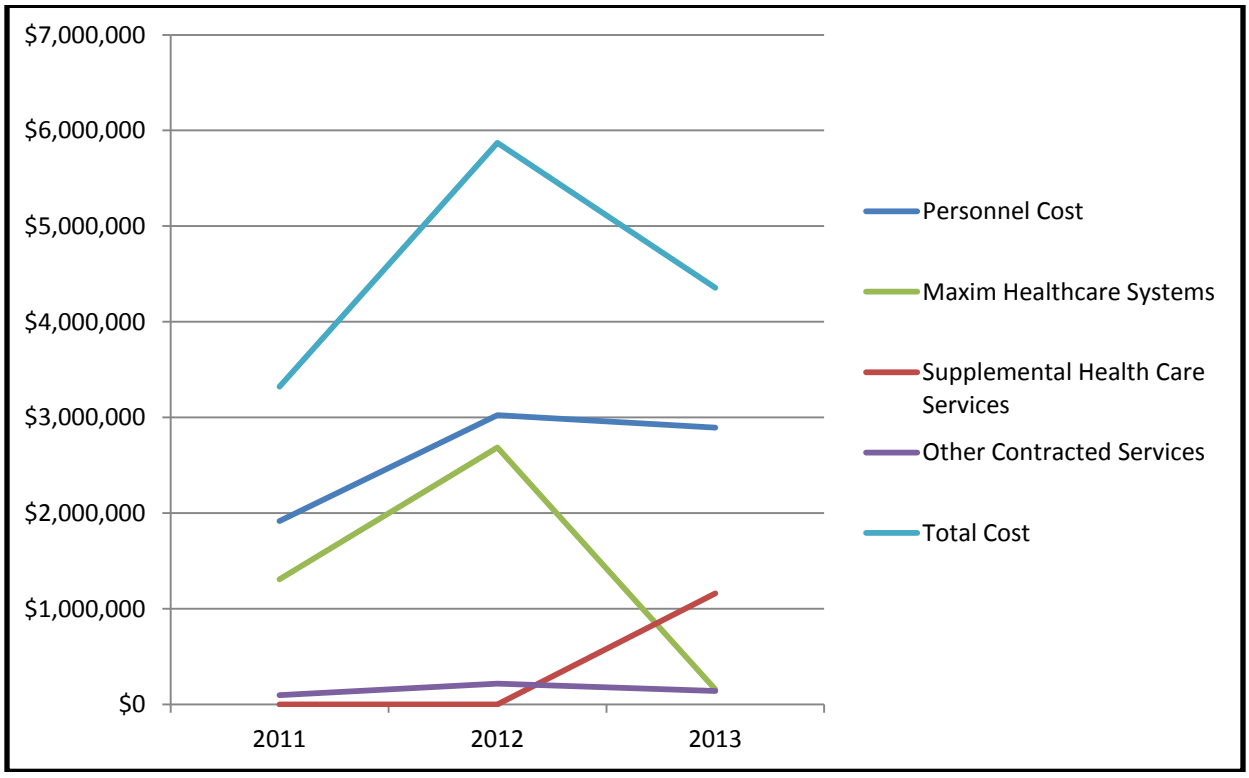
Chart 1

	2011	2012	2013
Personnel Costs*	$ 1,916,201.00	$ 3,024,947.00	$ 2,894,049.00
Vendors:			
Maxim Healthcare Systems #	$ 1,309,489.81	$ 2,627,513.07	$ 158,765.55
Supplemental Health Care Services #			$ 1,162,265.33
Other Contracted Services #	$ 96,444.50	$ 218,305.75	$ 141,722.01
Total	**$ 3,322,135.31**	**$ 5,870,765.82**	**$ 4,356,801.89**

* Does not include fringe benefits

\# Costs are allocated by document date

Chart 2



Medical Expenses for the Audit Period

Types of Medical Expenses

The various types of medical services provided to the inmates were categorized using the invoice descriptions. For comparison purposes we used the eleven categories listed below and have included a description of the services that were attributable to each: (see Charts 3 and 4)

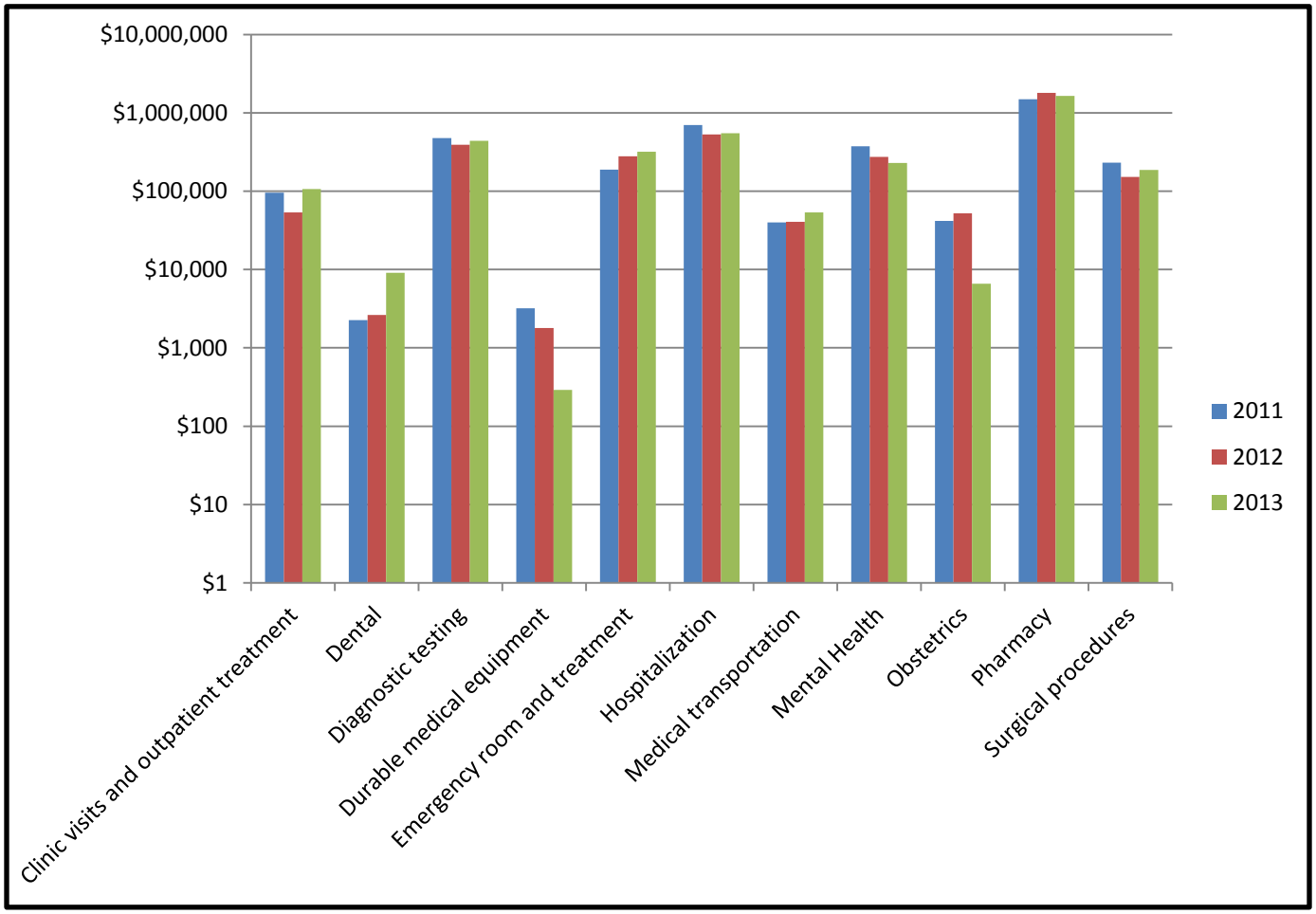
- Clinic Visits – all clinic visits, OT (occupational therapy), PT (physical therapy), speech, chemotherapy, and any procedures not performed in the ER (emergency room) or operating room.
- Dental – any CPT (current procedural terminology) code starting with a "D" to include panoramic films, dentures, and extractions.
- Diagnostic Testing – labs, x-rays, CTs (computed tomography), MRIs (magnetic resonance imaging), EEGs (electroencephalogram) and EKGs (electrocardiogram).
- Durable Medical Equipment – includes items such as braces, canes, crutches, orthotics and oxygen.
- Emergency Room and Treatment – any ER visit and treatment received such as miscellaneous medical supplies, pharmacy, stitches, IVs (intravenous therapy), and vaccinations.
- Hospitalization – all hospital admission stays and related charges for miscellaneous medical supplies, pharmacy and IVs.
- Medical Transportation – use of Rural Metro, We Care, etc.
- Mental Health – individual psychological evaluations and related hospitalization plus pharmacy charges.
- Obstetrics and Prenatal Care – includes prenatal testing (lab, sonogram, and fetal non-stress tests), abortions, and miscarriage related surgery.
- Pharmacy – all Pharmacy vendor costs.
- Surgical Procedures – operating room, recovery room, anesthesia, pharmacy and miscellaneous medical supplies.

(For specific numbers for each year of our audit period, see Charts 3-7)

Chart 3

	2011		2012		2013	
Category	**Amount**	**%**	**Amount**	**%**	**Amount**	**%**
Clinic & Outpatient	$ 95,646	2.62	$ 53,968	1.52	$ 106,685	3.01
Dental Procedures	$ 2,256	0.06	$ 2,628	0.07	$ 9,101	0.26
Diagnostic Testing	$ 475,420	13.16	$ 391,642	11.05	$ 437,628	12.37
Durable Med Equip	$ 3,205	0.09	$ 1,799	0.05	$ 292	0.01
Emergency Room	$ 187,843	5.20	$ 278,220	7.85	$ 319,806	9.04
Hospitalization	$ 700,275	19.39	$ 527,425	14.88	$ 550,780	15.56
Medical Transport	$ 40,013	1.11	$ 40,650	1.15	$ 53,777	1.52
Mental Health	$ 341,984	9.47	$ 286.722	8.09	$ 229,198	6.48
Obstetric	$ 41,646	1.15	$ 51,919	1.46	$ 6,593	0.19
Pharmacy	$ 1,492,014	41.30	$ 1,757,093	49.57	$ 1,639,397	46.32
Surgical Procedures	$ 232,072	6.42	$ 152,795	4.31	$ 185,802	5.25
Total	**$ 3,612,373**	**100.00**	**$ 3,544,861**	**100.00**	**$ 3,539,058**	**100.00**

Chart 4


$10,000,000
$1,000,000
$100,000
$10,000
$1,000
$100
$10
$1
Clinic visits and outpatient treatment
Dental
Diagnostic testing
Durable medical equipment
Emergency room and treatment
Hospitalization
Medical transportation
Mental Health
Obstetrics
Pharmacy
Surgical procedures
2011
2012
2013

Medical Expenses by Percentage

Chart 5

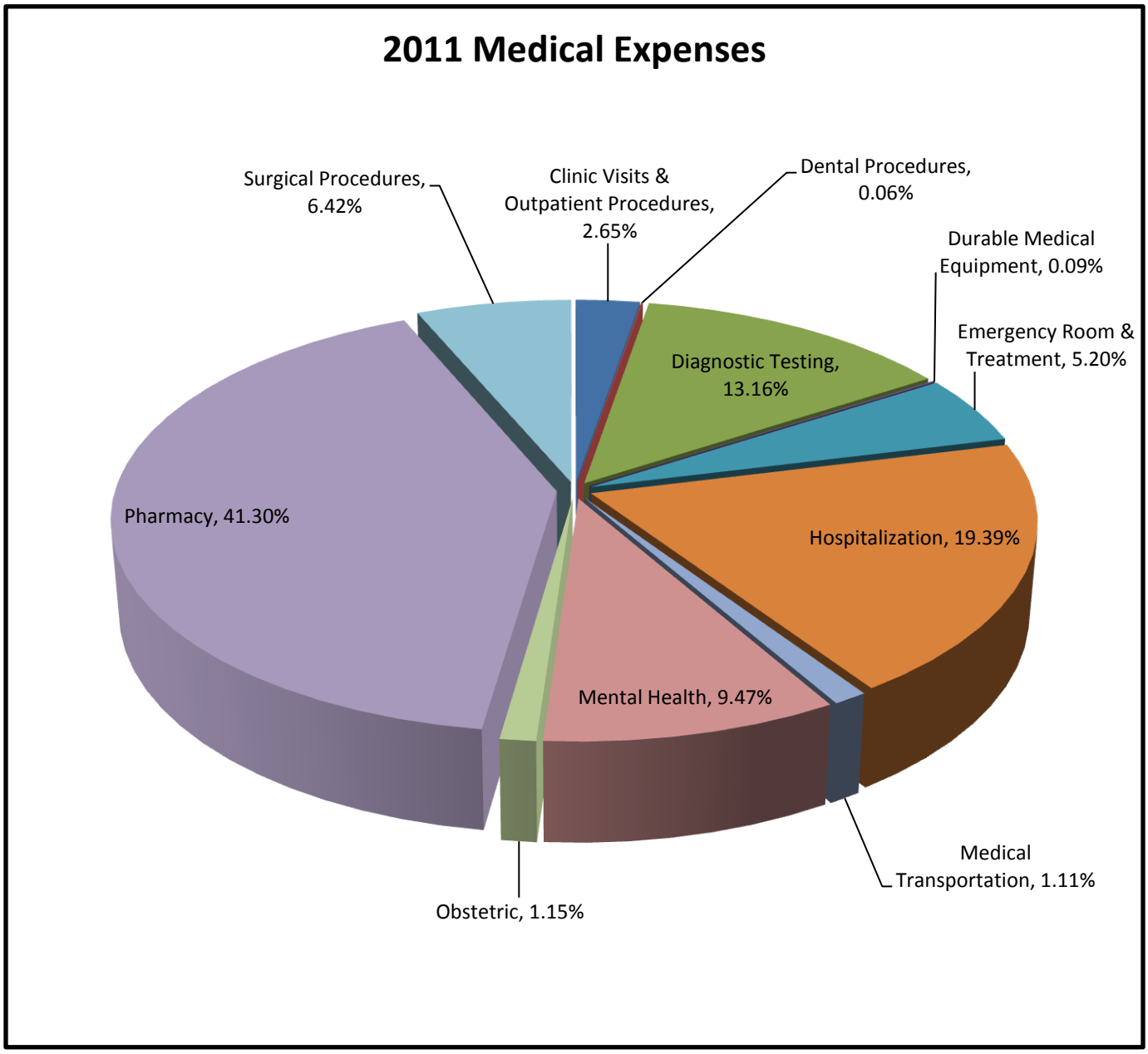


Chart 6

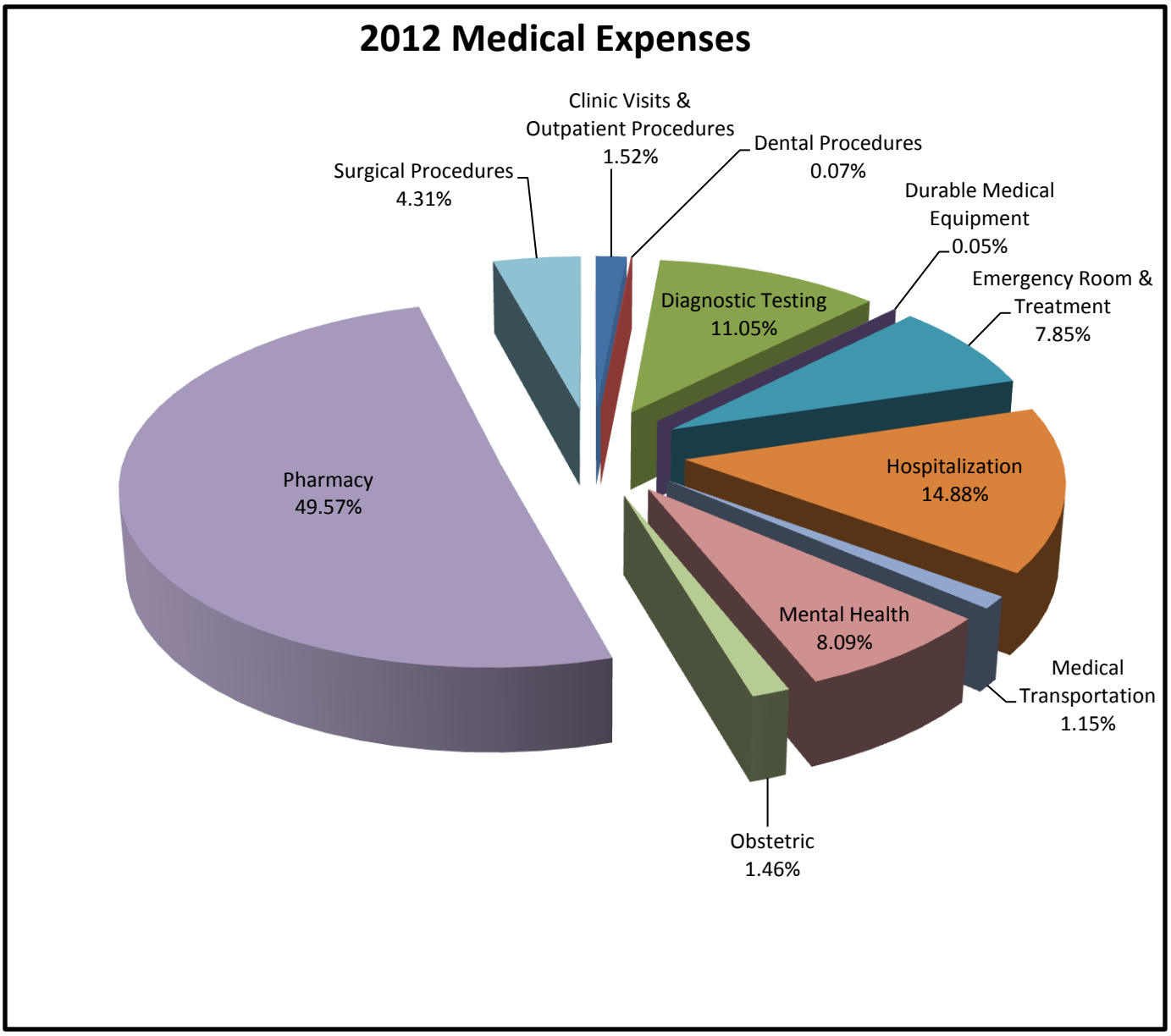
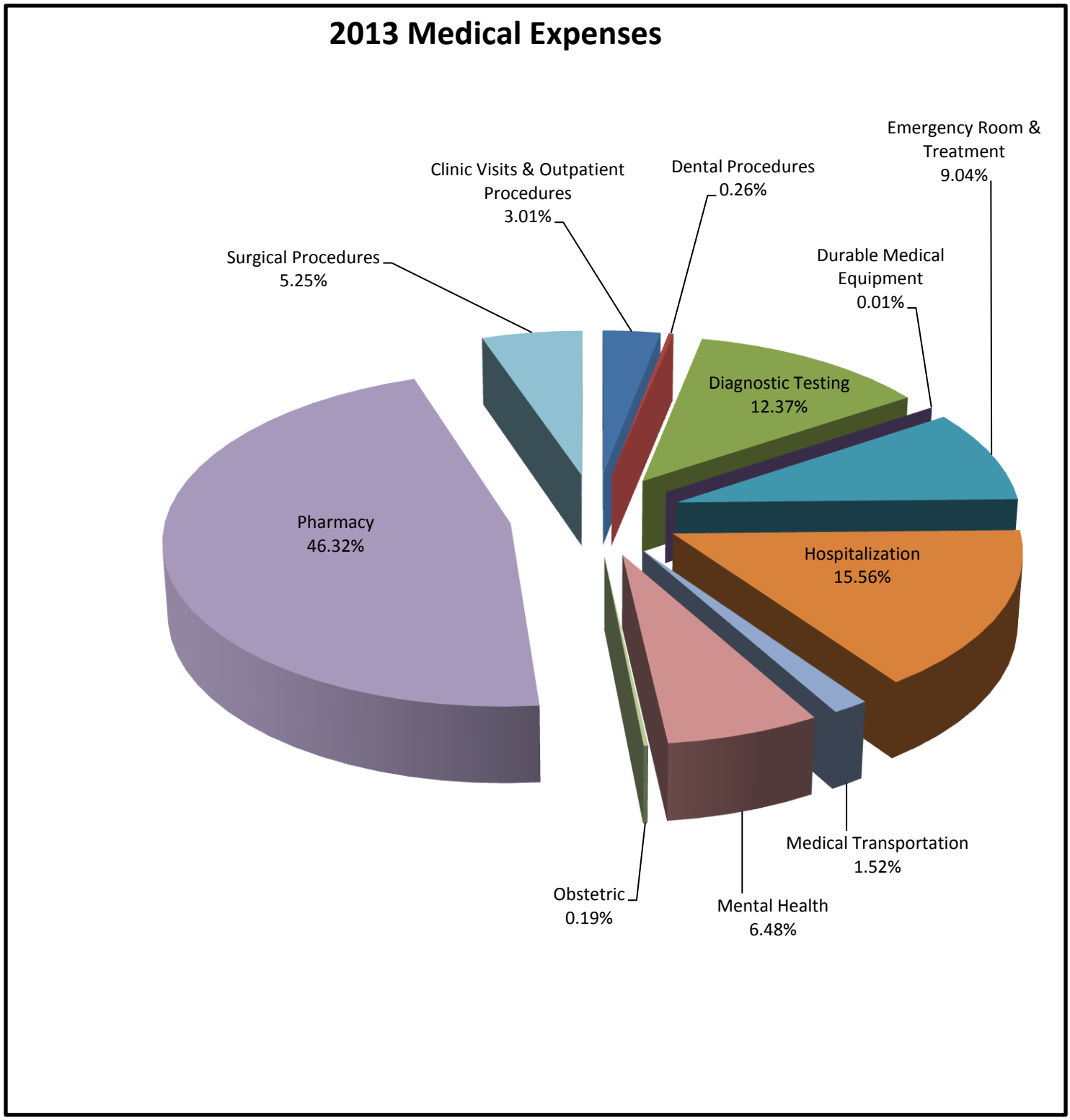
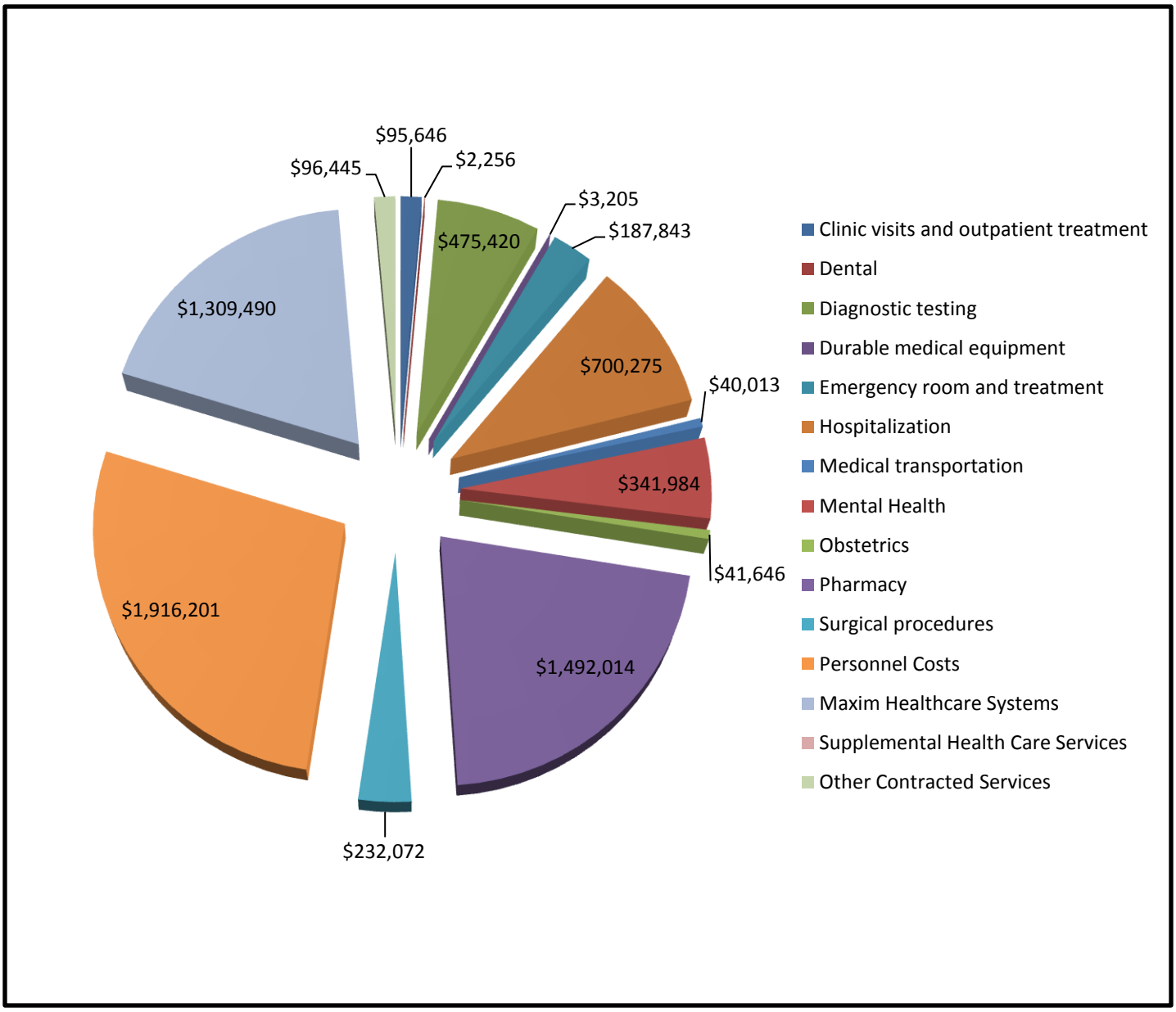

2012 Medical Expenses
Clinic Visits & Outpatient Procedures 1.52%
Dental Procedures 0.07%
Surgical Procedures 4.31%
Durable Medical Equipment 0.05%
Emergency Room & Treatment 7.85%
Diagnostic Testing 11.05%
Pharmacy 49.57%
Hospitalization 14.88%
Mental Health 8.09%
Medical Transportation 1.15%
Obstetric 1.46%

Chart 7


2013 Medical Expenses
Emergency Room & Treatment 9.04%
Clinic Visits & Outpatient Procedures 3.01%
Dental Procedures 0.26%
Surgical Procedures 5.25%
Durable Medical Equipment 0.01%
Diagnostic Testing 12.37%
Pharmacy 46.32%
Hospitalization 15.56%
Medical Transportation 1.52%
Obstetric 0.19%
Mental Health 6.48%

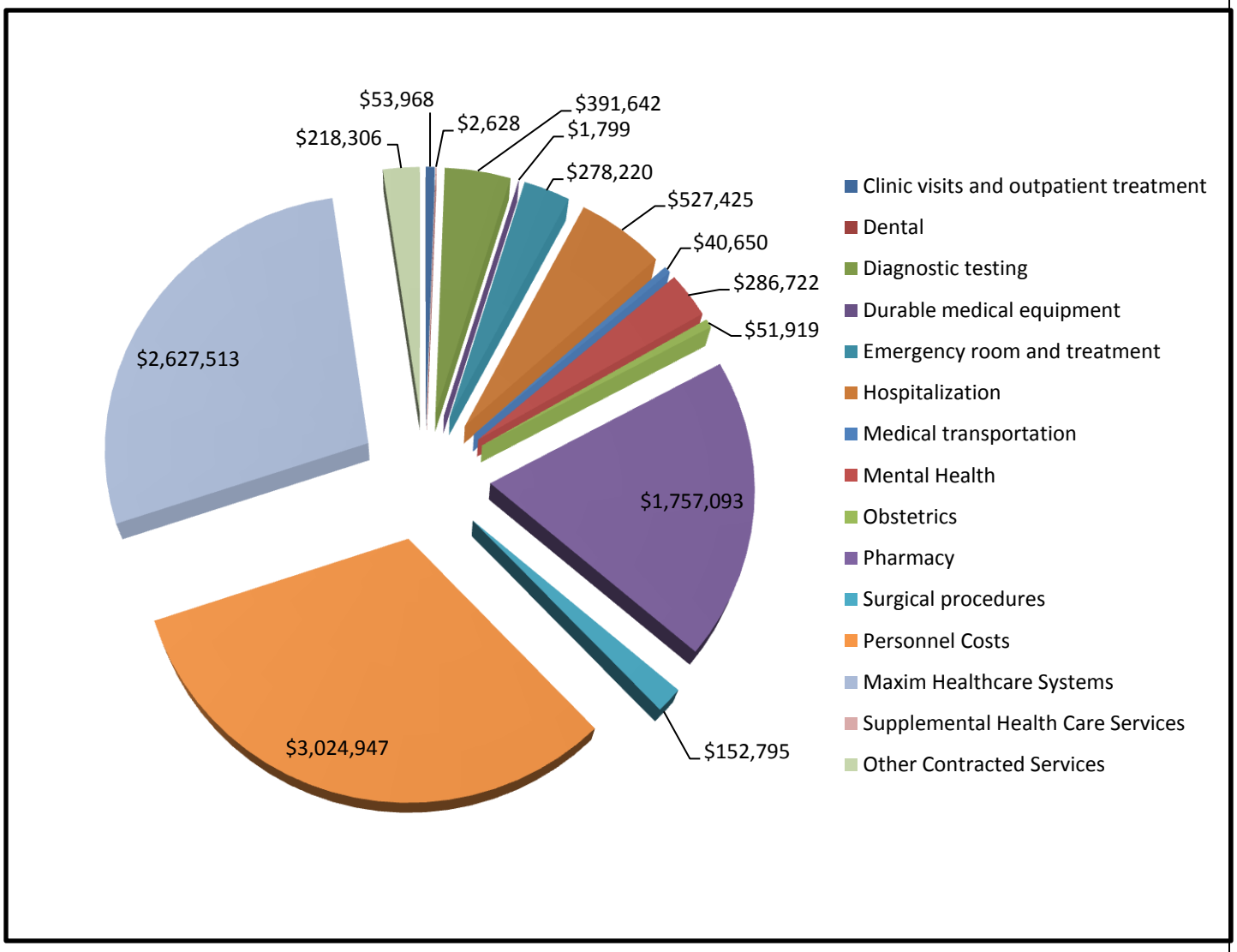
Total Costs 2011

Chart 8



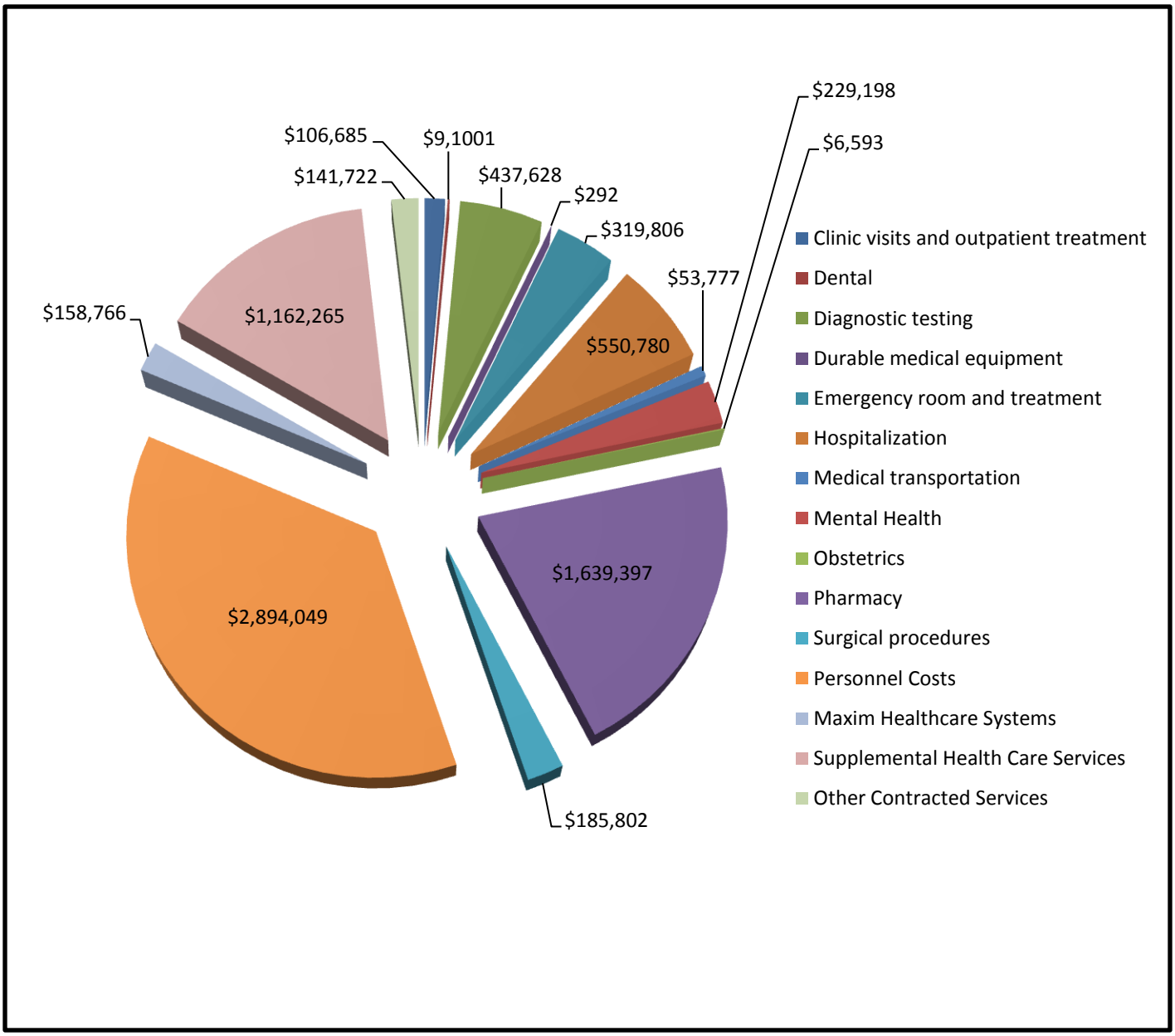
Total Costs 2012

Chart 9



Total Costs 2013

Chart 10



AUDITOR'S COMMENTS

1. Affordable Care Act

Jails and prisons around the country are signing up inmates for health insurance under the law, taking advantage of Medicaid that allows states to extend coverage for single and childless adults which are a major part of the prison population.[1]

States and counties are enrolling inmates for two main reasons—(1) Coverage can pay for inmates' hospital stays beyond 24 hours and (2) Inmates who are enrolled in Medicaid while in jail or prison can have coverage after they get out.

While we are not aware of any calculations or estimates that have been prepared for possible savings to Erie County, **WE RECOMMEND** that management of Health together with representatives of Budget and Management, work together to explore the feasibility of enrolling inmates for health insurance.

2. Inmate Co-Payments[2]

To help manage the unprecedented growth in inmate medical costs, management must implement innovative solutions that result in cost-saving measures. One such possibility is to implement inmate co-payments for medical services. About 70% of the States have already implemented some type of inmate co-payment. (See Appendix I for a chart of all States which have co-pays and how much they charge) These co-pay programs work the same way as co-pays for individuals outside of the corrections system, requiring inmates to pay a small fee for medications, doctor and/or nurse visits, dentist visits, or any other reason they may need access to medical services.

The money charged to the inmate is usually taken from an inmate's commissary fund which is they earned through jobs while they are incarcerated. The benefits of inmate co-pay systems are two-fold—(1) the money helps offset medical expenses incurred by the prison and (2) it disincentivizes unnecessary sick call visits, reducing the strain on medical services. If inmates have to use their own money to pay for medical services, it is generally believed that they will be less likely to abuse their medical privileges.

For an example of potential savings which could be realized, during the course of the audit the Audit Division obtained the number of prescriptions filled for inmates at both the Holding Center and the Correctional Facility for 2012, and for 2013 from the Department of Health. In 2012 we were informed that 43,878 prescriptions were filled and in 2013 prescriptions filled totaled 53,684. Over this period, if the County had charged a minimal $5 per prescription, which is the average co-pay for States charging inmates for prescriptions, $219,390 could have been generated in 2012 with an additional $268,420 generated in 2013. These numbers do not take into consideration any additional monies that would have been generated from charging co-pays for sick call visits, dental visits, or other medical related visits. Most government, public and

[1] www.nytimes.com/2014/03/10/us/little-known-health-act-fact-prison-inmates-are-signing-up...
[2] www.prisonpolicy.org/corrections+Health+care+costs+1-21-04.pdf

private health care plans require a co-pay of between $5 and $15 per prescription and $10 per office visit. Requiring the same of the inmates is not something unusual or burdensome.

We acknowledge that co-pays may not be applicable to indigent inmates and that some pre-existing conditions may be excluded as well.

WE RECOMMEND that both County and Health management research the advantages and disadvantages of implementing an inmate co-pay system and explore the legislation necessary to initiate such a program. By starting with inmate co-pay amounts that are very small, as noted above, and are limited initially to select services such as prescriptions and sick call visits, we believe that access to medical services will be less frequent. As a result, there would be a corresponding reduction in overall medical costs to the County, as well as the creation of a new source of revenue.

RESULTS OF EXIT CONFERENCE

An exit conference was held on December 18, 2014 with representatives from the Health Department, the Sheriff's Office, and the office of Budget and Management. The contents of the report were discussed with those present and they were in general agreement with our findings and recommendations.

In accordance with the County's Audit Response System and Procedures, we request that the Health Department and the Sheriff's Office prepare a written response to the Director of Budget and Management, the County Executive and our Office concerning the findings and recommendations by January 30, 2015 and further, we request that the County Executive forward copies of the written responses to the Erie County Legislature by February 13, 2015.

ERIE COUNTY COMPTROLLER'S OFFICE

cc: Hon. Mark. C. Poloncarz, County Executive
Hon. Timothy B. Howard, Erie County Sheriff
Dr. Gale R. Burstein, Commissioner of Health
Robert W. Keating, Director of Budget and Management
Erie County Fiscal Stability Authority

Appendix 1 - State Prescription Co-Pays for Inmates

State	Co-Pay Charged	Amount Charged
Alabama	Y	$4.00
Alaska	Y	$4.00
Arizona	Y	$4.00
Arkansas	Y	$5.00
California	Y	$5.00
Colorado	Y	$3.00
Connecticut	N	-
Delaware	Y	$4.00
Florida	Y	$15.00
Georgia	Y	$5.00
Hawaii	Y	$3.00
Idaho	Y	$5.00
Illinois	Y	$2.00
Indiana	Y	$5.00
Iowa	Y	$3.00
Kansas	Y	$2.00
Kentucky	Y	$5.00
Louisiana	Y	$5.00
Maine	Y	$5.00
Maryland	Y	*
Massachusetts	Y	$3.00
Michigan	y	$5.00
Minnesota	Y	$5.00
Mississippi	Y	$6.00
Missouri	N	-
Montana	N	-
Nebraska	N	-
Nevada	Y	$8.00
New Hampshire	Y	$3.00
New Jersey	Y	$5.00
New Mexico	N	-
New York	N	-
North Carolina	Y	$5.00
North Dakota	Y	$3.00
Ohio	Y	$3.00

State	Co-Pay Charged	Amount Charged
Oregon	Y	$10.00
Pennsylvania	Y	$5.00
Rhode Island	Y	$3.00
South Carolina	Y	$5.00
South Dakota	Y	$2.00
Tennessee	Y	$3.00
Texas	Y	$3.00
Utah	Y	$5.00
Vermont	N	-
Virginia	Y	$5.00
Washington	Y	$10.00
West Virginia	Y	$5.00
Wisconsin	Y	$7.00
Wyoming	N	-
Federal Bureau of Prisons	Y	$2.00
Average		$5.00

* Co-pay determined by provider, no specific $ amount noted