

STATE OF NEBRASKA
OFFICE OF INSPECTOR GENERAL OF CORRECTIONS

State Capitol, P.O. Box 94604
Lincoln, Nebraska 68509-4604
402-471-4215
Toll Free: 1-800-742-7690
oigcorrections@leg.ne.gov

Death of NCCW inmate Niccole Wetherell

SUMMARY OF AN INVESTIGATIVE REPORT

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Doug Koebernick, Inspector General
Zach Pluhacek, Assistant Inspector General

EXECUTIVE SUMMARY

On Feb. 26, 2021, 40-year-old Nicole Wetherell died in the medical unit at the Nebraska Correctional Center for Women (NCCW) in York. Incarcerated since she was a teenager, Ms. Wetherell had been diagnosed with cervical cancer in late 2019 after undergoing her first Pap smear in approximately nine years. By the time she died, cancer had spread to her brain, lungs, kidneys, and liver.¹

This report documents an investigation into Ms. Wetherell's death by the Office of Inspector General of the Nebraska Correctional System (OIG). Among other duties, the OIG is tasked with investigating deaths and serious injury incidents in the Nebraska Department of Correctional Services (NDCS), with the intent of promoting accountability and identifying possible systemic reforms.²

The OIG reviewed medical and other records from Ms. Wetherell's incarceration, letters she wrote during her illness, and the transcript of the required grand jury investigation into her death, and conducted interviews with inmates and staff familiar with her care. At the conclusion of this investigation, the OIG found the following:

- NDCS did not track when patients were due for preventative care;
- Delays in implementing an electronic health records (EHR) system have left the Department in violation of state statute.

The OIG recommends that NDCS take the following actions:

- Promptly ensure all facilities have a method of tracking when patients are due for preventative and chronic care;
- Provide the Legislature's Appropriations, Judiciary, and Health and Human Services committees with a detailed update on the Department's progress in implementing EHR; and

¹ Her death was also reviewed by a grand jury and the work of the grand jury is reviewable by the public.

² Neb. Rev. Stat. § 47-901.

- If EHR is not expected to be fully implemented by July 31, 2025, cease efforts to build an EHR system internally and request funds in the next biennial budget to purchase a system from an outside vendor.

BACKGROUND

Niccole Wetherell

Ms. Wetherell, age 40, was serving life in prison for her role in a man's stabbing death in Bellevue in 1998, when she was 18 years old. She served the entirety of her sentence at the women's prison in York.

By her mid-30s, she had become a leader and somewhat of a model inmate, receiving her associate's degree through a program with York College, serving as a peer mentor and volunteering with the service dog training program Domesti-PUPS. The year before her cancer diagnosis, she delivered a TEDx talk to fellow inmates and staff, saying she and her fellow "lifers" tried to give hope in what feels like a hopeless situation, and paraphrasing Holocaust survivor Victor Frankl: "When we can no longer change our situation, we are challenged to change ourselves."³

Diagnosis, Treatment, and Death

Prior to 2019, Ms. Wetherell received her last documented Pap smear in September 2010, after she notified medical staff at NCCW that she was experiencing abnormal periods. According to her medical file, the test was negative for malignancy or the type of abnormal cells that would indicate possible cancer. (Years later, she told a doctor at Nebraska Medical Center that she had never actually received the results of this test but assumed "no news is good news" since that is typically what happens at NCCW.)

In 2015, Ms. Wetherell began experiencing irregular bleeding, which prompted her to temporarily discontinue her three-month Depo-Provera injections. (She had been on Depo-Provera, a contraceptive and hormone therapy medication, since 2004.) She resumed the shots

³ Wetherell, N. [TEDx Talks]. (2018, June 26). *This is Us* [Video]. YouTube. <https://www.youtube.com/watch?v=i9tkOlrL2RU>.

again later in 2015, then discontinued them again in 2018 due to having a family history of osteoporosis and concerns that the shots may put her at increased risk. Her irregular bleeding returned, along with lower back cramps and foul discharge, according to an inmate interview request she sent to medical staff in June 2019. Late the following month, she requested a Pap smear, which was performed on Aug. 8, 2019.

Test results from the August 2019 Pap smear showed a high grade abnormality of cells. During a follow-up visit at an outside clinic, an obstetrician-gynecologist who examined her “was immediately able to see the cancer on my cervix just by looking at it,” she later wrote in a letter. Biopsy results indicated she was positive for squamous cell carcinoma, a type of skin cancer which is the most common form of cervical cancer, and is highly survivable if detected early.⁴ However, imaging showed Ms. Wetherell had a mass as large as 6.8 centimeters, with indications it had spread to surrounding tissue.

She began radiation therapy, and it was determined in February 2020 that she would not be a good candidate for removal surgery due to the size and persistence of her tumor. She underwent multiple cycles of chemotherapy, but by late 2020, she knew her cancer would not be going away.⁵ She began palliative care following another visit to the hospital in November 2020.

Ms. Wetherell wrote a letter in January 2021 after learning her cancer would be terminal and determining she was ineligible for medical parole due to having a life sentence.⁶ She died a month later, on Feb. 26, 2021, after spending a week in a hospice-type arrangement in the prison’s skilled nursing facility. A friend and fellow “lifer,” who works as a medical porter and has received hospice training, helped care for her during that final week. The friend said she slept in a chair next to Ms. Wetherell’s bed, waking every two hours to help reposition her. “Her biggest fear was being alone at night,” her friend said.

By the time she died, cancer had spread throughout much of Ms. Wetherell’s body. The forensic pathologist who conducted her autopsy told members of a York County grand jury which investigated her death that cancer had metastasized throughout her brain, both lungs, liver, both

⁴ American Cancer Society, <https://www.cancer.org/cancer/cervical-cancer/detection-diagnosis-staging/survival.html>.

⁵ Inmate Contact Notes, Nebraska Inmate Case Management System (NICaMS), Oct. 2, 2020.

⁶ Neb. Rev. Stat. § 83-1,110.02.

kidneys, and uterus, and that her pelvis was filled with so much cancer that the doctor was unable to distinguish her bladder, uterus, fallopian tubes, and ovaries. Her cause of death was metastatic cervical cancer.⁷

EXAMINATION OF ISSUES

Gap in Preventative Care

According to the Mount Sinai Health System:

“Cervical cancer usually develops slowly. It starts as a precancerous condition called dysplasia. This condition can be detected by a Pap smear and is nearly 100% treatable. It can take years for dysplasia to develop into cervical cancer. Most women who are diagnosed with cervical cancer today have not had regular Pap smears, or they have not followed up on abnormal Pap smear results.”

The federal Office on Women’s Health recommends that women ages 30-65 receive a Pap test every three years and/or a test for human papillomavirus (HPV) every five years. NDCS policy states female patients should have a pap smear every three years, unless more frequent screening is indicated.⁸ (Women previously were advised to receive a Pap test every year; this changed in part because of how long cervical cancer usually takes to develop.⁹)

In 2019, Ms. Wetherell began experiencing severe periods, bouts of extreme pain which lasted weeks, and other complications, according to a letter she wrote at the time. Nonetheless, the Pap smear she ultimately received was performed at her own request.

After she died, the forensic pathologist who conducted her autopsy noted to the grand jury that Ms. Wetherell had not received a Pap smear for nearly a decade. Asked if there was anything that could have helped extend Ms. Wetherell’s life, the pathologist responded, “I mean, from a

⁷ Transcript of York County grand jury proceedings, on file in office of York County Clerk of District Court.

⁸ NDCS Policy 115.05, “Health Screenings, Examinations, Appraisals & Reviews”.

⁹ <https://www.acog.org/womens-health/experts-and-stories/the-latest/why-annual-pap-smears-are-history-but-routine-ob-gyn-visits-are-not>.

general pathology standpoint ... probably would have had a Pap smear sooner than that and more frequent surveillance, and I don't know the reasons why there was that ten-year gap.”

Asked why Ms. Wetherell went so long without a Pap smear, the nurse practitioner who is the primary care provider at NCCW told the OIG that until recently, because of the Department's lack of electronic health records, the facility medical department had no method of tracking when patients were due for Pap smears and other preventive care. As a result of Ms. Wetherell's case, the nurse practitioner said, she began tracking patient visits with a Microsoft Excel spreadsheet. The facility also uses Excel to track chronic care.

NDCS policy does not indicate who — the provider or the patient — is responsible for making sure regular testing occurs. The fellow inmate who helped care for Ms. Wetherell during her final days said the facility medical department was very attentive to her medical needs following her diagnosis and that “both sides have an obligation” to track preventative care.

Many incarcerated individuals have never been responsible for attending to their own physical and mental health outside of a prison setting. This likely includes Ms. Wetherell, who was imprisoned since she was 18. There are more than 200 people in NDCS custody who are under age 22, including three 16-year-olds and five 17-year-olds as of July 2022.¹⁰ Nearly 200 more are over age 65, including 11 people in their 80s. Also as of July 2022, the Department had identified 110 people in its custody with a serious mental illness, 39 with traumatic brain injury, and 51 with developmental disability.¹¹

Electronic Health Records (EHR)

State statute requires the Director of Correctional Services to “Establish and administer policies that ensure that complete and up-to-date electronic records are maintained for each person committed to the department and which also ensure privacy protections.” This explicitly includes medical records.¹² This language has been in statute since 2015 with the passage of LB 598, the

¹⁰ “Corrections Active: NCYF > DCS Inmates Under 22 Years of Age,” NICaMS data accessed via Oracle Business Intelligence.

¹¹ “Corrections Active: DCS > All Current Vulnerable Population Members,” NICaMS data accessed via Oracle Business Intelligence.

¹² Neb. Rev. Stat. § 83-173.

same act which created the Office of Inspector General. The OIG also discussed the need for electronic health records in its first annual report in 2016.

However, seven years after the enactment of LB 598, virtually all inmate medical records are still kept in paper form. These medical files contain a jumble of charts, paper “kites” from inmates requesting medications or clinic visits, and handwritten nurses’ and physicians’ notes, which are often barely legible (see Figure 1).



In 2017, NDCS requested and was appropriated \$150,000 for a one-time consultant fee to plan for implementation of EHR.¹³ However, in 2018, Director Scott Frakes testified in opposition to a bill that would have appropriated a further \$500,000 for the

Department to implement EHR.¹⁴ He told the Legislature’s Appropriations Committee the bill was premature, but that the Department was already in the process of acquiring a system, that the medical director and his staff were “working to identify suitable products and developing a proposal for inclusion in our budget request for the upcoming biennium.” At that point, he said, the Department could “move towards implementation, contract process and implementation in the summer of 2019.”

Figure 1: Nicole Wetherell's NDCS medical file

¹³ Appropriations Committee proposed biennial budget, FY 2017-18 and 2018-19, <https://nebraskalegislature.gov/pdf/reports/fiscal/2017proposed.pdf>.

¹⁴ Appropriations Committee hearing, Feb. 13, 2018. Transcript at <http://www.nebraskalegislature.gov/FloorDocs/105/PDF/Transcripts/Appropriations/2018-02-13.pdf>.

In response to questions from the OIG at the time, NDCS said it had diverted the original \$150,000 intended for an EHR consultant to help fund a new electronic medication administration record (eMAR) system.¹⁵ According to the NDCS response, Dr. Harbans Deol, the Department's new chief medical officer, had determined that an EHR system did not require customization and "can be bought commercially, installed fairly quickly, and at a much lower cost than the previous approach (\$2 million vs. \$8 to \$10 million) without a need to hire a consultant." The Department initiated a request for information (RFI) for this purpose in October 2018, and received responses from 10 vendors.¹⁶ The OIG was able to review project plans for some of those responses, which offered implementation timelines ranging from less than two months to a little over a year.¹⁷ In the NDCS Strategic Plan from September 2018, it stated that "NDCS will fully implement electronic health records" but did not specify when that would be done.¹⁸

In 2019, NDCS requested and was appropriated \$1,346,927 to implement an EHR system, and an additional \$97,425 to cover ongoing expenses the following year.¹⁹ At the time, the Department's stated plan was still to utilize a commercial system. In November of that year, the Department told the OIG that a request for proposals (RFP) to begin the process of acquiring the system would be submitted to the Department of Administrative Services on Nov. 19, 2019.²⁰ The RFP was never opened for submissions.

During the 2021 budget cycle, NDCS requested and was appropriated a further \$744,736 for EHR, saying it had decided against purchasing one of the many pre-existing systems available on the market and would instead work with the Office of the Chief Information Officer (OCIO) to develop the system in-house.²¹ "After reviewing information received through the State of Nebraska's RFI (Request for Information) process, NDCS identified its needs could be best met, as well as the most cost effective approach, by developing the system with existing OCIO

¹⁵ Email from NDCS Executive Officer Jeff Wooten, Feb. 21, 2018.

¹⁶ Email from NDCS purchasing staff, Dec. 23, 2021.

¹⁷ See RFI responses from SapphireHealth, NextGen, and Meditech.

¹⁸ 2019-2023 Strategic Plan, Sept. 2018.

¹⁹ State of Nebraska FY2019-20/2020-21 Biennial Budget Report, Legislative Fiscal Office, <https://nebraskalegislature.gov/pdf/reports/fiscal/2019budget.pdf>.

²⁰ Email from NDCS Deputy Director for Administrative Services Robin Spindler, Nov. 7, 2019.

²¹ State of Nebraska FY2021-22/2022-23 Biennial Budget Report, Legislative Fiscal Office, <https://nebraskalegislature.gov/pdf/reports/fiscal/2021budget.pdf>.

resources and contracting additional support as needed,” the Department stated in its budget request. The in-house EHR system is being built within the Department’s existing Nebraska Inmate Case Management System (NICaMS).

Included in its rationale for the additional funds, NDCS noted the following: “The ability to forecast the next appointment date will enhance the provision of care and decrease the number of missed visits.”²²

In October 2021, the OIG requested an update on the EHR project from Dr. Deol. Responding on Dr. Deol’s behalf, NDCS Chief of Staff Laura Strimple said the first components of the EHR system went live on June 30, 2021. However, these components were limited to a behavioral health module and an intake appraisal form, and did not include any features related to routine inmate medical care. It is unclear when the system will be fully implemented. “A delivery date has not been established, but a substantial core of the project will be completed in three years,” Strimple stated in her email response to questions from the OIG.

The OIG has since learned that this three-year timeline may not be attainable. It is the OIG’s understanding that there is a belief that components of the system will eventually be able to interface directly with EHR systems used by outside providers, although it is unclear when and to what extent this will actually happen.

In the meantime, medical staff who spoke with the OIG said the Department’s reliance on paper records has been a continual frustration. One staff person described spending significant amounts of time on the phone or using a fax machine to transmit information which could easily be shared via a commercially available EHR system. This staff person also said potential applicants for medical positions at NDCS are turned off of working for the Department due to its lack of EHR. And custody staff described ferrying records containing sensitive medical information back and forth between facilities and outside providers when escorting inmates, which raises privacy concerns.

²² Operations and Aid Budget Request by Department of Correctional Services, 2021-2023 Biennial Budget, submitted Sept. 15, 2020.

FINDINGS AND RECOMMENDATIONS

Findings

- 1. NDCS did not track when patients were due for preventative care.** In Ms. Wetherell's case, the forensic pathologist who performed her autopsy speculated that a timely Pap smear could have detected her cancer sooner and possibly would have helped extend her life.
- 2. Delays in implementing an electronic health records (EHR) system have left the Department in violation of state statute.** Nebraska law specifically requires the Director of Correctional Services to "administer policies that ensure that complete and up-to-date electronic records," including medical records, are kept for each person committed to NDCS. Seven years after this requirement was enacted, virtually all the Department's medical records are still in paper form.

Recommendations

After considering the findings from this report, the OIG recommends that NDCS take the following actions:

- 1. Promptly ensure all facilities have a method of tracking when patients are due for preventative and chronic care and that the method of tracking follows them should they transfer to a different facility.** Preventative and chronic care should also be consistently provided according to these schedules. This should be completed by Nov. 1, 2022.

NDCS Response: Modify – it will take 90 days to ensure full compliance with this recommendation. Will agree to a completion date of 12/31/22.

OIG Response: We accepted the modification.

2. Provide the Legislature’s Appropriations, Judiciary, and Health and Human Services committees with a detailed update on the Department’s progress in implementing EHR. This update should include a timeline for each phase of implementation, and should be submitted to the Legislature no later than Nov. 1, 2022.

NDCS Response: Reject

3. If EHR is not expected to be fully implemented by July 31, 2025, the Department should cease its efforts to build an EHR system internally and request funds in the next biennial budget to purchase a system from an outside vendor. This deadline is three years after the date of this report and approximately 10 years after the enactment of the state statutory requirement related to electronic medical records.

NDCS Response: Accept