

Stanley Ligas, et al.
v.
Felicia Norwood, et al.
No. 05-4331

Sixth Annual Report of the Monitor

December 31, 2018

Respectfully Submitted:

Ronnie Cohn

Monitor

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Stanley Ligas, et al. v. Felicia Norwood, et al.

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I. INTRODUCTION

This Sixth Annual Report of the Monitor is respectfully submitted to the Court, Parties, and Intervenors in accordance with Paragraph 34 of the Ligas Consent Decree (Decree), which was approved and filed by the Court on June 15, 2011. The Decree requires that:

“The Monitor shall file annual reports to the Court, which shall be made publicly available. Such reports shall include the information necessary, in the Monitor’s professional judgment, for the Court, Plaintiffs and Intervenors to evaluate Defendants’ compliance or non-compliance with the terms of the Decree.”

As described in the Plaintiffs’ current Fact Sheet:

“Ligas v. Norwood (formerly Ligas v. Maram) is a lawsuit filed in 2005 by nine people with developmental disabilities (Plaintiffs) who reside in large private State-funded facilities (ICFs-DD) or who were likely to be placed in such facilities if they did not get community services. Plaintiffs wanted to receive community services, but their requests had been denied by the State of Illinois. In 2006, a Judge certified the case as a class action. (Note that people living in State-operated Developmental Centers are not part of the class action.) Prior to trial, the parties reached an agreement, but at a Fairness Hearing in July of 2009, the Judge found that the class definition was too broad as it included people

who did not desire to live in the community. Accordingly, the Judge did not approve the agreement and de-certified the class. In January of 2011, the Plaintiffs, Defendants and the Intervenor (representing those who wished to remain in ICFs-DD) reached a new agreement that all could support. The Judge held a Fairness Hearing on June 15, 2011 and approved the proposed Consent Decree.”

The first Ligas Monitor, Tony Records, was appointed by the Court on July 19, 2011. Upon his retirement, the current Monitor’s appointment was effective on July 1, 2015. The first three Annual Reports of the Monitor were submitted by Mr. Records in 2012, 2013 and 2014. Based upon the mid-year timing of the current Monitor’s appointment, the fourth and fifth Annual Reports were submitted by the current Monitor in 2016 and 2017. All of these reports are available on the website of the Department of Human Services (DHS). <http://www.dhs.state.il.us/page.aspx?item=64489>

The Monitor recognizes, with gratitude, that ongoing collaboration with the Defendants; Plaintiffs’ counsel and representatives; Counsel for the Intervenor; family and advocacy associations; service providers and provider organizations; the Illinois Council on Developmental Disabilities; service coordinators and others has been critical to the completion of the current report. Communication with beneficiaries of the Decree and their families has also been of great value to the Monitor in evaluating the Decree’s effectiveness at each stage of its implementation.

In addition, it is worthy of note that although the Defendants have remained out of compliance in the areas described herein, there has been some progress following the Court's Order in June, 2018. Similarly, although there have been recent significant changes within the Ligas Implementation Team at the Division of Developmental Disabilities, those remaining on the team continue to reply promptly to the Monitor's requests and all vacancies are scheduled to be filled in early January.

II. REVIEW OF COMPLIANCE FINDINGS TO DATE

A. Summary of the Monitor's Fourth and Fifth Annual Reports

The Monitor's Fourth and Fifth Annual Reports cite the lack of a State Budget for Fiscal Years (FY) 2016 and 2017 in Illinois and describe the uncertainties this created for beneficiaries of the Consent Decree and their families as well as for advocates, staff and providers of all types of services received by the Decree's beneficiaries. The joint efforts of the Plaintiffs, Defendants, Intervenor and Monitor in 2015 and 2016 resulted in Court Orders approved by United States District Judge Sharon Johnson Coleman which required, in part:

“The Comptroller shall continue to timely approve and make payments for services, programs and personnel, at a level and within the time period that such payments were made in Fiscal Year 2016, that are necessary to comply with the Consent Decree and Implementation Plans. The Court's previous orders of June 30, 2015 (Dkt. #597), August 18, 2015 (Dkt. #610) and September 1, 2015 (Dkt. #624) are incorporated herein and shall continue in effect. This Order shall remain in effect until the earlier of the effective date of the Fiscal Year 2017 budget or July 1, 2017, or until further order of this Court.”

This Order also required monthly reports to the Monitor “to enable her to evaluate and to advise the Court and the Parties regarding the State's compliance with the Consent Decree and Orders entered by this Court” and that “if at any time the State believes that it may not be able to comply with any provision of the Consent Decree or this Order, the State must immediately bring the State's potential non-compliance to the attention of

the Court, the Monitor, the Plaintiffs and the Intervenors before such non-compliance occurs.”

At the time that the Fifth Annual Report of the Monitor was issued, the Defendants had continued to maintain funding at the same level paid in FY 2015 which, though in compliance with the Court Orders and clearly necessary to continue services, remained inadequate as reported in both the Fourth and Fifth Annual Reports.

Both the Fourth and Fifth Annual Reports of the Monitor emphasize the fact that low wages, particularly those paid to Direct Support Professionals (DSPs) but including those paid to others providing services to beneficiaries of the Consent Decree, resulted in a staffing crisis for providers of services in their efforts to recruit, train and maintain adequate staff. At the time of the writing of the Fifth Annual Report in January, 2017 there had been no relief in terms of salary increases, DSP vacancy rates or increases in rates paid to providers since 2008 while operating costs continued to increase.

Other issues, which were first noted in the Fourth Annual Report and continued into the following year include, but were not limited to:

1. Delays in initiation of services for Class Members once they have been selected from the Prioritization of Urgency of Need for Services (PUNS) list;

2. Limited availability of small Community Integrated Living Arrangements (CILAs) in some geographic areas as well as for individuals with more intense medical, behavioral or physical needs;
3. Inadequate availability of flexible, person-centered, integrated day activities or employment for individuals seeking such opportunities; and
4. Inadequate monitoring of the quality of services provided to beneficiaries of the Consent Decree.

The negative impact upon beneficiaries of the Consent Decree of the inadequacy of both funding of services and of the processes put in place by the Defendants to monitor the quality of services is described in detail in the Fifth Annual Report. For example, providers' quotes therein include: "We do not have enough staff to meet the needs of the clients"; "A huge shortage in staffing ... has created the need to redirect focus to maintaining personal care ... rather than to skill acquisition and skill retention"; "Our group homes run with minimal staffing, which does not provide opportunities for community integration" and "Given the current residential and nursing rates, we are unable to support individuals with more advanced nursing or behavioral needs."

Quotes from parents include: "My daughter has experienced five trips to the Emergency Room over the past eighteen months, is not being provided with the opportunities included in her ISP, has only one staff member on

most shifts to meet the needs of all four women who live together and have significantly differing levels of need, and isn't always provided with healthy food.”; “My daughter lives in an ICF-DD. ... Due to her limited communication skills and complex medical needs, it takes several months for a new staff member to get to know and understand her. More important, it takes several months for my daughter to feel comfortable with the new staff person who must help her with her most personal needs. ... The constant turnover of staff and use of temporary staff has also caused her to suffer increased anxiety””; “My son lives in a CILA and has autism, an anxiety disorder and limited verbal skills. Routine and predictability are extremely important for my son and the lack of these results in his becoming very anxious, fearful and frustrated. Until last year, my son lived in a four-person CILA, but then the operating agency had to consolidate and increase the capacity of its CILAs in order to cut costs. Moving to a new home with more residents is very confusing to him and I am concerned for his safety and the safety of the other residents because it is much more difficult for a single staff person to adequately supervise six or eight individuals with significant developmental disabilities rather than four.”

It is worthy of note that the widespread concern with the wages paid to DSPs, who provide what has been aptly described as “front line services” to those living in CILAs and ICFs, resulted in both chambers of the Illinois Legislature passing bills in the fall of 2016 to provide “livable wages” to

DSPs. However, this legislation was vetoed by the Governor and an attempted override of the veto was unsuccessful. This issue was addressed more successfully a year later and is discussed further in Section III below.

Finally, the Fifth Annual Report repeats the Monitor's findings of non-compliance related to Paragraphs 4 and 5 of the Consent Decree and adds information regarding the Monitor's concerns about the Ligas 2016 Implementation Plan, which did not address the staffing crisis and was therefore filed with the Court by the Defendants alone, without a joint motion including the Plaintiffs and Intervenors.

Actions taken in response to the Monitor's Fifth Annual Report and the Defendants' response to that report are delineated in Section III below as well as in some of the specific subject matter areas herein.

The Ligas Consent Decree, as well as the Monitor's Fourth and Fifth Annual Reports and the Defendants' responses to these reports are available on the website of the Department of Human Services (DHS) <http://www.dhs.state.il.us/page.aspx?item=66987>. The Equip For Equality website (<https://www.equipforequality.org/>) also includes information related to the Ligas litigation and the Monitor's reports.

B. Findings for January, 2017 through December, 2018

Resources and Capacity

Paragraph 4 of the Consent Decree requires in part:

“Defendants shall implement sufficient measures to ensure the availability of services, supports and other resources of sufficient quality, scope and variety to meet their obligations to such Individuals under the Decree and the Implementation Plan consistent with such choices.”

“Funding for services for each Individual with Developmental Disabilities will be based on the Individual’s needs ... regardless of whether the Individual chooses to receive services in an ICF-DD or in a Community-Based setting.”

“Resources necessary to meet the needs of Individuals with Developmental Disabilities who choose to receive services in ICFs-DD shall be made available and such resources will not be affected by Defendants’ fulfillment of their obligations under the Decree. ...”

Paragraph 5 of the Consent Decree requires, in part:

“Annual budgets submitted by Defendants on behalf of their agencies shall request sufficient funds necessary to develop and maintain the services, supports and structures described in the Decree, consistent with the choices of Individuals with Developmental Disabilities, including Class Members. Defendants shall take steps sufficient to implement funding mechanisms that facilitate transition among service settings.”

The issues related to the Consent Decree's requirements of "resources and capacity" remain unresolved during the time period of 1/2017 through the date of the current report. However, there have been significant actions taken toward achieving compliance which are detailed below in Section III. As related primarily to resources and capacity, the initial responses to the Monitor's Fifth Annual Report and subsequent Court documents included:

- 2/24/2017- Defendants' Response to Fifth Annual Report of the Monitor, in which Defendants state that "this Response focuses solely on the issues pertaining to Resources and Capacity" as "the Defendants were found to be in substantial compliance with all other aspects of the Decree." The Monitor did find that the Defendants' had complied with transitioning the required numbers of Class Members from the PUNS list to receiving services by the dates specified in the Consent Decree, as well as with implementing both court ordered payments to providers of services at the FY15 level and reports to the Monitor on that matter. However, there still remained the other issues of noncompliance noted above and significant areas of concern and uncertainty related to monitoring of services, provision of crisis services, and changes in the processes of person-centered planning, all of which are described below. The Defendants also indicated there was no "systemic staffing crisis or decrease in service quality for either

CILA or ICF/DD providers”, though it was not clear how this was determined as the only monitoring of compliance completed by the Defendants was of Waiver Performance as opposed to entitlements of the Consent Decree.

- 4/7/2017- Plaintiffs’ and Intervenor’s Joint Motion to Enforce the Consent Decree cited breaches of the Consent Decree, the Monitor’s findings of noncompliance, declarations from providers of services as well as from subject matter experts, families of Consent Decree beneficiaries and the former Monitor. The motion highlighted the impact upon beneficiaries of the Consent Decree caused by inadequate funding of services as related to both wages and reimbursement rates, the resulting staffing crisis, issues related to person-centered services and community integration, health and wellbeing, predicted reductions and closures within the service delivery system. The Plaintiffs and Intervenor’s requested that the Court find the Defendants out of compliance and enter an Order to enforce the Consent Decree with a detailed schedule to develop a compliance plan followed by monthly reports to the Plaintiffs, Intervenor’s and Monitor regarding progress in implementing the plan.

- 6/23/17- Defendants' Response to Plaintiffs' and Intervenor's Joint Motion to Enforce Consent Decree includes the argument that Paragraph 4 of the Decree "does not obligate the State nor empower this Court to increase rates based on the facts Movants allege" and that Paragraph 4 "is intended to accomplish three goals: (1) set out Defendants' obligation to make available the resources necessary to meet the needs of Individuals with Developmental Disabilities (i.e. both Class Members and Intervenor's); (2) set out Defendants' obligation to not lessen their commitment to Intervenor's residing in ICF-DDs and not divert resources devoted to serving Intervenor's to meeting Defendants' new obligation to expand opportunities for Class Members to obtain community-based services; and (3) make obligations (1) and (2) explicitly linked to and consonant with Defendants' obligation to comply with the Decree and existing Federal Law." It is further stated that "during the negotiations of the Decree, Defendants insisted that the Decree would not obligate them to provide new or a higher level of services than are required to comply with federal law" and that Defendants will be in compliance with the Decree- as to both the types of services and the funding for those services-so long as Defendants remain in compliance with Federal law."

➤ 7/14/17-Plaintiffs’ and Intervenor’s Reply in Support of Their Joint Motion to Enforce the Consent Decree also quotes Paragraph 4 of the Decree in describing the Defendants’ service obligations, as follows: “The choices of Individuals with Developmental Disabilities, including Class Members, to receive Community-Based Services or placement in a Community-Based Setting or to receive ICF/MR services in an ICF-DD will be honored; ... Defendants shall implement sufficient measures to ensure the availability of services, supports and other resources of sufficient quality, scope and variety to meet their obligations to such Individuals under the Decree and the Implementation Plan consistent with such choices.” It is noted that while Paragraph 4 “does not explicitly provide for court-ordered rate increases ... consent decrees need not contain or limit the remedies that a court can order upon its violation.” Further, it is stated: “By agreeing to maintain the services provided under the Consent Decree, Defendants took on the obligation of paying the cost of those services knowing that, like all costs, they would not remain stagnant over time. By refusing to pay the actual cost of the services, Defendants are pushing those costs onto private providers, most of which are non-profit organizations with little capacity to absorb the costs that the State refuses to pay. That shifting of the financial burden has caused a reduction of the services required by the Decree.”

- 7/27/17- Defendants' Response to Plaintiffs' and Intervenor's Reply in Support of Their Joint Motion to Enforce Consent Decree refutes, among other issues raised, the arguments made by Plaintiffs and Intervenor regarding: interpretations of Paragraph 4 of the Consent Decree; the statement that "the stagnation of DSP rates has led to increased DSP vacancies and turnover, which in turn has resulted in decreased services"; the Movants' asking for "an increase in rates that ranges from \$207 million to over a billion dollars in additional spending each year. Although there is now a budget for FY18, the existence of a budget does not change the impact of the State's overall fiscal condition on this case, and does not include additional funds amounting to hundreds of millions or up to more than a billion additional dollars to satisfy Movants' demand for increased rates."

- 8/2/17- Defendants' Supplemental Response to Plaintiffs' and Intervenor's Reply in Support of Their Joint Motion to Enforce Consent Decree indicates an effort to address the "Movants' demand" that "the Court order Defendants to increase the rates paid to providers, particularly the rates that cover the wages paid to direct support professionals. ... Yet, as Movants acknowledge, the recently passed state budget does just that: the budget allocates an additional \$53.4 million to increase the

rates for DSP wages, and that increase exceeds the rate of inflation over the relevant time period. Thus, Movants no longer have a basis for their essential claim that Defendants are out of compliance with the Decree. The overall DSP wage is \$10.71/hour. The additional \$53.4 million included in the FY18 budget will increase by \$0.75/hour the DSP wage component of the provider reimbursement rate ... an increase of 7%. That 7% increase exceeds the inflation rate over the relevant time period, which is 2014 to 2017, and which has seen a cumulative inflation rate of 3.5%.” Additional details of the inflation calculations and the significance of the 2014-2017 time period are provided and the conclusion drawn is that “even if one goes back to 2012, when Defendants had just begun implementing the Decree, the 7% increase in the DSP rate still exceeds the cumulative inflation rate, which was 6.7% between 2012 and 2017. ... Defendants respectfully request that the Court deny Plaintiffs’ and Intervenors’ Joint Motion to Enforce Consent Decree.”

- 8/11/17- Judge Sharon Johnson Coleman entered the following Order:

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**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

STANLEY LIGAS, et al.,	)	
	)	
Plaintiffs,	)	
	)	Case No. 05 cv 4331
v.	)	
	)	Judge Sharon Johnson Coleman
FELICIA NORWOOD, et al.,	)	
	)	
Defendants.	)	

ORDER

Coming before the Court for hearing is plaintiffs' and intervenors' Joint Motion to Enforce the Consent Decree [666-1]. The instant motion stems from a Consent Decree entered into by the parties on June 15, 2011, after the Court certified a class and approved the Consent Decree. Defendants, officials of Illinois Department of Healthcare and Family Services and the Illinois Department of Human Services, assert that the State is in substantial compliance with the Consent Decree. For the reasons stated herein, this Court grants the motion.

Statement

Plaintiffs are individuals with developmental disabilities living at home or in intermediate care facilities for the developmentally disabled ("ICF-DD") who want to live in community integrated living arrangements ("CILAs) or other community settings. The intervenors are individuals with developmental disabilities living in ICF-DDs and want to remain in those facilities. Plaintiffs and intervenors assert that the State is in violation of the Consent Decree by failing to provide resources of sufficient quality, scope, and variety to provide developmentally disabled individuals with community-integrated care to the highest degree possible. The plaintiffs and intervenors must demonstrate a violation of the court order by clear and convincing evidence. *See Bailey v. Roob*, 567 F.3d 930, 934 (7th Cir. 2009).

Since the United States Supreme Court's decision in *Olmstead v. L.C. ex rel. Zimring*, "[s]tates are required to provide community-based treatment for persons with mental disabilities when the State's treatment professionals determine that such placement is appropriate, the affected persons do not oppose such treatment, and the placement can be reasonably accommodated, taking into

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account the resources available to the State and the needs of others with mental disabilities.” 527 U.S. 581, 607 (1999). In Section 4 of the 2011 Consent Decree at issue here, Illinois committed to providing these services.

Plaintiffs and intervenors presented evidence in the form of a report by economist, Elizabeth T. Powers, declarations from ICF-DD and CILA providers, and representatives of developmentally disabled individuals impacted by the Consent Decree. The State pays private organizations with state and federal money to provide CILA and ICF-DD services. In Illinois, approximately 11,000 individuals with developmental disabilities live in CILAs and 5,000 in ICF-DDs. The evidence presented demonstrates that the actual costs of operating CILA and ICF-DD facilities has increased substantially since the entry of the Consent Decree and wages for Direct Support Professionals (“DSPs”) has stagnated causing a staffing crisis that is inhibiting care and negatively impacting the individuals protected by the Consent Decree.

Defendants assert that the provision of services has not been reduced by the State and thus the State contends that it remains in substantial compliance. Further, defendants assert that the FY 2018 budget allocates an additional \$53.4 million to these services. Plaintiffs’ economist, Powers, advises that a 25% wage increase for DSPs would reduce turnover by a third. Defendants contend that such an increase is not financially feasible considering the State is facing \$14 billion in bills that are in arrears after the two year budget impasse.

Relying on *O.B. v. Norwood*, 838 F.3d 837 (7th Cir. 2016), defendants argue that this Court is does not have the authority to order an increase in wages. This Court agrees. In that case, the Seventh Circuit Court of Appeals stated that “if the shortage is of nurses willing to work at the reimbursement rates set by HFS, we could not order the agency to eliminate the shortage by raising those rates.” *O.B.*, 838 F.3d at 842. Plaintiffs and intervenors seemed to recognize this limitation, albeit reluctantly, asserting instead that the relief they are seeking is a plan from defendants to bring the State into compliance with the Consent Decree.

At the hearing, the Court also heard from the Court Monitor, who reports that defendants are not in substantial compliance with the Consent Decree. The Monitor reports that budget impasse of the preceding two years has resulted in a tangible reduction of services to plaintiffs and intervenors due to the rising costs and frozen funding. Moreover, the State has not presented any plan for compliance beyond a \$0.75 hourly wage increase for DSPs for FY2018 (from the allocation of \$53.4 million in the new budget).

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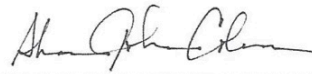
The Monitor referred to a State working group that had been established in 2014 to address this very issue. This Court believes that reaching a mutually agreeable long-term plan accounting for both the resources of the State and the needs of those with developmental disabilities would benefit from a revival of a State working group to devise creative solutions to the issue of compliance with the Consent Decree.

Accordingly, this Court finds that defendants are not in compliance with the Consent Decree by failing to provide the resources of sufficient quality, scope, and variety based on the ample evidence presented to the Court that individuals protected by the decree have experienced a reduction of services and have suffered substantially as a result. The dire financial situation of the State of Illinois and the attendant competing demands for resources are not lost on the Court. The Court directs that State to devise a plan to address the issues causing the reduction in services and to bring the State into substantial compliance.

IT IS SO ORDERED.

ENTERED:

Dated: August 11, 2017



SHARON JOHNSON COLEMAN
United States District Judge

- 8/12/17- Plaintiffs' Counsel issued a statement indicating that "Federal Judge orders Illinois to develop a plan to provide critical resources for people with developmental disabilities." (Attached to the end of this report.)

Class Member Lists

Paragraphs 8 and 9 of the Consent Decree require that the defendants maintain a statewide database in which all Class Members are enrolled and which, along with waiting list data, is promptly revised. The Implementation Plan is required to include information regarding the adequacy of the PUNS (Prioritization of Urgency of Needs for Service) database.

Paragraph 2 of the Consent Decree requires a list of Class Members who qualify for Medicaid Waiver services, live in an ICF-DD with nine or more residents and have affirmatively requested community-based services or placement in a community-based setting. Another list is required of Class Members who qualify for Medicaid Waiver services, live in a family home and are in need of and have affirmatively requested home and community-based services or services in a community based setting. The individuals on this list are known as Waiting List Class Members and this list is considered a subset of the PUNS list.

As indicated in the Monitor's Fifth Annual Report, improvements have been made in both accuracy of the data on the PUNS list and the efficiency of

tracking the progression of Class Members who have been selected from the PUNS list to the point of initiation of waiver services. With the development of the most recent and most comprehensive “Seeking Services” list, the Monitor has easier access to additional information and DDD (Division of Developmental Disabilities) promptly provides even unscheduled updates. Those involved in maintaining this information are essential to the Monitor’s identifying both potential barriers to achieving transitions and Class Members’ status toward receiving desired services.

Transition Service Plans

Paragraphs 11 through 15 of the Consent Decree set forth the requirements for developing Ligas Transition Service Plans and for the content of these plans. These plans were designed to “focus on the Class Member’s personal vision, preferences, strengths and needs in home, community and work environments” and to “reflect the value of supporting the Class Member with relationships, productive work, participation in community life and personal decision making”. It was required that these plans “not be limited by the current availability of services” and that they must be “consistent with the choices of the Class Member and the Class Member’s legal guardian.” In 2017, however, as part of DDD’s Life Choices Initiative and being aware of Federal guidelines for Person-Centered Planning, DDD developed the Discovery Tool and Personal Plan Tool to assess needs and preferences for all individuals included in the Medicaid Waiver. Collaboration among DDD, the Plaintiffs and Monitor to insure

that Class Members would not be losing any of the benefits of the Ligas Transition Service Plans resulted in the Discovery Tool and Personal Plan together replacing the Ligas Transition Service Plan as of January 1, 2018.

The quality and implementation of Personal Plans will be monitored as part of a larger, newly created Compliance Monitoring process which will likely be piloted in February, 2019. The Monitor remains concerned about the quality of services, as noted in the Fourth and Fifth Annual Reports and reflected in the section 1 above. More information regarding the new Compliance Measures is included in Section III below.

Transition for Class Members in ICFs-DD

Paragraph 17 of the Consent Decree requires that within six years after the approval of the Decree, all Class Members residing in ICFs-DD as of the date of approval of the Decree will transition to Community-Based settings consistent with their Transition Service plans if, at the time of the transition, the Class Member requests placement in a Community-Based setting as confirmed and documented in accordance with the Decree.

The Consent Decree required that all Class Members in this category transition to the community by 6/15/2017, with one-third of these individuals moving by 12/15/2013, two-thirds by 12/15/2015 and all by 6/15/ 2017. The actual target number for each of these benchmarks was fluid based upon the list defining this category, but in all cases the

Defendants exceeded the target numbers through 6/15/2017. However, the Plaintiffs have expressed concern regarding the outreach to individuals living in ICFs-DD as to whether all have been afforded sufficient information regarding their rights under the Decree related to moving out of ICFs and into the community. This remains an issue for resolution which has been on the active agenda of Parties' meetings since 2016.

Based upon the most recent semi-annual data, which was submitted to the Monitor on August 15, 2018, 1,437 of 1,608 active Ligas ICF-DD Class Members had transitioned to the community, with 1,410 receiving CILA services, 24 receiving Home-Based services and 3 receiving CLF (Community Living Facility) services. The number of active Ligas ICF-DD Class Members includes 209 individuals represented by the Office of the State Guardian for whom assessments are being completed as to whether or not they choose to move to the community.

As was indicated in the Monitor's Fifth Annual Report, the Monitor applauds the efforts involved in exceeding the benchmarks and will continue to work with the Plaintiffs and Defendants to facilitate the transitions of ICF-DD Class Members who choose to move to the community. All Class Members and beneficiaries of the Decree must be offered a variety of options and opportunities in order to make informed decisions about where, how and with whom they choose to receive services and supports. The Monitor will continue to work closely with the

Parties in tracking how such choices are facilitated, particularly in consideration of the obstacles described in the section above regarding resources and capacity, related to both the maintenance of existing community services and further development in the community.

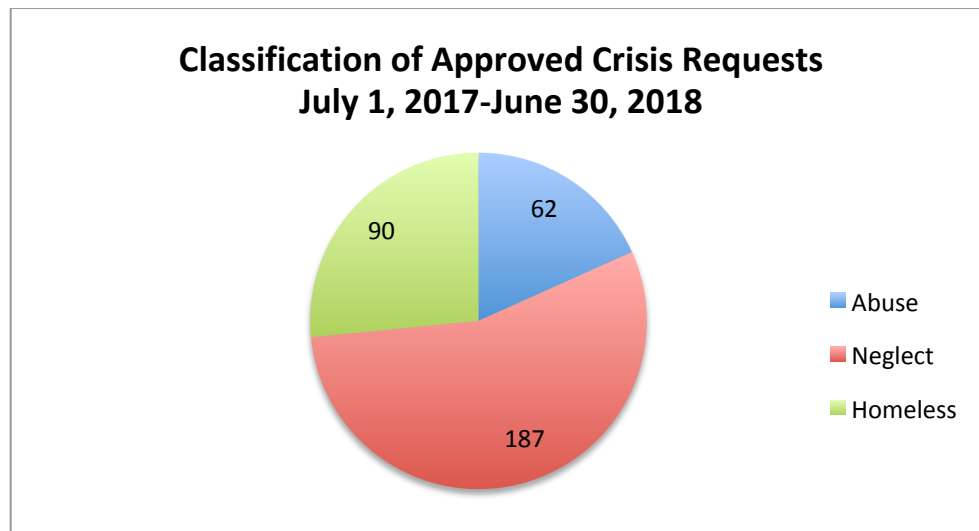
Crisis Services

As indicated in Paragraph 21(a)-(b) of the Ligas Consent Decree, “an individual is in a situation of “Crisis” if he or she is at imminent risk of abuse, neglect, or homelessness. The provision of interim emergency services (including interim placement in an ICF-DD where no placement in a Community-Based Setting was immediately available) will not necessarily exclude the Individual from being deemed to be in a situation of Crisis. If, following a screening, the Individual who is determined to be in Crisis requests appropriate Community-Based Services to be provided in the Family Home or requests placement in a Community-Based Setting, Defendants will promptly develop, in conjunction with the Class Member, a Transition Service Plan.”

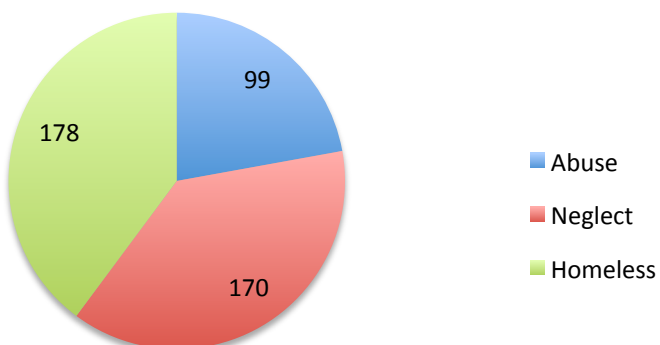
State Defendants are required to serve expeditiously class members who meet the above-described criteria and who request community services or placement in a community-based setting. A review of crisis requests from July 1, 2016 through June 30, 2017 indicated that 467 crisis services requests were received and reviewed by DDD with 447 requests approved.

Denials of crisis services requests were due to crisis criteria not being met and/or determination of lack of clinical eligibility. Of the approved crisis requests, ninety-seven (97) were classified as abuse, 170 were classified as neglect, and 178 were due to the individual being homeless.

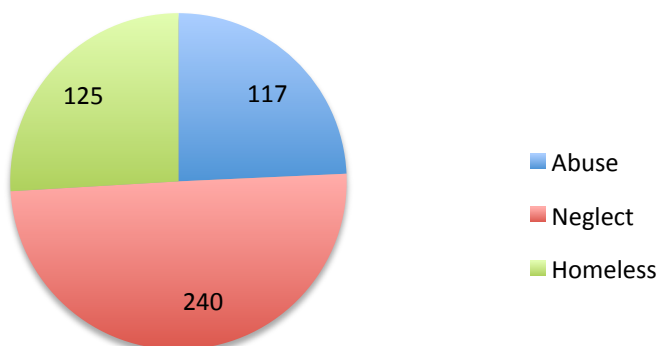
For the period of July 1, 2017 through June 30, 2018, 373 crisis services requests were received and reviewed by DDD with 339 requests approved. Again, denials of crisis services requests were due to crisis criteria not being met and/or determination of lack of clinical eligibility. Of these approved crisis requests, sixty-two (62) were classified as abuse, 187 were classified as neglect, and 90 were due to the individual being homeless.



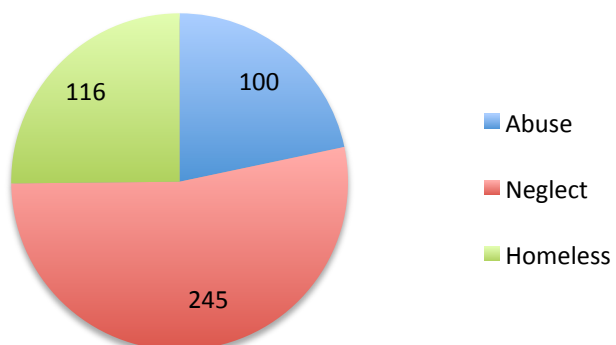
**Classification of Approved Crisis Requests
July 1, 2016-June 30, 2017**

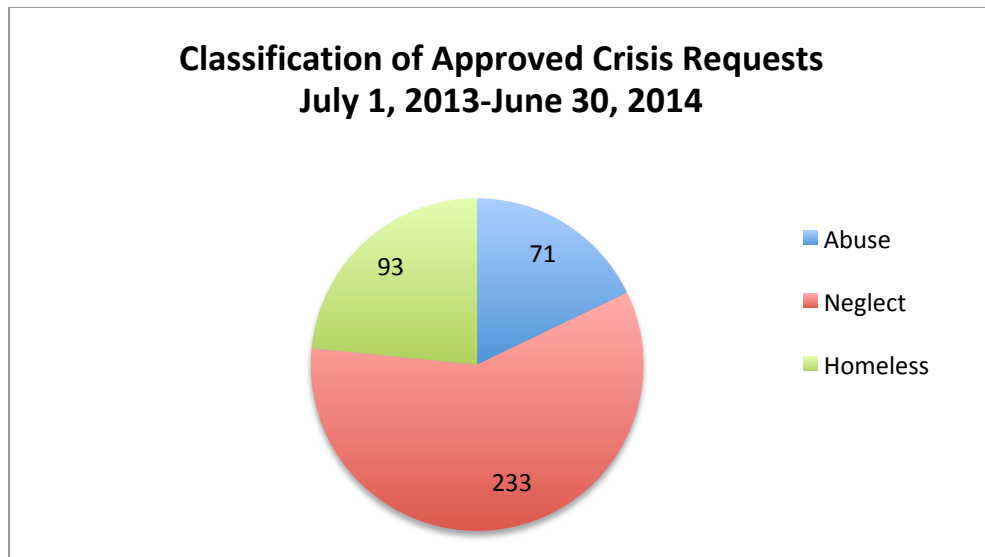


**Classification of Approved Crisis Requests
July 1, 2015-June 30, 2016**

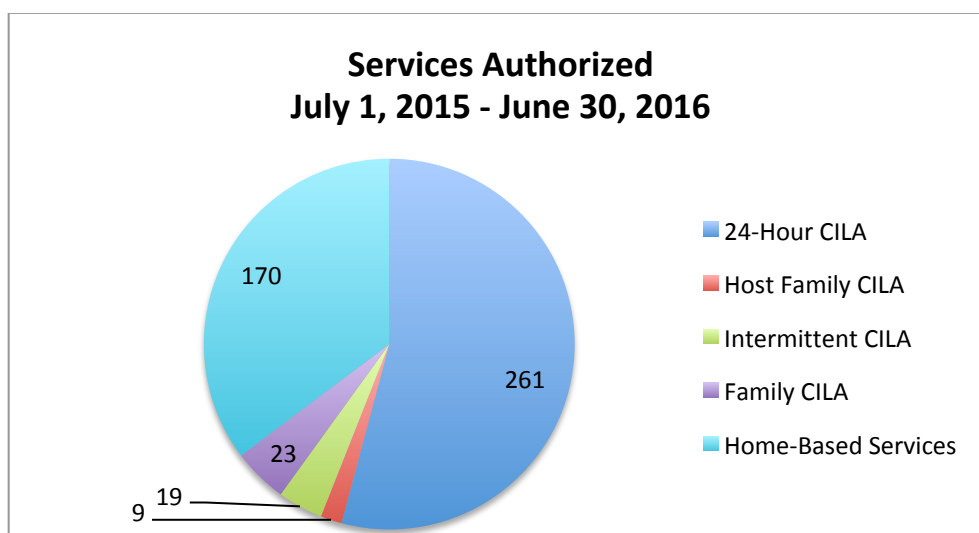
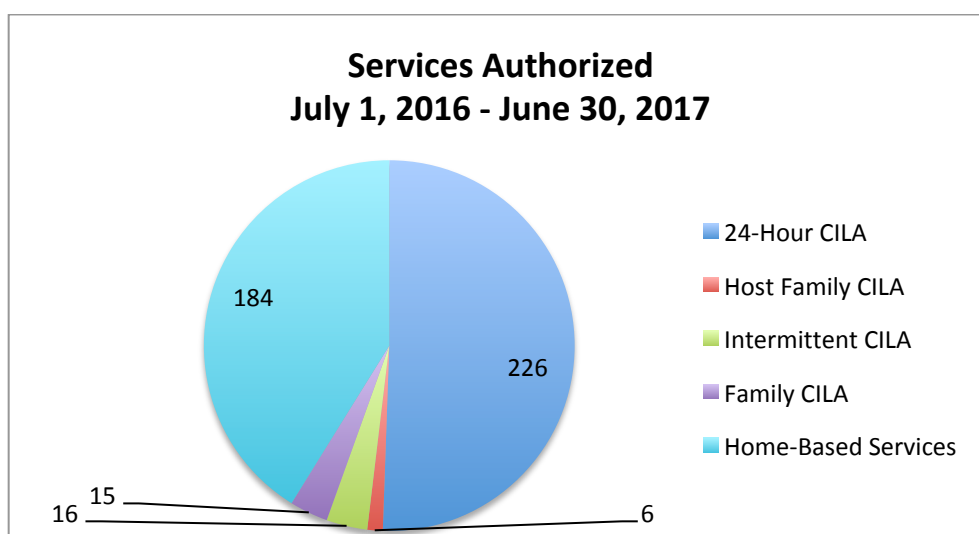
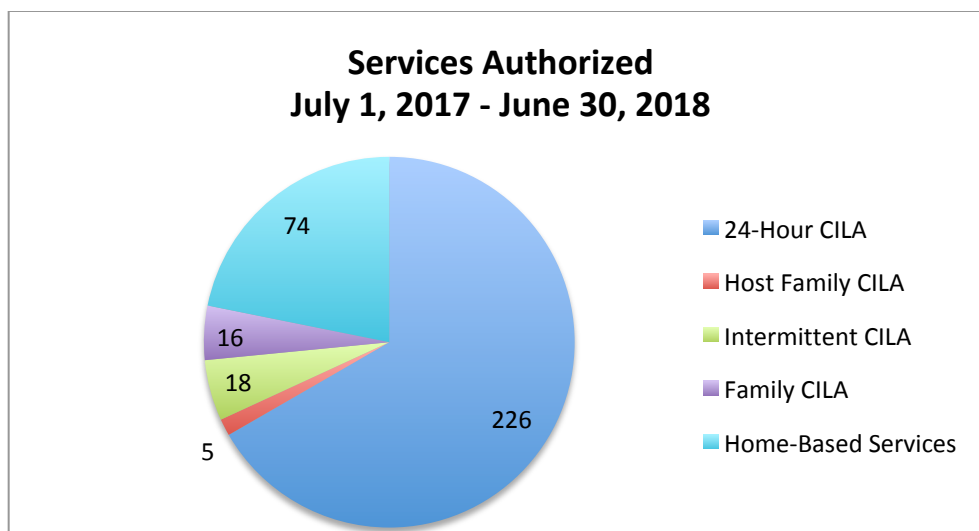


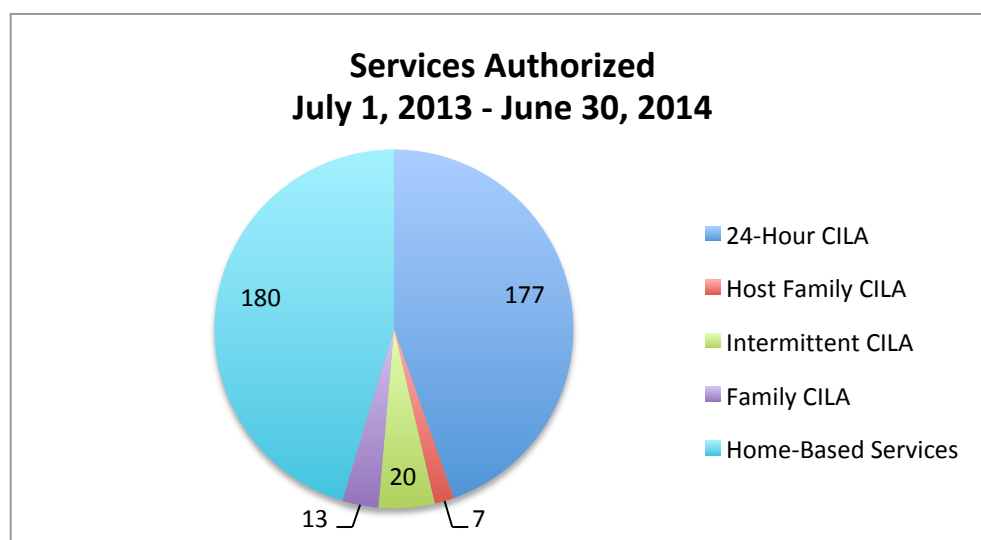
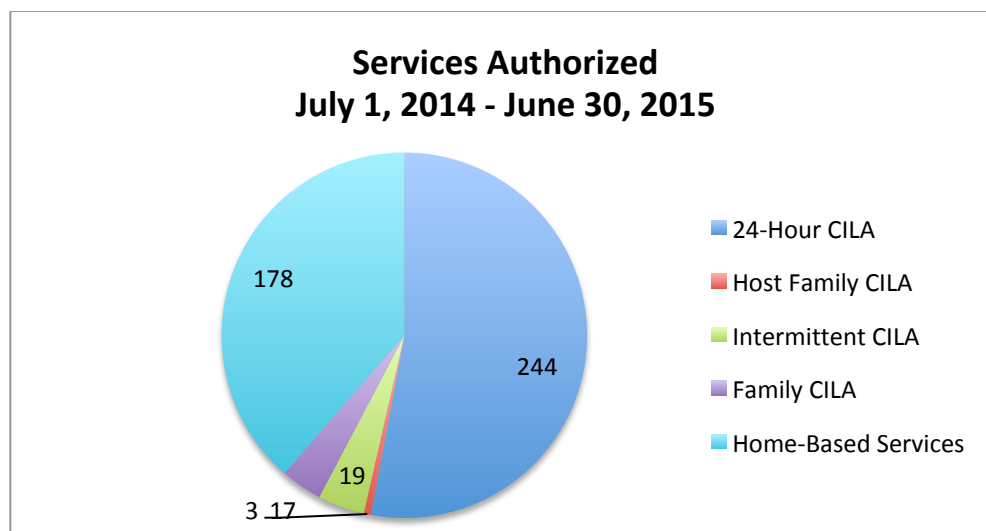
**Classification of Approved Crisis Requests
July 1, 2014-June 30, 2015**



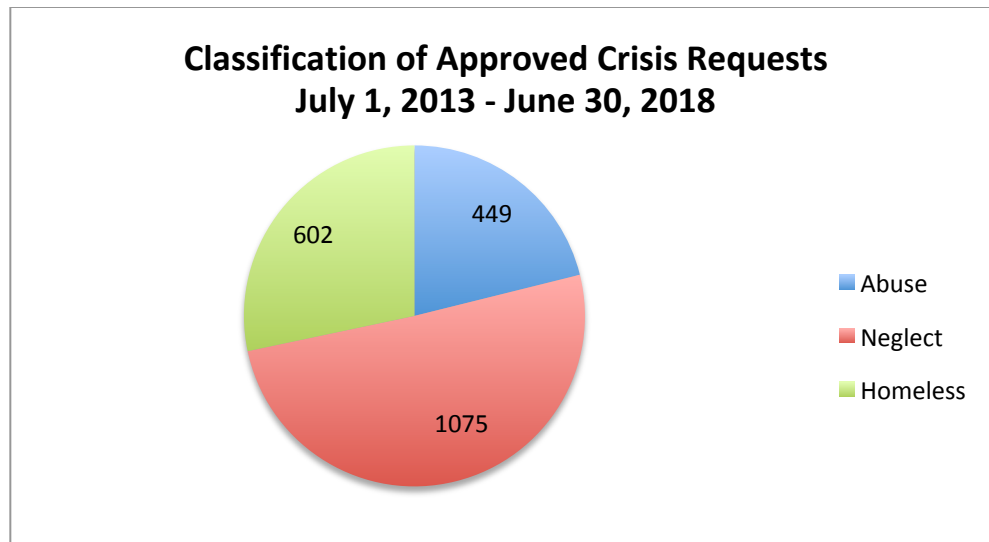


Services provided to class members in crisis included four types of CILA (Community Integrated Living Arrangement) options: 24-Hour CILA, Host Family CILA, Intermittent CILA, and Family CILA, in addition to Home-Based Support Services (HBS). For the period of July 1, 2016 through June 30, 2017, of the 447 crisis requests approved, 226 were funded to receive 24-Hour CILA, 6 were funded to receive Host Family CILA, 16 were funded to receive Intermittent CILA, and 15 were funded to receive Family CILA. Home-Based Support Services were authorized for 184 class members. For the period of July 1, 2017 through June 30, 2018, of the 339 approved crisis requests, 226 were funded to receive 24-Hour CILA, 5 were funded to receive Host Family CILA, 18 were funded to receive Intermittent CILA, and 16 were funded to receive Family CILA. 74 class members were authorized to receive Home-Based Support Services.

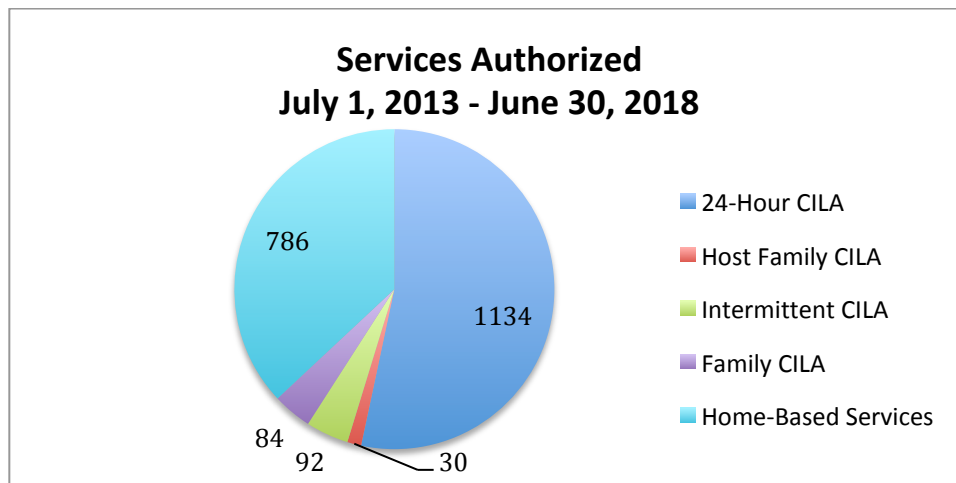




Combining the reporting years of 7/1/13-6/30/18, a total of 2126 crisis requests received have been approved by DDD.



For this same reporting period, services were provided to class members in crisis within four types of CILA (Community Integrated Living Arrangement) options:



During the 2013/2014 reporting period, the Monitor established, with the agreement of the parties, that the timeframe to receive services for class members in crisis will be 24-72 hours, although this timeframe may vary, depending on individual circumstances, or if temporary services are in place to address the immediate crisis. Since this agreement, the Monitor has

analyzed class member information and data from all crisis requests received and reviewed by the Defendants and determined to meet the requirements for crisis services. From the Monitor's analysis, the majority of crisis requests were reviewed by the region within an adequate timeframe. As can be seen in the chart below, for the past 2 years, the timeliness of review occurred, for the most part, within the 24-72 hours as established:

Timeliness of Review	FY 2016-2017		FY 2017-2018	
	N=447		N=339	
Within 1 day	391	87%	301	89%
Within 2-3 days	42	9%	37	11%
4-6 days	10	2%	1	<1%
Insufficient Data	4	<1%	n/a	n/a

Data from the most recent reporting period (July 1, 2017 to June 30, 2018) shows that 52% of the class members who were found to be in crisis, received some service within a 24-72 hour period after their crisis status was confirmed; for 31%, services were initiated between 4 and 9 days; 8% received services between 10-19 days; 4 individuals received services between 20 and 29 days; services were not initiated for 12 of the class members for more than a month; and for 16 class members, data was insufficient to include in the analysis. As noted in the chart below, while the past three years show improvement over FY 13/14, only one-half of the individuals who were found to be in crisis received some services within the 24-72 hours agreed upon timeline:

Timeliness of Authorization of Crisis Services	FY 2013-2014		FY 2014-2015		FY 2015-2016		FY 2016-2017		FY 2017-2018		Overall 2013-2018	
	N=397		N=461		N=482		N=447		N=339		N=2126	
24-72 hours	107	27%	218	47%	220	46%	229	51%	175	52%	949	45%
4-9 days	122	31%	151	33%	175	36%	164	37%	106	31%	718	34%
10-19 days	74	19%	64	14%	60	12%	43	10%	26	8%	267	13%
20-29 days	36	9%	15	3%	15	3%	8	2%	4	<1%	78	4%
30-39 days	15	4%	6	1%	3	1%	2	<1%	8	<2%	34	2%
40+ days	35	8%	5	1%	6	1%	1	<1%	4	<1%	51	2%
Insufficient Data	8	2%	2	1%	3	1%	n/a	n/a	16	5%	29	1%

Review of the data associated with the crisis requests reviewed and approved revealed that, in nearly all cases, a “safety plan” had been determined to be in place for the class member in order to ensure safety and reduction of risk while awaiting approval of services. In the Fourth and Fifth Annual Reports, the Monitor raised concerns as to the adequacy of safety plans wherein the class member in crisis is not in a permanent or stable situation (e.g., jail, psychiatric hospital, nursing home), and with this report continues to raise such concerns.

In addition to raising the question of the adequacy of crisis safety plans in the Fourth and Fifth Annual Reports, the Monitor also expressed concern that nearly half (49%) of the individuals with approved crisis placements were on the PUNS waiting list for three years or more. This report continues to provide an analysis of crisis data to determine the relationship between crisis applicants and the PUNS list and as can be seen in the charts below for the period of 7/1/16-6/30/18, again nearly half (44%) of the

individuals with approved crisis placements were on the PUNS waiting list for three years or more.

Approved Crisis Placements and Length of time on PUNS Waiting List July 1, 2016-June 30, 2018		
Time Period	Number of Placements	% of Total
One Month or Less	38	5%
Over 1 Month to 1 Year	219	28%
1 to 2 Years	103	13%
2 to 3 Years	50	6%
3 to 4 Years	62	8%
4 Years or More	281	36%
Insufficient Data	33	4%
N=786		

It should be noted that as reported by DDD, the accuracy of PUNS data depends on the timeliness of the ISC's entry into the PUNS database of the date an individual began receiving services (and therefore no longer seeking services).

Approved Crisis Placements and Length of time on PUNS Waiting List July 1, 2017-June 30, 2018		
Time Period	Number of Placements	% of Total
One Month or Less	14	4%
Over 1 Month to 1 Year	102	30%
1 to 2 Years	45	13%
2 to 3 Years	24	7%
3 to 4 Years	23	7%
4 Years or More	128	38%
Insufficient Data	3	<1%
N=339		

Approved Crisis Placements and Length of time on PUNS Waiting List July 1, 2016-June 30, 2017		
Time Period	Number of Placements	% of Total
One Month or Less	24	5%
Over 1 Month to 1 Year	117	26%
1 to 2 Years	58	13%
2 to 3 Years	26	6%
3 to 4 Years	39	9%
4 Years or More	153	34%
Insufficient Data	30	7%
		N=447

The Monitor greatly appreciates the assistance of Melanie Reeves Miller, the Monitor's Data and Program Analyst, in conducting this review of Crisis Services.

Transitions for Class Members on the Waiting List

Paragraph 22 of the Consent Decree defines the numeric requirements for transitions of Class Members on the Waiting List to the community for the period 6/15/11- 6/15/2017 and paragraph 23 states that after 6/15/2017 Class Members who remain on the Waiting List "shall receive appropriate Community-Based Services and/or placement in a Community-Based Setting such that they move off the Waiting List at a reasonable pace."

Over the first six years of the Decree's implementation, DDD was required to serve 3000 of these Class Members under the Medicaid Waiver and this numeric benchmark was exceeded by the Defendants. It is worthy of note that as of 6/30/2018, 5,924 Class Members had been selected from the PUNS waiting list and that 3,590 had begun receiving Waiver services.

Since 2016, the Plaintiffs, Defendants and Monitor have been engaged in a process to both define a “reasonable pace” for moving Class Members off the Waiting List following 6/15/2017 and decrease the amount of time that Class Members remain on the Waiting List prior to receiving desired services. Two of the steps taken already to clarify how priorities are established for these transitions are to simplify the categories related to those waiting for services to “Seeking Services” and “Planning for Services” and to consider the amount of time for which an individual has been waiting on the PUNS list since reaching the age of 18. In addition, in order to facilitate the PUNS selection process for individuals and their families, DDD will now be notifying those who are anticipated to be part of a PUNS pull in advance of the actual pull to allow families to have more time to explore service options.

Outreach

Paragraph 25 of the Consent Decree requires that “Defendants shall maintain a fair and accessible process by which Individuals with Developmental Disabilities or their legal guardians can affirmatively request in writing to receive Community-Based Services and/or placement in a Community-Based Setting or to receive ICF-MR services in an ICF-DD, and Defendants shall maintain up-to-date records of those requests.”

As described by the Monitor in the Fifth Annual Report, the Defendants’ outreach efforts, which were intended to identify individuals living in ICFs-

DD who wanted to move to the community but had either not been informed of this option or not yet expressed this desire, were concluded and the findings shared with the Monitor and Parties in April, 2016. At that time, it was noted that 123 individuals had been identified who chose to become Class Members and were added to the list of Class Members in ICFs-DD.

It is important to note herein that Class Members in ICFs-DD who had expressed (by themselves or their guardians) in writing by June 15, 2017 a desire to receive Community-Based Services and/or placement in a Community Setting were entitled to do so without having to wait on the Waiting List (in accordance with the Decree's original benchmarks as explained above). The Monitor, Defendants and Plaintiffs have continued to discuss the Plaintiffs' concerns regarding individuals living in ICFs-DD who learned about this right too late to benefit from this entitlement and whether this entitlement could thus be extended on a case-by-case basis.

Counsel for the Intervenor have stated that they are concerned about whether everyone who is selected from the Waiting List is offered a choice including ICFs-DD. However, in order to become a member of the Waiting List Class it is required that individuals make a record with the State confirming their desire for community services.

Implementation Plan

Paragraph 26 of the Consent Decree requires that “the Defendants, with the input of the Monitor, Plaintiffs, Class Counsel, Intervenor and Intervenor’s Counsel shall create and implement an Implementation Plan to accomplish the obligations set forth in the Decree,” and paragraph 28 requires that this plan be “updated and amended annually, or at such earlier intervals as Defendants deem necessary or appropriate.”

As has been the case for the past three years, at each scheduled Parties’ meeting, the Defendants provide updates of the Plan’s activities, as requested by the Parties, Intervenor and Monitor, and discussions are focused upon the areas deemed most significant at a given time. An agenda is set in advance to facilitate productive conversations.

Through 2015, the Implementation Plan updates and proposed revisions were provided by the Defendants to the Plaintiffs, Intervenor and Monitor for consideration and negotiations took place during parties’ meetings which resulted in jointly developed revisions being agreed upon before being submitted to the Court.

However, as reported in the Fifth Annual Report, in 2016 the Parties could not reach agreement as to the Plan’s content in areas required in paragraph 26: “necessary resource development activities to implement the Decree” and “services and supports required in Transition Service Plans

formulated pursuant to the Decree that are not currently available in the appropriate quantity, quality or geographic locations.” There has been no joint submission to the Court since the 2016 Revisions filed only by the Defendants. On a positive note, at the December, 2018 Parties’ Meeting, the Plaintiffs, Defendants, Intervenors and Monitor made significant progress and it is likely that an Implementation Plan will be jointly filed with the Court in early 2019.

Data Reports

Paragraph 33 of the Consent Decree requires, in part: “Not less than every six months, Defendants shall provide to the Monitor, Plaintiffs, Class Counsel, Intervenors and Intervenors’ Counsel and make publicly available, a detailed report containing data and information sufficient to evaluate Defendants’ compliance with the Decree and Defendants’ progress toward achieving compliance.”

The most recent Ligas Data Report is the fourteenth since the Decree was approved and is dated August 15, 2018. These reports are provided, in compliance with the Consent Decree, every six months and typically on February 15th and August 15th. The 8/15/2018 Report reflects data collected for FY 2018, which ended on 6/30/2018.

As reported in the Fifth Annual Report as well, the Monitor acknowledges that the Ligas Data Reports are submitted timely and that Defendants have also created additional reports as requested by the Monitor. DDD staff continue to be available to answer the Monitor's questions, clarify data and address concerns related to documents they have prepared.

III. ACTIONS TOWARD COMPLIANCE

Parties Meetings

Between 2/8/2017 and 12/19/2018, sixteen Parties' meetings were convened. Although agenda items varied based upon the most pressing issues at any given time, the topics of most ongoing discussions included: Ligas Data Reports; Ligas Transition Service Plans; the newly developed Discovery Tool and Personal Plans; Status Conferences with Judge Coleman; Defendants' proposed Compliance Plans and responses thereto from Plaintiffs, Intervenor and the Monitor; Reasonable Pace; Ligas Implementation Plan revisions; development of draft Compliance Measures to monitor services provided to Class Members receiving Waiver services. In addition to full Parties' meetings, there were several meetings convened among Plaintiffs, Defendants and the Monitor specifically to address how to define a reasonable pace for moving Class Members off the Waiting List.

Status Conferences and Court Filings

- Between 2/15/2017 and 11/15/2018, Plaintiffs' Counsel, Defendants, Counsel for the Intervenor, and the Monitor appeared in Court thirteen times for twelve Status Conferences/ Updates and for Oral Arguments at a lengthy hearing on 8/4/2017, following the filings of Plaintiffs, Intervenor and Defendants and prior to the Court's Order of 8/11/2017 as described in Section II.B above.

- Following the 8/11/2017 Court Order, there were Status Conferences on 11/27/2017 and 2/28/2018.
- On 3/30/2018, the Defendants filed a “Status Report Regarding Proposed Compliance Plan in Response to August 11, 2017 Order.” On the same day, Plaintiffs and Intervenor filed their “Response to Defendants’ Compliance Proposals” as did the Monitor. All three of these documents, as well as Exhibit A to the Defendants’ filing, are attached to the current Report.

The Defendants Proposed Compliance Plan includes four strategies:

- (1) A pilot program that will “create a new pool of candidates for service providers to consider hiring for open direct support professional (DSP) positions. ... Able-bodied adults with no dependents who receive public assistance benefits ... are required to seek employment/education and training and have time-limited benefits available to them. The Department of Human Service (DHS) Division of Family and Community Services (FCS) has an office of workforce development that assists recipients with job searches. Over half of the individuals receiving SNAP (Supplemental Nutrition Assistance Program) or TANF (Temporary Assistance for Needy Families) have high school diplomas, which is the same education level required for DSP positions. Defendants intend to implement a program wherein providers of

both ICF-DD and CILA services can hire qualified TANF and SNAP applicants to fill vacant DSP positions.”

(2) “Defendants have significantly increased funding so as to increase the hourly rates paid to DSPs, have proposed additional increases in such funding, and have proposed increases in funding for class members who will be selected from the waiting list. The already proposed and approved increased funding for DSP rates are intended to respond directly to Plaintiffs’ and Intervenor’s contentions that service providers have reduced services because they are unable to pay DSPs sufficient wages so as to recruit and retain a sufficient number of DSPs. The DSP rate increases are significant, amounting to a 14% increase from FY 2017 FY 2020.”

(3) “Defendants are enhancing and adding to their on-going monitoring of service delivery. ... To date, the provision of services and supports identified in an individual class member’s Service Plan or Implementation Strategy has not been part of the annual provider review process. Therefore, the Department will begin a separate review of a statistically significant number of Ligas Class Members in CILA settings to assess the implementation of the agreed-upon services and supports by the individuals’ providers.”

(4) “Defendants are working on several additional programmatic changes and enhancements, all of which are intended to increase

available services for individuals with developmental disabilities and better monitor whether services are being delivered as needed and intended.”

Further details of the Defendants’ proposed strategies are included in Exhibit A, which is attached to the current report.

The Response from the Plaintiffs and Intervenors states in part that “The proposals to reduce staffing shortages and increase rates are insufficient.” It goes on to say: “The proposed increase is woefully inadequate, as it would only bring the DSP rate to \$12.22 per hour by Fiscal Year 2020. As a result, the staffing crisis and insufficient services to class members and beneficiaries, well-documented in the Motion to Enforce, would continue. ... Defendants need a long-term plan to address the inadequate resources and resulting decline in services.” The Plaintiffs and Intervenors then “respectfully request that this Court: (1) find Defendants’ Proposals inadequate to remedy the finding of non-compliance, (2) order the Defendants to submit a new compliance plan, and (3) order the State to form a workgroup consisting of counsel for the Plaintiffs and Intervenors, providers, consumers, and representatives of the State to recommend revisions to the rate methodologies for CILAs and ICF-DDs.”

The Monitor’s Response to each of the Defendants’ strategies includes in part:

- On reducing staffing shortages: The proposed pilot project “cannot be expected to resolve this pervasive problem. Recent data from the DSP Workforce Coalition indicates that when the CILA program began in Illinois over twenty years ago, the wages paid to DSPs were nearly double the minimum wage, thus recognizing the value of their work. As of July 1, 2018, the minimum wage of \$12.00 per hour in Chicago will exceed the average hourly reimbursement rate to DSPs.”
- On modifications to the current funding rates: “The Defendants’ proposals fail to specifically address rates paid to providers of CILAs or of ICFs-IDD ... for whom rates have not been increased for approximately a decade while costs have significantly increased.” The Court’s Order of 8/11/2017 is referenced as follows: “This Court believes that reaching a mutually agreeable long term plan accounting for both the resources of the State and the needs of those with developmental disabilities would benefit from a revival of a State working group to devise creative solutions to the issue of compliance with the Consent Decree.” The Monitor recommends that “such a workgroup be convened and include the Monitor as well as other independent stakeholders with appropriate expertise and experience.”
- On compliance measurement: “The most recent draft is more comprehensive than earlier versions and references a ‘draft

concept' of a monitoring tool. The Monitor recommends that shared work begin promptly to develop such a tool and looks forward to an active role in advancing this process. ... It is the Monitor's recommendation that while it is anticipated that the Bureau of Quality Management (BQM) will be conducting reviews and reporting findings to the Parties and the Monitor, there must also be an independent aspect of the review process which does not include the Division or BQM."

- On programmatic modifications and enhancements: "These proposals are consistent with discussions held among the Plaintiffs, Defendants, Intervenor and Monitor and require no comment at this time."
- On 6/6/ 2018, Judge Sharon Johnson Coleman entered the following Order:

STANLEY LIGAS, et al.,

Plaintiffs,

V.

FELICIA NORWOOD, et al.,

Defendants.

Case No. 05 cv 4331

Judge Sharon Johnson Coleman

Coming before the Court on the proposed plan for compliance with the Consent Decree submitted by the defendants, officials of Illinois Department of Healthcare and Family Services and the Illinois Department of Human Services. This Court entered an Order on August 18, 2017, finding that defendants were not in substantial compliance with the Consent Decree entered on June 15, 2011. This Court directed defendants to establish a plan for compliance. This Court finds that the proposed plan does not adequately address the shortcomings that the Court identified in its previous Order.

In its August 18, 2017, Order this Court found that defendants were not in compliance with the Consent Decree by failing to provide the resources of sufficient quality, scope, and variety. This Court acknowledged the State of Illinois' significant budgetary issues in its Order. Although the Illinois legislature passed a budget today, the Court is under no illusion that Illinois' financial difficulties persist.

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reasonable start, but doubts that the proposal is adequate to address the issue of wages, staffing, and retention.

At the April 4, 2018, hearing on this matter the Court expressed uncertainty over the defendants' pilot project to expand the pool of potential candidates by coordinating with the Division of Family and Community Services to recruit able-bodied adults with no dependents who receive public assistance benefits from the Temporary Assistance for Needy Families ("TANF") and Supplemental Nutrition Assistance Program ("SNAP"). It is unclear that this pilot program will expand the candidate pool at all. It is also unclear to this Court whether it will address the corollary problem of retention of well-qualified employees when the wages continue to remain low.

Defendants' plan for wages falls woefully short, amounting only to a \$0.38 per hour per year increase for between FY2017 and FY2020. Defendants acknowledged that their proposal is particularly inadequate for DSPs working in Chicago, who will need a greater increase to keep pace with the minimum wage increases passed by the Chicago City Council. As both the Court Monitor and the plaintiffs point out, defendants have not always viewed DSP as a minimum wage job. Historically, DSPs were paid twice the minimum wage. It may not be feasible for the State to raise wage rates to that level, but this Court hesitates to affirm the devaluing of the role of caregivers for some of the more vulnerable members of our society. At the same time, this Court is not in the position to act as super-legislator by dictating how the State should allocate funds and administer its budget.

One of the criticisms of the defendants' proposal levied by the Court Monitor is that the proposal is too short-sighted and does not have a long-term plan. This Court agrees. However, it has been nearly seven years since the entry of the Consent Decree and this Court sees no end to the Court's oversight. For the defendants to truly comply and provide adequate services, the parties and stakeholders will have to come together to formulate a long-term plan to address these issues.

This Court believes that convening a work group that includes the Monitor and other independent stakeholders to study the wage rates for DSPs, the funding methodology for CILAs and ICFs for individuals with Intellectual and Developmental Disabilities, and develop a monitoring tool to assess adequacy of services, funding, and administration. Ideally the monitoring tool would include an independent review component. The Court also takes the Court Monitor's recommendation that the parties pursue expeditiously their discussion for developing the criteria for moving individuals from the Prioritization for Urgency of Need for Services ("PUNS") waiting list at a reasonable pace.

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This Court concludes that ultimately it must be the parties that develop adequate solutions to the problems at issue. This Court lacks the expertise and the budgetary authority to impose measures to resolve the issues here. The Court directs the parties to continue to develop a plan to address the issues causing the reduction in services and to bring the State into substantial compliance.

IT IS SO ORDERED.

ENTERED:

Dated: 6/6/18



SHARON JOHNSON COLEMAN
United States District Judge

- Following the 6/6/2018 Court Order, there were Status Conferences on 7/10/2018, 9/12/2018 and 11/15/2018. The next scheduled

Status Conference is scheduled for 2/14/2019, following a Parties' meeting and an Oversight Committee meeting on 2/13/2019.

Oversight Committee Meetings

The 6/6/2018 Court Order states in part that the Court recommends "convening a work group that includes the Monitor and other independent stakeholders to study the wage rates for DSPs, the funding methodology for CILAs and ICFs for individuals with Intellectual and Developmental Disabilities, and develop a monitoring tool to assess adequacy of services, funding and administration. Ideally the monitoring tool would have an independent review component. The Court also takes the Monitor's recommendation that the parties pursue expeditiously their discussion for developing the criteria for moving individuals from the Prioritization of Urgency of Need for Services ("PUNS") waiting list at a reasonable pace."

As a result, the Defendants, with input from the Plaintiffs, Intervenors and Monitor, established not only a Rate Methodologies Oversight Committee to implement the Court's Order but also Subcommittees to gather information and report to the Oversight Committee. The Subcommittees include: Employment and Training, Staffing, Technology, Behavior, Transportation, Nursing/ Medical and ICF-DD Rate Methodologies. The first meeting of the Oversight Committee, which includes the chairpersons of the Subcommittees, was held on 8/29/2018 and monthly meetings have been convened on 10/17/2018, 11/14/2018 and 12/19/2018, with the next

meetings scheduled for 1/16/2019 and 2/13/2019. Subcommittees have begun to develop recommendations for presentation to the Oversight Committee.

Ligas Compliance Measures

In the Fifth Annual Report, the Monitor indicated that a conference call had been held with Plaintiffs and DDD to discuss the current system of monitoring the quality of services provided to Class Members in CILAs and day programs. The Monitor stated in that report that there would be a review of a sample of surveys previously conducted by the Bureau of Quality Management (BQM), along with any required Corrective Action Plans and follow-ups, to explore the efficacy of current practices as well as to make recommendations if it appeared that any enhancements to the system were necessary and not being addressed. After several months of trying to obtain the anticipated material, it became apparent that the surveys being done were measuring only Waiver compliance. It is interesting to note that the CMS, the Center for Medicare and Medicaid Services, noted in 2017 that “CMS approval of a State’s Transition Plan solely addresses the state’s compliance with the applicable Medicaid authorities” and “does not address the state’s independent and separate obligations under the Americans with Disabilities Act, Section 504 of the Rehabilitation Act or the Supreme Court’s *Olmstead v. LC* decision.”

At that point, the Monitor and Monitor's Data and Program Analyst, in consultation with the Plaintiffs, Defendants and others experienced in measuring compliance began working to develop a monitoring tool and protocol for reviewing services received by Class Members who live in CILAs. A tool to monitor compliance with the Consent Decree has now been drafted and, as discussed in the Monitor's responses to the Defendants' proposed compliance plans and in the Court's 6/6/2018 Order, the process will be independent of DHS but is intended to include as reviewers four staff members of the State's Bureau of Quality Management, along with eight reviewers who are independent of the State system. The Monitor, Data and Program Analyst and the contractor will oversee the project. The contract for this project is expected to be finalized within days of the issuance of the current report and training of reviewers is being planned for February, 2019.

IV. COMMUNICATIONS & IMPLEMENTATION ACTIVITIES

- The Monitor communicates regularly with the Defendants, Plaintiffs and Intervenors and participates in monthly conference calls with the Plaintiffs and Defendants regarding individual Class Member issues.
- The Monitor responds promptly to inquiries from Class Members and their families, guardians and advocates.
- The Monitor frequently addresses Parents' associations, ISC agencies, providers and provider organizations, advocacy groups, and community organizations to share requested information regarding Ligas matters.
- The Monitor receives and reviews newsletters, updates and other documents from a variety of organizations and individuals who provide or evaluate services for beneficiaries of the Decree.
- The Monitor participates in the Arc's conventions, Executive Forums, "Know Your Options" and other informational sessions.

- The Ligas Class Member/Family Advisory Council asks that the Monitor participate in their quarterly meetings and this has been the practice since its inception in 2013. For the past five years, meetings were held in two locations- Chicago and Springfield- connected by videoconferencing and telephone. DDD staff, Class Counsel, the Monitor, family advocates and self-advocates regularly attend and guest speakers are invited to meetings upon request of the members or as suggested by DDD or the Monitor. Over the past year, there have been discussions about modifying the format of the meetings and most recently there have been conversations suggesting that there be two Ligas Town Hall meetings and two regular committee meetings per year. The Town Hall meetings would be open to the public. As of the writing of the current report, the Monitor is working with the chairperson of the Council and the DDD staff person who supports this group to plan for an initial Ligas Town Hall Meeting.

- There are several new initiatives that have recently been or will soon be implemented by the Defendants and that have been discussed with the Plaintiffs, Intervenor and Monitor as part of the drafting of the 2019 Implementation Plan Revisions. The Monitor is looking forward to the draft being finalized shortly so that all of this information can be shared.

V. Closing Remarks

The monitor remains indebted to all of those who provide expertise and insights to inform the Annual Reports. A special note of appreciation is due to the current Acting Director of the DDD who, in her brief return to DHS, has done so much more than what she describes as “keeping the train on the track.” Her participation particularly in the development of both the Oversight Committee and the draft Ligas Compliance Measures has been invaluable.

In looking forward to continued shared efforts with the beneficiaries of the Consent Decree and their families; Plaintiffs, Defendants and Intervenors; advocates, providers of services and other colleagues, the Monitor would like to share recent good news. The DDD has recently received authorization to develop six Long Term Stabilization Homes, each of which will be able to serve four people at a time. More information will be shared as available.

While much remains to be accomplished, issues of concern will be addressed at upcoming Parties’ meetings to facilitate corrective actions. It is clear that collaboration is the best approach to insure that all beneficiaries of the Consent Decree achieve their chosen goals.

ATTACHMENTS

(1) Plaintiffs' Counsel 8/12/17 Statement: "Federal Judge orders Illinois to develop a plan to provide critical resources for people with developmental disabilities."

(2) Defendants' "Status Report Regarding Proposed Compliance Plan in Response to August 11, 2017 Order"

(3) Exhibit A: Defendants' Compliance Plan Proposals

(4) Plaintiffs' and Intervenor's "Response to Defendants' Compliance Proposals"

(5) Monitor's "Response to Defendants' Compliance Proposals"



COURT SAYS STATE OF ILLINOIS FAILING TO KEEP PROMISES TO PEOPLE WITH DEVELOPMENTAL DISABILITIES

Federal judge orders Illinois to develop a plan to provide critical resources for people with developmental disabilities

CHICAGO (August 12, 2017) – The State of Illinois is failing to provide people with developmental disabilities appropriate resources in order to live independently. That finding, issued by Judge Sharon Johnson Coleman on Friday, specifically finds the State to be out of compliance with the 2011 Consent Decree in *Ligas v. Norwood*. Among the resources being provided by the State is pay for community workers for people with disabilities. Lack of adequate pay for these workers has resulted in many individuals losing or being unable to secure care and support in their home. Judge Coleman ordered development of a long-term plan to ensure that people with developmental disabilities have the services necessary to live meaningful lives in the community.

The State has had fair warning that this problem needed to be addressed. An Independent Monitor appointed by the court in the *Ligas* case found the State out of compliance with the Consent Decree for the past two years because the funding for services for people with disabilities has largely remained stagnant for the last decade. Over this same period, costs have significantly increased. A lack of meaningful response by the State led to lawyers for *Ligas* class members and beneficiaries to ask the court to force the State to act.

“We are pleased that Judge Coleman found that the State’s insufficient funding of services for people with developmental disabilities to be integrated into the community is a violation of the Consent Decree,” said Barry C. Taylor, Vice President for Civil Rights and Systemic Litigation at Equip for Equality and lead counsel in the *Ligas* case. “The State must now develop a plan that will make the promise of fully integrated lives under the Consent Decree a reality for our clients.”

The Judge’s order relies on an economist’s report. But there also were compelling stories from family members of people with developmental disabilities (as well as service providers) making clear the real human suffering and impact resulting from the insufficient resources provided by the State.

Community reimbursement rates have been frozen for nearly a decade, despite escalations in costs. Earlier this year, the Illinois General Assembly tried to address this critical issue by passing legislation that would have provided disability service professionals with a living wage, but Governor Rauner vetoed the bill. Although the recently-adopted State budget included a small wage increase, Judge Coleman found that was insufficient to meet the requirements of the Consent Decree

The low rates created crisis conditions in the staffing of these services. With insufficient staff, services to people with developmental disabilities are cut short. People with disabilities, who are supposed to be integrated into the community, are instead finding themselves increasingly isolated and segregated. Community providers have been forced to decrease staff ratios, frequently to only one staff for 4-8 residents. This means that staff cannot regularly take residents out of the house and they cannot work on building skills and independence. They are left with simply trying to maintain safety, instead of promoting full integrated lives in the community.

“The State of Illinois has ignored the impact that its actions have had on the ability of our clients to integrate into the community,” said Benjamin Wolf, Legal Director for the ACLU of Illinois. “Without the court’s intercession, we feared that many people with disabilities would still be isolated – in a small facility rather than a larger one.”

In 2011, a federal judge approved a Consent Decree in the *Ligas* case to provide people with developmental disabilities the opportunity to live in settings designed to promote independence in daily living, economic self-sufficiency, and to interact with non-disabled people to the fullest extent possible. While thousands of people have moved into the community as a result of the case, the State has failed to meet the requirements for providing the services they require in the community. Without these services, full community integration cannot be achieved. Individuals are left segregated in their new environment, often unable to leave home for outside activities, and at risk of returning to a more restrictive, and more costly to the State, institutions. The Americans with Disabilities Act requires the State to support people with disabilities to live in the most integrated setting possible. Judge Coleman found that Illinois is not meeting that requirement.

Mr. Taylor and Mr Wolf are joined by Equip for Equality attorneys Laura Miller and Amanda Antholt, ACLU of Illinois attorney Gail Waller, as well as by Scott Mendel at K&L Gates and William Choslovsky at Fox Rothchild, who represent a group of intervenors in the matter.

Judge Coleman’s Order can be found at: <http://www.equipforequality.org/wp-content/uploads/2017/08/Ligas-Order-Granting-Motion-to-Enforce.pdf>

Questions for Plaintiffs’ Counsel may be directed to Barry C. Taylor, Equip for Equality at 773-562-9567 or barryt@equipforequality.org

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

Stanley Ligas, et al.,	)	
	)	
Plaintiffs,	)	
	)	Case No. 05 C 4331
v.	)	
	)	Judge Sharon Johnson Coleman
Felicia Norwood, et al.,	)	
	)	
Defendants.	)	

**DEFENDANTS' STATUS REPORT REGARDING PROPOSED COMPLIANCE PLAN
IN RESPONSE TO AUGUST 11, 2017 ORDER**

Defendants, through their attorney, Lisa Madigan, Illinois Attorney General, hereby submits this status report regarding their proposed compliance plan in response to this Court's August 11, 2017 Order (Doc. No. 695), and state as follows:

In its August 11, 2017 Order, this Court found that "defendants are not in compliance with the Consent Decree by failing to provide the resources of sufficient quality, scope, and variety based on the ample evidence presented to the Court that individuals protected by the decree have experienced a reduction in services and have suffered substantially as a result." Doc. No. 695 at 3. As the parties have advised the Court, the parties and Monitor have met numerous times to discuss a proposed compliance plan and have exchanged numerous draft proposals. Despite best efforts and good faith negotiations, the parties have failed to agree on a compliance plan to submit to the Court. Defendants, therefore, submit their proposed compliance plan for the Court's consideration and approval.

Attached hereto as Exhibit A is Defendants' detailed compliance plan, which Defendants have previously provided to the parties and Monitor. In summary, Defendants' plan includes four

major strategies, all of which respond to this Court's specific findings regarding non-compliance. First, Defendants have started a pilot program that will create a new pool of candidates for service providers to consider hiring for open direct support professional (DSP) positions. The pilot is modeled on a similar state program that has successfully provided new candidates for child care positions with agencies through state child care programs. This pilot responds directly to Plaintiffs' and Intervenor's contentions that service providers have reduced services because of being unable to recruit and retain a sufficient number of DSPs.

Second, Defendants have significantly increased funding so as to increase the hourly rates paid to DSPs, have proposed additional increases in such funding, and have proposed increases in funding for class members who will be selected from the waiting list. The already approved and proposed increased funding for DSP rates are intended to respond directly to Plaintiffs' and Intervenor's contentions that service providers have reduced services because they are unable to pay DSPs sufficient wages so as to recruit and retain a sufficient number of DSPs. The DSP rate increases are significant, amounting to a 14% increase from FY2017 through FY2020. And, the proposed increases in funding for services for class members on the waiting list demonstrate that Defendants are not avoiding their other obligations under the Decree or addressing the DSP funding issue by shifting funds from other priorities.

Third, Defendants are enhancing and adding to their on-going monitoring of service delivery, all in an effort to better determine whether individuals are receiving services of sufficient quality, scope, and variety, consistent with the needs, choices and preferences of individuals receiving services. These monitoring enhancements also are intended specifically to help the parties and Monitor determine the impact the other compliance strategies described in

the proposed plan will have on staffing recruitment and retention, and more generally on whether services are being provided at the necessary levels.

Fourth, Defendants are working on several additional programmatic changes and enhancements, all of which are intended to increase available services for individuals with developmental disabilities and better monitor whether services are being delivered as needed and intended. These changes, like those described above, are all intended to address the Court's findings of non-compliance.

As described more fully in Exhibit A, these strategies are all of a nature where it will take time to determine the full effect these financial and programmatic modifications have on those who benefit from the *Ligas* Decree. As such, and in light of the fiscal constraints presented by what the Court acknowledged is the "dire financial situation of the State of Illinois and the attendant competing demands for resources" (Doc. No. 695 at 3), the compliance strategies described above and set out in greater detail in Exhibit A are the best approaches to address the areas of non-compliance the Court identified in its August 11, 2017 Order. Defendants believe that once these strategies are fully implemented, they will be successful, and Defendants will be in compliance with their obligations under the Decree.

Dated: March 30, 2018

Respectfully submitted,

By: /s/ Brent D. Stratton

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ATTORNEY FOR DEFENDANTS

EXHIBIT A

Ligas v. Norwood, 05-4331

DEFENDANTS' COMPLIANCE PLAN PROPOSALS

Pursuant to the Court's order of August 11, 2017, Defendants are to prepare and submit to the Court a plan to achieve compliance with the Ligas Consent Decree. The following represents the Defendants' plan to ensure compliance with the mandates of the Decree.

Defendants plan on ensuring compliance through four main types of activities: The first, and in Defendants' opinion most important, directly address the staffing shortages reported by providers. The second group of activities involves recent modifications to the funding for the hourly rates for Direct Support Professionals (DSPs), as well as funding to further the goals of moving individuals from the Prioritization for Urgency of Need for Services (PUNS) waiting list at a reasonable pace. The third represents compliance measurement tools, and the fourth category includes various programmatic and management changes to increase oversight and ensure compliance with individual Class Member service plans.

I. Reducing Staffing Shortages

Address DSP vacancies through coordination with Division of Family and Community Services

Able-bodied adults with no dependents who receive public assistance benefits – Temporary Assistance for Needy Families (TANF) and Supplemental Nutrition Assistance Program (SNAP) – are required to seek employment/education and training and have time-limited benefits available to them. The Department of Human Services (DHS or Department) Division of Family and Community Services (FCS) has an office of workforce development that assists recipients with job searches. Over half of the individuals receiving SNAP or TANF benefits have high school diplomas, which is the same education level required for DSP positions.

Defendants intend to implement a program wherein providers of both ICF/DD and CILA services can hire qualified TANF and SNAP applicants to fill vacant DSP positions. A similar program has already been implemented successfully with respect to child care workers. Defendants have already begun to formulate the process for a referral system for DSP positions and have held meetings with various program areas to work on a pilot program.

As of the date of this submission, Defendants plan on an employment referral pilot to take place as follows: FCS local offices will begin screening new applicants or current applicants whose benefits are being redetermined for suitability for the pilot employment program. This screening will be an initial screening designed to ensure potential candidates have the proper educational background and an interest in working as DSPs.

Once the initial screening is completed, all suitable candidates will be provided a second level screening and training to focus on general "soft" skills needed to ensure a successful transition to the workforce. This training will not focus on direct DSP skills per se, but rather on more basic professionalism and interpersonal skills that are needed not only for DSP work but other

potential employment opportunities. Upon completion of this training, individuals who have demonstrated the appropriate professional and interpersonal skills to suggest they would be successful as DSPs will continue through the referral process.

Once the candidates are determined to be appropriate for DSP positions through the various screenings and training aspects of the pilot program, a referral process will be put in place for providers to consider the candidates for open DSP positions. Defendants anticipate the pilot program will be able to demonstrate its effectiveness within 6 months following implementation, at which time DHS will determine whether to continue the program.

Efforts have already begun to implement this Pilot, including a webinar conducted on December 18, 2017 with various stakeholders to seek input into the process, including providers, advocates, the Illinois Council on Developmental Disabilities, and others. Defendants are in the process of finalizing the protocols and processes for the pilot to begin employment referrals. Screening for the first class of applicants is underway, and we anticipate the first class of approximately 100 DSP applicants will be matched with employers beginning in April 2018.

Defendants will provide updates to the parties and Monitor, seeking additional feedback throughout the process, and will report on the progress of the referral program during the pilot period.

II. Modifications to the Current Funding Rates

Funding for Ligas services, both CILA and ICF/DD is part of a larger system serving Illinois residents with developmental disabilities and cannot be examined without considering the larger picture. The State's fiscal condition is, and has been for a number of years, under extreme financial pressure, which will not be materially reduced by the tax increase that was enacted in 2017. However, the Defendants remain committed to the goals of the Ligas Decree, and as such, have requested, and obtained initial approval from the Office of the Governor and the Governor's Office of Management and Budget to include additional funding for rates and PUNS placements (under the "reasonable pace" requirement) in the proposed budgets for FY2019 and FY2020.

Looking at funding from a global perspective, given that rates and reasonable pace funding both come from the same funding source, Defendants will request the following increases in funding: For FY2019, the total request for increased funding will be approximately \$110 million above the FY2017 level, and for FY2020, the total request for increased funding will be approximately \$160 million above the FY2017 level. The breakdown and allocation of this increased funding for rates and PUNS services/reasonable pace is as follows:

Rates

As of FY2017, DSP rates averaged \$10.71 per hour. The Illinois General Assembly approved an increase of \$0.75 per hour as part of the FY2018 budget. This increase totaled \$56.4 million and went into effect on August 1, 2017. To ensure providers are able to both recruit and retain staff, Defendants have obtained initial approval for additional increases to the DSP hourly rates over

the next two fiscal years, FY2019 and FY2020. DSP rates will again increase by \$0.38 per hour each year, for a total of an additional \$0.76 per hour over the two-year period, which will increase total spending by \$31.1 million for FY2019 and an additional \$62.2 million for FY2020. By FY2020, the total spending on DSP rates will be \$118.6 million more than in FY2017, and represents a more than 14% increase in the hourly rate.¹ In addition, the Department will seek an additional \$0.18 per hour add on for FY2019 and an additional \$0.78 per hour add on for FY2020 for DSPs working in the City of Chicago, which will increase total spending on DSP rates by more than \$1 million in FY2019 and more than \$5 million in FY2020.

Reasonable Pace

Per the requirements of the Ligas Decree, after year 6, individuals are to be moved from the PUNS waiting list into services “at a reasonable pace.” The parties have been in continued discussions on what “reasonable pace” requires. Defendants propose the following for FY2019 and FY2020: For FY2019, Defendants will request an additional \$21.1 million in funding for PUNS services. This funding, in conjunction with anticipated attrition of individuals currently receiving services, will permit the Department to send 900 individuals selection letters for services, with the anticipation that approximately 630 individuals will begin receiving services as a result of that selection. This assumes that an additional 450 individuals will receive funding through crisis applications. For FY2020, the same rate of funding increases will be maintained (an additional \$21.1 million), again allowing an additional 900 selection letters and 630 more individuals served from the PUNS list and another 450 served through crisis. Further discussion is needed between the parties to determine the selection criteria for the PUNS selections.

Modification of Crisis Criteria

When they began implementing the Ligas Decree, Defendants anticipated that the level of attrition of recipients of services would have a positive impact on serving those on the PUNS list, *i.e.*, that there would be enough normal attrition to allow an increase in serving those on the PUNS list without increasing overall funding. However, crisis applications and approvals have continued to increase and as a result there has not been funding available to address issues such as rates and movement of individuals off of PUNS at a reasonable pace. As evidenced by the funding totals and service assumptions above, a significant portion of the funding that could be utilized to serve individuals on the PUNS waiting list is instead utilized for crisis services. Clarifying the application of crisis criteria might alleviate some of that pressure and allow funding to be directed to other areas.

Currently, individuals who are deemed to be in “crisis” may receive immediate services (within 24-72 hours) or receive supports through a Temporary Safety Plan until long-term arrangements are implemented. Crisis services are currently approved if the individual is at risk of abuse, neglect or homelessness. Despite the increase in services to individuals on the PUNS list over the span of the Ligas Decree, crisis applications have continued to increase year after year (with the exception of FY17, where applications were down from the prior year). Significant resources are expended serving individuals deemed to be in crisis.

¹ These figures remain under internal discussion and are subject to change.

While the Department recognizes the need to initiate immediate services for individuals in a crisis situation, there are instances where individuals are approved for crisis services in the absence of imminent risk. To address this issue, the Division of Developmental Disabilities (DDD) will work closely with Independent Service Coordination (ISC) agencies to ensure that applications are carefully screened and will review approved crisis packets to confirm the individual is at imminent risk for abuse, neglect or homelessness.

III. Compliance Measurements

Monitor the delivery of services to ensure individuals in CILAs are receiving the supports and services identified in their Personal Planning Documents

To date, the provision of services and supports identified in an individual class member's Service Plan or Implementation Strategy has not been a part of the annual provider review process. Therefore, the Department will begin a separate review of a statistically significant number of Ligas class members in CILA settings to assess the implementation of the agreed-upon services and supports by the individuals' providers. The survey will focus on items outlined in the last page of the Personal Plan containing overall outcomes, services and strategies and the Implementation Strategy document, which represents the services, supports and goals the individual, their family and/or guardian and provider have agreed upon.

There are currently 2,029 Ligas class members residing in Ligas-eligible residential waiver settings, of which the vast majority (2,021) reside in CILA settings). A statistically significant sample would require a review of 324 transition plans. The survey would be conducted by DDD staff to ensure independent and unbiased analysis.

The survey will evaluate class members' services under both the waiver² standards currently in use in the Annual BQM Waiver Review, as well as focusing on the actual delivery of services and supports in three main settings and three areas:

	<u>Needs/Strengths</u>	<u>Preferences</u>	<u>Personal Vision/Outcomes</u>
<u>Home</u>			
<u>Community</u>			
<u>Work</u>			

Embedded in assessing the services and supports provided in each of these areas will be an assessment of the overall Waiver quality elements. These areas will therefore be reviewed not just in terms of the actual services and supports being provided, but will also include how those services and supports align with nine specific outcome measures for each individual:

1. Connection to natural support networks;

² "Waiver" refers to the State's Medicaid waiver program wherein the State funds home-based services and community settings such as CILAs.

2. Presence of friends (either in home, programs, or other);
3. Choice in where to work;
4. Choice of personal goals;
5. Participate in the life of the community;
6. Safe in his or her home;
7. Best possible health;
8. Ability to exercise his or her rights; and
9. No abuse or neglect.

Examples of services and supports in each setting and category are as follows:

Home:

Needs/Strengths: level of independence/need for staff assistance (*i.e.*, requires direct supervision in community), physical needs (accessible home, chair in shower, etc.), behavioral needs, mental health needs, occupational therapy, behavioral therapy, assistance with activities of daily life (ADLs), etc.

Preferences: Interested in music – provision of radio, etc.; enjoys video games – provide gaming console; location of home, holiday celebrations, meal choice, etc.

Personal Vision: Long term goals, *i.e.*, independent employment, work, etc.

Community:

Needs/Strengths: Ability to independently access community opportunities with or without staff assistance, ability to use public transportation, behavioral/sensory concerns in community settings, etc.

Preferences: Preferred community activities, such as movies, shopping, visits to the library, etc. (with understanding that the compliance measure will be to demonstrate that the person is able to access community activities that are of interest to them).

Personal Vision: Long term community goals such as accessing opportunities more independently.

Work:

Needs/Strengths: Physical and/or Emotional/Behavioral supports needed in a workplace setting, ADL limitations, need for Vocational Assessment, etc.

Preferences: Type of work preferred, amount and duration, scope of work-full time, part time, volunteer, etc.

Personal Vision: Long term employment goals.

The review will include a review of the relevant documents as described below, but will also include a face-to-face meeting with the individual at the CILA, input from the family/guardian,

information from the provider (including day programming providers), as well as other potential sources of information. A tool will be developed with input from the Court Monitor to both measure and weigh various aspects of the transition plans and implementation thereof. A draft concept of a tool document has been provided to the parties and Monitor, and will be the subject of additional discussions. A compliance threshold will also need to be developed and agreed upon, and would focus on a two-pronged analysis: (1) the percentage on the scoring tool for implementation of each individual Implementation Strategy document needed to be considered compliant; (2) the required overall percentage of compliant reviews from the sample.

Preferences, Needs/Strengths are identified in the body of the Personal Plan. The individual's Personal Vision and desired Outcomes are summarized on the Signature/Summary Page of the Personal Plan. Services and Supports agreed upon between the individual and provider are found in the Implementation Strategy document. In addition to the above, DDD reviewers will also review case notes or "Q notes" when viewing progress towards personal outcomes. The ISC agency should retain the Discovery Tool, Personal Plan, and a copy Implementation Strategy, as well as documents addressing provision of services and supports and progress toward outcomes for review by DDD staff.

Beginning in FY2019, DDD will initiate a formal review involving half of the statistically valid sample, with the goal being that all participants in CILA will have gone through the Personal Plan process, so that the review process will remain consistent. The additional half of the sample will be reviewed in the following fiscal year. DDD will address any deficiencies that are discovered through a corrective action plan process. Information on the progress of the reviews will be provided at Ligas Parties meetings.

Require the Staff Stability Survey to be mandatory for all residential providers funded through DDD

DDD requested that providers participate voluntarily in the 2016 National Core Indicator Staff Stability Survey to obtain information on staff recruitment, wages, vacancies, turnover, etc. Seventy-five percent of providers participated, and a report is anticipated in the spring of 2018.

As a contractual condition of funding, DDD will require that all residential and day program providers complete the 2017 Staff Stability Survey. Obtaining data from all providers will better enable DDD to analyze trends and concerns regarding staffing, both on a systemic and individual provider level.

IV. Programmatic Modifications and Enhancements

Partnering with Medical/Dental Schools

DDD will continue to work to identify medical and dental clinics that accept Medicaid and determine if any are able to serve individuals with developmental disabilities. However, dental care is not covered under the Waiver program; it is covered only under the State's Medicaid Plan. Utilization of student services would require specific consent from parents/guardians for treatment. A number of universities have been identified that accept Medicaid, and additional

exploration is ongoing to determine what services may be able to be provided to individuals receiving services in either a waiver setting or an ICF/DD.

Integrate Assistive Technology into Personal Planning Process

DDD will issue an Informational Bulletin to accompany the Personal Plan assessment instructions to emphasize consideration of adaptive technology/equipment currently available and part of the Ligas Transition Service Plans. Training will also be conducted on assistive technology provided by DDD's training department to ISC agencies and providers to encourage consideration of currently available resources. A workgroup has also been formed to explore expanding the options of technology available to individuals.

Supportive Housing Possibilities/Self Directed Living Options

An internal workgroup has been created to examine self-directed living options. As a part of this workgroup, an RFI was recently issued seeking input on Self Directed Options. A copy of the RFI can be found at <http://www.dhs.state.il.us/page.aspx?item=100000>. DDD will report the response to the RFI at a later date and will continue to keep the parties and Monitor informed as this work progresses.

Capacity Management Application

Funds from the Balancing Incentive Program were used to contract with an outside vendor to create Phase I of a web-based application of all open vacancies – CILA, day program and ICF vacancies. Phase I of the application went live at the end of September 2017 and can be found at <http://www.dhs.state.il.us/page.aspx?item=81789>. Data is based on agency self-reporting. Families and ISC agencies can search by various data fields, including type (CILA, day training, ICF/DD, etc.), demographics (*i.e.*, capacity by gender type) and provider's name with contact, by zip code, county and city (locator search).

There is a possibility of a Phase II, which would allow reporting and utilization of data to BQM for the expansion of additional types of quality reviews. The process will be streamlined through use of iPads by BQM so that data will be recorded and managed during the site reviews. The manner in which BQM data is utilized and released will not change. Phase II has not yet been approved.

Convert the current Ligas Transition Services Plan process into the new Person-Centered Planning process to better meet the needs of Class Members

To ensure consistency and to further ensure Ligas Class Members receive person-centered planning, Defendants have begun to utilize the new person-centered Personal Plan process in lieu of Ligas Transition Services Plan for all new transitions as well as all yearly service plans. This is addressed in the current draft of the Implementation Plan.

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

STANLEY LIGAS, et al.,	)	
	)	
Plaintiffs,	)	No. 05 C 4331
	)	
v.	)	Judge Sharon Johnson Coleman
	)	
JULIE HAMOS, et al.,	)	
	)	
Defendants.	)	

**PLAINTIFFS' AND INTERVENORS' RESPONSE TO
DEFENDANTS' COMPLIANCE PROPOSALS**

This Court found that Defendants “are not in compliance with the Consent Decree by failing to provide the resources of sufficient quality, scope, and variety based on the ample evidence presented to the Court that individuals protected by the decree have experienced a reduction of services and have suffered substantially as a result.” (Dkt # 695) The Court ordered Defendants to “devise a plan to address the issues causing the reduction in services and to bring the State into substantial compliance.” *Id.* Today, Defendants filed a document entitled “Defendants’ Compliance Proposals” that falls far short of what is required to remedy the years-long violations. (“Proposals” Dkt #704) Only Sections I and II of the Proposals purport to “address the issues causing the reduction in services,” as the Court required, and even then, the proposals in these two sections fail to bring the State into compliance with the Decree.¹

The Proposals to Reduce Staffing Shortages and Increase Rates are Insufficient
Section I: Defendants propose reducing staffing shortages by recruiting people currently receiving public assistance. This may help attract a small number of new Direct Support Professionals (DSPs), but is a longer term effort and will not make a significant impact without an adequate increase in wages to reduce turnover. (See Section II below)

Section II: Defendants have obtained “initial approval” to increase the hourly pay for DSPs by \$0.38 in each of the next two years. The proposed increase is woefully inadequate, as it would only bring the DSP rate to \$12.22 per hour by Fiscal Year 2020.² As a result, the staffing crisis and insufficient services to class members and beneficiaries, well-documented in the Motion to Enforce, would continue. The proposed increase would raise reimbursement rates only

¹ Plaintiffs and Intervenor have additional comments about the Proposals beyond Sections I and II including related to compliance measurement, employment, short term stabilization homes and psychiatric services which can be discussed further during the April 4th status conference.

² At 3:37 pm today, after months of negotiations, Defendants added a new provision indicating they will seek an additional wage increase for DSPs working in Chicago. Plaintiffs and Intervenor need to review this change more carefully, but upon quick reflection, such a change (1) will make it even more difficult for providers near Chicago to recruit DSPs from Chicago and (2) does not help providers throughout the State to recruit and retain DSPs.

approximately 10% over 2008 rates, which were frozen for almost a decade. Using the change in the consumer price index, the proposed increase would bring reimbursement rates to only 2014 levels. Thus, in 2020, rates will still be at least six years behind. Providers will be required to meet 2020 costs with 2014 dollars, a clear impossibility. Also, the Proposals make no provision for the years beyond 2020. The Proposals are but a prescription for continuing the violation of the Decree by failing to provide adequate resources. Moreover, Defendants' budget figures are misleading. The \$0.38 per hour increase in each of the next two years will cost the state \$15.5 million each year because the federal government will cover half the cost. The larger numbers in the Proposals include the \$0.75 increase in place at the time of the Court's finding of non-compliance and the amount the State has allocated for reasonable pace (a separate part of the Decree unrelated to the Court's finding of non-compliance), while ignoring the fact that the State receives 50% federal reimbursement.

When Illinois developed its disability service system, the State did not view the DSP role as one that should be filled by an entry level, minimum wage employee, but rather by people with experience and maturity. As DSP rates remained stagnant and market wages increased, DSPs are now being paid as if it were a minimum wage job, albeit with much greater responsibilities. In 2001, the average DSP rate (\$9.92) was nearly double the minimum wage (\$5.15). Defendants' long-time failure to increase rates is a major reason why Defendants are out of compliance and their proposed increases are insufficient to remedy the non-compliance.³

Defendants need a long-term plan to address the inadequate resources and resulting decline in services. The Court suggested that Defendants reconvene a 2014 rates workgroup that made numerous recommendations. However, the Proposals make no reference to reconvening

³ Defendants know the market wage for DSP work. After the initial training period, Defendants pay \$15.00 an hour to new DSP's in the seven state-operated developmental centers ("SODC's") and as a result SODCs have only a 10% turnover rate in contrast to the 30 to 40% turnover in CILAs and ICF/DDs.

the workgroup, which could update the antiquated rate methodology, adopted almost 20 years ago. For example, the methodology currently in use assumes nurses' wages that are half what the average nurse earns today.⁴ Illinois currently ranks 47th nationally and spends only 55% of the U.S. average on developmental disability services, so significant change is desperately needed. While true compliance with the resource and service provisions of the Decree may not be achieved in the near-term, Defendants should not be able to evade the non-compliance finding without at least committing to a comprehensive plan that is reasonably likely to achieve compliance in the future.⁵

WHEREFORE, Plaintiffs and Intervenors respectfully request this Court: (1) find Defendants' Proposals inadequate to remedy the finding of non-compliance, (2) order the Defendants to submit a new compliance plan, and (3) order the State to form a workgroup consisting of counsel for the Plaintiffs and Intervenors, providers, consumers, and representatives of the State to recommend revisions to the rate methodologies for CILAs and ICF/DDs.

Respectfully submitted,

For Plaintiffs

By: /s/ Barry C. Taylor

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⁴ Inadequate support for nurses was the focus of a recent Chicago Tribune article focusing on abuse and neglect in group homes. <http://www.chicagotribune.com/news/watchdog/grouphomes/ct-met-group-home-murray-20180123-story.html>

⁵ The Plan also does not contemplate re-balancing the allocation of current resources, which disproportionately support expensive state-operated developmental centers. Plaintiffs strongly believe that re-balancing must be part of Defendants' long-term Plan to ensure sufficient resources are provided to class members and beneficiaries.

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

STANLEY LIGAS, et al.,	)	
	)	
Plaintiffs,	)	No. 05 C 4331
	)	
v.	)	Judge Sharon Johnson Coleman
	)	
JULIE HAMOS, et al.,	)	
	)	
Defendants.	)	

**LIGAS MONITOR’S RESPONSE TO
DEFENDANTS’ COMPLIANCE PROPOSALS**

Ligas Monitor's Response to the Defendants' Compliance Proposals

Following is the Monitor's response to the above named document which was submitted to the Plaintiffs, Intervenor and Monitor on March 28, 2018. These Proposals resulted from an Order entered on August 11, 2017 by Judge Sharon Johnson Coleman in response to the Plaintiffs' and Intervenor's Joint Motion to Enforce the Consent Decree. It is recognized that extensive efforts by all involved are reflected in these Proposals.

On January 20, 2017, the Fifth Annual Report of the Monitor was filed and cited therein areas of the State's noncompliance with the Ligas Consent Decree in regard to resources, capacity and quality monitoring. More specifically, areas of noncompliance included: inadequate wages for Direct Support Professionals (DSPs); inadequate rates for CILA (Community Integrated Living Arrangements) and ICFs/IID (Intermediate Care Facilities for Individuals with Intellectual and Developmental Disabilities) providers; an unprecedented statewide staffing shortage resulting in diminished quality and consistency of services leading to negative impacts upon beneficiaries of the Consent Decree; inadequate quality monitoring of plans for and implementation of services provided in CILAs as well as of progress toward individuals' personal outcomes; lack of timeliness of crisis services and inadequacy of crisis service plans.

The current Proposals from the Defendants address most of these issues and Defendants' section titles are being used below for ease of reference:

Reducing Staffing Shortages

Defendants continue to refer to "alleged" staffing shortages although these shortages have been substantiated as not only existing, but also being detrimental to beneficiaries of the Consent Decree. Nevertheless, a pilot project has been initiated to recruit Direct Support Professionals (DSPs) from a previously untapped group of applicants. This appears to be a worthwhile effort, but cannot be expected to resolve this pervasive problem. Recent data from the DSP Workforce Coalition indicates that when the CILA (Community Integrated Living Arrangements) program began in Illinois over twenty years ago, the wages paid to DSPs were nearly double the minimum wage, thus recognizing the value of their work. As of July 1, 2018, the minimum wage of \$12.00 per hour in Chicago will exceed the average hourly reimbursement rate to DSPs. In addition, a recent national staff stability survey of twenty-two states reported Illinois' statewide full-time vacancy level to be 14.6% as opposed to the 9.8% average for all of the states represented in the survey.

Modifications to the Current Funding Rates

The Defendants' Proposals fail to specifically address rates paid to providers of CILAs or ICFs/IID (Intermediate Care Facilities for Individuals with Intellectual and Developmental Disabilities) for whom rates have not been increased for approximately a decade while costs have significantly increased. The Court Order entered on August 11, 2017 includes a reference to the Monitor's statement regarding a work group convened by the State in 2014 to address CILA rates. The Order states: "This Court believes that reaching a mutually agreeable long term plan accounting for both the resources of the State and the needs of those with developmental disabilities would benefit from a revival of a State working group to devise creative solutions to the issue of compliance with the Consent Decree." It is recommended that such a workgroup be convened and include the Monitor as well as other independent stakeholders with appropriate

expertise and experience. In addition, any impact of the recent increase of seventy-five cents per hour for DSPs has not yet been demonstrated and adding only another seventy-six cents per hour over the next two years (paid as thirty-eight cents per hour per year) as suggested in the State's Proposals will, as noted above, result in DSPs earning less than minimum wage in some parts of Illinois and is also unlikely to solve the problems created by the unprecedented staffing shortage.

Reasonable Pace

The Defendants' Proposals recognize that criteria for the PUNS waiting list selections remain to be determined by the parties. The Monitor recommends that this discussion be completed as soon as possible in order that the process can be monitored as required by the Consent Decree.

Modification of Crisis Criteria

It is not recommended that crisis criteria be modified, but that any necessary training take place if there are misunderstandings between Independent Support Coordination (ISC) agencies and the Division of Developmental Disabilities as to the content of crisis packets sent to the Division. The Monitor has initiated several conversations with the Division regarding the adequacy of the crisis safety plans which are developed and implemented while services are being initiated to address crises. Compliance Evaluation Standards agreed upon in July of 2012 also indicate specific expectations for timeliness of initiation of crisis services and inclusion of a monitoring component and follow-up activities as part of a crisis transition plan once the crisis has been addressed. The previous Monitor also cited compliance concerns in this area in his First Annual Report. Further discussions are required to insure these requirements are being met.

Compliance Measurement

Defendants have revised this section several times based upon input from the Plaintiffs, Intervenor, and Monitor and this is appreciated. The most recent draft is more comprehensive than earlier versions and references a "draft concept" of a monitoring tool. The Monitor recommends that shared work begin promptly to develop such a tool and looks forward to an active role in advancing this process. It is premature to fully evaluate this newly revised section of the Proposals, but a few comments are nevertheless critical to the completion of this effort:

- There is no indication of monitoring Home Based Services, though these are provided to a majority of Class Members and are also funded by the Waiver.
- Part of the proposed monitoring system depends upon documents developed through a recently implemented Person-Centered Planning Process. As the implementation of this planning process is in its infancy and concerns have been expressed by many of those involved in its implementation, caution must be exercised in measuring implementation of services provided against a plan that may not be accurately reflecting individuals' preferences and needs or supports and services upon which the planning team has agreed.
- It is the Monitor's recommendation that while it is anticipated that the Bureau of Quality Management (BQM) will be conducting reviews and reporting findings to the Parties and the Monitor, there must also be an independent aspect of the review process which does not include the Division or BQM. As has been done successfully in several other states, it is recommended that the Monitor and others comprising an independent team conduct

reviews and assess the results of reviews conducted by the BQM and the Division. The Compliance Evaluation Standards agreed upon in 2012 include several references to independent reviews by the Monitor related to class members in ICFs and in family homes as well as those in crisis situations. While some of the recommendations in these Compliance Evaluation Standards are more specific to where class members were living at that time, there is a clear intent to include independent monitoring. The Consent Decree also states in paragraph 31: “The Monitor may retain such staff and/or consultants as appropriate to assist in the performance of his or her duties.” Further discussions are required, but one approach might be that BQM continues to complete the Waiver Quality Reviews while the independent team conducts the surveys described in the Proposals as being conducted by Division staff.

Programmatic Modifications and Enhancements

These proposals are consistent with discussions held among the Plaintiffs, Defendants, Intervenors and Monitor and require no comment at present.