

STANLEY LIGAS, et al. v. JULIE HAMOS, et al.

Second Annual Report of the Monitor

September 30, 2013

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Section 1 – Introduction

This report is respectfully submitted to the Court, the Parties and the Intervenors in accordance with the Consent Decree (Decree) approved and filed by the Court on June 15, 2011. Specifically, the Decree requires that:

The Monitor shall file annual reports to the Court, which shall be served on all Parties and Intervenors and 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.¹

The Monitor's First Annual Report was submitted to the Court and the parties on September 27, 2012. This second report addresses those activities that took place since that date. The Monitor has engaged in numerous activities consistent with Section XIV (Monitoring and Compliance) of the Decree. There have been twelve parties' meetings since the approval of the Decree. During each of these meetings, the Monitor has given a verbal report of progress and concerns regarding compliance as well as a review of activities. The Monitor has also met with and talked to counsel and representatives of the parties and intervenors separately on

¹ Consent Decree, Section XIV, ¶34, at Page 19.

an ongoing basis. No prior drafts of this report or any part of this report have been submitted to the parties, intervenors or anyone else. This report was delivered by email to the parties and intervenors on September 30, 2013.

This report is organized in five sections. Following the introduction is a section describing the activities of the Monitor during the past year and anticipated activities for the next year. This is followed by a brief and general description of actions taken by the Defendants during this period. The next section is the primary section, which includes a sequential description of activities and findings listed in order of requirements of the Decree and as listed in the established Compliance Standards developed by the Monitor in accordance with the Decree.² Finally, the Monitor has included some brief overall comments designed to communicate a broad description of progress and successes thus far, as well as anticipated possible roadblocks to compliance in the future.

This report includes one finding of noncompliance, with regard to transition planning. More than 150 class members transitioned to community-based settings in western Illinois without the benefit of a *Ligas* Service Transition Plan as called for in the Decree and the *Ligas* Implementation Plan. Details of this finding and corresponding recommendations are in Section 6, Transition Service Plans (page 22-23) of this report. A discussion of necessary action steps to resolve this matter will be discussed at the next parties meeting on October 9, 2013. The Monitor is not requesting the Court to take any action on this matter at this time.

There is another instance during this reporting period when it was necessary the Monitor work with the parties to resolve an issue of compliance. This issue is regarding the promulgation of changes by the Illinois legislature regarding the ICF/DD bed hold policy. In this instance, the intervenors invoked a claim of non-

² Consent Decree, Section XIV, ¶32, at pages 17 and 18.

compliance pursuant to Paragraph 35 of the Decree. On May 23, 2013, the Monitor issued a special report to include a determination of non-compliance with the Decree. Although the defendants did not agree with this determination, subsequent legislation was passed which partially corrected the stated problem. This issue has yet to be fully resolved. (See Section 4, Resources and Capacity for further details.)

There are no other findings of noncompliance in this report.

Section 2 - Activities of the Monitor

The Monitor was appointed by the Court on July 19, 2011 and started monitoring activities on August 3, 2011. Activities of the Monitor during the first year of implementation are fully described in the First Annual Report filed with the Court on September 27, 2012. During the past year, the Monitor has continued to engage in numerous activities designed to initiate and encourage necessary compliance-related actions, assist the Defendants in the implementation of the Consent Decree requirements, facilitate communication between the parties, inform the class members, families and members of the general public about the requirements of the Decree as well as evaluate overall compliance.

It is important to state once again that the Monitor has continued to receive full cooperation and support from the Defendants, including the Department of Human Services, Department of Healthcare and Family Services, the Governor's office, the Attorney General's office and, in particular, the management team and staff at the Division of Developmental Disabilities (DDD). DDD has provided the Monitor with continuous and unfettered access to program staff, class members, class member records and requested information and documents. Plaintiffs' counsel and representatives as well as counsel for the Intervenor have also been readily available and responsive to the Monitor whenever called upon. In all of the parties' meetings, discussions have been productive and on point toward the goal of compliance with the Decree.

The Monitor has also experienced full cooperation and support from the community service providers, ICF/DD facility staff, advocacy organizations and family associations throughout the state of Illinois through the provision of information, facilitation of meetings and direct input on issues relating to compliance activities.

Class members, as well as their guardians and families have also been forthcoming and responsive to the Monitor and continuously expressed a willingness to participate in activities and share their experiences in order to assist the Monitor in evaluating compliance.

Activities of the Monitor over the past year include the following:

- ✓ The Monitor continued to hold separate meetings and phone calls with all counsel to discuss expectations and obtain various perspectives on challenges pertaining to compliance activities.
- ✓ The Monitor has facilitated each of the parties' meetings as well as special single issue meetings. Meetings during this reporting period were held on 9/27/12, 12/13/12, 1/11/13, 3/5/13, 4/5/13 and 7/12/13. The next parties' meeting is scheduled for October 9, 2013. These parties' meetings are scheduled routinely, at least each quarter, in order to maintain a regular line of communication among the parties and to document progress and concerns on a timely basis. To increase efficiency and productivity, these meetings have been bifurcated to include full participation of the parties and intervenors for discussion and input relating to paragraphs 4-10, 25 and 45 of the Decree and class counsel and defendants' participation with regard to the remaining provisions of the Decree.
- ✓ Initial and continuous meetings have been conducted with key staff at DDD and DHS who have specific responsibilities relating to implementation of compliance related activities. The Associate Director of DDD has been the key liaison with the Monitor in facilitating meetings, document production and development and coordination of compliance activities.
- ✓ The Monitor has continued to devote a significant amount of time and effort to continue to provide information sessions, listening sessions and "town hall" meetings across the state to class members, potential class members, families, guardians, community service providers, advocacy organizations, ICF/DD providers, PAS agencies and other stakeholders. These sessions provided an overview of the Decree and Implementation Plan as well as an update of compliance activities and ways stakeholders can play a vital role in providing information and feedback on *Ligas* related issues. Audiences of more than thirty-five of these information and listening sessions over the past two years have included more than 3,500 participants.

- ✓ Regularly scheduled meetings are held with the DDD Director to review progress and challenges related to implementation activities designed to develop strategies to address current issues. The Monitor has also had several meetings with the DHS Secretary to provide an update of activities and any concerns about overall compliance.
- ✓ The Monitor has also met on a quarterly basis with the Governor's office to provide an overview of activities and discuss any overall compliance concerns.
- ✓ The Monitor has reviewed hundreds of documents provided by the defendants, class counsel, service providers, PAS agencies, advocacy organizations and families that have provided significant information, insight and perspective to compliance activities and challenges.
- ✓ The Monitor has reviewed all information on the defendants' various websites relevant to compliance activities and policies that relate to the Decree. The Monitor has worked directly with DDD staff to review and modify information on the *Ligas* page or the DDD website.
- ✓ The Monitor has provided his telephone and email contact information widely across the state in order to hear directly from class members, families, guardians, service providers and PAS agencies about questions and concerns relative to implementation of compliance related activities. As a result, there have been scores of inquiries and concerns received which require specific follow-up and clarification with the defendants. This process has helped clarify many policy questions that have emanated as result of new compliance activities.
- ✓ The Monitor now participates in monthly scheduled conference calls with class counsel and the defendants to discuss individual class member issues and concerns. These calls, scheduled for the first Tuesday of each month, have been quite helpful in resolving individual issues and have also been informative in identifying systemic issues and policies that may affect compliance with the Decree.
- ✓ The Monitor also participates in meetings of the *Ligas* Class Member/Family Advisory Group that has been recently formed for the parties to hear directly from class members and their families regarding their experiences as members of the *Ligas* class.

Section 3 - Overall Activities of the Defendants and Parties

Year two of implementation of the Decree, compared to the previous year, can be described as a year of productivity. Despite the numerous obstacles articulated by the Monitor in the First Annual Report, the defendants took a "can do" approach toward implementation and worked fastidiously to achieve compliance.

Financially, the state, while facing straitened circumstances, came up with the resources necessary to initiate services and supports for more than more than 2,000 class members thus far. This is truly significant.

The Monitor is in no way suggesting that all is perfect or even near perfect. The Illinois system of services for people with developmental disabilities remains to be deeply flawed. This report will pinpoint numerous areas where much improvement and restructuring is needed, including one area of non-compliance. Development of processes and internal mechanisms to achieve and maintain compliance, however, has moved forward with purpose and direction. Some of these activities over the past year by the defendants include the following:

- ✓ The defendants have exceeded their requirements to initiate services for class members who are on the waiting list and class members in ICFs/DD. As of September 1, 2013, 1,356 class members who live at home have initiated services and 519 additional class members living in ICFs/DD have moved. Additionally, 269 class members were served over the past year who were found to be in crisis. These accomplishments should not be understated.
- ✓ The pilot for *Ligas* Service Transition Plan (LSTP) has been completed and, as of July 1, 2013, is now fully operational statewide. DDD has also established a system to track LSTP production and, in the future, will be able to provide information on Data Reports regarding LSTP development.
- ✓ An Outreach contractor has been retained and has begun work toward contacting potential class members to provide information on possible service options as called for in the Decree. Outreach staff have been hired and initial training and orientation has been completed.

- ✓ Significant resources were added to the FY13 appropriations to address the provider payment cycle problems that were cited in the Monitor's First Annual Report. These added resources will be a significant factor in addressing the cash-flow problems and, in some instances, allow providers to consider expansion in order to serve more class members.
- ✓ These has been significant "clean-up" activity with regard to the Prioritization of Urgency of Need for Services (PUNS) waiting list of class members in order to provide increased accuracy and credibility in the selection process for class members on the list.
- ✓ The speed of responsiveness in which the provision of crisis services for *Ligas* class members has vastly improved through the implementation of the defendants' corrective action plan.
- ✓ The defendants have conducted monthly reviews with each of the eighteen Pre-Admission Screening (PAS) agencies to evaluate movement of class member activities from the PUNS list as well as transition of class members from ICFs/DD to community-based settings.

There are also a number of encumbrances that have continued to interfere with implementation activities and threaten substantial compliance. Some of these encumbrances include the following:

- ✓ Opportunities for employment and a path to employment for class members are extremely limited. Although the Governor and Legislator have elevated employment to a high priority, much needs to be done in order to make employment a reality for class members.
- ✓ Despite efforts by the defendants, as identified in the Monitor's First Annual Report, reimbursement rates of funding for community-based settings remain to be among the lowest in the country
- ✓ Many class members who were selected for funding for Community Integrated Living Arrangement (CILA) chose home based services and some cited the lack of flexibility in the CILA program as the reason for this selection.

The issues listed above and more will be discussed in detail in the body of this report.

Section 4 – Compliance Requirements and Activities

This section provides a specific review of the compliance requirements in each of the nine major areas of compliance, which include the following:

1. Resources and Capacity
2. Class Member List(s)
3. Transition Service Plans
4. Transition for Class Members in ICFs/DD
5. Crisis Services
6. Transition for Class Members on Waiting List
7. Outreach
8. Implementation Plan
9. Data Reports
10. Dispute Resolution

Each area of compliance is listed below in a separate section that includes: a description of the requirements in the Consent Decree; timeframes or deadlines for compliance; related activities described in the Implementation Plan and; the status of implementation of compliance activities by the defendants. In accordance with this provision, this section is considered by the Monitor as the primary measure of compliance with the Decree. For some of the requirements, the timeframes for implementation of the specific timeframes have not yet transpired. In these instances, the Monitor will report on activities that have occurred so far and, where appropriate, the likelihood that these actions will lead to timely compliance.

This section also includes comments about the establishment of the *Ligas* Class Member and Family Advisory Group which is called for in the revised Implementation Plan.

Resources and Capacity

The Decree requires resources for community services to be provided consistent with the choice of a class member and the requirements of paragraphs 17 through 19 and 21 through 23 of the Decree. 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. Funding for services for individuals with developmental disabilities will be based on the individual's needs using federally approved objective criteria regardless of whether the individual chooses to receive services in an ICF/DD or in a community-based setting. Amendments to the state Medicaid plan will continue to include ICF/DD services as an alternative choice for long term services.³ Annual budgets will be sufficient to fund the services necessary to comply with the Decree consistent with the choices of individuals with developmental disabilities, including class members.⁴

The Implementation Plan calls for a continuation of activities to develop new community services providers and the voluntary conversion of ICFs/DD to community-based services.⁵ The Implementation Plan also calls for the development of annual budget proposals to incorporate the necessary resources to carry out the provisions of the Decree. The Plan also includes resources for a listing of specific contractual agreements necessary to address the anticipated increase in demand for services, additional DDD staff to be hired in order to manage compliance and prepare compliance-related reports and funding for direct services for class members as they are identified to receive community services.⁶

³ ¶ 4 of June 15, 2011 Consent Decree at page 7

⁴ ¶ 5 of June 15, 2011 Consent Decree at pages 7 and 8.

⁵ Ligas Implementation Plan, 12/15/11, Section IV, Page 13.

⁶ Ligas Implementation Plan, 12/15/11, Section X, Page 20-22.

In order to comply with the provisions of the Decree regarding resources, the defendants engaged in numerous activities. These activities include the following:

- A *Ligas* budget was developed by the Governor and approved by the legislature for Fiscal Year 2014. This budget calls for the increase of \$32.5 million in new funds for implementation of *Ligas* activities. This increase is above and beyond the increases necessary to annualize funding for services and supports that began in FY2013.
- The defendants' data reports also indicate that spending for ICF/DD services has remained constant, with an FY 2014 budget projection of \$370.1 million. Although this amount is slightly lower than FY 2013, there are clear trends and projections for fewer individuals to be served in ICF/DD facilities. The chart below illustrates the ICF/DD budget activity over the past four years.

Fiscal Year	ICF/DD Census	Budget (In Millions)	Per Person Annual Budget
FY2011	6,427	\$392.8	\$60,993
FY2012	6,414	\$381.1	\$59,417
FY2013	6,074	\$372.4	\$61,311
FY2014*	5,800*	\$370.1	\$63,810

*Projected

- As reported in the Monitor's First Annual Report, DHS instituted changes in the reimbursements as well methods and standards for establishing payments for home and community-based services, particularly targeting small (1-4 person) Community Integrated Living Arrangements (CILA). Many of these changes are designed to realign the prior disincentives in the reimbursement rate structure for smaller community homes. These changes have taken full effect.
- The *Ligas Implementation Team* has been fully funded (\$1.68 million) and is mostly in place. Positions for this team includes the following:
 - Compliance Coordinator (1 position) – This position is currently vacant; however, a staff person has been assigned to serve as the lead coordinator for *Ligas* activities. These are his full-time duties. In addition, a person from the Medicaid Waiver unit has been assigned responsibilities for coordination activities, especially those surrounding the waiting list. These are her full-time duties.

- Program and Data Support Staff (1 position) – Funding for this position is being used to contract with a retired employee who has a great deal of knowledge and experience with the DD service system, the Department's budgeting practices, and data systems.
- Bureau of Quality Management Staff (7 positions) – All seven positions have been filled.
- Bureau of Transition Services Staff (4 positions) – All four positions have been filled.
- Appeals Unit Staff (1 position) – This position was filled in FY12
- Rates Section Staff (1 position)– This position was filled in FY12
- Medicaid Waiver Staff (3 positions) – All three positions have been filled.

In the Monitor's First Annual Report, only eight of these 18 positions had been filled. At this juncture, 17 of the 18 positions have now been filled and responsibilities for the remaining position are being fulfilled.

The *Ligas* budget also includes \$2.69 million in FY2014 for contractual agreements called for in the Implementation Plan. Specific allocations for contractual services include the following:

- ✓ Outreach activities. Funds for the independent outreach contractor and related costs.
- ✓ Increased funding for PAS agencies to include:
 - Increased eligibility determinations
 - Development of *Ligas* Service Transition Plans
 - Increased PUNS enrollment activity
 - New ISSA Services
- ✓ An independent contractor has been hired to provide training and technical assistance to PAS agencies in the development of *Ligas* Service Transition Plans. This contractor has started and has begun work with three PAS agencies.

- ✓ Negotiations are nearly complete with an independent contractor to provide family support and advocacy to waiting list class members on a statewide basis.

A year ago, amendments were approved by the Center for Medicare and Medicaid (CMS) for the expansion of the Medicaid Home and Community Based Services (HCBS) Waiver from 15,920 individuals to 18,200 individuals. It is projected that as many as 21,300 individuals will be served in the Medicaid Waiver program by the end of FY 2014. DHS will need to secure approval for this expected increase. This projected increase is designed to allow for sufficient increase in capacity to serve the number of new class members called for to comply with the Decree. The defendants and the Monitor will continue to track capacity growth closely and, if necessary, the defendants will submit additional amendments in the future.

Concerns Regarding Resources

The steps above illustrate a clear commitment by the defendants to allocate significant resources to implement the necessary activities to comply with the Decree. There are still some key areas, however, which will require direct attention and, in some instances, additional resources, including the following.

Despite the enhancements to the reimbursement rates for community services cited in the Monitor's First Annual Report, the overall rates for community services remain to be among the lowest in the country. A number of providers have informally reported to the Monitor that they would be willing to expand community services, especially small CILA settings, if the rates were realistic and commensurate with actual costs for providing services in smaller, often more desirable settings. As a result, the large majority of community-based settings developed have been large 7-8 person settings, very often not the choice of the class members. It will important for Illinois to move forward and establish a rate

structure that promotes community flexibility, individual choice and fully integrated activities. Over the next six months, the Monitor will work with DHS and the parties to identify recommendations for rate adjustments

As reported in the introductory section of this report, there was an instance when it was necessary the Monitor work with the parties to resolve an issue of compliance. This issue is regarding the promulgation of changes by the Illinois legislature regarding the ICF/DD bed-hold policy. These changes resulted in a negative impact on financial impact on ICFs/DD that was a estimated loss of as much as \$8 million annually.

In this instance, the intervenors invoked a claim of non-compliance pursuant to Paragraph 35 of the Decree claiming that enactment of this legislation was a violation of the Decree. After meeting and conferring with the parties reviewing relevant information, on May 23, 2013, the Monitor issued a special report to include a determination of non-compliance with Paragraph 4 of the Decree. Since then, the parties discussed the matter again at the July 12, 2013 parties meeting. The legislature rescinded part of the legislation, thus reducing the amount of financial hardship on ICF/DD providers by approximately 75%. This matter has not yet been fully resolved. The Monitor will continue to work with the parties in the attempt to come to a final resolution of this matter.

A final issue with regard to resources that warrants immediate attention is the need for additional support within DHS, and, in particular, DDD to implement key activities related to the Decree. The absence of an effective data system, for example, continues to make it difficult for staff to track day-to-day activities of class member services and support. The lack of an employment coordinator

significantly reduces the likelihood of successful implementation of employment services initiatives. The lack of an assigned Medicaid waiver manager makes it nearly impossible for DDD to continuously evaluate the effectiveness and flexibility of the waiver and fashion policy recommendations for change. Due to the success of *Ligas* activities, the number of people supported by DDD is increasing rapidly. Since the approval of the Decree, it is estimated that the number of people served by the home and community-based waiver will increase by more than 20% over the next few years. A management team and infrastructure must be in place to support this rapid growth. Over the next six months, the Monitor will work with the DHS Secretary and DDD Director to identify recommendations to strengthen the support provided by the Department for *Ligas* class members.

Class Member List(s)

The Decree requires the defendants to maintain a statewide database in which all Class Members are enrolled.⁷ Defendants are also required to promptly revise the class member database and waiting list data.⁸

The Implementation Plan describes the process for the development and maintenance of a class member list that will be accessible to the Monitor and Class Counsel. Intervenor's counsel will have access to the class list as provided in the Implementation Plan. DDD will use its PUNS database to maintain a list of Waiting List class members. The Plan also calls for DDD to review the adequacy of the PUNS database.

Upon recommendation by the Monitor and agreement of the parties and intervenors, the defendants have developed and maintained two class member lists.

There is now a list of class members pursuant to ¶2 (a) of the Decree, 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. As of September 1, 2013 there were 892 class members in this category. The defendants maintain a list that contains, at a minimum: the names of individuals; the documentation to verify their written affirmative request; date of birth; social security number and; the name of the facility in which they live. Since the Monitor's First Annual Report, the accuracy and veracity of this list has improved significantly. The most recent list has been reviewed and re-reviewed and appears to be consistent with the requirements. Of particular concern in the Monitor's First Annual report was ensuring that none of those listed as Objectors are not included on the list, unless there is a more current affirmative

⁷ ¶8 June 15, 2011 Consent Decree at Page 8.

⁸ ¶9 June 15, 2011 Consent Decree at Page 9.

written statement that the individual and/or guardian has changed their mind and has since requested services in a community-based setting. During the past year, the Monitor facilitated a meeting with the defendants, class counsel and counsel for the intervenors to conduct a detailed review of the list of objectors. This list was then reconciled and disseminated to the parties and intervenors. A senior staff member within DDD has been assigned to maintain this list and inform the Monitor of any particular updates and concerns. A monthly review and update of ICF/DD class member list is conducted with PAS agencies.

There is also a list of class members pursuant to ¶2 (b) of the Decree 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. These individuals are known as Waiting List Class Members. As of September 15, 2013, there were 14,110 class members in this category. This list is also maintained as a subset of the overall waiting list (Commonly known as the PUNS list) for services.

As reported in the Monitor's First Annual Report, development and refinement of this list has also proven to be quite challenging. Initial utilization of this initial list revealed that much of the class member information was outdated and/or inaccurate. A large number of addresses were incorrect and some individuals had moved out of state. Contact information was often inaccurate or outdated. Some individuals on the initial list are now deceased. In more than 400 other instances, after individuals were contacted, it was determined that they no longer needed or wanted home and community-based services or services in a community-based setting.

DDD took immediate and deliberate actions to address these problems. The PAS agencies have the primary responsibility to update the information on the waiting list. Communications were sent to each PAS agency with clear instructions on updating data on the waiting list and reminding them of their responsibility regarding individual updates. DDD assigned a key staff member as well as an additional professional staff member to maintain and update this list as a high priority. These two staff are and have been in constant communications with PAS agency representatives to correct inaccurate data and update waiting list information. Budget allocation enhancements have also been made to ensure that payments to PAS agencies are adequately reimbursed for PUNS entry and update activities on an expedited basis. These efforts thus have been quite effective.

The Monitor has worked closely with DDD to ensure that the waiting list of class members is updated. This list has grown by more than 3,000 class members over the past year. This is due, in part, to a number of individuals “aging in” to the class by virtue of turning 18 years old. In other instances, families have requested that their loved one be added to the waiting list because of the renewed hope that implementation of Ligas Decree has engendered.

As an overall note, and as reported in the Monitor’s first report, the problems identified in the class member lists issue are also symptomatic of a more endemic issue within DDD – the lack of a comprehensive integrated data system. It will be important for DHS over the next several years to address this issue and develop a plan to address the overall need for a data system that is responsive and consistent with the ever-growing challenges within DDD and DHS. The Monitor recognizes that development of a comprehensive data system will require a significant initial investment of resources. The outcome of such an endeavor, however, would help ensure effectively coordinated services for *Ligas* class members and others.

Transition Service Plans

The Decree requires the defendants to develop transition plans for all class members who are selected to be served pursuant to the Decree. Transition plans shall describe all services required, how they will be developed and obtained and a timetable for transition.⁹ Transition plans will be developed by a Qualified Professional in conjunction with the class member and guardian and others, as appropriate.¹⁰

The process for transition planning will include the class member's personal vision, preferences, strengths, and needs in home, community and work and shall reflect the value of supporting relationships, productive work, participation in community life and personal decision making.¹¹ Services and supports will be integrated into the community and consistent with choices of class members and guardians. Transition plans shall not be limited by the current availability of services but be within the confines of the waiver and State Plan.¹² Transition plans for class members who are determined to be in crisis will be developed.¹³

The Implementation Plan calls for a phase-in process for the completion of a transition service plan for each class member seeking services in a community-based setting. The Plan outlines an 18-month long process that includes a pilot trial period, re-evaluation and state-wide implementation by July 1, 2013. This process ensures coordination required between PAS/ISC agencies and class members.¹⁴

⁹ ¶11 June 15, 2011 Consent Decree at Page 9.

¹⁰ ¶12 June 15, 2011 Consent Decree at Page 9.

¹¹ ¶13 June 15, 2011 Consent Decree at Page 9 & 10.

¹² ¶14 June 15, 2011 Consent Decree at Page 10.

¹³ ¶21.(b) June 15, 2011 Consent Decree at Page 12.

¹⁴ Ligas Implementation Plan, 2013 Revisions, 2/25/13 Section VI, Page 18

The defendants have begun to implement the transition planning process consistent with what is described in the Implementation Plan. These activities include the following:

- DDD has completed the development of the *Ligas* Service Transition Plan (LSTP) documents through a process of receiving broad input from the parties, class members and families, PAS agencies and other key stakeholders. These documents include the LSTP format and accompanying instructions for class members moving from their homes or ICFs/DD to CILA. The final version of the LSTP as well as corresponding instructions can also be found on the DDD Website. (<http://www.dhs.state.il.us/page.aspx?item=40989>) An abbreviated transition plan format was developed for class members seeking community-based services in crisis situations.
- Two PAS agencies, Developmental Disability Services of Metro East and Suburban Access, Inc. piloted the utilization of the LSTP for a six month period in FY13 through January 2013. Each of the pilot agencies selected a sampling of class members living at home and living in ICFs/DD who participated in the sample. The total sampling size was more than 150 individuals. Monthly conference calls with the two pilot PAS agencies were conducted by DDD with the Monitor's participation to review progress and implementation challenges throughout the pilot period.
- After reviewing the results of the pilot activities, DDD, with input from the Monitor and class counsel, made necessary changes to the forms and processes in the beginning of calendar year 2013.
- On April 16, 2013, DDD, with assistance from the Monitor, conducted the initial training for all PAS agency management staff on the LSTP requirements, planning document and transition planning process. During the remainder of April and through May 2013, DDD and the Monitor provided training to all 18 PAS agencies and service coordinators. This training reached over 300 individuals. Once the LSTP training sessions were completed for each PAS agency, they began implementation of the new Transition Service Plan on a statewide basis by July 1, 2013.
- For those class members who moved into a community-based setting prior to July 1, 2013 and did not have the benefit of a LSTP, a *Modified Version* of the LSTP was developed. PAS agencies are required to complete this Modified Version for each applicable class member no later than the second quarter of FY2014.

With regard to the transition planning process for class members in crisis, DDD designed modifications to the existing Crisis Funding Request and developed the *Crisis Transition Plan and Funding Request*. This form and format, along with detailed instructions, were posted on the DDD website and disseminated to all PAS agencies for input. These documents were finalized and were required to be utilized by all PAS agencies statewide beginning September 14, 2012. Since this crisis transition planning form is a relatively minor adaptation to an existing form, a pilot process was not considered necessary.

The Monitor is generally pleased with the progress the defendants have made toward the development of a Transition Service Plan. Converting a system from virtually no transition service planning to a person-centered approach as required in the Decree necessitates a carefully planned and deliberate process that takes time to evolve. As these Ligas Transition Service Plans are evaluated by DDD and the Monitor, needed modifications will be completed and training and technical assistance, as necessary, will be implemented.

Another component of this process will be the training of PAS agencies and others on effective person-centered planning. The *Ligas Implementation Plan* calls for a consultant to be identified to work with the DDD Bureau of Transition Services to review transition plans and train PAS agencies and providers on their development.¹⁵ This consultant, Dr. Mark Friedman, was hired in August 2013 and has now begun his work.

Over the next year, the Monitor will conduct a random sampling review of LSTPs as called for in the Compliance Evaluation Standards and report to the parties on the results.

¹⁵ *Ligas Implementation Plan, 2013 Revisions*, Section X, at page 24

Specific Compliance Finding with Regard to Transition Planning

In September 2012, the Department of Healthcare and Family Services (DHFS) and the Department of Public Health entered into an Agreement with St. Mary's Square, an ICF/DD facility in Galesburg, IL to develop a "replacement plan" to close the facility within 36 months. Subsequently, a replacement proposal was also developed and revised on March 14, 2013. At that time the facility served 205 individuals. The Replacement Proposal specifically states that

Individuals transferring from the Facility who are deemed to be Ligas class members will be afforded the services and supports as described in section VII, paragraphs 10-16 of the Ligas v. Hamos Consent Decree, in accordance with the Ligas v. Hamos Implementation Plan.¹⁶

This Replacement Proposal was signed by the authorized representative of St. Mary's Square and the Director of DDD. Less than six months later, on August 29, 2013, the facility closed. Approximately 200 Ligas members had moved to home and community-based settings. Approximately 192 of these class members moved to homes operated by the same provider, into the same model of 8-person group home in two neighboring towns in western Illinois.

On August 20, 2013, the Monitor met with DDD, St. Mary's Square leadership and staff, the PAS Agency - Western Illinois Services Center, (WISC), DDD staff, the Office of the State Guardian (OSG) and selected community services staff. It was discovered at that meeting that nearly all of the class members had moved without the benefit of a Ligas Service Transition Plan. Most of these individuals moved after July 1, 2013. It should also be stated that WISC, the PAS agency involved had completed the training for LSTPs on April 16, 2013. The lack of LSTPs for all of these class members constitutes a serious violation of Paragraph 10 of the Decree.

¹⁶ St. Mary's Square Living Center Replacement Proposal, Revised March 14, 2013, Page 3

There appears to be a number of systemic malfunctions that led to this noncompliance, including the hasty manner in which the facility moved to close the facility without regard to the required processes, the lack of responsibility of the PAS agency to facilitate the development of LSTPs and the lack of oversight of DHS to ensure that LSTPs were in place prior to these class members' move.

It is the Monitor's view and finding that these class members and/or their guardians were not given the opportunity to make informed decisions or provided with an objective menu of viable options prior to their move. This is wholly unacceptable.

As a consequence, the Monitor recommends that DHS, in conjunction with the Monitor, conduct a full investigation of this matter and develop a report with findings and recommendations, to include:

- A written report to include a sequence of actions that took place that led to this noncompliance;
- A listing of class members who were moved without LSTPs;
- A remedial plan to ensure that choice and options be given to each class member adversely affected; and
- A list of recommendations that will ensure that such noncompliance does not recur.

This investigation should be completed no later than January 10, 2014. This recommendation will be further discussed at the October 9, 2013 parties' meeting.

Additional Concerns Regarding Transition Planning

Paragraph 13 and 14 of the Decree state:

The process for transition planning will include the class member's personal vision, preferences, strengths, and needs in home, community and work and shall reflect the value of supporting relationships, productive work, participation in community life and personal decision making.¹⁷

and:

Services and supports will be integrated into the community and consistent with choices of class members and guardians. Transition plans shall not be limited by the current availability of services but be within the confines of the waiver and State Plan.¹⁸

In order for implementation of this requirement occur, the transition planning process must include a broad menu of real choices for each class member. This includes the size of community residential setting and employment.

Data provided by the defendants show that, among all class members who transitioned to Community Integrated Living Arrangement (CILA) settings in the first two years of implementation, 69% transitioned to settings of seven or eight residents. For those who transitioned from ICF/DD facilities 75% moved to settings of seven or eight individuals. Only 8% of those class member who transitioned from an ICF/DD facilities to CILA settings, moved to settings of four persons or fewer. These data strongly suggest to the Monitor that the option of movement to smaller settings is, for many class members, not one that is sufficiently presented or sufficiently explored. Anecdotally, many families have reported to the Monitor that their clear preference was a smaller setting, but were told that this is not an option because of "availability" or "cost effectiveness."

¹⁷ ¶13 June 15, 2011 Consent Decree at Page 9 & 10.

¹⁸ ¶14 June 15, 2011 Consent Decree at Page 10.

Services in smaller settings certainly falls within the realm of current best practices. In fact, the Federal Center for Medicare and Medicaid Services (CMS) has enacted financial incentives for states that transition individuals from ICF/DD facilities to settings of four persons or fewer through the Money Follows the Person (MFP) program. Class members and their families should be given that choice. If they choose a smaller setting, efforts should be made to identify options consistent with the requirements in the Decree.

Another area in which, in the Monitor's view, adequate real choice is not afforded, is that of employment. While the specific data are not available, it is quite clear that an overwhelming number of class members are transitioning into daytime activities that do not include real employment or even provide for a path to employment. Again, many families, class members and guardians, anecdotally, have reported to the Monitor that the option of competitive employment was not even considered during the transition planning process or was dismissed as "unrealistic" or simply not presently available. This must change. For adults with developmental disabilities, employment should be the default daytime activity and should be the first option presented.

This year, the Governor signed into law the *Illinois Employment First Act* which establishes a definition of competitive employment and incorporates specific requirements for state agencies to implement activities to promote employment and establish measurable goals and objectives toward employment activities.¹⁹ Enactment of this legislation provides the timely impetus for the parties to work together to take steps to implement strategies to ensure that the employment option is a viable one for *Ligas* class members.

Over the next year, the Monitor will be working with the parties to ensure that all options, including the option of smaller home settings and real employment, are provided to class members throughout the transition planning process.

¹⁹ HB2591 Enrolled, Illinois Employment First Act

Transition for Class Members in ICFs/DD

The Decree requires all class members in ICFs/DD to transition to community services or community-based settings consistent with their transition plans if, at the time of transition, the class members request placement in a Community-Based Setting as confirmed and documented in accordance with the Decree.²⁰

- One third of class members in this category will transition by 12/15/2013. The number of class members to transition during this period will be determined by June 15, 2013.
- Two thirds of class members in this category will transition by 12/15/2015. The number of class members to transition during this period will be determined by June 15, 2015.
- All class members in this category will transition by 6/15/2017. The total number of class members to transition from ICFs/DD will be determined by June 15, 2017.

The Implementation Plan calls for the identification and referral of these class members to PAS/ISC agencies for assistance in transition to community-based settings. The number of people identified for transition from ICFs/DD is expected to change, pursuant to the results of the outreach process described below. PAS/ISC agencies will monitor the adjustment and resolve issues as they are identified.²¹

889 class members in this category were identified on June 15, 2013. Of the number of class members identified on that date, one-third are required to be served by December 15, 2013. As reported in the Class Member List section, there were 892 class members in ICFs/DD as of September 1, 2013. As of that same date, 560 class members in this category have received funding for

²⁰ ¶17 June 15, 2011 Consent Decree at Page 10.

²¹ Ligas Implementation Plan, 12/15/11, Section V, Page 14 -15

community-based services or services in a community-based setting. Of the 560 who have received funding, at least 519 of these class members have actually started community-based services and billing for these services has been verified. This far exceeds the requirement that one-third of ICF/DD class members move prior to December 15, 2013. DDD sends requests to PAS agencies for monthly updates for all ICF/DD class members to determine the status of choice and selection of community services providers and projected transition dates.

The overwhelming majority (99%) of class members who have transitioned have requested and received funding for Community Integrating Living Arrangements, (CILA) and the remainder of the class members (1%) have requested and received funding for home-based services (HBS) and have returned to their family home.

It should be noted that, to date, at least 90 individuals living in ICFs/DD who were contacted to receive transition supports to community services have since changed their minds and chosen to stay living in the ICF/DD. In each of these instances the individual's choices were respected and they were removed from the class member list.

A large number of class members who were living in ICFs/DD who have moved services in a community-based setting did so as a result of a voluntary downsizing or closure agreement. There are expected to be even more individuals who will be identified over the next year who are living in ICFs/DD now and will need to move due to voluntary downsizing or closure agreements. It will be imperative for the defendants to ensure that these individuals are provided with the opportunity to review an array of options so they can make an informed decision about where and how they want to receive services and supports. The Monitor has discussed this with the parties and DDD staff and will be working closely with the defendants in tracking how choices are being facilitated for individuals who are affected by implementation of voluntary downsizing and closure plans.

Crisis Services

The Decree requires the defendants to serve Class members who meet the crisis criteria described in ¶21 (a) of the Decree and who request community services or placement in a community-based setting expeditiously.²² Services and/or placement will be provided in a manner consistent with the transition plan.

The Implementation Plan calls for the PAS/ISC agencies to continue to submit requests for services from individuals in crisis situations. DDD will ensure that class members are served expeditiously.²³ The Monitor established the standard, 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.²⁴

As reported in the Monitor's First Annual Report, on May 1, 2012, the Monitor notified the defendants and class counsel of non-compliance in that crisis services were not being provided expeditiously as called for in paragraph 21(c) of the Decree. After a sampling review of the crisis services for class members from June 2011 to April 2012, the Monitor found a large percentage of class members who were not served for weeks and, in some instances, months, who needed services immediately. The Monitor recommended that the defendants develop a plan to address these issues. The defendants acknowledged the problem and immediately developed a draft corrective action plan and reviewed the plan with the Monitor. This draft plan was then presented to the parties and discussed at the June 21, 2012 parties' meeting. Following the meeting, class counsel provided written comments to the defendants on June 28, 2012 on the corrective action for crisis services. The defendants, in conjunction with the Monitor have since modified this plan and have moved forward with many of the action steps. The

²² ¶21.(C) June 15, 2011 Consent Decree at Page 12.

²³ Ligas Implementation Plan, 12/15/11, Section VIII, at Page 19

²⁴ Compliance Evaluation Standards, July 17, 2012 at Page 14

DDD Deputy Director for Community Services has been assigned the lead responsibility for overseeing implementation of the crisis corrective action plan.

Some of the key action steps in the Crisis Service Request Action Plan include the following:

- DDD has developed an internal quality assurance process and checklist for management staff and Network Coordinators to individually evaluate each crisis request packet to ensure timeliness and completion.
- The internal database has been modified to ensure accuracy of entities.
- Network staff have been provided additional training in the areas of crisis data entry and processing crisis requests.
- Network Coordinators have now been assigned authorization to issue Pre-Award Letters in order to expedite processing of these letters.
- Training was in October 2012 for DDD Network staff and PAS agencies about submitting complete and accurate crisis funding requests, and being fully prepared when presenting requests to the Review Committee.
- The frequency for internal DDD informal review committee meetings has been increased to reduce the lag time in approval.
- Rate setting unit staff have been instructed to give high priority to crisis requests which will be specifically labeled as high priority. Distribution of award letters will also be streamlined and conveyed electronically.
- A management report was designed for improved overall internal monitoring of crisis requests.

After nearly a full year, implementation of this corrective action plan has shown significant, if not remarkable, improvement in the results. The Monitor reviewed crisis class member information and data from 145 crisis requests during FY 2013. In addition, in accordance with the Compliance Standards, the Monitor randomly selected 5% of class members among those crisis requests, and for those class members, conducted an in-depth review. The results showed that 95% (139) of the class members who were found to be in crisis, received services with a 24-72 hour period after their crisis status was confirmed. This finding demonstrates that

the defendants' efforts were wholly successful. The Monitor will continue to work with the defendants, including a joint review of the crisis management reports, to continue to improve crisis responsiveness.

It should be noted that there were a number of instances that were identified by the Monitor, where the processing of the crisis applications and request information packets development moved slowly prior to the crisis review process by DDD. The Monitor will work with the DDD management staff to establish a mechanism to track and improve that part of the process,

The defendants' data reports indicate that, in FY 2012, 288 class members who requested service pursuant to the crisis criteria were served and, in FY 2013, 269 class members in crisis were served. This represents a slightly downward trend of crisis requests over the past several years. Historically, the defendants process approximately 300 to 350 crisis requests per year. It is likely that this downward trend is, in part, due to a large number of class members in the emergency and critical categories being selected from the waiting list for funding.

As mentioned in the Transition Service Plan section above, the defendants have developed and are now implementing the *Crisis Transition Plan and Funding Request* form. Utilization of this form as prescribed appears to have resulted in a more effective and uniform manner in processing crisis requests.

Transition for Class Members on Waiting List

The Decree requires Class members described in ¶2.b of the Decree will transition to community-based services. These class members are referred to in the Decree as "Waiting List Class Members."²⁵ Class members described in ¶2.b and ¶22 (a) and ¶22 (b) will transition in accordance with the following schedule:

- Community-based services or placement in a community-based setting for 1,000 Waiting List class members will begin by June 15, 2013.
- Community-based services or placement in a community-based setting for an additional 500 Waiting List class members will begin by June 15, 2014.
- Community-based services or placement in a community-based setting for an additional 500 Waiting List class members will begin by June 15, 2015.
- Community-based services or placement in a community-based setting for an additional 500 Waiting List class members will begin by June 15, 2016.
- Community-based services or placement in a community-based setting for an additional 500 Waiting List class members will begin by June 15, 2017.
- Following June 15, 2017, Waiting List class members will receive community-based services or placement in a community-based setting at a reasonable pace.²⁶

The Implementation Plan incorporates the criteria for prioritization for selection of class members who are on the waiting list to receive funding for community-based services or services in a community-based setting. Within each category, selections will be made based on the length of time on the waiting list database.²⁷

²⁵ ¶22.(c) June 15, 2011 Consent Decree at Page 13.

²⁶ ¶23.(c) June 15, 2011 Consent Decree at Page 13.

²⁷ Ligas Implementation Plan, 12/15/12, Section VII, Page 21

As reported in the Class Member List section above, the PUNS list shows 14,110 individuals who qualify as Waiting List class members. In order to implement a systematic process for selections of class members to effectuate services for the initial 1,000 individuals by June 15, 2013, the defendants engaged in several selection events. (Commonly referred to as “PUNS pulls”) The first selection event identified 800 individuals believed to be class members and occurred in February 2012. After an initial screening process, 65 individuals were removed from this list and 735 letters were sent to the class members and/or guardians and their respective PAS agencies indicating that funding for community-based services or services in a community-based setting would be available upon application. The second selection event occurred in June 2012, which identified an additional 626 individuals and, after initial screening 22 individuals were removed from the list, resulting in 604 application letters being sent to the class members and respective PAS agencies. A third selection event occurred in October 2012 and 1,500 individuals believed to be class members were selected. A fourth selection event occurred in September 2013 with 500 individuals selected and 27 names were removed for various reasons, resulting in 473 letters being sent to class members and respective PAS agencies. In summary, 3579 letters have been sent to Ligas waiting list class members over the past 20 months. Each of the selection events have chosen people in accordance within the criteria for prioritization as listed in the *Ligas Implementation Plan*. The breakdown of the recent selection event is available on the DDD website:

(<http://www.dhs.state.il.us/page.aspx?item=67339>)

The Monitors’ First Annual Report identified numerous problems with the integrity of the class member lists and the defendants’ efforts to address these problems. Despite the serious concerns cited a year ago, the Monitor is pleased to report that the defendants have, to date, complied with this requirement of the Decree.

As of September 1, 2013, the status of provision of services for those individual found eligible as waiting list class members is as follows:

- As of September 1, 2012, services have been initiated for 1,356 class members.
- An additional 121 class members have received finding awards and services are about to begin soon.
- Packets for another 25 individuals have been completed to DHS for funding approval.
- 363 individuals are in the process of receiving Level II screening by PAS agencies and requests are being processed.
- Initial contact has been made with an additional 83 individuals who have confirmed that they have requested services.

In summary, the defendants' hard work in this area, has resulted in outcomes that have far exceed the requirements of the Decree. The defendants are also well on the way to meeting or exceeding the requirements for the provision of services to waiting list class members of an additional 500 individuals by July 30, 2014.

The Monitors' First Annual Report expressed grave concerned about the likelihood that the defendants would achieve full compliance with this provision of the Decree. These concerns were followed by numerous recommended steps designed to better manage the PUNS data and infuse new resources into the process. These concerns and recommendations were heeded and resulted in deliberate actions that resulted in a changed climate of movement and productivity. The defendants are to be congratulated for their hard work in this area and for applying the necessary resources and assistance where they were needed.

There are, however, some concerns with regard to the outcomes of these activities. The *Ligas* Implementation Plan calls for selection for funding to identify 50% of those selected to be served through the CILA out-of-home supports and 50% to be selected to receive home-based support services. Data provided by DDD for the first two years of service provision show that less than 20% of those selected are now being served through CILA supports and more than 80% are being served through the home-based supports program. This outcome is statistically significant enough to warrant close and careful examination. It is not clear what has led to this irregularity with regard to expectations and results. Absent a detailed review, any reasons given for this would be mostly speculative.

The Monitor recommends, therefore, that a review be conducted by the defendants, with support from the Monitor and input from class counsel, to determine the reasons for the number of class members who were selected for CILA who did not accept CILA supports and services.

Outreach

The Decree requires the defendants to maintain a fair and accessible process by which individuals or their guardians can affirmatively request services and maintain records of those requests.²⁸

The Implementation Plan outlines numerous activities designed to identify individuals throughout the state who are or will be in need of home and community-based services and services in a community based setting. These activities include training and information sessions as well as the development and distribution of written materials to broad based audiences.

For potential class members living in ICFs/DD, the Plan provides a detailed description and requirements for the development of a contact to secure the services of an outside contractor(s) to contact all potential class members and determine and document an informed decision on whether they are requesting services in a community-based setting.²⁹

The defendants engaged in numerous activities to comply with the Outreach requirements of the Decree and activities described in the *Ligas Implementation Plan*. At the initial parties' meeting, it was agreed by the parties and memorialized by the Monitor that for those individuals who live in ICF/DD settings, they are considered a class member if they have completed a PASS Form 1238 or its predecessor, DHMDD Form 1243, or DD PAS 10 form, or the Request form disseminated through plaintiffs' counsel, and checked the box that they choose Home and Community Based Services.

²⁸ ¶25 June 15, 2011 Consent Decree at Page 14

²⁹ Ligas Implementation Plan, 2013 Revisions, December 15, 2012

The Defendants, and in many instances, in conjunction with the Monitor, engaged in activities to inform stakeholders as well as the community at large about the requirements of the Decree and how services can be sought and received by qualified class members. Some of these activities include the following:

- DDD and the Monitor have continued conducting training activities for each of the 18 PAS agencies on the requirements of the Decree and Implementation Plan and, in particular, their role in facilitating choice for class members.
- DDD has developed and maintained a *Ligas* website that includes a full and downloadable description of the requirements of the Decree, updates on documents and activities related to the Decree and contact information for parties interested in more information. This website is updated on a regular basis. See: <http://www.dhs.state.il.us/page.aspx?item=40989>
- DDD maintains a consumer-friendly PAS agency locator function on the DDD website whereby families can locate their PAS agency by simply entering their county or zip code.
- DDD has also structured the 1-888-DDPLANS toll free number so that families can be directed to the *Ligas* inquiry staff support.
- DDD has established, widely publicized and maintained a *Ligas* complaint contact within the Division who responsible to receive and memorialize inquiries, complaints and requests for information from class members, families other interested parties. This staff person also maintains a log of complaints and related follow-up activities.

With regard to outreach to persons living in ICFs/DD, the defendants, with input from representatives from class counsel, intervenors counsel and the Monitor, developed a *Ligas* Outreach Request for Proposals (RFP). This RFP was released to the public for solicitation on September 13, 2012 and proposals were due to DHS no later than October 9, 2012. This RFP was designed to secure the services of an independent contractor to 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 or services in a community-based setting or continue to receive services in an ICF/DD.

There were no responsive bids to this RFP. As a result, DHS identified a qualified contractor, the Council on Quality and Leadership, (CQL) to serve as the Outreach Contactor. Over the past six month, CQL engaged in numerous initial steps and activities to prepare for implementation of their outreach responsibilities. These steps include:

- CQL has identified and hired a project director to be the full-time manager of outreach operations;
- With input from the parties and intervenors, CL drafted a protocol and flowchart of outreach activities;
- With input from the parties and intervenors, CQL drafted telephone contact script to be used for outreach activities;
- Conducted a training and orientation to review outreach responsibilities and activities for ICF/DD providers. DDD, the Monitor, class counsel participated in the session. The intervenors participated by phone. This training and orientation was held in Springfield on June 26, 2013.
- CQL has hired all staff who will be responsible for scheduling interviews and interview class members and families. Resumes for these staff were provided to DDD and the Monitor.
- All staff attended a three-day training session from September 10, 2013 through September 13, 2013 in Pontiac. DDD and the Monitor provided key elements of this training.

Contacts with potential class members will begin in October 2013. The contactor will begin by contacting potential class members and families from ICF/DD facilities from two distinct geographical areas within Illinois to include one area in the suburban Chicago area and one in southern Illinois.

It is expected that outreach activities for potential class members living in ICFs/DD will transpire over the next three years. It will be important for CQL and DDD to provide ongoing communications with the Monitor, parties and intervenors, regarding progress, outcomes and barriers to implementation.

Implementation Plan

The Decree requires that the defendants finalize the Implementation Plan, with input from the parties and intervenors.³⁰ The Implementation Plan must be filed with the Court by December 15, 2011. The Implementation Plan shall be updated and amended at least annually.³¹

The original *Ligas Implementation Plan* was negotiated by the parties and intervenors and filed with the Court by the defendants on December 15, 2011. There was joint agreement by all parties, the Intervenors and the Monitor on the initial Implementation Plan. This Plan was approved by the Court and ordered as a supplement to the Decree on February 15, 2012. Subsequently, DDD provided updates and proposed revisions to the Implementation Plan and provided a draft to the parties and intervenors. These revisions were negotiated and submitted to the Court without objection on February 22, 2013. At a brief hearing on March 5, 2013, the Court approved the revised Implementation Plan.

The defendants have utilized the *Ligas Implementation Plan* as their blueprint for activities designed to comply with the Decree. At each scheduled parties' meeting, the defendants provide a verbal update of Plan activities and respond to questions from class counsel and counsel for the intervenors. There have also been significant inquiries from key stakeholders and members of the public at large about implementation activities.

The Monitor recommends that the defendants resubmit a proposed amended *Ligas Implementation Plan* with necessary revisions prior to the scheduled parties meeting in January 2014 for review and input. Following the input from the parties, intervenors and the Monitor, the defendants should file the updated plan to the Court, as required in the Decree.

³⁰ ¶27 June 15, 2011 Consent Decree at Page 15.

³¹ ¶28 June 15, 2011 Consent Decree at Page 15

Data Reports

The Decree requires the defendants to provide 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 towards achieving compliance.³² Not less than every six months, defendants shall provide data reports to the Monitor, class counsel and intervenors.

Implementation Plan Activities – The Implementation Plan calls for the submission of data reports.

The defendants have provided Data Reports to the parties, intervenors and Monitor on August 20, 2012, February 15, 2013 and August 15, 2013. The Data Reports include class member data regarding the class member list(s), services to class members in ICFs/DD, services to class members from the Waiting List, ICF/DD resident outreach, transition service plans, crisis services, voluntary ICF/DD closure and downsizing agreements, eligibility appeals and the *Ligas* budget. The Monitor finds the form and format for class member data to be useful and acceptable. It will be increasingly important, however, to ensure that data with regarding budget expenditures and shortfalls, if any, are updated on a regular basis.

³² ¶ 33 of June 15, 2011 Consent Decree at page 18.

Services for Named Plaintiffs

The Decree requires the defendants within sixty days to offer each of the Named Plaintiffs the opportunity to receive appropriate community-based services or services in a community-based setting.³³

The defendants have complied with this requirement of the Decree. All five named plaintiffs were offered services in community based settings and have successfully transitioned to their new homes or received home-based services funded through the Illinois home and community-based waiver.

***Ligas* Class Member/Family Advisory Committee**

The Implementation Plan calls for the establishment of the *Ligas* Class Member/Family Advisory Committee.³⁴ This Committee has now been established and conducted its first organizational meeting on June 27, 2013. Minutes of the meeting have been completed and the committee is scheduled to meet again in Chicago on October 8, 2013

Dispute Resolution

The Decree clarifies the rights of class members to appeal or seek administrative or judicial review pursuant to governing law through the existing fair hearing process. Class members may also avail themselves of any informal appeal process that currently exists.³⁵

The Monitor reviewed the appeal data with the defendants in April 2012 and identified a number of problems with the appeal process. Scheduling of appeals hearings and obtaining written hearing determinations were taking an inordinately

³³ ¶37 June 15, 2011 Consent Decree at Page 21

³⁴ *Ligas* Implementation Plan, Revised 2013, at Page 12

³⁵ ¶24 June 15, 2011 Consent Decree at Page 14

long time, in some instances, as much as six months to a year. The appeals application process was often confusing to individuals and families and some families reported that they were not aware of their appeal rights.

As a result of these problems, the defendants, with input from class counsel, developed and have implementing an appeals corrective action plan that includes the following activities and tasks:

- HFS has hired an additional three new Administrative Law Judges as hearing officers and one additional attorney to support the hearing process.
- The newly hired ALJ's, at the request of HFS, conducted site visits to several CILA settings to better understand community-based services for people with developmental disabilities.
- The application process was streamlined so that appeals come directly to DDD rather than the additional pass through with HFS.
- A draft to include modifications of the appeals rights form is being finalized.
- Appeals unit staff have been instructed in writing to give top priority to crisis appeals.
- Appeals unit staff are being trained to expedite informal appeals.
- An internal checklist has been drafted to provide effective and ongoing tracking of appeals.
- PAS agencies are being re-trained on preparing complete appeal requests.
- Weekly internal management reports will be generated to ensure internal reviews are scheduled on a timely basis.
- Management reports will be incorporated into the *Ligas* data reports.

From a general review of the appeals data, it appears that the appeal process has improved somewhat, particularly in conducting hearings within a reasonable

timeframe. The Monitor, however, has not yet conducted a comprehensive review of the appeals data and process with the defendants. This will occur over the next six months. The Monitor will then provide the parties with findings and recommendations for improvement.

Section 5 – Overall Comments

Over the first two years of implementation of the *Ligas* Decree, the Monitor has watched gradual, yet constant growth in the defendants' capacity to achieve compliance and support class members and their families to the best of their ability. The defendants' effort is unquestionably strong and evident. The results of these efforts are now coming to fruition. Since June 15, 2011, services have been provided for more than 2,200 class members, including ICF/DD class members, waiting list class members and those in crisis. A year ago, the Monitor expressed much vexation and doubt noting the many difficulties and challenges facing compliance. Through the diligent work of the defendants, with full cooperation from class counsel and the intervenors, much has been accomplished.

The Monitor will continue to work diligently with the parties and intervenors until substantial compliance with all of the requirements becomes a reality.