SECOND AMENDED

COMPREHENSIVE PLAN OF ACTION

INTRODUCTION

On December 5, 2011, the United States District Court for the District of Minnesota adopted the Settlement Agreement in this class action. The settlement was intended to bring significant improvements to the care and treatment of individuals with developmental and other disabilities in the State of Minnesota. This Comprehensive Plan of Action (CPA) is established pursuant to the Court's Order of August 28, 2013, and with the agreement of the parties.

Part I of the CPA covers elements of the Settlement Agreement and the closure and replacement of the MSHS-Cambridge facility with community services. Part II covers the Rule 40 modernization plan. Part III is the *Olmstead* Plan which is being finalized pursuant to the Court's orders.

MANAGEMENT

The Department of Human Services will establish a Jensen Implementation Team ("Team") comprised of at least four full-time professional staff, with clerical assistance, which will be responsible for management and coordination of this Part I and also Part II of this Plan. The Team will have a designated leader skilled in leadership in the field of developmental disabilities, and will have sufficient resources to fulfill its responsibilities. At least two additional professional staff will be responsible for the Department of Human Services elements of the Olmstead Plan.

The Jensen Implementation Team is responsible for bi-monthly updates to the Court and Court Monitor, and for promptly providing all information requested by the Court Monitor. The bi-monthly updates will be provided ten days in advance in draft to the Court Monitor, Plaintiffs' Class Counsel, the Ombudsman for Mental Health and Developmental Disabilities, and the Executive Director of the Minnesota Governor's Council on Developmental Disabilities.

STRUCTURE

The CPA includes Evaluation Criteria (EC) and accompanying Actions. The ECs set forth the outcomes to be achieved and are enforceable. The Actions under the ECs are not enforceable requirements. Compliance with an EC will be deemed to have been achieved if the EC's Actions are taken. However, the Department of Human Services may undertake alternate actions to achieve satisfaction of the EC. The Actions may be modified pursuant to the modification process set forth in the Order of August 28, 2013.

ECs are indicated by whole Arabic numbers (e.g., 1, 2) and, in the original, by blue shading. Actions are indicated by Arabic numbers with consecutive decimals (e.g., 1.1, 1.2, 1.3, 2.1, 2.2, 2.3).

DEFINITIONS

For the purposes of this Comprehensive Plan of Action, "Facility" and "Facilities" means MSHS-Cambridge, the MSOCS East Central home established under the Settlement Agreement, and the treatment homes established (or to be established) under this Comprehensive Plan of Action. The provisions of this Comprehensive Plan of Action regarding the fact and process for closure of MSHS-Cambridge and the list of discharges refer to the facility at 1425 East Rum River Drive South, Cambridge, MN 55008, and not to the MSOCS East Central home in the town of Cambridge, MN.

The Settlement Agreement states that its provisions under "System Wide Improvements" on "long term monitoring, crisis management and training represent the Department's goals and objectives; they do not constitute requirements." §X.A. For the purposes of this Comprehensive Plan of Action, the related Evaluation Criteria are to be understood as, and to be subject to, a "best efforts" standard. These are: EC 68 and 69 (long term monitoring); 70, 71 and 72 (crisis management); 73, 74 and 75 (training).

The Settlement Agreement Definitions (§III. Definitions) apply, except to the extent of the meaning of "Facility" under this Comprehensive Plan of Action, and that the "scope of DHS obligations" to individuals with developmental disabilities under the System Wide Improvements (§X) is not limited to residents of the Facility.

APPLICABILITY

This Comprehensive Plan of Action applies to the Defendant Department of Human Services, an agency of the State of Minnesota and, with regard to the *Olmstead* Plan, to the State of Minnesota. Consistent with its obligations under the Settlement Agreement, applicable law, and the federal court orders in this case, the Department of Human Services shall utilize best efforts to require counties and providers to comply with the Comprehensive Plan of Action through all necessary means within the Department of Human Services' authority, including but not limited to incentives, rule, regulation, contract, rate-setting, and withholding of funds.

PART I

Settlement Agreement Section IV. METO CLOSURE

1. The Facilities will comply with Olmstead v. L.C. The Facilities are and will remain licensed to serve people with developmental disabilities. The Facility will eliminate unnecessary segregation of individuals with developmental disabilities. People will be served in the most intregated setting to which they do not object. Each individual's program will include multiple opportunities on an ongoing basis to engage with: (1) citizens in the community, (2) regular community settings, (3) participating in valued activities (4) as members of the community. These community activities will be highly individualized, drawn from the person-centered planning processes, and developed alongside the individual.

1.1 Each individual's planning processes will specifically address integration within the following life areas: (1) home; (2) work; (3) transportation; (4) lifelong learning and education; (5) healthcare and healthy living; and (6) community and civic engagement.

1.2 Cambridge and successor facilities apply strong efforts to individualize and personalize the interior setting of the home. This includes exerting maximal feasible efforts to assist individuals to personalize and individualize their bedrooms and common areas, to make each common area aesthetically pleasing, and to actively support individuals to bring, care for, acquire, and display personal possessions, photographs and important personal items. Consistent with person-centered plans, this may include the program purchasing such items which will build towards transition to a new place to live.

2. Facilities utilize person-centered planning principles and positive behavioral supports consistent with applicable best practices including, but not limited to the Association of Positive Behavior Supports, Standards of Practice for Positive Behavior Supports .

2.1 Each individual will be involved to the greatest extent possible in the development of a person-centered profile centering on learning from the person and those who know the person best about their history, preferences, life experiences, interests, talents, and capacities among other areas within 30 days of admission. This profile will be updated and revised as more is learned over time on at least a monthly basis.

A revised person-centered profile format will be developed from the current person-centered description to include the above areas and to include a method to note when revisions and additions are made, by whom, and in what venue (e.g., a person-centered meeting of the support team, interview, an individual update by a staff member, a phone call).

2.2 From the understanding in the person-centered profile, a person-centered plan will be completed which includes the development of a shared vision of the future to work towards within 30 days of admission, as well as agreements and shared objectives and commitments to work towards.
2.3 The person-centered plan will directly inform the development of the individualized program plan (or Coordinated Service Support Plan). Such plans will build on the strengths and interests of the individual, and moving towards increasing relationships, roles, and community integration in these areas of life.
2.4 The person-centered plan will directly inform the development of a Positive Behavior Support Plan. Life direction, talents, and interests will be capitalized on in any planned intervention. Each behavior support plan will include teaching strategies to increase competencies and build on the strengths of the person.
2.5 Each behavior support plan will be unique to each individual. The use of token economies, and contingent reinforcement will be used sparingly, not for punishment, and only when weighed again the potential risks to the person's image and competencies in terms of exercising personal autonomy.
2.6 Each behavior support plan will include a summary of the person's history and life experiences, the difficulties and problems the person is experiencing, past strategies and results, and a comprehensive functional behavioral analysis, from which strategies are derived.
2.7 Each Functional Behavioral Analysis will include a: a. Review of records for psychological, health and medical factors which may influence behaviors b. Assessment of the person's likes and dislikes (events/activities/objects/people) c. Interviews with individual, caregivers and team members for their hypotheses regarding the causes of the behavior; d. Systematic observation of the occurrence of the identified behavior for an accurate definition/description of the frequency, duration and intensity; e. Review of the history of the behavior and previous interventions, if available; f. Systematic observation and analysis of the events that immediately precede each instance of the identified behavior; g. Systematic observation and analysis of the consequences following the identified behavior; h. Analysis of functions that these behaviors serve for the person; i. Analysis of the settings in which the behavior occurs most/least frequently. Factors to consider include the physical setting, the social setting, the activities occurring and available, degree of participation and interest, the nature of teaching, schedule, routines, the interactions between the individual and others, degree of choice and control, the amount and quality of social interaction, etc. j. Synthesis and formulation of all the above information to formulate a hypothesis regarding the underlying causes and/or function of the targeted behavior. or shall be consistent with the standards of the Association of Positive Behavior Supports, Standards of Practice for Positive Behavior Supports (http://apbs.org).

2.8 Each positive behavior support plan will include: 1. Understanding how and what the individual is communicating; 2. Understanding the impact of others' presence, voice, tone, words, actions and gestures; 3. Supporting the individual in communicating choices and wishes; 4. Supporting workers to change their behavior when it has a detrimental impact; 5. Temporarily avoiding situations which are too difficult or too uncomfortable for the person; 6. Enabling the individual to exercise as much control and decision making as possible over day-to-day routines; 7. Assisting the individual to increase control over life activities and environment; 8. Teaching the person coping, communication and emotional self-regulation skills; 9. Anticipating situations that will be challenging, and assisting the individual to cope or calm; 10. Offering an abundance of positive activities, physical exercise, and relaxation, and 11. As best as possible, modifying the environment to remove stressors (such as noise, light, etc.).
2.9 The format used for Positive Behavioral Support Plans will be revised to include each of the above areas, and will be used consistently.
3. Facilities serve only "Minnesotans who have developmental disabilities and exhibit severe behaviors which present a risk to public safety."
3.1 All referrals for admission will be reviewed by the admissions coordinator to assure that they are persons with a Developmental Disability and meet the criteria of exhibiting severe behaviors and present a risk to public safety taking into account court ordered admissions.
4. Facilities notify legal representatives of residents and/or family to the extent permitted by law, at least annually, of their opportunity to comment in writing, by e-mail, and in person, on the operation of the Facility.
4.1 Initiate annual written survey process to all legal representatives of residents and/or family to the extent permitted by law whose individual of interest was served within the past year which solicits input on the operation of the Facility. Each survey will be in the relevant language, and will include notification that comments on Facility operations may be offered in person or by mail or telephone by contacting Facility director or designee.
4.2 Aggregate data will be collected from survey responses received from each survey process. Facility staff will develop an action plan to outline changes which will be made as a result of survey data, and implement those changes.
SETTLEMENT AGREEMENT SECTION V.A. PROHIBITED TECHNIQUES – RESTRAINT
5. The State/DHS immediately and permanently discontinues all the prohibited restraints and techniques.

5.1 DHS will issue a memorandum to all Facility staff confirming the Department's commitment to provide services and supports which are consistent with best practices including: 1) Providing individuals with a safe and therapeutic environment which includes positive behavioral supports and training on behavioral alternatives; 2) Recognizing that restraints are not a therapeutic intervention; 3) An immediate prohibition on prone restraint, mechanical restraints, seclusion and time out; 4) The Facilities' goal towards immediate reduction and eventual elimination of restraint use whenever possible; and 5) Restraint use is permitted only when the client's conduct poses an imminent risk of physical harm to self or others and less restrictive strategies would not achieve safety; client refusal to receive/participate in treatment shall not constitute and emergency.
5.2. The Facility shall remove "mechanical restraint," "prone restraint," "prone hold" and all other prohibited techniques from all current Facility forms and protocols.
5.3 Facility policy(s) on Emergency Interventions shall minimally include: 1) The type of emergency interventions permitted and prohibited; 2) The protocol for administering emergency interventions; 3) The authorization and supervision needed for each emergency intervention; 4) The medical monitoring required during and after each restraint; 5) The review requirements of each emergency intervention (administrative, internal and external); 6) The data collection and aggregate data review of restrictive intervention usage. The Facility policy shall separate and clearly delineate "therapeutic interventions" from "emergency restraint/interventions." Current Facility policy/procedures shall be revised to comply with these requirements.
5.4 All Facility staff members have received competency-based training on the policy/procedures identified immediately above.
5.5 Competency-based training on the policy/procedures identified above has been incorporated into Facility orientation and annual training curricula.
6. The State/DHS has not used any of the prohibited restraints and techniques.
6.1 Facility Staff will specify on Restraint Form which emergency technique was employed, verifying that a prohibited technique was not used.
6.2 The supervisor will review each restraint with staff by the end of his/her shift, verifying that: 1) The threat of imminent harm warranted the emergency intervention, 2) The intervention was an approved technique and no suspicion exists that a prohibited technique was used; and 3) When applicable, what immediate corrective measures/administrative actions need to be taken.
6.3 Any/all use of prohibited techniques, e.g., prone restraints, mechanical restraints, seclusion, timeout, etc., will be investigated as potential allegations of abuse. Facility Staff are required to immediately report any suspected use of prohibited restraints/techniques to their supervisor.)
6.4 Reporting and review forms/procedures are revised, and utilized, to incorporate the above 6.1, 6.2 and 6.3.

7. Medical restraint, and psychotropic/ neuroleptic medication have not been administered to residents for punishment, in lieu of habilitation, training, behavior support plans, for staff convenience or as behavior modification.
7.1 Facility policy shall specifically forbid the use of restrictive interventions, including medical restraints and/or psychotropic/neuroleptic medication for: the purposes of punishment; in lieu of habilitation, training, or behavior support plans; for staff convenience; or as a behavior modification.
7.2 Facility policy will specify medication management protocols consistent with best practices in the support and treatment of individuals with cognitive and/or mental health disabilities.
SETTLEMENT AGREEMENT SECTION V. B. PROHIBITED TECHNIQUES - POLICY
8. Restraints are used only in an emergency.
8.1 Facility Staff will clearly document, on the restraint form, the circumstances leading up to the restraint and what imminent risk of harm precipitated the application of the restraint. This shall include what antecedent behaviors were present, what de-escalation and intervention strategies were employed and their outcomes.
8.2 In the event a restraint was used in the absence of imminent risk of harm, staff will be immediately retrained on Facility policies addressing the "Therapeutic Interventions and Emergency Use of Personal Safety Techniques" policy with such retraining being entered into their training file.
9. The Policy (Settlement Agreement Att. A, as it may be revised after court approval, dissemination and staff training) was followed in each instance of manual restraint
9.1 As part of its data management processes, the Facility will collect, review and analyze information related to staff's adherence to restraint policy.
10. There were no instances of prone restraint, chemical restraint, seclusion or time out. [Seclusion: evaluated under Sec. V.C. Chemical restraint: evaluated under Sec. V.D.]
10.1 Facility policy shall clearly identify prone restraint, chemical restraint, seclusion and timeout as "prohibited."
SETTLEMENT AGREEMENT SECTION V.C. PROHIBITED TECHNIQUES – SECLUSION AND TIME OUT
11. There were zero instances of the use of Seclusion. Facility policy shall specify that the use of seclusion is prohibited.

12. There were zero instances of the use of Room Time Out from Positive Reinforcement. Facility policy shall specify that the use of time out from positive reinforcement is prohibited.
SETTLEMENT AGREEMENT SECTION V.D. PROHIBITED TECHNIQUES – CHEMICAL RESTRAINT
13. There were zero instances of drug / medication use to manage resident behavior OR to restrain freedom of movement. Facility policy specifies the Facility shall not use chemical restraint. A chemical restraint is the administration of a drug or medication when it is used as a restriction to manage the resident's behavior or restrict the resident's freedom of movement and is not a standard treatment or dosage for the resident's condition.
14. There were zero instances of PRN orders (standing orders) of drug/ medication used to manage behavior or restrict freedom of movement. Facility policy specifies that PRN/standing order medications are prohibited from being used to manage resident behavior or restrict one's freedom of movement.
SETTLEMENT AGREEMENT SECTION V.E. PROHIBITED TECHNIQUES – 3rd PARTY EXPERT
15. There is a protocol to contact a qualified Third Party Expert.
15.1 Facility policy stipulates that a Third Party Expert will be consulted within 30 minutes of the emergency's onset.
16. There is a list of at least 5 Experts pre-approved by Plaintiffs & Defendants. In the absence of this list, the DHS Medical or designee shall be contacted.
17. DHS has paid the Experts for the consultations.
18. A listed Expert has been contacted in each instance of emergency use of restraint.
19. Each consultation occurred no later than 30 minutes after presentation of the emergency.
20. Each use of restraint was an "emergency."
21. The consultation with the Expert was to obtain professional assistance to abate the emergency condition, including the use of positive behavioral supports techniques, safety techniques, and other best practices. If the Expert was not available, see V.F. below.

21.1 On the restraint form, Facility staff will identify the Third Party or other expert and will document all recommendations given by the consultant, techniques, and the efficacy and outcomes of such interventions. When reviewing the restraint form 24 hrs post-restraint, Designated Coordinator will verify that Facility staff contacted the medical officer within 30 minutes of the emergency's onset.
SETTLEMENT AGREEMENT SECTION V.F. PROHIBITED TECHNIQUES – MEDICAL OFFICER REVIEW
22. The responsible Facility supervisor contacted the DHS medical officer on call not later than 30 minutes after the emergency restraint use began.
23.1 On the Restraint Form, the Facility supervisor will document both the date/time that the emergency restraint began and the date/time s/he contacted the designated medical officer.
23. The medical officer assessed the situation, suggested strategies for de-escalating the situation, and approved of, or discontinued the use of restraint.
23.1 The Facility supervisor will document on the restraint form and in the resident's record, the medical officer's de-escalation strategies, the outcome of those strategies used, and whether approval was needed and/or given for continued restraint use.
24. The consultation with the medical officer was documented in the resident's medical record.
24.1 When conducting his/her post-restraint review, the Designated Coordinator will verify that the supervisor contacted the medical officer within 30 minutes of the emergency restraint and documented the details in the resident's medical record.
SETTLEMENT AGREEMENT SECTION V.G. PROHIBITED TECHNIQUES – ZERO TOLERANCE FOR ABUSE AND NEGLECT
25. All allegations were fully investigated and conclusions were reached. Individuals conducting investigations will not have a direct or indirect line of supervision over the alleged perpetrators; the DHS Office of the Inspector General satisfies this requirement. Individuals conducting investigations, interviews and/or writing investigative reports will receive competency-based training in best practices for conducting abuse/neglect investigations involving individuals with cognitive and/or mental health disabilities and interviewing.
25.1 DHS employees having responsibility for investigative duties will receive 8 hours of continuing education or in-service training each year specific to investigative practices.
25.2 Each investigation will undergo a quality review by a peer or supervisor who has, at minimum been trained in the requirements set forth in this Implementation Plan.

25.3 The Department will maintain an electronic data management system, to track all information relevant to abuse/neglect investigations. This data management system will minimally include: 1) Incident date; 2) Report date; 3) Incident location; 4) Provider; 5) Allegation type; 6) Alleged victim; 7) Alleged perpetrator(s); 8) Injuries sustained; 9) Assigned investigator; 10) Date investigative report is completed; 11) Substantiation status; 12) Systemic issues identified and the corrective measures taken to resolve such issue; 13) Whether or not the case was referred to the county attorney; and 14) Whether or not charges were filed; and 15) Outcome of charges.
25.4 Allegations substantiated by DHS Licensing (Office of Inspector General) will be documented in the client's Facility record.
26. All staff members found to have committed abuse or neglect were disciplined pursuant to DHS policies and collective bargaining agreement, if applicable.
26.1 All substantiated allegations of staff abuse or neglect are referred to Human Resources for human resources action in accordance with the definitions set forth under the Vulnerable Adults Act. All perpetrators will be disciplined in accordance with DHS policies and procedures and Union Contracts.
27. Where appropriate, the State referred matters of suspected abuse or neglect to the county attorney for criminal prosecution.
27.1 All allegations of abuse or neglect related to care of residents of a Facility will be submitted to the common entry point to determine whether or not the case will be referred to the county attorney for criminal prosecution.
SETTLEMENT AGREEMENT SECTION VI.A. RESTRAINT REPORTING & MGMT – FORM 31032
28. Form 31032 (or its successor) was fully completed whenever use was made of manual restraint.
28.1 When reviewing the restraint form 24 hrs post-restraint, the Designated Coordinator will verify that Form 31032 (or any successor) was completed timely, accurately and in its entirety.
29. For each use, Form 31032 (or its successor) was timely completed by the end of the shift.
29.1 When reviewing the restraint form 24 hrs post-restraint, the Designated Coordinator will verify that Form 31032 (or any successor) was completed timely, accurately and in its entirety.
30. Each Form 31032 (or its successor) indicates that no prohibited restraint was used.
30.1 Staff will indicate what type of restraint was used on Form 31032 (or any successor).

30.2 When reviewing the restraint form 24 hrs or one business day post-restraint, the Designated Coordinator will verify that no prohibited techniques were used.
SETTLEMENT AGREEMENT SECTION VI.B RESTRAINT REPORTING & MGMT- NOTIFICATIONS
31. Within 24 hours, and no later than one business day, Form 31032 (or its successor) in each instance was submitted to the Office of Health Facility Complaints.
31.1 Form 31032 (or its successor) is sent to the Office of Health Facility Complaints within 24 hours or no later than one business day.
32. Within 24 hours, and no later than one business day, Form 31032 (or its successor) in each instance was submitted to the Ombudsman for MH & DD
32.1 Form 31032 (or its successor) is sent to the Ombudsman for MH & DD within 24 hours or no later than one business day.
33. Within 24 hours, and no later than one business day, Form 31032 (or its successor) in each instance was submitted to the DHS Licensing
33.1 Form 31032 (or its successor) is sent to DHS Licensing within 24 hours or no later than one business day.
34. Within 24 hours, and no later than one business day, Form 31032 (or its successor) in each instance was submitted to the Court Monitor and to the DHS Internal Reviewer
34.1 Form 31032 (or its successor) is sent to the Court Monitor and to the DHS Internal Reviewer within 24 hours or no later than one business day.
35. Within 24 hours, and no later than one business day, Form 31032 (or its successor) in each instance was submitted to the legal representative and/or family to the extent permitted by law.
35.1 Form 31032 (or its successor) is sent to the legal representative~~,~~ and/or family to the extent permitted by law, within 24 hours or no later than one business day.
36. Within 24 hours, and no later than one business day, Form 31032 (or its successor) in each instance was submitted to the Case manager.
36.1 Form 31032 (or its successor) is sent to sent to the case manager within 24 hours or no later than one business day.

37. Within 24 hours, and no later than one business day, Form 31032 (or its successor) in each instance was submitted to the Plaintiff's Counsel.
37.1 Form 31032 (or its successor) is sent to the Plaintiff's Counsel within 24 hours or no later than one business day.
SETTLEMENT AGREEMENT SECTION VI.C. RESTRAINT RESPONSES ARE NOT TO REPLACE OTHER INCIDENT REPORTING, INVESTIGATION, ANALYSIS & FOLLOW-UP
38. Other reports, investigations, analyses and follow up were made on incidents and restraint use.
38.1 The Designated Coordinator will review each client incident, injury and/or restraint use within 1 business day of its occurrence to: 1) Evaluate the immediate health and safety of the individual(s) involved; 2) Ensure no prohibited techniques were used; 3) Ensure all documentation and notifications were properly made; and 4) Determine what, if any, immediate measures must be taken.
38.2 The Designated Coordinator will convene an Interdisciplinary Team (IDT) meeting within 5 business days of a restraint to: 1) Review the circumstances surrounding the behavioral emergency; 2) Determine what factors likely contributed to the behavioral emergency, i.e. life event, environmental, relational discord, etc.; 3) Identify what therapeutic interventions, including individualized strategies, were employed and why they were unsuccessful in de-escalating the situation; 4) Review and assess the efficacy of the individual's PBS plan, making changes as needed; 5) Determine if trends/patterns can be identified with this individual or this living area; and 6) Take all corrective measures deemed necessary, indicating what actions are being taken, the party responsible for taking such actions, the date by which these actions will be taken, and how the efficacy of such actions will be monitored. Documentation of the IDT meeting, including attendees, review and actions taken will be thoroughly documented in the individual's record.
38.3 When changes to an individual's program plan and/or PBS plan are recommended during the IDT's restraint review, the Designated Coordinator will ensure that such changes are made within 2 business days of the IDT meeting related to the restraint use.
38.4 A facility-based Positive Behavioral Supports Review (PBSR), comprised of both behavioral analysts and non-clinical staff, will be established and maintained for the purposes of: 1) Reviewing all positive behavioral support plans to ensure they adhere to current best practice; 2) Approving and monitoring the efficacy of all positive behavioral support plans; 3) Reviewing the use of any restrictive and/or emergency interventions, i.e. restraints, 911 calls, etc. The PBSR Committee will meet on a monthly basis.
38.5 The PBSR committee will maintain meeting minutes detailing attendance (person/title); chairperson; individual and aggregate data review; issues and trends identified (individual and systemic); corrective measures to be taken; dates by which such corrective measures are to be completed; responsible parties, and follow-up of the previous month's action plans.

38.6 The Department will identify and address any trends or patterns from investigations.
SETTLEMENT AGREEMENT SECTION VII.B. RESTRAINT REVIEW - INTERNAL REVIEWER
39. In consultation with the Court Monitor during the duration of the Court's jurisdiction, DHS designates one employee as Internal Reviewer whose duties include a focus on monitoring the use of, and on elimination of restraints.
40. The Facility provided Form 31032 (or its successor) to the Internal Reviewer within 24 hours of the use of manual restraint, and no later than one business day.
40.1 The shift supervisor/administrator on duty will notify the Internal Reviewer of the restraint within 24 hours and no later than one business day. Notification will be made electronically along with the completed Form 31032 (or its successor).
41. The Internal Reviewer will consult with staff present and directly involved with each restraint to address: 1) Why/how de-escalation strategies and less restrictive interventions failed to abate the threat of harm; 2) What additional behavioral support strategies may assist the individual; 3) Systemic and individual issues raised by the use of restraint; and 4) the Internal Reviewer will also review Olmstead or other issues arising from or related to, admissions, discharges and other separations from the facility.
41.1 The Internal Reviewer will consult with staff present and directly involved with each restraint to address: 1) Why/how deescalation strategies and less restrictive inteventions failed to abate the threat of harm; 2) What additional behavioral support strategies may assist the individual; 3) Systemic and individual issues raised by the use of restraint; and 4) the Internal Reviewer will also review *Olmstead* or other issues arising from or related to, admissions, discharges and other separations from the facility.
SETTLEMENT AGREEMENT SECTION VII.B. RESTRAINT REVIEW - EXTERNAL REVIEWER
42. On April 23, 2013, the Court appointed the Court Monitor as the External Reviewer, with the consent of Plaintiffs and Defendants. DHS funds the costs of the external reviewer.

43. After providing Plaintiffs' Class Counsel and the Department the opportunity to review and comment on a draft, the External Reviewer issues written quarterly reports informing the Department whether the Facility is in substantial compliance with the Agreement and the incorporated policies, enumerating the factual basis for its conclusions.
44. In conjunction with duties and responsibilities under the Order of July 17, 2012, the Court Monitor reviews and makes judgments on compliance, makes recommendations and offers technical assistance in his discretion, and files quarterly and other reports with the Court. Timing of reports is subject to the Court's needs, results of Monitor's reviews, and to the monitoring plan pursuant to the Order of August 28, 2013.
EXTERNAL ENTITY AND PLAINTIFFS' ACCESS
45. The following have access to the Facility and its records: The Office of Ombudsman for Mental Health and Developmental Disabilities, The Disability Law Center, and Plaintiffs' Class Counsel.
45.1 Open access to the Facility, its successors, and their records is given to the Office of Ombudsman-MH/DD, The Disability Law Center and Plaintiffs' Class Counsel.
46. The following exercised their access authority: The Office of Ombudsman for Mental Health and Developmental Disabilities, The Disability Law Center, and Plaintiffs' Counsel.
46.1 The Ombudsman-MH/DD, Disability Law Center and Plaintiffs' counsel have all exercised their authority to access the Facility, its successors, and their records.
SETTLEMENT AGREEMENT SECTION VIII. TRANSITION PLANNING
47. The State undertakes best efforts to ensure that each resident is served in the most integrated setting appropriate to meet such person's individualized needs, including home or community settings. Each individual currently living at the Facility, and all individuals admitted, will be assisted to move towards more integrated community settings. These settings are highly individualized and maximize the opportunity for social and physical integration, given each person's legal standing. In every situation, opportunities to move to a living situation with more freedom, and which is more typical, will be pursued.
47.2 Regarding transition planning for individuals entering more restrictive settings, the tasks under Evaluation Criteria 48 to 53 shall be fulfilled.

48. The State actively pursues the appropriate discharge of residents and provided them with adequate and appropriate transition plans, protections, supports, and services consistent with such person's individualized needs, in the most integrated setting and to which the individual does not object.
48.1 Each individual currently living at MSHS-Cambridge, and any individuals admitted prior to its closure, will have an appropriate transition plan developed within 30 days of admission in accordance with the individual needs and preference for the most integrated setting possible . (For this purpose "admission" and "commitment" are treated the same.).
48.2 For individuals who may by law or court order be required to enter more restrictive and less integrated circumstances, such as incarceration in a prison, person-centered planning and transition planning is given the same importance as voluntary admissions. All efforts will be towards preparation and transition, safeguarding, negotiating with facilities, supports while in a facility, and implementing immediate post-facility transition into well-matched supports.
49. Each resident, the resident's legal representative and/or family to the extent permitted by law, has been permitted to be involved in the team evaluation, decision making, and planning process to the greatest extent practicable, using whatever communication method he or she (or they) prefer.
49.1 Each individual and/or the individual's family and/or legal representative as desired by the individual or required by guardianship is permitted, actively encouraged, and welcomed to be involved in the individual's person-centered planning and decision making to the greatest extent practicable utilizing whatever communication method the individual prefers and respecting the individual's right to choose the participants. Invitations to all planning and evaluation meetings will be extended. Alternate means of participation will be extended to those who cannot travel or attend, including phone and video conferencing.
49.2 Each individual will be invited and encouraged to participate in and take leadership in the person-centered planning processes when this is possible and desired by the person. In all circumstances, the person-centered planning process will be engaged in for and with all individuals, with the understanding that transition and change will happen, that the people are vulnerable, and may need the alliance and support of other allies to support the process of moving forward. High quality person-centered planning, including the development of person-centered profiles, plans, and transition plans, will not be delayed or minimized by a person's perceived level of readiness to take leadership of the process, or willingness to engage in the process.
50. To foster each resident's self-determination and independence, the State uses person-centered planning principles at each stage of the process to facilitate the identification of the resident's specific interests, goals, likes and dislikes, abilities and strengths, as well as support needs.

50.1 Person-centered planning: 1) Will be started immediately upon meeting the person, before admission if possible; 2) Will be on-going; 3) Will be supported by a team of people who represent the interests of the person, if need be; 4) Without exception, and only if the person objects to the inclusion of specific people, the support team will include willing family members, case managers, current, past and future service workers, and at least one individual who is in a freely-given relationship with the person which is conflict-free. This can include a community advocate, citizen advocate, family member, or other individual who only has the welfare of the individual to consider. If the individual is unable or unwilling to participate, people who know about and care for the individual, with the individual's approval, will still be invited to engage in sharing their perspectives about what that positive future can be and what is needed to bring it about. This process will begin at first contact, with a first person-centered plan drawn up by day 30 after admission or 45 days from approval of this Plan.
50.2 Each Person-Centered Plan will be enriched, altered and moved forward at least every 30 days as the person becomes better known and moves toward a new living situation. As plans for this new living situation emerge, each plan will include all activities relevant for transition to a new living situation, relevant and necessary supports to assure the person will have good success, and protections that need to be in place.
50.3 The information from each Person-Centered Plan will be fully incorporated into each person's transition plan, Positive Behavior Support Plan, goal plans, and service objectives within any Individual Service Plan.
50.4 All plan facilitators will have, or function under the active supervision of a staff person who has, significant experience and background in facilitation, social devaluation and its consequences, and the principles of Normalization / Social Role Valorization, person-centered thinking, and the various and vast array of useful tools and techniques which may be of use for a particular person. Any such supervisor shall co-sign and be responsible for the plan and plan process. In this manner, a thoughtful, authentic, individualized and successful planning process will result in meaningful outcomes. Evidence of use of various, individualized techniques for different individual people will be clear in the development of person -centered plans. (PATH, MAPS, Personal Futures Planning, One Page Profiles, and Helen Sanderson's Person-Centered -Thinking, are examples)
50.5 An annual learning and professional development plan which includes the above areas will be developed with and for each facilitator of person-centered processes. It may include reading, research, formal, and informal training, mentoring, and development events. These learning and professional development plans will include a minimum of 25 hours per year of educational activities (formal and informal) focused on person-centered planning, and will be completed as planned. Attendance at professional conferences, in and out of state, will be supported and facilitated.

50.6 Person-Centered Planning will include the intentional development of each support team's understanding and analysis of the individual's particular life experiences and how they have impacted the person. Themes, patterns, potential responses, and lessons should be drawn from this knowledge. Biographical timelines, or other person-centered means to capture histories and understand the person will be conducted for each person, with the collaboration of the person and family, if appropriate.
50.7 The development of a person-centered description or personal profile will be used to develop the initial person-centered plan.
50.8 The formats for the Person-Centered Plan, person-centered description or personal profile will be revised to comply with the content requirements of this CPA. The Individual Program Plan will incorporate the Person-Centered Plan. The Person-Centered Plan will be re-designed to reflect a person-centered approach and style. This will include adding: 1) The focus person's goals, interests and vision for the future; 2) The identification of any actions and plans towards achieving those goals; 3) Support to be provided and by whom; 4) Use of everyday, informal language and avoidance of unnecessary service jargon. Objectives for the Person-Centered Plan will be drawn directly from the person-centered description/profile.
51. Each resident has been given the opportunity to express a choice regarding preferred activities that contribute to a quality life.
51.1 For each person served at a Facility, the Person-Centered Plan will include preferred activities, areas in which the person wants to learn and grow, relationships to strengthen, and competencies to learn.
51.2 Frequent, daily opportunities will be built into daily life for each person to engage in meaningful activities that are personalized, individualized, and selected by the person. These will be activities planned with the person, and carried out in an individualized fashion. "House activities" will generally not be consistent with providing individualized, person-centered activities which the person freely chooses to engage in.
52. It is the State's goal that all residents be served in integrated community settings and services with adequate protections, supports and other necessary resources which are identified as available by service coordination. If an existing setting or service is not identified or available, best efforts will be utilized to create the appropriate setting or service using an individualized service design process.

52.1 Each individual's Person-Centered Plan will embody continuously increasing clarity at each revision/development meeting on what an ideal living situation may look like for the person. These will support and describe "must haves" components which must be in place in any considered situation. This may include living situations which are not offered in existing structured services. It may also be impossible to "show" a person a service that matches their needs, even though they may select that option from several.
52.2 If an existing service/living situation is identified and selected by the individual with assistance from the support team, alterations, enhancements, and additional supports will be added whenever appropriate to ensure robust community supports which meet the essential needs for assistance, structure, and support as outlined in the Person-Centered Plan. "Must haves" identified as in 52.1 are required to be in place.
52.3 If an existing residential service is not identified or available, the appropriate services must be created, using an individualized service design process.
52.4 When a living situation is identified as a possibility, the individual and the support team as appropriate will have multiple opportunities to visit, meet potential house-mates, interview the staff and provider, spend time in the situation, and be given the opportunity to make a choice about the living situation, request program enhancements or adjustments, or decline the option .
52.5 When a discharge into an alternative living situation is agreed upon, the transition plan will be further developed and finalized. This pre-discharge iteration of the transition plan will include not only the sharing of information and documents transfers between providers, 1) An individualized plan to facilitate a smooth move; 2) Assistance to the person to navigate the move with ease, and arrange for safeguarding and transfer of the person's belongings ; 3) Planning for and making purchases for new home, ; 4) Assistance to become familiar with new neighborhood, area, town; 5) Planning for packing and move day ; 6) Personalization of new home; 7) Notification of family and friends ; 8) Post office and utility changes ; 9) Introductions to neighbors; 10) Setting up opportunities to deepen relationships with future housemates; 11) Celebrations, welcoming, and farewells; 12) Designing layout of space, window treatments, etc. These types of considerations are a part of the typical processes that valued adults in our culture when preparing to move, and these and others shall be considered.
52.6 The format for the transition plan will incorporate and provide for address of the elements in 52.5 above.
53. The provisions under this Transition Planning Section have been implemented in accord with the *Olmstead* decision.

53.1 Any living arrangement, day service, or other service which is administered or organized in a segregated manner must be justified in writing as a part of the transition plan as being necessary. In a "segregated manner" means that the people served are all people with disabilities who have not specifically chosen to live or be served together. This justification will be accompanied by objectives to increase social and physical integration which will be included in service planning objectives and program planning.
53.2 All services provided and planned for, and transitioned into must be adequate, appropriate, and carefully monitored. This need for monitoring will be carefully weighed by each person-centered team and addressed. This includes services at the Facility and new living and working situations into which a person is transitioning.
53.3 All services provided will include assisting people to have meaningful roles in community life, civic life, relationships, work and career, home, and areas of personal interest. When appropriate, these areas of engagement will be envisioned by the team alongside the individual served, and opportunities will be created for this engagement in everyday life. These roles and engagements will be consistently identified and addressed within the Person-Centered Planning, Transition, and the Positive Behavior Support Plans development processes.
53.4 The above areas of engagement (community life, civic life, relationships, career, home, personal interests) will be included in each Person-Centered Plan as focus areas for planning and related objectives.
SETTLEMENT AGREEMENT SECTION IX.A. OTHER PRACTICES AT THE FACILITY – STAFF TRAINING
54. Facility treatment staff received training in positive behavioral supports, person-centered approaches, therapeutic interventions, personal safety techniques, crisis intervention and post crisis evaluation.
54.1 Facility staff in all positions receive annual standardized training in: 1.Therapeutic Interventions 2. Personal safety techniques 3. Medically monitoring restraint 4. Positive Behavior Supports 5. Person-Centered Approaches 6. Crisis Intervention 7. Post-Crisis Evaluation and Assessment

54.2 All new or temporary Facility staff in all positions receive standardized pre-service training in: 1.Therapeutic Interventions 2. Personal safety techniques 3. Medically monitoring restraint 4. Positive Behavior Supports 5. Person-Centered Approaches 6. Crisis Intervention 7. Post-Crisis Evaluation and Assessment
54.3 The Department will record, monitor and follow-up with the Facility administration to ensure that all facility treatment staff receive all necessary training including, but not limited to, EC 62-64, below.
55.Facility staff training is consistent with applicable best practices, including but not limited to the Association of Positive Behavior Supports, Standards of Practice for Positive Behavior Supports (http://apbs.org). Staff training programs will be competency-based with staff demonstrating current competency in both knowledge and skills.
55.1 All Facility staff training programs will be competency-based with staff demonstrating current competency in both knowledge and skills.
55.2 Training curricula are developed, based on, and consistent with best practices in: 1) Positive Behavioral Supports; 2) Person-Centered approaches/practices; 3) Therapeutic Intervention Strategies; 4) Personal safety techniques; and 5) Crisis intervention and post crisis evaluation.
55.3 Each training program (that is, 1) Positive Behavioral Supports; 2) Person-Centered approaches/practices; 3) Therapeutic Intervention Strategies; 4) Personal Safety techniques; and 5) Crisis intervention & post crisis evaluation), will be evaluated at least annually and revised, if appropriate, to ensure adherence to evidence-based and best practices.
55.4 DHS will ensure training programs promote sensitivity awareness surrounding individuals with cognitive and mental health disabilities and how their developmental level, cultural/familial background, history of physical or sexual abuse and prior restraints may affect their reactions during behavioral emergencies.
55.5 DHS will ensure that training programs are designed to also develop staff's self-awareness of how their own experiences, perceptions and attitudes affect their response to behavioral issues and emergencies.
56. Facility staff receive the specified number of hours of training: Therapeutic interventions (8 hours); Personal safety techniques (8 hours); Medically monitoring restraint (1 hour).

56.1 Competency-based training curriculum is developed which minimally provides 8 hours training in Therapeutic Interventions; Personal Safety Techniques and 1 hour in Medically Monitoring Restraints.
56.2 All current employees receive 8 hours of competency-based training on Therapeutic Interventions.
56.3 All current employees receive 8 hours of competency-based training on Personal Safety Techniques.
56.4 All current employees receive1 hour of competency-based training on Medically Monitoring restraints.
57. For each instance of restraint, all Facility staff involved in imposing restraint received all the training in Therapeutic Interventions, Personal Safety Techniques, Medically Monitoring Restraint.
57.1 No staff member is permitted to be assigned to direct support services until having received all required orientation and/or annual inservice training on all elements of EC 56, above.
SETTLEMENT AGREEMENT SECTION IX.B. OTHER PRACTICES AT THE FACILITY – HOURS OF TRAINING
58. Facility staff receive the specified number of hours of training: Person-centered planning and positive behavior supports (with at least sixteen (16) hours on person-centered thinking/planning): a total 40 hours; Post Crisis Evaluation and Assessment (4 hours).
SETTLEMENT AGREEMENT SECTION IX.C. OTHER PRACTICES AT THE FACILITY – VISITOR POLICY
59. Residents are permitted unscheduled and scheduled visits with immediate family and/or guardians, at reasonable hours, unless the Interdisciplinary Team (IDT) reasonably determines the visit is contraindicated.
59.1 Facilitate and allow all individuals to have scheduled and unscheduled visits with immediate family and/or guardians and other visitors if not contraindicated by court order or person-centered plans.
60. Visitors are allowed full and unrestricted access to the resident's living areas, including kitchen, living room, social and common areas, bedroom and bathrooms, consistent with all residents' rights to privacy.
60. 1 Facilitate all visitors access to the individual's living areas, including kitchen, living room, social and common areas, bedroom and bathrooms, with attention paid to the right of individual privacy and person-centered plans or court requirements.
61. Residents are allowed to visit with immediate family members and/or guardians in private without staff supervision, unless the IDT reasonably determines this is contraindicated.

61.1 Provide privacy, if desired by the individual, for all individuals when visiting with immediate family members and/or guardians, unless the person-centered plans reasonably determines this is contraindicated or visitation rules are court ordered.
SETTLEMENT AGREEMENT SECTION IX.D. OTHER PRACTICES AT THE FACILITY – NO INCONSISTENT PUBLICITY
62. There is no marketing, recruitment of clients, or publicity targeted to prospective residents at the Facility.
63. The Facility purpose is clearly stated in a bulletin to state court judges, county directors, social service supervisors and staff, county attorneys and Consumers and Families and Legal Representatives of consumers of Developmental Disabilities services. Any admission will be consistent with the requirements of this bulletin.
63.1 Clearly state the Facility's purpose in a bulletin to state court judges, county directors, social service supervisors and staff, county attorneys and Consumers and Families and Legal Representatives of consumers of Developmental Disabilities services.
64. The Facility has a mission consistent with the Settlement Agreement and this Comprehensive Plan of Action.
SETTLEMENT AGREEMENT SECTION IX.E. OTHER PRACTICES AT THE FACILITY – POSTING REQUIREMENTS
65. The Facility posts a Patient/Resident Rights or Bill of Rights, or equivalent, applicable to the person and the placement or service, the name and phone number of the person within the Facility to whom inquiries about care and treatment may be directed, and a brief statement describing how to file a complaint with the appropriate licensing authority.
66. The Patient/Resident Bill of Rights posting is in a form and with content which is understandable by residents and family/guardians.
66.1 Apart from any Patient/Resident Rights or Bill of Rights format which may be required by state law, an alternative version at an appropriate reading level for residents, and with clearly understandable content, will be posted and provided to individuals, parents and guardians on admission, reviewed at IDT meetings, and annually thereafter.

SETTLEMENT AGREEMENT SECTION X.A. SYSTEM WIDE IMPROVEMENTS – EXPANSION OF COMMUNITY SUPPORT SERVICES
67. The expansion of community services under this provision allows for the provision of assessment, triage, and care coordination to assure persons with developmental disabilities receive the appropriate level of care at the right time, in the right place, and in the most integrated setting in accordance with the U.S. Supreme Court decision in *Olmstead v. L.C.* , 527 U.S. 582 (1999).
67.1 Community Support Services (CSS) provides assessment, triage, and care coordination so that persons with developmental disabilities can receive the appropriate level of care in the most integrated setting.
67.2 Collect and manage data to track CSS interventions noted in 67.1 and their outcomes.
67.3 Provide necessary administrative/ management support within CSS to accomplish data management and analysis.
67.4 Focus weekly "diversion" meetings to include person-centered development strategies rather than considering only existing vacancies and challenges. From this perspective: 1) Review any proposed admissions to more restrictive settings and consider all possible diversion strategies; 2) Review status of transition planning for all living at the Facility, 3) Add active, individualized planning/development focus to these transition discussions which is consistent with the Olmstead Plan and includes such activities as developing a person-centered request for proposals for any person or persons at the Facility without an identified and appropriate targeted home in the community.
67.5 Weekly diversion meetings consider all individuals in danger of losing their living situation with an emphasis upon development of integrated alternatives where none are available.
67.6 CSS has additional administrative / managerial support to insure documentation and analysis of all diversion efforts and their impact on individuals' stability regarding living situations and behavioral / mental health.
67.7 CSS provides continuous and on-going diversion from institutionalization and placement in less integrated settings whenever possible by establishing procedures for assessment, care planning, and providing additional services, supports and expertise for individuals in jeopardy of losing their placements or living situations due to behavioral or mental health problems.

67.8 The Department will collect and review data relative to admissions and transitions. This shall include, but not be limited to: 1) individual's name, date of birth and county of origin; 2) current residence, provider and type of residential setting, e.g., independent living, family of origin, group home, ICF/ID, etc.; 3) date the individual moved to or was admitted to current residence; 4) previous residences, providers and residential settings; 5) dates of previous admissions and transitions including reason(s) for moves.
68. The Department identifies, and provides long term monitoring of, individuals with clinical and situational complexities in order to help avert crisis reactions, provide strategies for service entry changing needs, and to prevent multiple transfers within the system.
68.1 For DHS-operated services, the Department will maintain State and regional quality assurance committees to review data on a monthly basis. This review will include: 1) identifying individuals at heightened risk and determining intervention strategies; 2) reviewing data by county, region and provider to determine if trends or patterns exist and necessary corrective measures; and 3) maintaining meeting minutes detailing attendance (person/title), chairperson, individual and aggregate data review, issues and trends identified (individual and systemic), corrective measures to be taken, dates by which such corrective measures are to be completed, responsible parties, and follow-up of the previous months' action plans.
68.2 The Department will maintain an electronic data collection system which tracks the status of all corrective action plans generated by State and regional quality assurance committees, following up with the appropriate provider or county to ensure task completion.
69. Approximately seventy five (75) individuals are targeted for long term monitoring.
69.1 CSS will identify individuals with clinical and situational complexities who have been served by CSS and who would likely benefit from more intensive monitoring.
69.2 Seventy five individuals who are significantly at-risk for institutionalization or loss of home due to behavioral or other challenges will be identified for intensive monitoring and, if needed, intervention with additional supports and services.
69.3 These 75 individuals will be identified by CSS in collaboration with lead agency case managers based upon frequency of behaviors dangerous to self or others, frequency of interactions with the criminal justice system, sudden increases in usage of psychotropic medications, multiple hospitalizations or transfers within the system, serious reported incidents, repeated failed placements, or other challenges identified in previous monitoring or interventions and cost of placement. The status of these individuals will be reviewed at least semi-annually by CSS.
70. CSS mobile wrap-around response teams are located across the state for proactive response to maintain living arrangements.

70.1 Describe locations of the 9 teams that have been established in 23 locations throughout the state.
70.2 Provide CSS with administrative / managerial support for the 9 teams to insure sufficient data collection and central data management
70.3 Document responses from CSS to individual's satisfaction surveys.
71. CSS arranges a crisis intervention within three (3) hours from the time the parent or legal guardian authorizes CSS' involvement.
71.1 Strategically establish nine teams in 23 locations throughout the State to respond within 3 hours of a request for service. CSS admissions contacts the person's case manager as soon as they learn of a potential or actual crisis situation.
71.2 Streamline authorization procedure to facilitate CSS' response to reported crises as quickly as possible.
72. CSS partners with Community Crisis Intervention Services to maximize support, complement strengths, and avoid duplication.
72.1 There is ongoing collaboration with the Metro Crisis Coordination Program (MCCP), whose intent is to provide a crisis safety net range of services for persons with developmental disabilities or related conditions; MCCP is a collaborative effort of seven counties in the Twin Cities metropolitan area. (metrocrisis.org)
72.2 Each county, and tribe as relevant, will have a system of locally available and affordable services to serve persons with developmental disabilities.
72.3 Continue quarterly meetings with MCCP.
73. CSS provides augmentative training, mentoring and coaching.
73.1 CSS Staff will offer and provide training, as requested or determined to be lacking, on coaching, mentoring and Augmentative training.
73.2 CSS will update training manual as necessary.
73.3 CSS will have sufficient administrative/ managerial staff to track/analyze training as well as mentoring and coaching services provided.

74. CSS provides staff at community based facilities and homes with state of the art training encompassing person-centered thinking, multi- modal assessment, positive behavior supports, consultation and facilitator skills, and creative thinking.
74.1 CSS determines locations for teams and/or home-based staff. CSS creates position descriptions that identify the necessary knowledge, skills, and abilities. CSS hires or trains staff with necessary qualifications and skills to provide training.
74.2 CSS insures that all vacant trainer positions are filled as efficiently as possible and with appropriately qualified staff.
74.3 Training curricula are reviewed routinely to insure consistency with best practices.
75. CSS' mentoring and coaching as methodologies are targeted to prepare for increased community capacity to support individuals in their community.
75.1 CSS will mentor and develop coaches in the community with a vision to support individuals in communities.
75.2 Track issues including frequency of behaviors dangerous to self or others, frequency of interactions with the criminal justice system, sudden increases in usage of psychotropic medications, multiple hospitalizations or transfers within the system, serious reported incidents, repeated failed placements, or other challenges identified in previous monitoring or interventions and cost of placement.
75.3 Provide additional administrative/ managerial support to CSS sufficient to enable timely and complete data collection, entry and analysis.
76. An additional fourteen (14) full time equivalent positions were added between February 2011 and June 30, 2011, configured as follows: Two (2) Behavior Analyst 3 positions; One (1) Community Senior Specialist 3; (2) Behavior Analyst 1; Five (5) Social Worker Specialist positions; and Five (5) Behavior Management Assistants.
76.1 Review position descriptions, update as necessary.
76.2 Work with DHS Human Resources on advertising positions.
76.3 Fill any vacancies in functionally equivalent positions, with the required qualifications. As necessary to fulfill this Comprehensive Plan of Action, fill any position.
77. None of the identified positions are vacant.

77.1 Fill as quickly as possible and with qualified applicants all vacancies in these and other functionally equivalent positions. Provide sufficient salary, bonus and other structures and incentives to ensure that the positions are filled.
78. Staff conducting the Functional Behavioral Assessment or writing or reviewing Behavior Plans shall do so under the supervision of a Behavior Analyst who has the requisite educational background, experience, and credentials recognized by national associations such as the Association of Professional Behavior Analysts. Any supervisor will co-sign the plan and will be responsible for the plan and its implementation.
SETTLEMENT AGREEMENT SECTION X.B. SYSTEM WIDE IMPROVEMENTS – OLMSTEAD PLAN
79. The State and the Department developed a proposed *Olmstead* Plan, and will implement the Plan in accordance with the Court's orders. The Plan will be comprehensive and will use measurable goals to increase the number of people with disabilities receiving services that best meet their individual needs and in the "Most Integrated Setting," and which is consistent and in accord with the U.S. Supreme Court's decision in *Olmstead v. L.C.* , 527 U.S. 581 (1999). The *Olmstead* Plan is addressed in Part 3 of this Comprehensive Plan of Action.
SETTLEMENT AGREEMENT SECTION X.C. SYSTEM WIDE IMPROVEMENTS – RULE 40 MODERNIZATION
80. Rule 40 modernization is addressed in Part 2 of this Comprehensive Plan of Action. DHS will not seek a waiver of Rule 40 (or its successor) for a Facility.
SETTLEMENT AGREEMENT SECTION X.D. SYSTEM WIDE IMPROVEMENTS – MINNESOTA SECURITY HOSPITAL
81. The State takes best efforts to ensure that there are no transfers to or placements at the Minnesota Security Hospital of persons committed solely as a person with a developmental disability.
82. There are no transfers or placements of persons committed solely as a person with a developmental disability to the Minnesota Security Hospital (subject to the exceptions in the provision).
82.1 DHS will communicate to all County Attorneys and state courts responsible for commitments, and to all county directors and case managers, that, pursuant to the order of the federal court approving this Plan, no person committed with a sole diagnosis of developmental disability may be transferred or placed at the Minnesota Security Hospital. Such communication will be made from the Commissioner within 30 days of the order approving this plan and, in addition, by DHS staff who become aware of any such proposed commitment or transfer.

82.2 The Jensen Implementation Team will document any proposed transition to or placement at MSH of any person committed solely as a person with a developmental disability, including but not limited to any diversion efforts prior to transfer or placement and any subsequent placements.
83. There has been no change in commitment status of any person originally committed solely as a person with a developmental disability without proper notice to that person's parent and/or guardian and a full hearing before the appropriate adjudicative body.
83.1 The Jensen Implementation Team will document any changes in commitment status of a person originally committed solely as a person with a developmental disability. The documentation will include any notifications and a description of any hearing, and copies of petitions and other papers submitted in connection with notification and/or hearing.
84. All persons presently confined at Minnesota Security Hospital who were committed solely as a person with a developmental disability and who were not admitted with other forms of commitment or predatory offender status set forth in paragraph 1, above, are transferred by the Department to the most integrated setting consistent with *Olmstead v. L.C.* , 527 U.S. 581 (1999).
84.1 Provide current census, and identifying information, of any people living at MSH committed solely as a person with a developmental disability.
84.2 Provide documentation of any transition/ placement from MSH since 12/5/2011 of any persons committed solely as a person with a developmental disability. Any such transfer/placement shall be to the most integrated setting consistent with *Olmstead v. L.C.*, 527 U.S. 581 (1999).
SETTLEMENT AGREEMENT SECTION X.E. SYSTEM WIDE IMPROVEMENTS – ANOKA METRO REGIONAL TREATMENT CENTER
85. All AMRTC residents committed solely as a person with a developmental disability and who do not have an acute psychiatric condition are transferred from AMRTC to the most integrated setting consistent with *Olmstead v. L.C.* , 527 U.S. 581 (1999).
85.1 DHS will communicate to all County Attorneys and state courts responsible for commitments, and to all county directors and case managers, that, pursuant to the order of the federal court approving this Plan, no person committed with a sole diagnosis of developmental disability may be transferred or placed at the Anoka Metro Regional Treatment Center. Such communication will be made from the Commissioner within 30 days of the order approving this plan and, in addition, by DHS staff who become aware of any such proposed commitment or transfer.

85.2 The Jensen Implementation Team will document any proposed transition to or placement at Anoka Metro Regional Treatment Center of any person committed solely as a person with a developmental disability, including but not limited to any diversion efforts prior to transfer or placement and any subsequent placements.
SETTLEMENT AGREEMENT SECTION X.F. SYSTEM WIDE IMPROVEMENTS – LANGUAGE
86. The term "mental retardation" has been replaced with "developmental disabilities" in any DHS policy, bulletin, website, brochure, or other publication. DHS will continue to communicate to local government agencies, counties, tribes, courts and providers that they should adhere to this standard.
86.1 All references to outdated terminology used to describe persons with Developmental Disabilities have been updated with clarification on the Departments use of people first language inserted in areas where historical documents are found. In addition to, or in lieu of, updating each webpage, DHS shall maintain the previously established "disclaimer" language to explain the presence in historical documents of outdated terminology.
87. DHS drafted and submitted a bill for the Minnesota Legislature that will require the replacement of terms such as "insane," "mentally incompetent," "mental deficiency," and other similar inappropriate terms that appear in Minnesota statutes and rules.
87.1 On the removal of inappropriate terms that appear in Minnesota statutes and Rules, *see* 2013 legislation at Chapter 62 and Chapter 59, Article 3, section 21 signed by the Governor on May 16, 2013. DHS will not seek to repeal or replace this legislation.
CLOSURE OF MSHS-CAMBRIDGE AND REPLACEMENT WITH COMMUNITY HOMES AND SERVICES
88. MSHS-Cambridge will be closed. There will be community treatment homes dispersed geographically. Any need for additional community treatment homes beyond four will be determined based on a specific assessment of need based on client needs with regard to such criteria as those at risk for institutionalization or re-institutionalization, behavioral or other challenges, multiple hospitalizations or other transfers within the system, serious reported injuries, repeated failed placements, or other challenges identified in previous monitoring or interventions.
89. Staff hired for new positions as well as to fill vacancies, will only be staff who have experience in community based, crisis, behavioral and person-centered services and whose qualifications are consistent with the Settlement Agreement and currently accepted professional standards. Staff reassigned from MSHS-Cambridge will receive additional orientation training and supervision to meet these qualifications within 6 months of reassignment.
90. Provide integrated vocational options including, for example, customized employment.

91. All requirements in this Comprehensive Plan of Action are fully met for each individual served in the area of Person-Centered Planning.
92. All requirements in this Comprehensive Plan of Action are fully met for each individual served in the area of Transition Planning.
93. DHS will provide augmentative service supports, consultation, mobile teams, and training to those supporting the person. DHS will create stronger diversion supports through appropriate staffing and comprehensive data analysis.
94. All sites, programs and services established or utilized under this Comprehensive Plan of Action shall be licensed as required by state law.
95. Residents currently at MSHS-Cambridge transition to permanent community homes.
96. Training plan for staff strongly emphasizes providing tools and support services in a person's home as quickly as possible. Staff will also be trained in delivering community based programs and processes.
THERAPEUTIC FOLLOW-UP OF CLASS MEMBERS AND CLIENTS DISCHARGED FROM METO/MSHS-CAMBRIDGE
98. DHS will maintain therapeutic follow-up of Class Members, and clients discharged from METO/MSHS-Cambridge since May 1, 2011, by professional staff to provide a safety network, as needed, to help prevent re-institutionalization and other transfers to more restrictive settings, and to maintain the most integrated setting for those individuals.

PART II

Modernization of Rule 40

BACKGROUND

"Rule 40," *Use of Aversive and Deprivation Procedures in Licensed Facilities Serving Persons with Developmental Disabilities*, implements Minnesota Statute Section 245.825 by setting standards for the use of aversive and deprivation procedures with persons who have a developmental disability and who are served by a DHS license holder.

Rule 40 was promulgated in 1987 and was intended to represent best practices at the time. However, it does not represent current best practices, including those supported by the Association of Positive Behavior Supports. The Settlement Agreement required the appointment of an advisory committee for the following purposes:

"to study, review and advise the Department on how to modernize Rule 40 to reflect current best practices, including, but not limited to the use of positive and social behavioral supports, and the development of placement plans consistent with the principle of the 'most integrated setting' and 'person centered planning, and development of an 'Olmstead Plan'" consistent with the U.S. Supreme Court's decision in Olmstead v. L.C., 527 U.S. 582 (1999)." Settlement Agreement at §X.C.

THE ADVISORY COMMITTEE REPORT WAS ACCEPTED BY THE DEPARTMENT

The advisory committee studied the literature, received consultation regarding best practices, and deliberated over many months to formulate a detailed and comprehensive analysis with recommendations. Rule 40 Advisory Committee Recommendations on Best Practices and Modernization of Rule 40 (Final Version - July 2013). The recommendations were fully accepted by the Department which wrote the introduction to the Committee's report:

"Ensuring that the Minnesotans who receive services are treated with respect and dignity is a key element of the mission of the Department of Human Services (the Department or DHS). As an agency with responsibilities for the administration and oversight of services, as well as a provider of services, we are committed to fulfilling our mission consistent with the current best practices and principles that support inclusive community living and quality of life.

To that end, DHS will prohibit procedures that cause pain, whether physical, emotional or psychological, and establish a plan to prohibit use of seclusion and restraints for programs and services licensed or certified by the department. It is our expectation that service providers, including state operated services, will seek out and implement therapeutic interventions and positive approaches that reflect best practices."

*"Current best practices include, but are not limited to, the use of positive and social behavioral supports, prohibitions on use of restraints and seclusion, trauma informed care, and the development of community support plans that are consistent with the principles of the "most integrated setting" and "person centered planning," consistent with the U.S. Supreme Court's decision in Olmstead v. L.C., 527 U.S. 581 (1999). * * * To achieve these changes across our service system, we will create a culture that honors the trust placed in us both as a provider and as a department responsible for the administration and oversight of many of the services that support citizens."*

Quotations from DHS, Introduction to Rule 40 Advisory Committee Recommendations on Best Practices and Modernization of Rule 40 (Final Version - July 2013) at page 1.

SCOPE OF RULE 40 MODERNIZATION

99. The scope of the Rule 40 modernization shall include all individuals with developmental disabilities served in programs, settings and services licensed by the Department, regardless of the setting in which they live or the services which they receive. As stated in the Settlement Agreement, the modernization of Rule 40 which will be adopted under this Comprehensive Plan of Action shall reflect current best practices, including, but not limited to the use of positive and social behavioral supports, and the development of placement plans consistent with the principle of the 'most integrated setting' and 'person centered planning, and development of an 'Olmstead Plan'" consistent with the U.S. Supreme Court's decision in Olmstead v. L.C., 527 U.S. 582 (1999)."

ADOPTION OF RULE 40 MODERNIZATION

100. Within the scope set forth above, the rule-making process initiated by the Department of Human Services pursuant to the Settlement Agreement, the Department shall by **December 31, 2014** propose a new rule in accordance with this Comprehensive Plan of Action ("Proposed Rule"). This deadline may be extended for good cause shown upon application to the Court not later than 20 days prior to the deadline.

Should the Department of Human Services believe that it requires additional rule-making authority to satisfy the requirements of this Plan, in order to apply the rule to all providers covered by Rule 40 and the scope of this Plan, the Department will seek an amendments to statutes in the 2014 Minnesota Legislative session to ensure that the scope of the Rule 40 modernization stated above is fulfilled and will apply to all of the facilities and services to persons with developmental disabilities governed by Rule 40. Any proposed amendment(s) are subject to the notice and comment process under EC __ below.

If legislative approval for the requested authority is not obtained in the 2014 Minnesota Legislative session, the Court may use its authority to ensure that the Adopted Rule will apply consistent with the scope set forth in EC 99.

By **August 31, 2015**, the Department of Human Services shall adopt a new rule to modernize Rule 40 ("Adopted Rule"). This deadline may be extended for good cause shown upon application to the Court not later than 60 days prior to the deadline.

TEMPORARY TAPERED USE OF MEDICAL RESTRAINT

101. The Proposed Rule shall address the temporary use and tapering of carefully monitored individual medical restraints for self-injurious behavior while non-restraint positive behavior supports are implemented under professional supervision.

In formulating the Proposed Rule, and any other methods or tools of implementation, the Department shall carefully consider the recommendations of Dr. Fredda Brown, whose consultation on the Rule 40 modernization the Department requested with regard to matters on which the Advisory Committee had not reached consensus. The Department shall document the results of this review.

THE PROPOSED RULE
102. The Proposed Rule shall be consistent with and incorporate, to the extent possible in rule, the Rule 40 Advisory Committee's consensus recommendations stated in its *Recommendations on Best Practices and Modernization of Rule 40 (Final Version - July 2013).* During the rule-making process, the Department shall advocate that the final rule be fully consistent with the Rule 40 Advisory Committee's recommendations. The phrase "to the extent possible in rule" above is intended to recognize that some elements of the Committee's recommendations are not susceptible to the format of rules and, therefore, will be implemented by the Department through policies, bulletins, contract provisions, and by other means. Not later than (30) days prior to public notice of the content of the Proposed Rule, the Department shall provide a draft of the rule to Plaintiffs' Class Counsel, the Court Monitor, the Ombudsman for Mental Health and Developmental Disabilities, and the Executive Director of the Governor's Council on Developmental Disabilities for review and comment and, if requested by any of these entities, for discussion in a conference prior to public notice of the content of the Proposed Rule. The Department will share with these entities the intended final content not later than five (5) days prior to the public notice.
REFERRAL OF UNRESOLVED ISSUES TO THE OLMSTEAD PLAN PROCESS
103. Within thirty (30) days of the promulgation of the Adopted Rule, Plaintiffs' Class Counsel, the Court Monitor, the Ombudsman for Mental Health and Developmental Disabilities, or the Executive Director of the Governor's Council on Developmental Disabilities may suggest to the Department of Human Services and/or to the Olmstead Implementation Office that there are elements in the Rule 40 Advisory Committee Recommendations on Best Practices and Modernization of Rule 40 (Final Version - July 2013) which have not been addressed, or have not adequately or properly been addressed in the Adopted Rule. In that event, those elements shall be considered within the process for modifications of the Olmstead Plan. The State shall address these suggestions through Olmstead Plan sub-cabinet and the Olmstead Implementation Office. Unresolved issues may be presented to the Court for resolution by any of the above, and will be resolved by the Court.
IMPLEMENTATION
104. The Department of Human Services shall implement the Adopted Rule and take other steps to implement the recommendations of the Rule 40 Advisory Committee.