UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

James and Lorie Jensen, as parents, Guardians and next friends of Bradley J. Jensen, et al.,

Plaintiffs,

v. Civil No. 09-1775

Minnesota Department of Human Services, an agency of the State of Minnesota, et al.,

Defendants.

COMPLIANCE ASSESSMENT

Pursuant to Order of September 29, 2016 (Doc. No. 595)

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Court Monitor

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November 22, 2016

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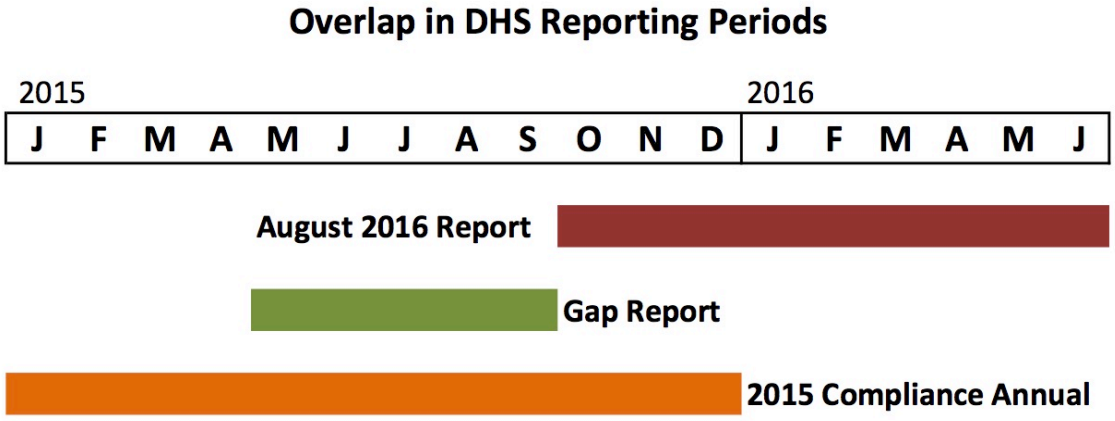
Background. By Order of September 29, 2016 (Doc. No. 595), the Court requested the Court Monitor to provide the Court with a report which "assesses substantial compliance with regard to all components of the JSA (Jensen Settlement Agreement) and CPA (Comprehensive Plan of Action)" and also identifies of "those areas where he needs more information and his recommendation for obtaining that information." This Compliance Assessment is based on DHS' most recent docketed reports.[1]



Adopted by the Court amid continued compliance concerns, and without objection from any party (Doc. No. 284), The court-ordered Comprehensive Plan of Action (CPA) is the roadmap to compliance. It includes verbatim, modified, restated and, in some cases, expanded Settlement Agreement requirements, and additional relief. These are embodied in more than 100 Evaluation Criteria (EC). The Evaluation Criteria are enforceable and set forth "outcomes to be achieved."

The Vitality of the Evaluation Criteria. Adopted by the Court amid continued compliance concerns, and without objection from any party, the Comprehensive Plan of Action is the roadmap to compliance. It includes verbatim, modified, restated and, in some cases, expanded *Jensen* Settlement Agreement requirements, and additional relief. These are embodied in more than 100 Evaluation Criteria (EC).

[1] An exception to sourcing in these reports is the Court Monitor's inclusion of Defendants' failure to report the arrest of a staff person for sexual abuse of a *Jensen* class member. *See* EC 25-27. The seriousness of this omission prompts that inclusion.

The Evaluation Criteria are enforceable and set forth "outcomes to be achieved." ECs generally include "Actions" which are not themselves enforceable but compliance with an EC "will be deemed to have been achieved if the EC's Actions are taken." The CPA Actions provide vitality to the order.

Before the CPA, Defendants operated without any plans to implement the lean Settlement Agreement. The Court's and Court Monitor's urgings that an implementation plan be advanced were not heeded, even as Defendants were struggling toward compliance. Eventually, after the Court ordered the Court Monitor to finalize implementation planning, the CPA was developed through cooperation between experts engaged by the Court Monitor, and DHS program staff and officials; they worked through each Evaluation Criterion to articulate the implementation components including the Actions.[2] The CPA was approved by Plaintiffs and the Consultants and then adopted by the Court.

Defendants' Self-reporting is not Conclusive. This Compliance Assessment appraises Defendants' representations – their self-reporting – on the status of their compliance.

Defendants may believe that the Court Monitor must accept as conclusive their self-reporting on compliance on each EC. When Defendants report compliance, there is compliance. The Court Monitor must concur that X occurred without further inquiry. Such an *ipse dixit* is mistaken.

In addition to the Court's order which elicited

The Court's order for this report anticipated subsequent information-gathering by the Court Monitor. (Doc. No. 595) (Court Monitor will "identify in its report to the Court those areas where he needs more information and his recommendation for obtaining that information."). (Doc. No. 599) (same).

By definition, a Court Monitor, accountable to the Court, is not a mere conduit of Defendants' self-reporting. Here, Defendants' non-compliance and deficient reporting prompted the 2012 appointment of the Court Monitor. The Court's mandate has consistently been for independent factual inquiry. *E.g.,* (Doc. 211) ("The Monitor will independently investigate, verify, and report on compliance. . . ." "Monitor reports to be "based upon his investigation, without relying on the conclusion of the DHS. . . .") (emphasis added).

[2] *See, e.g.,* Doc. No. 224 (requiring Implementation Plans); Doc. 237 (DHS plan is not acceptable; without objection, Court Monitor given authority to finalize the DHS plan in cooperation with DHS Deputy Commissioner); Doc. No. 266 (requiring Court Monitor to submit final report addressing the Implementation Plan); Doc. 284 (accepting Court Monitor report, and requiring that Defendants "shall comply with the CPA.") (CPA is at Doc. 283).

this Assessment (*see* box), the history of this litigation supports robust Court Monitor review. The Court has noted significant continued non-compliance by Defendants since mid-2012. Defendants' credibility has been undermined. Defendants have misrepresented information to the Court and provided unverifiable compliance information. Concomitantly, Defendants have repeatedly acknowledged non-compliance.

The Court and Court Monitor have pressed Defendants to improve their self-assessments and their reporting. Defendants are making progress in those respects. One is hopeful that such improvements will increasingly reflect increasing compliance with the Court's orders, confirmed by appropriate review. As Defendants informed the Court at the outset, they "expect to have their compliance monitored." (Doc. 159 at 10).

Weaknesses in Defendants' Self-reporting. The assessment makes plain several weaknesses in Defendants' self-reporting and verification which impact on assessing substantial compliance:

- *Outcomes related to quality of life or required interactions among people are not verified, and typically not reported, in the DHS compliance reports.*
- *Interviews with individuals with first hand compliance information do not take place as a regular part of DHS self-evaluation*.
- *Document review is virtually the sole source of DHS compliance information*.
- *Verification of the adequacy of community settings and services takes place without visits to the community settings or services, or meeting the individuals.*
- *The reliability and completeness of the reported information is in doubt in some respects.*
- *For elements with a "best efforts" standard, information demonstrating best efforts is not provided.*

Counties. Many requirements of the Court's decrees necessitate collaboration with the counties and settings/services providers. The Comprehensive Plan of Action anticipates an active role for DHS with regard to effecting county/provider adherence "through all necessary means within" DHS' authority.

The Lenient Approach Toward Compliance Assessment. The Court Monitor adopts an exceptionally lenient approach to the Court's direction to assess compliance with the Court's orders. Thus, in borderline cases or where DHS reports do not address the matter covered by the EC, compliance is marked, "Inconclusive."

Had this report relied simply on what is stated in DHS' reports, many of the "inconclusive" findings would have been "non-compliance" findings.

Maintenance of Effort. Each EC is assessed as being in a Compliance, Non-compliance, or Inconclusive status. Because under the Court's order, the source data are Defendants' self-reporting and, some of it from 2015 or earlier, the status is not necessarily current. However, it is expected that Defendants continue to diligently move toward and to maintain compliance.

Where an EC is assessed as being in Compliance, it is vital that there be follow-up to ensure maintenance of effort, and that there is no backsliding. This is indicated for those ECs by the phrase, "Maintenance Follow-up."

In litigation involving systemic relief, compliance cannot reasonably be assessed by a "snapshot" in time. One moment meeting a standard does not establish compliance for an ongoing obligation. Perhaps especially where there is a history of non-compliance, one would expect a defendant to have sustained a sufficient level of compliance to assure that there is momentum to its continuance.

After the independent Court Monitor's fuller assessment, it would be appropriate for the parties, Consultants and Court to seek agreement on what remains to be done.

Results. For the reader's convenience, each Evaluation Criterion is presented in full, followed by the Court Monitor's comments on the data, and a compliance assessment: Compliance, Non-compliance, Inconclusive. Summary charts are placed after this Executive Summary.

44 ECs are assessed as being in Compliance

5 ECs are assessed as being in Non-compliance

49 ECs are assessed as Inconclusive.[3]

Highlights. It is not possible to fairly summarize the results of this assessment. There are dozens of requirements. Some ECs are vital to individuals' health and safety; others are functional or supportive. Highlights include:

A. Lack of community capacity for transitions to community supports and services, and insufficient DHS response, are negatively affecting compliance:

- MSHS-Cambridge has been closed and replaced by the Minnesota Life Bridge treatment homes.
- The need for more robust community structure causes long MLB stays. Clinical expertise in the community is a limiting factor.

[3] The remaining ECs are not subject to assessment for a variety of reasons.

- There is a lack of community capacity for transitioning persons out of MLB.
- DHS has obligations under the Court's orders to exert its authority regarding community supports necessary for compliance.

B. This report finds significant progress and compliance in a number of areas, for example:

- MSHS-Cambridge is closed.
- Prohibited forms of restraint are not used in the Cambridge facility successors.
- Community training by DHS' Community Support Services is extensive.
- While there remain some elements of concern, the Positive Supports Rule is promulgated and it replaces the aversive orientation of the prior Rule 40. The new rule's implementation remains to be gauged.
- Restraint chairs and seclusion continue to be used at Minnesota Security Hospital and in other licensed settings. There is a question regarding permissibility of such use under the CPA.

C. This report finds substantial non-compliance with a number of requirements based on the content of DHS' self-reporting.

D. It is time, some would say past time, to conclude the last piece of the Positive Supports Rule. If the suggestions are well-founded, individuals are needlessly being subjected to inappropriate aversive practices. The process to resolve pending issues should be concluded as soon as possible.

Tables. Two tables follow:

A. Compliance Assessment Summary

B. Methods for Obtaining Additional Information Summary

A. Compliance Assessment Summary

Color Key[4]

Compliance	Non-compliance	Inconclusive

EC 1. Facilities: Most Integrated			
EC 2. Facilities: Person-Centered Planning			
EC 3. Facilities: Admissions Meet Criteria			
EC 4. Facilities: Family Comment			
EC 5. Restraint: Prohibited Restraint Discontinued			
EC 6. Restraint: Prohibited Restraint Not Used			
EC 7. Restraint: Medical Restraint Not Used			
EC 8. Restraint: Emergency Restraint Only			
EC 9: Restraint Policy Followed			
EC 10. Restraint: No Prone, Chemical, Seclusion			
EC 11. Restraint: No Seclusion			
EC 12: Restraint: No Time Out			
EC 13: Restraint: No Chemical Restraint			
EC 14: Restraint: No PRN Orders			
EC 15-24: Restraint: Third Party Consultation			
EC 25. Abuse/Neglect Investigations			
EC 26. Abuse/Neglect Staff Discipline			
EC 27. Abuse/Neglect: Prosecution Referral			
EC 28 – 30. Restraint: Reporting Form			
EC 31-37. Restraint: Receipt of Restraint Reports			
EC 38. Incidents & Restraints: Other Analyses			
EC 39. Internal Reviewer: Restraints			
EC 40. Internal Reviewer: Receipt of Restraint Reports			
EC 41. Internal Reviewer: *Olmstead*, Admissions, Discharges			
EC 42-44. External Reviewer / Court Monitor	Not applicable		

[4] A color display or printout is required for these summaries. Readers who cannot interpret this output may contact the Court Monitor for an alternative.

EC 45 – 46. Plaintiffs' & Third Party Access			
EC 47. Transition: Most Integrated			
EC 48. Transition: Appropriate Discharge			
EC 49. Transition: Family Involvement			
EC 50. Transition: Person-Centered Planning			
EC 51: Transition: Choice			
EC 52. Transition: Integrated Settings & Services			
EC 53. Transition: Segregation & *Olmstead*			
EC 54. Facility Staff Training: Topics			
EC 55. Facility Staff Training: Best Practices			
EC 56. Facility Staff Training: Intervention			
EC 57. Facility Staff Training: Restraints			
EC 58. Facility Staff Training: Person-Centered			
EC 59-61. Visitation			
EC 62. No Targeted Marketing			
EC 63. Facility: Purpose			
EC 64. Facility: Consistent Mission			

EC 65. Bill of Rights Posted			
EC 66. Bill of Rights Accessibility			
EC 67. CSS: Community Services Expansion			
EC 68. CSS: Long Term Monitoring			
EC 69. Long Term Monitoring Cases			
EC 70. CSS: Mobile Teams			
EC 71. CSS: Response Time			
EC 72. CSS: Collaboration			
EC 73. CSS: Training			
EC 74. CSS: Training in Community			
EC 75. Mentoring & Data			
EC 76. CSS: Additional Staff			
EC 77. CSS: Staff Vacancies			
EC 78. FBA Staff			
EC 79. *Olmstead* Plan	Not covered here		
EC 80. Rule 40 Modernization: Waiver			
EC 81. MSH: Efforts Re Placements			
EC 82. MSH: Placements			
EC 83. Commitment Status Change			
EC 84. MSH			

Commitments			
EC 85. AMRTC Commitments			
EC 86. Terminology			
EC 87. Statutory Language Changes			
EC 88. Cambridge Closed			
EC 89. MLB Staff Experience			
EC 90. Integrated Vocational Options			
EC 91 Individuals' Person-Centered Planning Requirements Met			
EC 92. Individuals' Transition Planning Requirements Met			
EC 93. Diversion Supports & Data Analysis			
EC 94. Licensure Required Under CPA			
EC 95. Cambridge			

Residents Move to Community			
EC 96. Staff Training Emphasizes Community			
EC 97. [There is no EC 97]			
EC 98. Successful Life Project			
EC 99. Rule 40 Modernization: Scope			
EC 100. Rule 40 Modernization: Adoption			
EC 101. Rule 40 Modernization: Medical Restraint			
EC 102. Rule 40 Modernization: Proposed Rule			
EC 103. Rule 40 Modernization: Issue Resolution	Pending resolution		
EC 104. Rule 40 Modernization: Rule Implementation			

B. Obtaining Information Summary

Color Key[5]

Monitor Document Review	Monitor Interviews	Monitor with Consultant

EC 1. Facilities: Most Integrated			
EC 2. Facilities: Person-Centered Planning			
EC 3. Facilities: Admissions Meet Criteria			
EC 4. Facilities: Family Comment			
EC 5. Restraint: Prohibited Restraint Discontinued	Maintenance Follow-up		
EC 6. Restraint: Prohibited Restraint Not Used			
EC 7. Restraint: Medical Restraint Not Used	Maintenance Follow-up		
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EC 11: Restraint: No Seclusion	Maintenance Follow-up		
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EC 13: Restraint: No Chemical Restraint	Maintenance Follow-up		
EC 14: Restraint: No PRN Orders	Maintenance Follow-up		
EC 15-24: Restraint: Third Party Consultation	Maintenance Follow-up		
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EC 40. Internal Reviewer: Receipt of Restraint Reports	Maintenance Follow-up		
EC 41. Internal Reviewer: *Olmstead*, Admissions, Discharges	Maintenance Follow-up		
EC 42-44. External Reviewer/Court Monitor	Not Applicable		
EC 45 – 46. Plaintiffs' & Third Party Access	None		
EC 47. Transition: Most Integrated			

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EC 48. Transition: Appropriate Discharge			
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EC 56. Facility Staff Training: Intervention			
EC 57. Facility Staff Training: Restraints			
EC 58. Facility Staff Training: Person-Centered			
EC 59-61. Visitation			
EC 62. No Targeted Marketing	Maintenance Follow-up.		
EC 63. Public Statement of Facility Purpose			
EC 64. Facility: Consistent Mission			
EC 65. Bill of Rights Posted			
EC 66. Bill of Rights Accessibility			
EC 67. CSS: Community Services Expansion			
EC 68. CSS: Long Term Monitoring			
EC 69. Long Term Monitoring Cases			
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EC 87. Statutory Language Changes	None		

EC 88. Cambridge Closed	None		
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EC 99. Rule 40 Modernization: Scope			
EC 100. Rule 40 Modernization: Adoption	None		
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Compliance Assessment

I. Background

By Order of September 29, 2016 (Doc. No. 595), the Court requested the Court Monitor to provide the Court with a report which "assesses substantial compliance with regard to all components of the JSA [Jensen Settlement Agreement] and CPA [Comprehensive Plan of Action" and also identification of "those areas where he needs more information and his recommendation for obtaining that information" to enable an assessment of substantial compliance.

This Compliance Assessment is based on DHS' most recent docketed reports.[6]

An exception to sourcing in these reports is the Court Monitor's inclusion of Defendants' failure to report the arrest of a staff person for sexual abuse of a *Jensen* class member. *See* EC 25-27. The seriousness of this omission prompts that inclusion.

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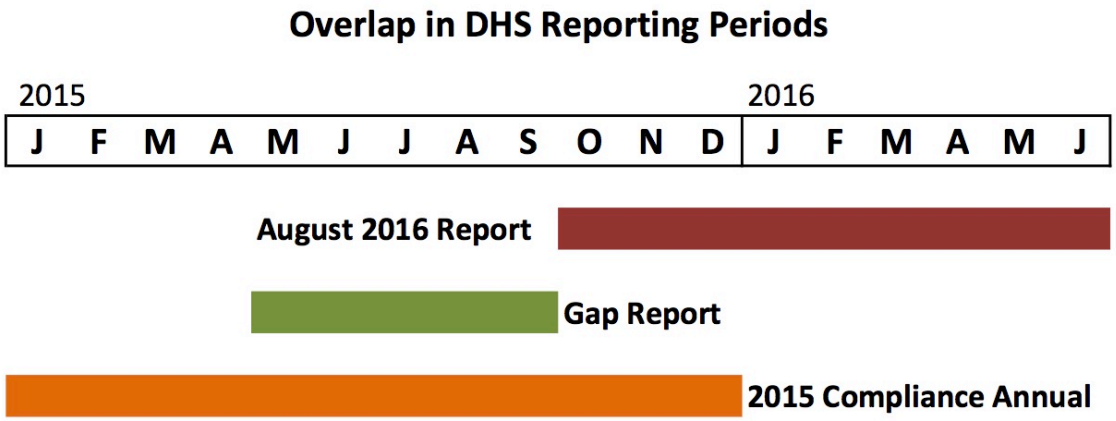
[6] This Compliance Assessment is based on DHS' most recent docketed reports covering overlapping time periods:

- *August 2016 Semi-Annual Report, Reporting Period: October 1, 2015 – June 30, 2016* (Doc. No. 589) ("August 2016 Report"), a nine-month period
- *Jensen Settlement Agreement Comprehensive Plan of Action (CPA) - Ninth Compliance Update Report, Reporting Period: May 1-September 30, 2015* (Doc. No. 531) ("September 2015 Gap Report"), a five-month period
- Overlapping the September 15, 2015 Gap Report, the *2015 Compliance Annual Report: Reporting Period: January 1 – December 31, 2015* (Doc. No. 553-1) ("2015 Compliance Annual Report"), a twelve-month period, covering 28 ECs.

The Assessment also considers DHS' *Report to Court in Response to March 18, 2016 Order* (Doc. No. 551) (filed May 31, 2016 ("May 2016 Report").

The Court Monitor also met with Defendants on November 10 and with Plaintiffs' counsel on November 17 and received their feedback on a prior version of this assessment.



II. The Vitality of the Evaluation Criteria

Adopted by the Court amid continued compliance concerns, and without objection from any party (Doc. No. 284), the Comprehensive Plan of Action is the roadmap to compliance. It includes verbatim, modified, restated and, in some cases, expanded *Jensen* Settlement Agreement requirements, and additional relief.[7] These are embodied in more than 100 Evaluation Criteria (EC). The Evaluation Criteria are enforceable and set forth "outcomes to be achieved."

Before the CPA, Defendants operated without any plans to implement the lean Settlement Agreement. The Court's and Court Monitor's urgings that an implementation plan be advanced were not heeded, even as Defendants were struggling toward compliance. The Court then ordered Defendants to submit implementation plans but the submissions were inadequate as they acknowledged. Without objection, the Court ordered the Court Monitor to finalize implementation planning. The Court Monitor chose to engage independent professionals in developmental disabilities to work directly with Defendants' program and administrative professionals; for days, they worked through each Evaluation Criterion to articulate the implementation components including the Actions. The CPA was approved by Plaintiffs and the Consultants and then adopted by the Court.[8]

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[7] Court Monitor, *Report to the Court: Comprehensive Plan of Action* (Doc. No. 254).

[8] *See, e.g.,* Doc. No. 224 (requiring Implementation Plans); Doc. 237 (DHS plan is not acceptable; without objection, Court Monitor given authority to finalize the DHS

The cooperative professional effort between Defendants and the Court Monitor led to the agreement, then ordered by the Court, that – as the CPA puts it – "compliance with an EC will be deemed to have been achieved if the EC's Actions are taken." CPA at 1 (quoted above). Doing it another way is acceptable through the established modification process. Doing it another way does not give Defendants the benefit of the "deeming" standard.

III. Defendants' Self-reporting is not Conclusive

This Compliance Assessment appraises Defendants' representations – their self-reporting – on the status of their compliance.

Defendants may believe that the Court Monitor must accept as conclusive their self-reporting on compliance on each EC. When Defendants report compliance, there is compliance. The Court Monitor must concur that X occurred without further inquiry. Such an *ipse dixit* is mistaken.

In addition to the Court's order which elicited this Assessment (*see* box), the history of this litigation supports robust Court Monitor review. The Court has noted significant continued non-compliance by Defendants since mid-2012. Their credibility has been undermined on more than one occasion. Defendants have misrepresented information to the Court and provided information on

The Court's order for this report anticipated subsequent information-gathering by the Court Monitor. (Doc. No. 595) (Court Monitor will "identify in its report to the Court those areas where he needs more information and his recommendation for obtaining that information."). (Doc. No. 599) (same).

By definition, a Court Monitor, accountable to the Court, is not a mere conduit of Defendants' self-reporting. Here, Defendants' non-compliance and deficient reporting prompted the 2012 appointment of the Court Monitor. The Court's mandate has consistently been for independent factual inquiry. *E.g.,* (Doc. 211) ("The Monitor will independently investigate, verify, and report on compliance. . . ." "Monitor reports to be "based upon his investigation, without relying on the conclusion of the DHS. . . .") (emphasis added).

plan in cooperation with DHS Deputy Commissioner); Doc. No. 266 (requiring Court Monitor to submit final report addressing the Implementation Plan); Doc. 284 (accepting Court Monitor report, and requiring that Defendants "shall comply with the CPA.") (CPA is at Doc. 283).

compliance, which could not be verified.[9] Concomitantly, Defendants have repeatedly acknowledged non-compliance, failed to contest non-compliance findings, and been found in non-compliance by the Court.[10]

The Court and Court Monitor have pressed Defendants to improve their self-assessments and their reporting. Defendants are making progress in those respects. One is hopeful that such improvements will increasingly reflect increasing compliance with the Court's orders. Independent Court Monitor review, to be sure, is perhaps frustrating to Defendants. However, as Defendants informed the Court at the outset, they "expect to have their compliance monitored." (Doc. 159 at 10).

IV. Weaknesses in DHS Reporting and Verification

This assessment review makes plain several weaknesses in Defendants' self-reporting and verification:

- *Outcomes related to quality of life or required interactions among people are not verified, and typically not reported, in the DHS compliance reports.* For some Evaluation Criteria, the outcomes are such things as production of a plan or other document, or a staff with a particular credential. For

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[9] *E.g.*, Defendants "concealed and misled" the Court. (Doc. 259) ("The Court further finds that the DHS consciously concealed and misled the Plaintiffs and the Court with regard to the lack of licensure, or if not consciously concealed and misled, was indifferent to both the violation and the expectation of candor with all parties, including the Court; conceding the violation once reported by the Court Monitor does not mitigate this in any way."). *See* reports to the Court by the Court Monitor, *Report to the Court: Client __: AWOL v. Transitioned to the Community* (Doc. No. 251) (DHS compliance director reported that class member ___ had "transitioned" to community services; in fact, he had absconded and DHS did not know his whereabouts); *Report to the Court: Verification of Representations by the State* (Doc. No. 414) (information provided by DHS cannot be verified; DHS' own documentation demonstrates non-compliance); *Report to the Court. Verification Items: DHS 4th and 5th Compliance Update Report* (Doc. No. 374) (investigations and person-centered plans).

[10] Doc. 223 at 12 (Court noted and detailed non-compliance not contested by Defendants; found that "heightened supervision" of Defendants is required.); Doc. No. 340 (Court refrained from issuing contempt and other punitive sanctions for the most recently established non-compliance; DHS' recognized "that it must do more to ensure that the counties comply with the court's mandates."); Doc. No. 368 (order based on Monitor reports on use of aversives on individuals).

others, the outcomes are such things as interactions among individuals, families and staff, or quality of life, characteristics of environments, or establishment of systems or processes.

- *Interviews with individuals with first hand compliance information do not take place as a regular part of DHS self-evaluation*. Interviews with individuals, families, or providers are not a source of any of the information in the DHS reports. Interviews with DHS direct support staff, or DHS employees not involved in the report writing/reviews are not a source of any of the information in the DHS reports (except in a handful of instances the content of which is not reported).
- *Document review is virtually the sole source of DHS compliance information*. This is the case even when, as with Transition Planning for example, the nature and extent of inter-personal interaction is fundamental to compliance assessment.
- *Verification of the adequacy of community settings and services takes place without visits to the community settings or services, or meeting the individuals.*
- *The reliability and completeness of the reported information is in doubt in some respects.* Some data is incomplete. Some survey results are provided only in part. Sometimes, just a portion of the CPA provisions are addressed.
- *For elements with a "best efforts" standard, information demonstrating best efforts is not provided.*

V. Counties

Many requirements of the Court's decrees necessitate collaboration with the counties and settings/services providers. This is the case as to both facilities (*e.g.,* Transition Planning) and expansion of community services. Meaningful determination of compliance must involve those intersections of county/provider with the state.

The Comprehensive Plan of Action anticipates an active role for DHS with regard to effecting county/provider adherence "through all necessary means within" DHS' authority:

> 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. (CPA at 2).

Heightened exercise of the state's role vis-à-vis the counties would significantly increase the level of compliance, a conclusion bolstered by Defendants' own conclusions.

VI. The Lenient Approach Toward Compliance Assessment

The Court Monitor adopts an exceptionally lenient approach to the Court's direction to assess compliance with the Court's orders. Thus, in borderline cases or where DHS reports do not address the matter covered by the EC, compliance is marked, "Inconclusive."

Had this report relied simply on what is stated in DHS' reports, many of the "inconclusive" findings would have been "non-compliance" findings.[11]

For most Evaluation Criteria, the DHS reports do not address some or many of the requirements of the particular criterion. DHS JOQACO verification addresses only an incomplete universe. In these instances, there is no information with which to make an assessment that there is compliance. The DHS reports' flaws identified in Section II above compound the challenge.

The leniency of "inconclusive" is justified at this preliminary stage because of the possibility that a comprehensive independent compliance review might find compliance in some of those instances. Non-compliance is assessed where non-compliance is evident.

VII. Maintenance of Effort

Each EC is assessed as being in one of three statuses: Compliance, Non-compliance, Inconclusive. Because under the Court's order, the source data are Defendants' self-reporting and, some of it from 2015 or earlier, the status is not necessarily current. The data limitation also means that

In litigation involving systemic relief, compliance cannot reasonably be assessed by a "snapshot" in time. One moment meeting a standard does not establish compliance for an ongoing obligation. Perhaps especially where there is a history of non-compliance, one would expect a defendant to have sustained a sufficient level of compliance to assure that there is momentum to its continuance.

After the independent Court Monitor fuller assessment, it would be appropriate for the parties, Consultants and Court to seek agreement on what remains to be done.

[11] In one instance, the Court Monitor's leniency is exercised in another way. What would otherwise be "non-compliance" with regard to EC 15-24 (Third Party Consultation) is rated "compliance."

it is beyond the scope of this report to advise whether compliance has been maintained to a sufficient degree or length of time to assure the Court that the EC no longer requires active judicial oversight. However, it is expected that Defendants continue to diligently move toward and to maintain compliance.

Where an EC is assessed as being in Compliance, the Court Monitor generally indicates that there is not currently a need for additional information, but that there should be follow-up to ensure *maintenance of effort*, and that there is no backsliding. This is indicated for those ECs by the phrase, "Maintenance Follow-up."[12]

The data limitation also means that it is beyond the scope of this report to advise whether compliance has been maintained to a sufficient degree or length of time to assure the Court that the EC no longer requires active judicial oversight.

VIII. Highlights.

It is not possible, and it would not be fair to the Court or the parties, to seek to fully summarize the results of this assessment. There are dozens of requirements. Some ECs are vital to individuals' health and safety; others are functional or supportive. Here, we provide several highlights that bear on systemic themes.

A. Lack of community capacity for transitions to community supports and services, and insufficient DHS response, are negatively affecting compliance:

- MSHS-Cambridge has been closed and replaced by the Minnesota Life Bridge treatment homes which are intended to provide short-term intensive support. The Court Monitor shares DHS' concerns with the unnecessarily long tenures of individuals in MLB's facility settings and the lack of community capacity to ensure compliance with the CPA.
- Inadequate community resources cause long MLB stays; the needs arise at the front end and on discharge. MLB sometimes receives incomplete information on admission. Clinical expertise in the community is a limiting factor in effectively supporting MLB residents in integrated settings, consistent with the requirements of the Comprehensive Plan of Action.
- In addition, there is a lack of community capacity for transitioning persons out of MLB. Compounding that challenge, it is difficult for some treatment teams in the community to accept the expectation of MLB regarding the importance of seeking community options or the importance of positive behavior supports/person-centered approaches.

[12] For some items, there is no need for maintenance follow-up (*e.g.*, the fact that MHS-Cambridge is closed).

- DHS has obligations under the Court's orders to exert its authority regarding community supports necessary for compliance.

B. This report finds significant progress and compliance in a number of areas, for example:

- MSHS-Cambridge is closed. It is a sizeable achievement in this litigation that a facility designated to serve individuals who are a risk to public safety has been replaced by geographically dispersed, short-term small treatment facilities.
- Prohibited forms of restraint are not used in the Cambridge facility successors.
- Community training and mentoring efforts by DHS' Community Support Services are extensive, both within DHS and in outreach to the community. The training is varied and there is attention to its evolution.
- While there remain some elements of concern, the Positive Supports Rule is promulgated and it replaces the aversive orientation of the prior Rule 40. The new rule's implementation remains to be gauged.
- Restraint chairs and seclusion continue to be used at Minnesota Security Hospital and in other licensed settings. There is a question regarding permissibility of such use under the CPA

C. This report finds non-compliance with a number of requirements based on the content of DHS' self-reporting.

D. It is time, some would say past time, to conclude the last piece of the Positive Supports Rule. Under EC 103, suggestions were made to Defendants that the adopted rule is inadequate in a number of important ways. If the suggestions are well-founded, individuals are needlessly being subjected to inappropriate aversive practices. The mandated process to resolve these issues should be concluded as soon as possible.

Summary totals of assessment results are:

44 ECs are assessed as being in Compliance

5 ECs are assessed as being in Non-compliance

49 ECs are assessed as Inconclusive.[13]

[13] The remaining ECs are not subject to assessment for a variety of reasons.

IX. Report Structure

For the reader's convenience, each Evaluation Criterion is presented in full, followed by the Court Monitor's comments on the data, and a compliance assessment: Compliance, Non-compliance, Inconclusive. Areas in which the Court Monitor needs additional information to make an assessment are discussed next, with a concluding table stating the applicable recommendation of mechanisms for obtaining that information:

Monitor Document Review	Monitor Interviews	Monitor with Consultant

Three tables follow the Executive Summary above:

A. Compliance Assessment Summary

B. Methods for Obtaining Additional Information Summary

The Report utilizes several conventions stated in the footnote.[14]

X. Compliance Assessment of Evaluation Criteria

[14] a. References to report page numbers are in the form "(p. x)" for the August 2016 Report. Page references to other documents are cited with the document title.

b. For Evaluation Criteria reported in both the DHS' 2015 Gap Report and the August 2016 Report, this Compliance Assessment utilizes the more recent 2016 information. Where the 2016 Report does not include an Evaluation Criterion, the 2015 Report information is used.

c. On February 10, 2016 the *Jensen* Implementation Office (JIO) was moved to DHS' Compliance Office and renamed the *Jensen/Olmstead* Quality Assurance and Compliance Office (JOQACO). For simplicity and narrative consistency, the JIO is referred to as JOQACO.

EC 1. Facilities: Individualized Service in Most Integrated Settings

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 integrated 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 that will build towards transition to a new place to live.

Comments Regarding DHS Information

- DHS provides narrative conclusory statements, and does not include results of interviews with individuals, families/guardians, case managers, providers or others.
- The statement does not discuss analysis of documents or state that any review or analysis of documents occurred. (For example, it is stated person-centered plans exist, but no information is provided on the degree or extent of plan implementation).
- No verification by the *Jensen* Implementation Office occurred.

DHS Data: *September 2015 Gap Report*
2015 Compliance Annual Report

Compliance Assessment

EC 1. Facilities: Most			Inconclusive

Integrated			

Areas Needing Additional Information

The planning and implementation processes under this EC and its actions contemplate involvement of the individuals and their families/guardians staff, case managers and providers. The plans contemplate implementation and interaction among professional and support staff, and with the individual as well. Additional information is also needed regarding the individualization, appropriateness and completeness of the plans, especially considering the discovery of missing parts of some unstated number of plans. Ascertaining compliance requires interviews of relevant parties, document review and input of consultants.

Obtaining Additional Information

EC 1. Facilities: Most Integrated			Monitor with Consultant

EC 2. Facilities: Person-Centered Planning & Positive Behavioral Supports

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. 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. 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.

Comments Regarding DHS Information

- Includes references to CPA Actions.

- Describes Person-Centered Plan development and Positive Behavior Support Plan development for residents of the Cambridge-successor facilities.
- Includes one individual example of one person's planning.
- Does not provide data for all the individuals in the facilities.
- No outcome information is provided.
- JOQACO verification included interviews with staff at 2 of the 4 successor facilities, and did not interview staff at the other two.
- JOQACO does not report any observation of individuals and plan implementation.
- JOQACO verification did not include interviews with individuals or families/guardians, providers or case managers.
- JOQACO found that there were "missing parts of residents Transition Summaries and Plans." Parts were missing for "certain residents." Neither the number of residents' plans, nor the missing parts of records is described. (p. 16).

DHS Data: *August 2016 Report*

Compliance Assessment

EC 2. Facilities: Person-Centered Planning			Inconclusive

Except for information on one person (which may or may not have been based on interviews or observation),

Areas Needing Additional Information

The planning and implementation processes under this EC and its actions contemplate involvement of the individuals and their families/guardians staff, case managers and providers. The plans contemplate implementation and interaction among professional and support staff, and with the individual as well. Additional information is also needed regarding the individualization, appropriateness and completeness of the plans, especially considering the discovery of missing parts of some unstated number of plans. Ascertaining compliance requires interviews of relevant parties, document review and input of consultants.

Obtaining Additional Information

EC 2. Facilities: Person-			Monitor with Consultant

Centered Planning			

EC 3. Facilities: Admissions Meet Criteria

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.

Comments Regarding DHS Information

- During the reporting period, there were 24 referrals to Minnesota Life Bridge. 3 individuals were admitted (one of these was a re-admission).
- DHS provides Table 1 with a short phrase identifying the outcome of each referral (p. 18).
- No information is provided on why the referral agency (or individual) believed the person met the admission criteria, or why MLB believed the person did not meet criteria, or whether MLB denied admission for another reason.
- The report describes which officials review which papers, and the items in the related database.
- JOQACO's verification consists of maintaining and tracking referral, admission, and transition data.
- There is no verification by JOQACO of whether admissions meet the EC standard, or whether those denied admission would meet the EC standard.

DHS Data: August 2016 Report

Compliance Assessment

EC 3. Facilities: Admissions Meet Criteria			Inconclusive

Areas Needing Additional Information

Additional information is needed regarding why the referral agency (or individual) believed the person met the admission criteria, or why MLB believed the person did not meet criteria, or whether MLB denied admission for another reason.

Obtaining Additional Information

EC 3. Facilities: Admissions Meet Criteria	Monitor Document Review	Monitor Interviews	

EC 4. Facilities: Family Comment

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.

Comments Regarding DHS Information

- In September, 2016, the final month covered by the five month gap report, DHS "sent out satisfaction surveys for the three people who transitioned" from Minnesota Life Bridge to the community.
- Four residents of East Central had completed satisfaction surveys in May 2015.
- DHS reports that in Calendar Year 2015 MLB sent surveys to 12 people (12 were returned), and annual or transition surveys to case managers and legal representatives; incomplete information is reported on the number of surveys returned apart from the 12. The 4 residents of East Central completed satisfaction surveys in May 2015.
- DHS reports that "Minnesota Life Bridge and East Central do not report any issues or concerns from the 2015 survey process." DHS does not report

whether case managers or legal representatives reported any issues or concerns.

- DHS states that it planned to respond to surveys ("will contact," "will continue to collect and review," "will track," "will verify" completion of actions to address concerns, "will continue to distribute").
- DHS is discussing starting an initial 3 month post-admission satisfaction survey.
- No results, aggregate data, or action plan of surveys were provided.

DHS Data: *September 2015 Gap Report*
2015 Compliance Annual Report

Compliance Assessment

EC 4. Facilities: Family Comment			Inconclusive

Areas Needing Additional Information

Survey documents (forms and responses) and DHS analysis and description of any action taken in response to survey feedback.

Obtaining Additional Information

EC 4. Facilities: Family Comment	Monitor Document Review	Monitor Interviews	

EC 5. Restraint: Prohibited Restraint Discontinued

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.

Comments Regarding DHS Information

- During the reporting period, no prohibited restraints or techniques were used at the Cambridge successors. The policies had been adopted.
- Notes:
  - The Compliance finding does not apply to MSH or AMRTC, or to any restraint use under the Positive Support Rule (Rule 40 modernization); the Court Monitor expresses no opinion here on the applicable rules, standards or practices with regard to those matters.
  - Actions 5.4 and 5.5 (staff training) are not covered by the Compliance finding; these are covered in EC 54 *et seq.*

DHS Data: *September 2015 Gap Report*

Compliance Assessment

EC 5. Restraint: Prohibited Restraint Discontinued	Compliance		

- Notes:
  - The findings do not apply to MSH or AMRTC, or to any restraint use under the Positive Support Rule (Rule 40 modernization); the Court Monitor expresses no opinion here on the applicable rules, standards or practices with regard to those matters.

- Actions 5.4 and 5.5 (staff training) are not covered by the Compliance finding; these are covered in EC 54 *et seq.*

Areas Needing Additional Information

None.

Obtaining Additional Information

EC 5. Restraint: Prohibited Restraint Discontinued	Maintenance Follow-up

Court Monitor access and receipt of restraint, PRN use, 911 calls, incident reports and related information, to continue.

EC 6. Restraint: Prohibited Restraint Not Used

6. The State/DHS has not used any of the prohibited restraints and techniques.
6.1 Facility ~~S~~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.

Comments Regarding DHS Information

- DHS reports that during the reporting period there was no use of prohibited restraints or techniques at the Cambridge successors.
- DHS reports on two incidents involving manual (not prohibited) restraint at Cambridge successors. The reports include facts from written reports by staff only.

- MLB concluded there was "policy breakdown" with regard to notification of the Medical Officer. In one incident, MLB staff contacted the Medical Officer "but not within" the required 30 minute window. In the other, staff forgot to make the call.
- The JOQACO reviewed the forms.
- There were no interviews with the individuals or with staff to verify the reports.
- Notably, the description of the two incidents does not state that the individuals' program, behavioral or other plans were consulted, were known by staff, or whether there were any requirements or guidelines for use of restraint with the particular clients, or with regard to the circumstances which prompted the use of the manual restraints.
- Note: The findings do not apply to MSH or AMRTC, or to any restraint use under the Positive Support Rule (Rule 40 modernization); the Court Monitor expresses no opinion here on the applicable rules, standards or practices with regard to those matters.

DHS Data: *September 2015 Gap Report*

Compliance Assessment

EC 6. Restraint: Prohibited Restraint Not Used			Inconclusive

Areas Needing Additional Information

Document review and interview with person who was restrained and any witnesses; review of individuals' program, behavioral and related plans.

Obtaining Additional Information

EC 6. Restraint: Prohibited Restraint Not Used	Monitor Document Review	Monitor Interviews	

Access and receipt of restraint, PRN use, 911 calls, incident reports and related information, to continue.

EC 7. Restraint: Medical Restraint Not Used

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.

Comments Regarding DHS Information

- DHS reports that there was no use of medical restraint prohibited by EC 7.
- Note: The findings do not apply to MSH or AMRTC, or to any restraint use under the Positive Support Rule (Rule 40 modernization); the Court Monitor expresses no opinion here on the applicable rules, standards or practices with regard to those matters.

DHS Data: *Gap Report*

Compliance Assessment

EC 7. Restraint: Medical Restraint Not Used	Compliance		

Areas Needing Additional Information

None.

Obtaining Additional Information

EC 7. Restraint: Medical Restraint Not Used	Maintenance Follow-up

Court Monitor access and receipt of restraint, PRN use, 911 calls, incident reports and related information, to continue.

EC 8. Restraint: Emergency Restraint Only

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.

Comments Regarding DHS Information

- *See* discussion under EC 6.
- DHS's report for EC 8 and 9 generally repeats that for EC 6.

DHS Data: September 2015 Gap Report

Compliance Assessment

EC 8. Restraint: Emergency Restraint Only			Inconclusive

Areas Needing Additional Information

Document review and interview with person who was restrained and any witnesses; review of individuals' program, behavioral and related plans.

Obtaining Additional Information

EC 8. Restraint: Emergency Restraint Only	Monitor Document Review	Monitor Interviews	

Access and receipt of restraint, PRN use, 911 calls, incident reports and related information, to continue.

EC 9. Restraint Policy Followed

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.

Comments Regarding DHS Information

- EC 9 requires ongoing attention to following policy including data analysis of staff adherence as part of data management processes.
- *See* discussion under EC 6.
- DHS's report for EC 8 and 9 generally repeats that for EC 6.
- DHS reports no information on the data analysis requirement.
- DHS states that JOQACO "will verify that staff training on prohibited techniques continues to take place at new employee orientation and at annual staff training sessions" (p. 17, Gap Report) but reports no data in this regard. [*See* compliance assessments below in staff training section]

DHS Data: *September 2015 Gap Report*

Compliance Assessment

EC 9: Restraint Policy Followed			Inconclusive

Areas Needing Additional Information

Document review and interview with persons responsible for the data analysis, and for responses to any policy revisions.

Obtaining Additional Information

EC 9: Restraint Policy Followed	Monitor Document Review	Monitor Interviews	

Access and receipt of restraint, PRN use, 911 calls, incident reports and related information, to continue.

EC 10. Restraint: No Prone, Chemical, Seclusion

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."

Comments Regarding DHS Information

- DHS reports that there was no use of prone restraint, chemical restraint, seclusion or time out during this reporting period.
- Note: The findings do not apply to MSH or AMRTC, or to any restraint use under the Positive Support Rule (Rule 40 modernization); the Court Monitor expresses no opinion here on the applicable rules, standards or practices with regard to those matters.

DHS Data: September 2015 Gap Report

Compliance Assessment

EC 10. Restraint: No Prone, Chemical, Seclusion	Compliance		

Areas Needing Additional Information

None.

Obtaining Additional Information

EC 10. Restraint: No Prone, Chemical, Seclusion	Maintenance Follow-up

Court Monitor access and receipt of restraint, PRN use, 911 calls, incident reports and related information, to continue.

EC 11. Restraint: No Seclusion

11. There were zero instances of the use of Seclusion. Facility policy shall specify that the use of seclusion is prohibited.

Comments Regarding DHS Information

See EC 10.

DHS Data: *September 2015 Gap Report*

Compliance Assessment

EC 11. Restraint: No Seclusion	Compliance		

Areas Needing Additional Information

None.

Obtaining Additional Information

EC 11: Restraint: No	Maintenance Follow-up

Seclusion	

Court Monitor access and receipt of restraint, PRN use, 911 calls, incident reports and related information, to continue.

EC 12. Restraint: No Time Out

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.

Comments Regarding DHS Information

See EC 10.

DHS Data: September 2015 Gap Report

Compliance Assessment

EC 12: Restraint: No Time Out	Compliance		

Areas Needing Additional Information

None.

Obtaining Additional Information

EC 12: Restraint: No Time Out	Maintenance Follow-up

Court Monitor access and receipt of restraint, PRN use, 911 calls, incident reports and related information, to continue.

EC 13. Restraint: No 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.

Comments Regarding DHS Information

See EC 10.

DHS Data: September 2015 Gap Report

Compliance Assessment

EC 13: Restraint: No Chemical Restraint	Compliance		

Areas Needing Additional Information

None.

Obtaining Additional Information

EC 13: Restraint: No Chemical Restraint	Maintenance Follow-up

Court Monitor access and receipt of restraint, PRN use, 911 calls, incident reports and related information, to continue.

EC 14. Restraint: No PRN Orders

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.

Comments Regarding DHS Information

See EC 10.

DHS Data: *September 2015 Gap Report*

Compliance Assessment

EC 14: Restraint: No PRN Orders	Compliance		

Areas Needing Additional Information

None.

Obtaining Additional Information

EC 14: Restraint: No PRN Orders	Maintenance Follow-up

Court Monitor access and receipt of restraint, PRN use, 911 calls, incident reports and related information, to continue.

EC 15 - 24. Restraint: Third Party Consultation

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.
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.

Comments Regarding DHS Information

- ECs 15-24 involve Third Party Expert consultation by Facility staff regarding each incident of the use of restraints. In the absence of establishment of the anticipated review by one of a panel of outside experts, EC 16 provided that the DHS Medical Officer or designee perform the consultation.
- The consultation was to obtain assistance to abate the emergency condition through use of positive supports, safety techniques and other best practices. EC 21.
- To be useful, the contact with the consultant was to begin no later than 30 minutes after the emergency restraint use began.
- The EC 16 panel list was never established.
- DHS states that "in August 2014, in discussions with [unidentified] interested persons, people preferred at that time that" MLB continue using the Medical Officer review process "rather than attempting to contract with an outside Third Party." (p. 20, 2015 Gap Report).
- From EC 6 discussion above (based on 2015 Gap Report): MLB concluded there was "policy breakdown" with regard to notification of the Medical Officer. In one incident, MLB staff contacted the Medical Officer "but not within" the required 30 minute window. In the other, staff forgot to make the call. This breakdown results in a non-compliance finding here; in 100% of the two instances, the 30-minute window was missed. However, in the interest of fairness – and in a departure from the structure of this report, the Court Monitor observes that generally subsequent individual incident reports on restraints do show that the Medical Officer is timely contacted. Therefore, the Court Monitor does not assess non-compliance.

DHS Data: *September 2015 Gap Report*
See final bullet re: other reports

Compliance Assessment

EC 15-24: Restraint: Third Party Consultation	Compliance		

Areas Needing Additional Information

None.

Obtaining Additional Information

EC 15-24: Restraint: Third Party Consultation	Maintenance Follow-up

EC 25. Abuse/Neglect Investigations

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.

Comments Regarding DHS Information

-
- Abuse/neglect of class members is quite serious and the CPA requires "All allegations were fully investigated and conclusions were reached."
- The primary information on this EC reported by DHS is that during the reporting period for the September 2015 Gap Report there were 14 reports on *Jensen* class members, with 9 of the reports including a substantiated finding. The victims were at both state and private providers:

  Between May and September 2015, the Office of Inspector General issued 14 reports on investigations involving *Jensen* Class

Members. These reports contained 17 allegations. Nine of the 14 reports included a substantiated finding.

Two of the nine reports with a substantiated finding involved two different vulnerable adults at different Minnesota State Operated Services facilities. Seven of the nine reports with a substantiated finding involved private providers; two of the seven reports involved the same vulnerable adult (J3) with the same private provider. The Office of Inspector General determined that the substantiated maltreatment for which the staff person was responsible in both reports involving J3 did not meet statutory criteria to be determined as recurring or serious. No additional reports were received involving this vulnerable adult or provider during this reporting period. (September 2015 Gap Report at 23).

- For the reports by the DHS OIG, DHS reports nothing about the circumstances, any commonalities or differences, or how the abuse/neglect was addressed by DHS or the providers. (On one case involving MLB employees, *see* EC 26).
- DHS reports no information on whether DHS OIG investigators, interviewers and writers received the required training with regard to the 14 cases.[15]

Unreported Staff Arrest for Sexual Abuse

A staff person was arrested between October and November, 2015 for sexual abuse of a *Jensen* class member. See Court Monitor Memorandum to Peg Booth, November 3, 2015 ("As you know, a female staff person has been criminally charged in connection with sexual abuse of ____. On October 6, 2015, he told staff that this female staff person had shared alcohol with him and that he'd had sex with her three times since October 3, 2015.")

This arrest and abuse are not reported in Defendants' compliance reports to the Court (the August 2016 and the 2015 Annual Reports include this time period).

- DHS reports no information on whether there is an electronic data management system and, if so, whether it meets the requirements.
- DHS reports no information on whether substantiated allegations are documented in the individuals' Facility records.

DHS Data: September 2015 Gap Report
(The arrest is not reported in the 2015 Annual or the August 2016 reports)

Compliance Assessment

[15] DHS contracts with Greg Wiley for employee investigations. It is unclear how his role differs from that of the DHS Office of Inspector General which is mandated to investigate abuse/neglect. Mr. Wiley's training experience has been presented to the Court Monitor in the past.

EC 25. Abuse/Neglect Investigations		Non-compliance	

Areas Needing Additional Information

Review of investigations, interviews with relevant Office of Inspector General management and staff. Review training materials and practices. Confirm manner, timing and content of documentation of substantiation in individuals' records.

Obtaining Additional Information

EC 25. Abuse/Neglect Investigations	Monitor Document Review	Monitor Interviews	

EC 26. Abuse/Neglect Staff Discipline

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.

Comments Regarding DHS Information

- DHS' primary information is that during the reporting period there were 14 reports on *Jensen* class members, with 9 of the reports including a substantiated finding. The victims were at both state and private providers. (EC 25 at p. 23, 2015 Gap Report, referenced above under EC 25).
- Except for 1 of the cases, DHS fails to report on any discipline or other action in these staff abuse/neglect cases.
  - "Two of the nine reports with a substantiated finding involved two different vulnerable adults at different Minnesota State Operated Services facilities." (*id.).*
  - Under EC 26, DHS reports that the "Office of Inspector General substantiated one allegation of neglect involving three Minnesota Life

Bridge employees in May 2014." (p. 24, 2015 Gap Report). Evidently, this is one of the two (of the nine reports) at a state facility.

- There is no statement in the DHS report that the perpetrators in both cases were disciplined; only one case (3 employees) is referenced as involving discipline.

- *See* text block under EC 25.

DHS Data: *September 2015 Gap Report*
(The arrest is not reported in the 2015 Annual or the August 2016 reports)

Compliance Assessment

EC 26. Abuse/Neglect Staff Discipline		Non-compliance	

Areas Needing Additional Information

Review of investigations, interviews with relevant Office of Inspector General and Human Resources management and staff. Review disciplinary and related records.

Obtaining Additional Information

EC 26. Abuse/Neglect Staff Discipline	Monitor Document Review	Monitor Interviews	

EC 27. Abuse/Neglect: Prosecution Referral

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.

Comments Regarding DHS Information

- There were 9 substantiated abuse/neglect allegations against *Jensen* class members during the reporting period. EC 25-26.
- The DHS report on EC 27 states, "There *were no known referrals* of suspected abuse or neglect sent to the county attorney during this reporting period." (emphasis added).
- It is insufficient to state that there were "no known referrals." DHS has the capacity to inquire and determine if there were referrals.
- There is no information that any of the 9 cases were referred for prosecution, or when or how or whether they were considered for referral.
- *See* text block under EC 25 for a case, omitted by Defendants, which was prosecuted and known to DHS.

DHS Data: September 2015 Gap Report
(The arrest is not reported in the 2015 Annual or the August 2016 reports)

Compliance Assessment

EC 27. Abuse/Neglect: Prosecution Referral			Inconclusive

Areas Needing Additional Information

Review of investigations, interviews with relevant Office of Inspector General and Human Resources management and staff. Review disciplinary and related records.

Obtaining Additional Information

EC 27. Abuse/Neglect: Prosecution Referral	Monitor Document Review	Monitor Interviews	

EC 28 - 30. Restraint: Reporting Form

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.

Comments Regarding DHS Information

- EC 28-30 require use of a particular form for restraint use, 911 calls and PRN medication, and follow up on the form's completion.
- The DHS report states that there were no manual restraints during this reporting period.
- The Court Monitor, who receives and reviews all such forms, knows that such forms continue to be in use and completed since the 2015 Gap Report's reference.[16] In an exercise of leniency, the Court Monitor finds this requirement in compliance.

DHS Data: *September 2015 Gap Report*
May 2016 Report

Compliance Assessment

EC 28 – 30. Restraint: Reporting Form	Compliance	`	

Areas Needing Additional Information

None.
Should DHS contemplate changes to the reporting form or its procedures, the parties, consultants and Court Monitor should be notified

Obtaining Additional Information

EC 28 – 30.	Maintenance Follow-up

[16] This observation is about the use of the form, and not a comment on its content.

Restraint: Reporting Form	

EC 31 - 37 Restraint: Receipt of Restraint Reports

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.

Comments Regarding DHS Information

- The Court Monitor, who receives and reviews all such forms, knows that such forms continue to be in use and completed since the 2015 Gap Report's reference.[17] In an exercise of leniency, the Court Monitor finds this requirement in compliance.

DHS Data: *August 2016 Report*

Compliance Assessment

EC 31-37. Restraint: Receipt of Restraint Reports	Compliance		

Areas Needing Additional Information

None.

Obtaining Additional Information

EC 31-37. Restraint: Receipt of Restraint Reports	Maintenance Follow-up

EC 38. Incidents & Restraints: Other Analyses

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.

[17] This observation is about the use of the form, and not a comment on its content.

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.

Comments Regarding DHS Information

- The DHS Gap report refers to these two activities of analysis of analysis ((p. 28, September 2015 Gap Report); however, the *2015 Compliance Annual Report* does not report anything regarding these analyses:
  - JOQACO "is working with the Disability Services Division on review and analysis of Behavior Intervention Report Form (BIRF) data."
  - The JOQACO "data analyst will continue to identify and address trends and/or patterns from investigations."
- DHS reports that MLB staff in July 2015 began incorporating "additional analysis detail into Incident Review Meetings notes." The *2015 Compliance Annual Report* includes several graphs of **frequency** of incidents, restraints, and PRN use, but **no data on any other variables**, and no analysis or discussion of follow up (or notation of the origin or source of the charts).
- The DHS report does not present data from the other reviews of restraints.
- The DHS report does not present data regarding trends/patterns from investigations.
- Activities under Actions 38.1 to 38.6 are not reported by DHS.

DHS Data: September 2015 Gap Report
2015 Compliance Annual Report

Compliance Assessment

EC 38. Incidents & Restraints: Other Analyses			Inconclusive

Areas Needing Additional Information

Review of underlying data, minutes and other presentations in committees, analyses of trends and patterns, and interviews of management and other staff responsible for these functions.

Obtaining Additional Information

EC 38. Incidents & Restraints: Other Analyses	Monitor Document Review	Monitor Interviews	

EC 39. Internal Reviewer: Restraints

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.

Comments Regarding DHS Information

- Because 911 calls from facilities may relate to behavior plan implementation, and to the use/avoidance of emergency restraint, it is vital that DHS maintain and track accurate information on the number and nature of 911 calls.
- The current Internal Reviewer, Dr. Daniel J. Baker, was hired December 1, 2015. Only the 2016 Report covers his activities.[18]

[18] The Gap Report on EC 39 discusses the departure of Dr. Richard Amado and the delay in hiring his replacement, Dr. Baker.

- MLB documents and examines each incident of emergency use of manual restraint, 911 calls or use of PRN medication. The information is reviewed by the Internal Reviewer who provides feedback and monitoring. 38 incidents occurred during the reporting period for the August 2016 Report. The information in Defendants' report consists of lists, but does not include analysis of variables or recommendations for elimination of the interventions to the extent possible.
- Defendants describe generally the activities of the Internal Reviewer and reference the existence of his monthly reports. When the Court Monitor asked Defendants if they wished him to review those monthly reports regarding compliance with this EC and report on that here, they demurred.
- The Internal Reviewer reported the "prevalence and justification" for 911 calls to the facilities as requested by the Court. (Doc. 578 at 6). (August 2016 Report at 73 ff.). He found:
  - MLB policy "does not give specific guidance on when to call 911, and does not make explicit the connection between positive behavior supports and 911 utilization."
  - MLB training "This training did not give guidance on when to call 911, though reporting for 911 calls was mentioned."
    - The Internal Reviewer made recommendations for improvements; implementation is not yet reported.
- For verification, JOQACO maintains and compares relevant databases, maintains the Internal Reviewer reports, and "reconciles" various pertinent data.

DHS Data: *August 2016 Report*

Compliance Assessment

EC 39. Internal Reviewer: Restraints			Inconclusive

Areas Needing Additional Information

There is little information reported on the content of the communications between MLB staff and the Internal Reviewer, or on the molding of final recommendations. There is no information reported on whether there are disagreements between the two and, if no, how they are resolved. Also, the discrepancies on the number of 911 calls – which discrepancies were not identified by JOQACO, even in the current report – should be examined. Information related to these areas need to be examined.

Obtaining Additional Information

Further review of this EC would require:

EC 39. Internal Reviewer: Restraints	Monitor Document Review	Monitor Interviews	

EC 40. Internal Reviewer: Receipt of Restraint Reports

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).

Comments Regarding DHS Information

The Internal Reviewer receives the same restraint report at the same time as the other recipients receive it. EC 31-37.

DHS Data: August 2016 Report

Compliance Assessment

EC 40. Internal Reviewer: Receipt of Restraint Reports	Compliance		

Areas Needing Additional Information

None.

Obtaining Additional Information

EC 40.	Maintenance Follow-up

EC 41. Internal Reviewer: *Olmstead*, Admissions, Discharges

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 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.

Comments Regarding DHS Information

- The first sentence of this EC relates to the Internal Reviewer's consultation with staff present and directly involved in restraint situations. (This contrasts with the larger framework of EC 39).
- The Internal Reviewer does address the admission/discharge challenges under item "4" of this EC; the Court Monitor's concern is whether and how the issues he raises are accepted and effectively addressed by those within DHS receiving his reports.
- The Internal Reviewer's examination of admissions, discharges and separations, has resulted in these "two most significant concerns:" "(a) long tenures of MLB residents due to difficulties in placement, and (b) incomplete information about the person upon admission." (p. 23).
- The report also states that, "with respect to discharges, [long tenure of MLB residents], clinical expertise is a limiting factor in effectively supporting MLB residents in integrated settings, consistent with the requirements of the CPA." (p. 24).
- The Internal Reviewer's report on one person's Rhythm of the Day is summarized.
- The Internal Reviewer's educational and related presentations are summarized.

- No verification activities by JOQACO are described (the same text at p. 23 is pasted at p. 26) though it does not relate to the new information under this EC.

DHS Data: *August 2016 Report*

Compliance Assessment

EC 41. Internal Reviewer: *Olmstead*, Admissions, Discharges	Compliance		

Areas Needing Additional Information

- None needed.
- The Court Monitor notes that the second concern voiced by the Internal Reviewer is consistent with the additional inquiry the Court Monitor suggests with regard to EC 3 on admissions/referrals.
- Neither additional document review nor interviews would likely add to the Court Monitor's ability to draw a compliance assessment.

Obtaining Additional Information

EC 41. Internal Reviewer: *Olmstead*, Admissions, Discharges	Maintenance Follow-up

EC 42-44. External Reviewer / Court Monitor
NOT APPLICABLE TO THIS REPORT

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.

EC 45 – 46. Plaintiffs' & Third Party 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.

Comments Regarding DHS Information

- EC 45 and 46 provide for access to the Cambridge successors and the facility records for the Ombudsman, the Disability Law Center and Plaintiffs' counsel.
- DHS reports, "there has been and will be no limits on such access. . . ." (p. 32, September 2015 Gap Report).
- The Court Monitor does not recommend "maintenance follow-up" for this item, as the entities with guaranteed access would surely raise the issue should it arise.

DHS Data: *September 2015 Gap Report*

Compliance Assessment

EC 45 – 46. Plaintiffs' & Third Party Access	Compliance		

Areas Needing Additional Information

None.

Obtaining Additional Information

EC 45 – 46. Plaintiffs' & Third Party Access	None

EC 47. Transition: Most Integrated

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.

Comments Regarding DHS Information

- Defendants approach on this EC is significantly less demanding than the EC itself. That this requirement has a "best efforts" standard suggests that the DHS reports describe and demonstrate how best efforts have been exercised.
  - The first sentence of DHS' report on this EC states:
    - "MLB makes best efforts to provide each resident with the most integrated or best alternative setting while they plan for further

transition to a more integrated setting in the community." (p. 27). (emphasis added)

- However, the EC is significantly more demanding:
  - "The State undertakes best efforts to ensure that each resident is served in the most integrated setting appropriate to meet such person's individual needs, including home or community setting." (emphasis added)

- Efforts under the EC are "to ensure" and are undertaken by "The State." The DHS report is about "pursuing," not ensuring, and about activities by MLB, a structure with limited authority and purview, rather than DHS as the relevant state actor under the CPA in this regard.

  - The CPA's requirement is of the State itself, and mandates attention to the State's leverage and other influence on Counties and providers:

  - CPA at 2: "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."

- The report identifies two areas in which compliance is a challenge, though the report does not explicitly state that the result is non-compliance. First, it is "difficult for some treatment teams [in the community] to accept the direction or expectation of MLB during the person's stay [at MLB], such as the importance of seeking permanent options or the importance of positive behavior supports/person-centered approaches. (p. 27). Second, there is a "lack of community capacity for transitioning persons out of MLB." (*id.).*
- JOQACO reviewed individual's transitions to community homes by reviewing the plan documents themselves. (Staff at two MLB homes were interviewed in that regard, though the report does not indicate the results of the interviews)
- No individuals were interviewed; no families/guardians were interviewed.
- No community homes or day/work programs were visited.
- No case managers or provider staff were interviewed.

DHS Data: *August 2016 Report*
May 2016 Report

Compliance Assessment

EC 47. Transition: Most Integrated			Inconclusive

Areas Needing Additional Information

Further information is required regarding the activities of MLB and other DHS actors regarding planning and implementation of placements, and the extent to which planned and implemented placements satisfy the requirements of this EC. Also, the nature and extent of the challenges asserted by DHS needs to be examined to determine whether, in the context of the individuals at MLB, they are hindering placement consistent with the EC.

Compliance with this EC by definition requires "eyes-on" and "ears-on" interaction with the settings into which the planning documents placed the individual; interviews with the individual, family/guardians, case manager, provider, and DHS staff to validate and corroborate the written plans (E.g., "These settings are highly individualized and maximize the opportunity for social and physical integration, given each person's legal standing." "[l]iving situation with "more freedom," "typical").

The need for such information is unsurprising. DHS has never questioned that assessment of community placements necessitates on-site community review. When DHS reviewed the Court Monitor's community assessment, the JOQACO staff visited the individual at his/her home. When the MLB Successful Life Project under the CPA assessed individual status, staff made physical contact on site in the person's community.

Obtaining Additional Information

EC 47. Transition: Most Integrated			Monitor with Consultant

EC 48. Transition: Appropriate Discharge

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.

Comments Regarding DHS Information

- The report describes the transition planning process as beginning on admission to MLB and continuing throughout the person's stay.
- Under Action 48.1, a draft Transition Plan is to be completed within 30 days of admission.
- "The person and their team contribute to transition planning and plan updates through monthly team meetings." (p. 28).
- JOQACO reviewed 4 transition plans for current facility residents, and found that the plans and monthly updates exist. However, 2 plans were not initiated within 30 days as required.
- JOQACO reviewed transition plans for the 2 individuals transitioned from MLB during the reporting period. Follow-up interviews with MLB staff occurred regarding the written plans.
  - No individuals were interviewed; no families/guardians were interviewed.
  - No community homes or day/work programs were visited.
  - No case managers or provider staff were interviewed.
- There is a tool DHS is using to examine transition plans, Called the *Person Centered Plan Report Scoring Criteria and Checklist.* This tool is to be used to assess transition plans for individuals leaving MLB. It is reported to have been **completed for 3 individual's' plans**. May 2016 Report at 30. This is a paper review of a paper document.

DHS Data: *August 2016 Report*
May 2016 Report

Compliance Assessment

EC 48. Transition: Appropriate Discharge			Inconclusive

Areas Needing Additional Information

The EC requires both plans and the existence of "services consistent with such person's individualized needs, in the most integrated setting and to which the individual does not object." Plans are not enough; they must be implemented.

The discussion under EC 47 regarding need for additional information is incorporated here by reference.

Obtaining Additional Information

EC 48. Transition: Appropriate Discharge			Monitor with Consultant

EC 49. Transition: Family Involvement

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.

Comments Regarding DHS Information

- The report states that family involvement is encouraged by MLB. Participation is supported through conference calls, scheduling of team meetings, flexible locations for team meetings, and the like.
- The DHS "responsible party" reporting the original data to JOQACO verified compliance solely through review of written plans and MLB progress review meetings.
- JOQACO did not verify any of that information. JOQACO reviewed only a copy of the "Referral Response Letter" which is a form letter by which MLB responds to referrals for placement; it appears to have nothing to do with assessing implementation of this EC.
- No individuals were interviewed; no families/guardians were interviewed.
- No community homes or day/work programs were visited.
- No case managers or provider staff were interviewed.

DHS Data: August 2016 Report

Compliance Assessment

EC 49. Transition: Family Involvement			Inconclusive

Areas Needing Additional Information

The questions which require answering under the EC are: Was the family was involved in the circumstances stated? Was the preferred communication method used? DHS reports what is written on its paper. The family's information and opinions are needed for a full and accurate representation of compliance.

Obtaining Additional Information

EC 49. Transition: Family Involvement	Monitor Document Review	Monitor Interviews	

EC 50. Transition: Person-Centered Planning

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.

Comments Regarding DHS Information

- The DHS report references and incorporates its discussions at EC 2, 48 and 49.
- DHS reports that monthly updates occur "consistent with Action 50.2." (p. 33).
- DHS reports that information in the Person-Centered Plan informs multiple other plans "consistent with Action 50.3." (p. 33).
- Although DHS notes two of the 8 Actions in this EC, the others are missing it DHS' discussion. The DHS report includes no information on fundamental elements of this EC and its Actions that are not in other ECs. The report does not explain why these elements are ignored. DHS' data do not mention them at all. There is no information that any data on these was collected or analyzed. For example,
  - *Team Membership.* The Person-Centered Plan team must include: "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." (Action 50.1).

- *Supervision of Person-Centered Plan Facilitators*. Need for specific training and experience in order to produce "meaningful outcomes." (Action 50.4).
- *Annual Learning and Professional Development Plan.* This is for plan facilitators and involves flexible formats and approaches. (Action 50.5).

DHS Data: *August 2016 Report*

Compliance Assessment

EC 50. Transition: Person-Centered Planning			Inconclusive

Areas Needing Additional Information

Like DHS, the Court Monitor references and incorporates the discussions at EC 2, 48 and 49 above regarding areas needing additional information.

In addition, information is needed requiring all elements of this EC, most of which are ignored in the DHS report.

Obtaining Additional Information

EC 50. Transition: Person-Centered Planning			Monitor with Consultant

EC 51. Transition: Choice

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.

Comments Regarding DHS Information

- DHS reports that, consistent with Actions 51.1 and 51.2, each MLB resident has the ability to plan his or her day, and to include activities important to them.
- An example of one individual is provided (the example does not mention any activities; it describes the individual's reactions and desires about planning activities).
- The reporting responsible party reviewed only documents to support this report.
- No verification by JOQACO occurred.

DHS Data: August 2016 Report

Compliance Assessment

EC 51: Transition: Choice			Inconclusive

Areas Needing Additional Information

This EC requires that "each resident" have opportunities for "choice." Activities are to "contribute to a quality life." Planning and implementation with staff takes place. Assessment requires obtaining information from the individuals and staff, and consideration of compliance in the context of the person's Person-Centered Plan.

Obtaining Additional Information

EC 51. Transition Choice			Monitor with Consultant

EC 52. Transition: Integrated Settings & Services

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.

Comments Regarding DHS Information

- This EC requires integrated community settings along with services and related resources. “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." The Actions include extensive detail on accomplishing these outcomes.

- That this requirement has a "best efforts" standard suggests that the DHS reports describe and demonstrate how best efforts have been exercised. DHS has not done so.
- DHS reports two accomplishments: a) two persons transitioned to the community during the reporting period, and b) individuals have "opportunities to explore potential future communities and potential future service providers." (p. 34).
- The other elements of the EC are not addressed.
- JOQACO's verification was review of the two individuals' planning documents.

DHS Data: *August 2016 Report*

Compliance Assessment

EC 52. Transition: Integrated Settings & Services			Inconclusive

Areas Needing Additional Information

The Court Monitor references and incorporates the discussions at EC 2, 48, 49 and 50 above regarding areas needing additional information.

In addition, information is needed requiring all elements of this EC, most of which are ignored in the DHS report.

Obtaining Additional Information

EC 52. Transition: Integrated Settings & Services			Monitor with Consultant

EC 53. Transition: Segregation & *Olmstead*

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.

Comments Regarding DHS Information

- DHS addresses this EC in terms of the principles of the Olmstead decision that favor integrated settings over segregated settings.
- DHS reports, "During this reporting period, no person at MLB was transitioned to services in a more segregated setting." (p. 35).
- MLB works with providers willing to serve persons with "complex behaviors and needs" and MLB stresses "the requirements for transition planning outlined in EC 49 – EC 53."
- For verification, DHS references its discussion under EC 48.

DHS Data: *August 2016 Report*

Compliance Assessment

EC 53. Transition: Segregation & *Olmstead*			Inconclusive

Areas Needing Additional Information

Echoing DHS, the Court Monitor references and incorporates the discussions at EC 48-53 above regarding areas needing additional information.

In addition, information is needed requiring all elements of this EC, most of which are ignored in the DHS report.

Obtaining Additional Information

EC 53. Transition: Segregation & *Olmstead*			Monitor with Consultant

EC 54. Facility Staff Training: Topics

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.

Comments Regarding DHS Information

- DHS' information here on staff training is provided for ECs 54-57 collectively.[19]
- DHS has recently changed its method for maintaining and organizing training records.[20]
- The Court's Order of March 18, 2016 (Doc. No. 551 at 10-11) requested DHS to review staff training. The Internal Reviewer did so and provided an evaluation and recommendations, near the June 30, 2016 end of the reporting period for the August 2016 Report. *See* DHS May 31, 2016 Report to the Court (Doc. 572 at 5-13).
- DHS reports that, after the June 30, 2016 end of the reporting period, the Internal Reviewer found that some of the recommendations were implemented and, as to the EASE curriculum, changes were anticipated.
- DHS is exploring opportunities for standardizing training across divisions, citing the Court's recommendation at Doc. No. 551. (p. 79).
- See discussion under EC 56.
- Improvements are in process but not completed. Especially in light of the history of non-compliance with training requirements, independent review and verification is crucial.

DHS Data: *August 2016 Report*
2015 Compliance Annual Report
May 2016 Report

Compliance Assessment

EC 54. Facility Staff Training: Topics			Inconclusive

[19] The DHS *August 2016 Report* includes more current information than the *2015 Compliance Annual Report* (for example, on DHS' response to the Internal Reviewer report). In any event, the *2015 Compliance Annual Report* is a narrative with no data reported and no verification activities reported.

[20] Gap Report at 40 ("Minnesota Life Bridge is organizing all historic training records for Minnesota Life Bridge staff for data entry into the web-based the Department's Pathlore Learning Management System, which the Department has updated to track individual staff competency results along with class completion. Minnesota Life Bridge will complete data entry into Pathlore by January 2016.").

Areas Needing Additional Information

When DHS has implemented the anticipated changes in training, this requirement should be assessed again through document review and interviews.

Obtaining Additional Information

EC 54. Facility Staff Training: Topics	Monitor Document Review	Monitor Interviews	

EC 55. Facility Staff Training: Best Practices

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.

Comments Regarding DHS Information

See discussion at EC 54.

- The *2015 Compliance Annual Report* states that MLB "will be implementing a new process" for "reviews and fidelity checks for positive behavior support programs and positive behavior support program training" with "corrective action where staff do not demonstrate fidelity checks to programs." (p. 15).

This was to begin in February 2016. The August 2016 Report, however, does not cover EC 55. Given the major changes anticipated (*see* EC 54), the status of this planned effort is unclear.

- Improvements are in process but not completed. Especially in light of the history of non-compliance with training requirements, independent review and verification is crucial.

DHS Data: *August 2016 Report*
2015 Compliance Annual Report

Compliance Assessment

EC 55. Facility Staff Training: Best Practices			Inconclusive

Areas Needing Additional Information

When DHS has implemented the anticipated changes in training, this requirement should be assessed again through document review and interviews.

Obtaining Additional Information

EC 55. Facility Staff Training: Best Practices	Monitor Document Review	Monitor Interviews	

EC 56. Facility Staff Training: Intervention

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.

Comments Regarding DHS Information

- Training is fundamental to compliance. The CPA calls for training to the level of competence. One expects that this leads to habit, the incorporation of the learned skills in daily practice.
- Compliance with these staff training requirements has repeatedly been spotty and problematic. DHS' recent reports continue to reflect that history.

- DHS states that as of the "date of this report," that is August 2016, *after* the June 30, 2016 closing date for the report, and *after* the end of the DHS training year, "all active staff" at MLB and East Central have completed EC 56 training hours "from the 2015/2016 training year," that is, March 12, 2015 to March 11, 2016.
  - DHS does not explain who is excluded by the phrase "active staff." (The requirement applies to all staff).[21]
  - DHS' statement indicates that some staff were not fully trained for as late as 17 months after the beginning of the DHS training year.
- DHS' 2016 reporting method and language is confusing and obfuscating. EC 56 is assigned Annual reporting to the Court. Regardless of the non-calendar "training year," it is a simple matter for DHS, once a year, for the relatively few Facility staff, to simply look back over the prior 12 months and determine whether each staff had the required training during those 12 months.
- *See* discussion at EC 54.

DHS Data: August 2016 Report
2015 Compliance Annual Report

Compliance Assessment

EC 56. Facility Staff Training: Intervention			Inconclusive

[21] This training is about use of restraints, and therapeutic interventions that include non-restraint approaches, and about ensuring safety for staff. It is reasonably necessary for part-time staff, and administrative and management staff, all of whom may encounter individuals served by the Facility.

Areas Needing Additional Information

Analysis of original training records for all Facility staff, the DHS computerized and other record systems, interviews with individuals involved. When DHS has implemented the anticipated changes in training, this requirement should be assessed again through document review and interviews.

Obtaining Additional Information

EC 56. Facility Staff Training: Intervention	Monitor Document Review	Monitor Interviews	

EC 57. Facility Staff Training: 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.

Comments Regarding DHS Information

See discussion at EC 54, 55 and 56.

DHS Data: August 2016 Report
2015 Compliance Annual Report

Compliance Assessment

EC 57. Facility Staff Training: Restraints			Inconclusive

Areas Needing Additional Information

Analysis of original training records for all Facility staff, the DHS computerized and other record systems, interviews with individuals involved. When DHS has

implemented the anticipated changes in training, this requirement should be assessed again through document review and interviews.

Obtaining Additional Information

EC 57. Facility Staff Training: Restraints	Monitor Document Review	Monitor Interviews	

EC 58. Facility Staff Training: Person-Centered

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).

Comments Regarding DHS Information

- *See* comments under EC 54, 55 and 56.
- As of December 31, 2015, according to DHS' *2015 Compliance Annual Report* (p. 18), there was non-compliance with the training required under EC 58. The following year January to March 2016) – after the reporting period -- DHS conducted additional training resulting in a "significant increase;" however, DHS does not report the extent of the increase or whether compliance was achieved.
- The 2016 report identifies non-compliance, mis-counting of regular activities as training, and a need address training further:
  - JOQACO identified problems with reporting as a result of which it will meet with MLB in September 2016 "to formulate a more detailed plan of action regarding completion and reporting of training hours." (p. 69).
  - Through interviews with MLB staff, JOQACO learned that hours of staff's regular and expected review of updates to individuals' support and transition plans, progress notes and meeting minutes were being counted as a self-study course titled "PBS On-going Learning and Practice" (Course Code SOS00011966). This was included in training reports in DHS' Pathlore training record system. (p. 69).
  - Staff interviews by JOQACO also identified staff need for more training support "from higher level BAs" and for "better documentation of training processes." (p. 69). MLB is to produce an Action Plan on the "processes

and expectations for training – particularly the content, competency, and documentation requirements associated with self-study training hours – to better ensure the consistency and quality of training." (p. 69).

DHS Data: August 2016 Report
2015 Compliance Annual Report

Compliance Assessment

EC 58. Facility Staff Training: Person-Centered		Non-compliance	

Areas Needing Additional Information

Analysis of original training records for all Facility staff, the DHS computerized and other record systems, interviews with individuals involved. When DHS has implemented the anticipated changes in training, this requirement should be assessed again through document review and interviews.

Obtaining Additional Information

EC 58. Facility Staff Training: Person-Centered	Monitor Document Review	Monitor Interviews	

EC 59 - 61 Visitation

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.

Comments Regarding DHS Information

- DHS states that it implements the visitor policy in ECs 59-61 at the Cambridge successor facilities.
- "[I]f" there are limits on visitors, based on Interdisciplinary Team decision or by court order, "staff note that limit in the person's person-centered plan and/or facility records." (p. 42, September 2015 Gap Report).
- DHS provides no information on number(s) of visitors or on the number/nature of any limits by the Team or court order. Whether or not a log is kept of visitors, staff must keep track of visitors to ensure that requirements of person-centered plans are satisfied.
- No interviews with individuals or families are reported in connection with verifying DHS' report of compliance.

DHS Data: *September 2015 Gap Report*
2015 Compliance Annual Report

Compliance Assessment

EC 59-61. Visitation			Inconclusive

Areas Needing Additional Information

Interviews with staff, individuals and families/guardians. Review of individuals' plans if there are visitor limits.

Obtaining Additional Information

EC 59-61. Visitation	Monitor Document Review	Monitor Interviews	

EC 62. No Targeted Marketing

62. There is no marketing, recruitment of clients, or publicity targeted to prospective residents at the Facility.

Comments Regarding DHS Information

- DHS states, "The Department does not engage in any marketing, recruitment of clients, or publicity targeted to prospective residents. " (p. 43, September 2015 Gap Report).

DHS Data: September 2015 Gap Report
2015 Compliance Annual Report

Compliance Assessment

EC 62. No Targeted Marketing	Compliance	`	

Areas Needing Additional Information

None.

Obtaining Additional Information

EC 62. No Targeted Marketing	Maintenance Follow-up.

EC 63. Facility: Purpose

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.

Comments Regarding DHS Information

- The bulletin that was adopted in 2014 is in the process of revision. *See* EC 64.
- The 2014 bulletin expired early in 2016. See Bulletin #14-76-01 (April 29, 2014) *Transition of Minnesota Specialty Health System (MSHS) – Cambridge to Minnesota Life Bridge: Admission and Discharge Processes, Transition Planning and Community Mobile Support Services* (expiration date: April 29, 2016).
- The bulletin was adopted explicitly to comply with the orders in this litigation.
- It would be unreasonable and a waste of resources to assess compliance based on a two year old expired bulletin for which DHS has drafted a replacement, and publication of which is soon to occur. (DHS has declined to provide the Court Monitor with a draft of the replacement).
- No conclusion can be reached at this time.

The Bulletin Drafting Process

The 2014 Bulletin was drafted and issued after extensive discussion with the Consultants and Plaintiffs' counsel, their input into revisions, and with their agreement. The Court Monitor took part in those discussions.The bulletin's terms are integral to many elements of the CPA. One would expect that the same process is being, or will be, followed now.

DHS Data: *August 2016 Report*
September 2015 Gap Report

Compliance Assessment

EC 63. Facility: Purpose			Inconclusive

Areas Needing Additional Information

Review of expected Bulletin and Manual page revisions. Check-in with plaintiffs and court consultants.

Obtaining Additional Information

EC 63. Facility: Purpose	Monitor Document Review		

EC 64. Facility: Consistent Mission

64. The Facility has a mission consistent with the Settlement Agreement and this Comprehensive Plan of Action.

Comments Regarding DHS Information

- The Facility's mission is summarized by DHS as "Successful Transition to a Successful Life."
- MLB's residential treatment services are intended to be restraint-free, short-term and to facilitate "successful transition to living in homes of their choosing." (p. 36)
- MLB's principles and operations had been set forth in DHS Bulletin #14-76-01 (issued April 29, 2014), after review by the parties and Court Monitor.
- The report references DHS Bulletin #14-76-01 (see EC 63 discussion above) and states, "This Bulletin is in the process of being revised and updated and is now in the process of being finalized and approved." (p. 36). The update and that of the corresponding Community-Based Services Manual page are expected to be available publicly in September 2016.
- The above updates have not yet been issued.

DHS Data: August 2016 Report

Compliance Assessment

EC 64. Facility: Consistent Mission			**Inconclusive**

Obtaining Additional Information

EC 64. Facility: Consistent Mission	Monitor Document Review		

EC 65. Bill of Rights Posted

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.

Comments Regarding DHS Information

- A Bill of Rights must be posted in each of the Facilities. Also, additional information on making inquiries about treatment, and how to file a complaint must be posted.
- DHS' *Gap* report states that three versions of a Bill of Rights are posted, but does not provide information on the posting or the other required information.

DHS Data: *September 2015 Gap Report*
2015 Compliance Annual Report

Compliance Assessment

EC 65. Bill of Rights Posted			Inconclusive

Areas Needing Additional Information

Observation of what is posted, its location, compliance with the requirements, and accessibility to individuals.

Obtaining Additional Information

EC 65. Bill of Rights Posted	Monitor Document Review		

EC 66. Bill of Rights Accessibility

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.

Comments Regarding DHS Information

- The Bill of Rights form and content must be understandable by individuals and parents/guardians.
- It is to be provided "on admission, reviewed at IDT meetings, and annually thereafter."
- DHS reports that the form and content meet EC 66.
- However, DHS reports that the Bill of Rights is provided only on admission. The time of admission is often emotional and hectic, and is by definition prior to the individual becoming familiar with the environment and program. The additional exposure contemplated in EC 66 is important.

DHS Data: *September 2015 Gap Report*
2015 Compliance Annual Report

Compliance Assessment

EC 66. Bill of Rights Accessibility			Inconclusive

Areas Needing Additional Information

Review of what is posted, and interviews with individuals and staff on when and how it is provided to individuals.

Obtaining Additional Information

EC 66. Bill of Rights Accessibility	Monitor Document Review	Monitor Interviews	

EC 67. CSS: Community Services Expansion

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.

Comments Regarding DHS Information

- The outcome sought in EC 67 ("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") was not evaluated by DHS. This outcome cannot be assessed at a distance, based only on second- and third-hand information, and document review.
  - DHS reports counts of individuals receiving services, and that document review indicates "supports provided were appropriate" but there is no report on right time, right place or most integrated setting.
  - The Internal Reviewer provided an admirable and detailed "performance report"on CSS and Crisis Intervention, with recommendations for improvement. (May 2016 Report at 14-21). However, the individuals' situations were considered from paper reviews, with no direct interaction with individuals, families/guardians or case managers.[22]
- The DHS report does not address the EC Action elements regarding management, staffing, data collection and review, diversion meetings, existence of procedures for specified purposes, tracking of outcomes, and others.
- DHS reports that "Community Support Services (CSS) mobile teams provided assessment, triage and care coordination to 298 persons with developmental disabilities," including "61 individuals who received long term monitoring." (p. 37). [Long term monitoring is addressed in ECs 68 and 69].
- JOQACO did a 6% sample (about 15 individuals) reviewing only CSS worker case notes to verify, "Supports were appropriate." (p. 38). The review was of those documents only, with an email contact about two cases.
- No individuals or their families were interviewed.
- No case managers or providers were interviewed.
- No residential or day/vocational settings were visited.
- The data reported is based solely on document review (aside from two emails)

DHS Data: *August 2016 Report*
May 2016 Report

Compliance Assessment

EC 67. CSS: Community			Inconclusive

[22] Seven survey questions' results were cited, reported to be from training attendees, care providers, legal guardians (5 surveys) and individuals (11 surveys).

Services Expansion			

Areas Needing Additional Information

Through interviews and sampling, and selected site visits, as well as document review, information is needed on the operations of CSS contemplated under this EC at both the individual case level and the organizational level.

Obtaining Additional Information

EC 67. CSS: Community Services Expansion Community Services Expansion			Monitor with Consultant

EC 68. CSS: Long Term Monitoring

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.

Comments Regarding DHS Information

- *See* discussion at EC 67.
- The outcome sought in EC 68 ("to help avert crisis reactions, provide strategies for service entry changing needs, and to prevent multiple transfers within the system") was not evaluated by DHS. No outcome information is provided.
- DHS states that for its review it took a "random sample" of the 61 individuals receiving long term monitoring but no percentage or number of individuals in the sample is provided.
- Information is provided on only 2 individuals cited as "examples."
- JOQACO separately reviewed CSS case notes for a sample of 10 of the 61, reviewed the documents and found that services for 8 were "ongoing," 1 was transferred to SLP and 1 was closed.
- No information is provided on the State and regional quality assurance committees, the monthly reviews they are to provide, the data reviewed, their address of trends and corrective measures.
- No information is provided on the electronic data collection system for tracking corrective action plans, or follow-up with providers and counties.

DHS Data: *August 2016 Report*
May 2016 Report

Compliance Assessment

EC 68. CSS: Long Term Monitoring			Inconclusive

Areas Needing Additional Information

Information on the outcomes of the long term monitoring is needed, at both the individual and aggregate level. Information is required on the State and regional quality assurance committees, the monthly reviews they are to provide, the data reviewed, their address of trends and corrective measures, and on the electronic data collection system for tracking corrective action plans, or follow-up with providers and counties.

Obtaining Additional Information

EC 68. CSS: Long Term Monitoring			Monitor with Consultant

EC 69. CSS: Long Term Monitoring Cases

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.

Comments Regarding DHS Information

- *See* discussion at EC 67.
- This long term monitoring is extremely important to protecting at-risk individuals. Those to be monitored are individuals "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."
- DHS reported and verified that 61 individuals are in long term monitoring.
- The requirement is that approximately 75 individuals are targeted for long term monitoring.
- The discrepancy between 61 and 75 is sufficient for the non-compliance assessment. DHS does not assert in their reports that there are no more than 61 individuals who meet the criteria.
- In addition, the EC Actions include detailed identification process and criteria as well as a requirement for specific semi-annual status reviews. No information is provided on these elements.

DHS Data: *August 2016 Report*
May 2016 Report

Compliance Assessment

EC 69. Long Term Monitoring		Non-compliance	

Cases			

[On November 10, 2016, DHS told the Court Monitor that they understand that more information is needed to explain why 75 individuals are not being monitored, and that they have such information, but DHS declined to provide that information. Therefore, the Court Monitor assesses this EC as in Non-compliance.]

Areas Needing Additional Information

Additional information regarding remedy and the situation of those individuals receiving long term monitoring is needed.

Obtaining Additional Information

EC 69. Long Term Monitoring Cases	Monitor Document Review	Monitor Interviews	Monitor with Consultant

EC 70. CSS: Mobile Teams

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.

Comments Regarding DHS Information

- *See* discussion at EC 67.
- DHS reports that it maintains "9 mobile wrap-around response teams and 23 office locations across the state." (p. 42).
- CSS staffs each mobile team with at least two people. "When CSS mobile supports are engaged, at least one member of the mobile team provides outreach services, in consultation with other mobile team members."
- DHS conducted a survey (*see* Action 70.3) and received 17 responses from persons who received services from mobile teams, 8 responses from legal

representatives, and 50 from county case managers. The results reported are incomplete and of questionable utility.

- DHS does not report the number of surveys sent out, the proportion of potential recipients to whom it was sent, and does not indicate the number of non-responders.
- DHS does not report the number of questions on the survey. DHS reports results of 2 questions to legal representatives of individuals receiving services and to 3 questions to case managers.

DHS Data: *August 2016 Report*
May 2016 Report

Compliance Assessment

EC 70. CSS: Mobile Teams			Inconclusive

Areas Needing Additional Information

Information needed includes interviews of CSS management and selected CSS staff, and consideration of interviews with some survey respondents. Also, the full survey and responses are required. Information on the functioning and location of the 9 mobile teams is needed.

Obtaining Additional Information

EC 70. CSS: Mobile Teams	Monitor Document Review	Monitor Interviews	

EC 71. CSS: Response Time

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.

- *See* discussion at EC 67.

- DHS reports that CSS arranged for a crisis intervention in 12 persons' situations during the reporting period.
- "CSS arranged a crisis intervention within three hours from the time a parent or guardian authorized CSS' involvement" in all but one of the 12 cases.[23]
- CSS starts the 3-hour time computation from receipt of a written "signed consent," not from when "the parent or legal guardian authorizes CSS' involvement;" the latter is the EC language. DHS does not provide information on the time lag between the initial call for crisis intervention, and the receipt of the written consent. DHS does not provide information on the complexity of the written consent or on what occurs if a written consent is not returned after CSS is alerted to a crisis situation.

Comments Regarding DHS Information

- DHS reports that CSS arranged for a crisis intervention in 12 persons' situations during the reporting period.
- "CSS arranged a crisis intervention within three hours from the time a parent or guardian authorized CSS' involvement" in all but one of the 12 cases.
- CSS starts the 3-hour time computation from receipt of a written "signed consent," not from when "the parent or legal guardian authorizes CSS' involvement;" the latter is the EC language. DHS does not provide information on the time lag between the initial call for crisis intervention, and the receipt of the written consent. DHS does not provide information on the complexity of the written consent or on what occurs if a written consent is not returned after CSS is alerted to a crisis situation.
- While it may be that in the usual situation written consent is required, it is also the case that in a crisis there may be alternatives to obtaining it, or that the immediately responding crisis worker can obtain consent on the spot. It is thus important to explore the implementation of this requirement.

DHS Data: *August 2016 Report*
May 2016 Report

Compliance Assessment

EC 71. CSS: Response Time			Inconclusive

[23] In one case, a time was entered incorrectly into a database. In another, an intake worker left ill and handoff to the successor was missed, causing a 19.87 hour delay.

Areas Needing Additional Information

Review of the CSS policy and practice on response time, and also the consent form. Interviews with CSS management and analysis of the data on crisis response time is needed.

Obtaining Additional Information

EC 71. CSS: Response Time	Monitor Document Review	Monitor Interviews	

EC 72. CSS: Collaboration

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.

Comments Regarding DHS Information

- *See* discussion at EC 67.
- DHS reports collaboration with other crisis intervention services, and meetings with lead agencies across the state.
- With regard to safety net (Action 72.1), DHS is available to provide CSS services if needed by a lead agency in the community.
- DHS does not provide any information on Action 72.2, that each county and tribe "will have a system of locally available and affordable services."

DHS Data: *August 2016 Report*
May 2016 Report

Compliance Assessment

EC 72. CSS: Collaboration			Inconclusive

Areas Needing Additional Information

The nature of the collaboration can be identified through interviews and document review, together with interactions related to the sufficiency of services locally.

Obtaining Additional Information

EC 72. CSS: Collaboration	Monitor Document Review	Monitor Interviews	

EC 73. CSS: Training

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.

Comments Regarding DHS Information

- DHS reports on numbers of trainings and the existence and updating of curriculum.
- DHS reporst 99%/100% positive response from 453 respondents to a survey asking whether the "class was valuable/useful" and whether the class is "recommended."
- JOQACO and CSS reviewed curriculum for "best practices" and updated its materials in that regard.

DHS Data: August 2016 Report

Compliance Assessment

EC 73. CSS: Training	Compliance		

Areas Needing Additional Information

None.

Obtaining Additional Information

EC 73. CSS: Training	Maintenance Follow-up

EC 74. CSS: Training in Community

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.

Comments Regarding DHS Information

- DHS refers to its report on EC 73.
- It is noted that DHS does not reference Action 74.2 (filling vacancies).

DHS Data: August 2016 Report

Compliance Assessment

EC 74. CSS: Training in Community	Compliance		

Areas Needing Additional Information

None, unless information is received in other elements of CSS review indicating unmet need due to trainer vacancies.

Obtaining Additional Information

EC 74. CSS: Training	Maintenance Follow-up

EC 75. CSS: Mentoring & Data

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.

Comments Regarding DHS Information

- DHS states that it accomplishes mentoring and coaching through the augmentative training sessions described with regard to immediately prior ECs.
- With regard to the tracking under Action 75.2, DHS states that it will begin to track those issues for all people with developmental disabilities by March 1, 2017.[24]
- DHS recently expanded data management capacity by "creation of a data coordinator position [which] will facilitate this expanded tracking." (p. 48).
- DHS "anticipates adding a management analyst position to develop and support sustainable, timely and complete data collection and analysis."

DHS Data: August 2016 Report

Compliance Assessment

EC 75.			Inconclusive

[24] DHS currently tracks those issues for people with long term monitoring. (p. 48).

Mentoring & Data			

Areas Needing Additional Information

Information needed includes review of tracking currently done, the post March 1, 2017 status, and the results of the added capacity.

Obtaining Additional Information

EC 75. CSS: Mentoring & Data	Monitor Document Review	Monitor Interviews	

EC 76. CSS: Additional Staff

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.

Comments Regarding DHS Information

- DHS reports on advertising and filling vacancies in CSS, and that four Behavior Analyst 3 Supervisors, and three Behavior Analyst 3 level staff were hired during the recent reporting period.
- A registered licensed Occupational Therapist Senior was also hired during the recent reporting period.
- DHS provided detailed summaries of the qualifications and experience of the added behavioral analyst staff in the recent report.
- Given the information in the recent and the Gap Report, this EC appears fulfilled.

DHS Data: August 2016 Report
September 2015 Gap Report

Compliance Assessment

EC 76. CSS: Additional Staff	Compliance		

Areas Needing Additional Information

No further information is deemed necessary. Little if anything would likely be gained by review of the newly hired individuals' curricula vitae.

Obtaining Additional Information

EC 76. CSS: Additional Staff	Maintenance Follow-up

EC 77. CSS: Staff Vacancies

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.

Comments Regarding DHS Information

- DHS reports that a social worker in one identified position was promoted. The position was posted and interviews "begin on August 16, 2016."
- The Court Monitor observes that vacancies occur naturally in any enterprise. The EC does not forbid vacancies, but requires that they be filled "as quickly as possible." (p. 50).
- There is no reason at this time to deem as non-compliance the single recent vacancy, with interviews imminent.

DHS Data: August 2016 Report

Compliance Assessment

EC 77. CSS: Staff Vacancies	Compliance		

Areas Needing Additional Information

No further information is deemed necessary.

Obtaining Additional Information

EC 77. CSS: Staff Vacancies	Maintenance Follow-up

EC 78. FBA Staff

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.

Comments Regarding DHS Information

- EC 78 requires that a credentialed analyst supervise staff writing or reviewing Functional Behavioral Assessments. Also, a supervisor must "co-sign the plan and will be responsible for the plan and its implementation." (p. 50).
- DHS reports that, for CSS, there are two staff who perform this function," one of whom has the required national certification credentials and one of whom is a psychologist who at the time of the report was without the required credentials, although the examination was to take place prior to the filing of the report (p. 26-27, May 2016 Report).
- DHS reports no data on, and does not mention, the second sentence on co-signing, and responsibility for plans and their implementation.
- There is no information on the number of plans, whether they are co-signed, timeliness of co-signing, or the nature and extent of the supervisors' involvement in the plans' implementation.

DHS Data: August 2016 Report

September 2015 Gap Report
May 2016 Report

Compliance Assessment

EC 78. FBA Staff			Inconclusive

Areas Needing Additional Information

Interviews with CSS FBA supervisors, and the staff with whom they are to co-sign. Review of FBAs and records regarding signature and implementation.

Obtaining Additional Information

EC 78. FBA Staff	Monitor Document Review	Monitor Interviews	

EC 79. *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.

NOT COVERED IN THIS REVIEW

EC 80. Rule 40 Modernization: Waiver

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.

Comments Regarding DHS Information

DHS reports that it has not, and will not, seek a waiver for a Facility.

DHS Data: *September 2015 Gap Report*
2015 Compliance Annual Report

Compliance Assessment

EC 80. Rule 40 Modernization: Waiver	Compliance		

Areas Needing Additional Information

None.

Obtaining Additional Information

EC 80. Rule 40 Modernization: Waiver	Maintenance Follow-up

EC 81. MSH: Efforts Re Placements

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.

Comments Regarding DHS Information

- DHS reports that "MSH verified" that there were no transfers to or placements at MSH to which this EC is applicable from January 1, 2016 to June 30, 2016. The verification is reported to be based on computer and documentary reports.
- DHS also reports that it admitted a child to MSH committed solely as a person with a developmental disability on May 19, 2015. 2015 *Compliance Annual Report,* p. 23). The child is referenced here as "___"

- *DHS agrees that ___'s entry into MSH was in knowing violation of the CPA. That ___ was at CPA was discovered by the Court Monitor; DHS had not informed the Court Monitor, Plaintiffs or the Consultants of ___.*
- DHS reports on the status of ___.
- DHS is discussing "what the Department could do to help current and future clients transition out of MSH more quickly as well as prevent persons committed solely as a person with a developmental disability from admission to MSH." (*August 2015 Report,* p. 71).
- Given that ___ entered MSH in violation of the CPA during the reporting period and that DHS is in the process of discussing what it can do to prevent similar situations, compliance with this EC is assessed as Inconclusive.
- The compliance assessment by the Court Monitor does not represent any opinion regarding ___ placement, care or discharge.

DHS Data: *August 2016 Report*
2015 Compliance Annual Report

Compliance Assessment

EC 81. MSH: Efforts Re Placements			Inconclusive*

* This finding is apart from the orders and other activity of the Court and parties with regard to ___. This finding does not represent any opinion regarding ____'s placement, care or discharge.

Areas Needing Additional Information

None.

Obtaining Additional Information

EC 81. MSH: Efforts Re Placements	Monitor Document Review	Monitor Interviews	

EC 82. MSH: Placements

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.

Comments Regarding DHS Information

- *See* discussion at EC 81.

DHS Data: *August 2016 Report*

Compliance Assessment

EC 82. MSH: Placements			Inconclusive*

* This finding is apart from the orders and other activity of the Court and parties with regard to __. This finding does not represent any opinion regarding ___ placement, care or discharge.

Areas Needing Additional Information

None.

Obtaining Additional Information

EC 82. MSH: Placements	Monitor Document Review	Monitor Interviews	

EC 83. Commitment Status Change

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.

Comments Regarding DHS Information

- *See* discussion at EC 81.
- DHS reports that there have been no commitment changes in violation of this requirement.

DHS Data: *September 2015 Gap Report*
2015 Compliance Annual Report

Compliance Assessment

EC 83. Commitment Status Change			Inconclusive

Areas Needing Additional Information

Information on commitments of people with developmental disabilities at the facility.

Obtaining Additional Information

EC 83. Commitment Status Change	Monitor Document Review		

EC 84. MSH Commitments

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).

Comments Regarding DHS Information

- DHS reports that, at the time of *the September 2015 Gap Report*, there were five *Jensen* class members at MSH. Each was reported to fit within the exceptions of this EC. (six class members at the time of the *2015 Compliance Annual Report* plus a member of the CPA Therapeutic Follow Up group). Thus, at the time of that report, there was reported compliance with regard to class members.
- EC 84 is not limited to class members. DHS does not mention whether there were other people with developmental disabilities at MSH who were not class members.
- *See* discussion at EC 81.

DHS Data: *September 2015 Gap Report*
2015 Compliance Annual Report

Compliance Assessment

EC 84. MSH Commitments			Inconclusive

Areas Needing Additional Information

Information on commitments of people with developmental disabilities to MSH.

Obtaining Additional Information

EC 84. MSH Commitments	Monitor Document Review		

EC 85. AMRTC Commitments

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.

Comments Regarding DHS Information

- DHS reports that, while there had been two individuals at AMRTC due to psychiatric episodes, one was discharged to the community, and one was committed with a mental illness. Thus, at the time of that report, there was reported compliance.
- EC 85 is not limited to class members. DHS does not mention whether there were other people with developmental disabilities a AMRTC who were not class members.
- *See* discussion at EC 81.

DHS Data: *September 2015 Gap Report*

Compliance Assessment

EC 85. AMRTC Commitments			Inconclusive

Areas Needing Additional Information

Information on commitments of people with developmental disabilities to MSH.

Obtaining Additional Information

EC 85. AMRTC Commitments	Monitor Document Review		

EC 86. Terminology

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.

Comments Regarding DHS Information

- DHS reports that outdated terminology has been replaced when identified in DHS material and that a "terminology disclaimer" statement has been added to DHS' webpages and the DHS Bulletin template.

DHS Data: *September 2015 Gap Report*

Compliance Assessment

EC 86. Terminology	Compliance		

Areas Needing Additional Information

None.

Obtaining Additional Information

EC 86.	None

Terminology	

EC 87. Statutory Language Changes

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.

Comments Regarding DHS Information

- DHS reports that the statutory and rule language changes took place in 2013.
  DHS Data: September 2015 Gap Report

Compliance Assessment

EC 87. Statutory Language Changes	Compliance		

Areas Needing Additional Information

None.

Obtaining Additional Information

EC 87. Statutory Language Changes	None

EC 88. Cambridge Closed

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.

Comments Regarding DHS Information

- DHS reports that Cambridge closed as of August 29, 2014. There are four successor homes to Cambridge, geographically dispersed.
- No activity or need is reported by DHS for additional homes beyond the four. The Court Monitor expresses no opinion on this question.
- The assessment of compliance relates solely to the first two sentences of this EC 88.

DHS Data: *September 2015 Gap Report*

Compliance Assessment

EC 88. Cambridge Closed	Compliance		

Areas Needing Additional Information

None.

Obtaining Additional Information

EC 88. Cambridge Closed	None

EC 89. MLB Staff Experience

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.

Comments Regarding DHS Information

- DHS reports the conclusion that this EC is satisfied but no data regarding that conclusion, and no verification activities regarding that conclusion.
- The Internal Reviewer reports that there were 7 new hires for MLB during the reporting period, and 7 staff transferred in. He states he reviewed their resumes and concluded from that review that they meet the EC criteria.
- Aside from document review, accomplished without spot checking or interview (including interview of supervisors), there is no verification reported of compliance with this EC.

DHS Data: *September 2015 Gap Report*
2015 Compliance Annual Report
May 2016 Report

Compliance Assessment

EC 89. MLB Staff Experience			Inconclusive

Areas Needing Additional Information

Review and spot check of resumes, selected interviews.

Obtaining Additional Information

EC 89. MLB Staff Experience	Monitor Document Review	Monitor Interviews	

EC 90. Integrated Vocational Options

90. Provide integrated vocational options including, for example, customized employment.

Comments Regarding DHS Information

- DHS reports the conclusion that this EC is satisfied but no data regarding that conclusion, and no verification activities regarding that conclusion.
- DHS does not report that anyone was "provided" any vocational option (opportunities are only "explored").
- The Internal Reviewer is planning – over the next year – to assess each MLB resident to determine if the person is employed in competitive integrated employment which meets the person's preferences. (p. 27, 2015 *Compliance Annual Report).* There is thus no current information showing compliance.

DHS Data: *September 2015 Gap Report*
2015 Compliance Annual Report

Compliance Assessment

EC 90. Integrated Vocational Options			Inconclusive

Areas Needing Additional Information

Data regarding fulfillment of provision of integrated vocational options, including customized employment, for individuals served.

Obtaining Additional Information

EC 90. Integrated Vocational Options			Monitor with Consultant

EC 91. Individuals' Person-Centered Planning Requirements Met

91. All requirements in this Comprehensive Plan of Action are fully met for each individual served in the area of Person-Centered Planning.

Comments Regarding DHS Information

- DHS reports the conclusion that this EC is satisfied but no data regarding that conclusion, and no verification activities regarding that conclusion.

DHS Data: *September 2015 Gap Report*
2015 Compliance Annual Report

Compliance Assessment

EC 91 Individuals' Person-Centered Planning Requirements Met			Inconclusive

Areas Needing Additional Information

Data regarding fulfillment of Person-Centered Planning for individuals served.

Obtaining Additional Information

EC 91. Individuals' Person-Centered Planning Requirements Met			Monitor with Consultant

EC 92. Individuals' Transition Planning Requirements Met

92. All requirements in this Comprehensive Plan of Action are fully met for each individual served in the area of Transition Planning.

Comments Regarding DHS Information

- DHS reports the conclusion that this EC is satisfied but no data regarding that conclusion, and no verification activities regarding that conclusion.

DHS Data: *September 2015 Gap Report*
2015 Compliance Annual Report

Compliance Assessment

EC 92. Individuals' Transition Planning Requirements Met			Inconclusive

Areas Needing Additional Information

Data regarding fulfillment of Transition Planning for individuals served.

Obtaining Additional Information

EC 92. Individuals' Transition Planning Requirements Met			Monitor with Consultant

EC 93. Diversion Supports & Data Analysis

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.

Comments Regarding DHS Information

- On the first sentence of this EC, *see* EC 67-69.
- This EC also requires "comprehensive data analysis" on the diversion supports: "augmentative service supports, consultation, mobile teams, and training to those supporting the person." On this EC, DHS does not report that there is such analysis or, if not, when and how it will be provided.
- An effectively functioning system, serving hundreds of individuals under this EC with dozens of professional staff, requires analysis of data on what is happening (or not happening) for the individuals intended to benefit from the activity. DHS acknowledges that this piece did get missed.

DHS Data: *August 2016 Report*

Compliance Assessment

EC 93. Diversion Supports & Data Analysis		Non-compliance	

Areas Needing Additional Information

Needed is "comprehensive data analysis" on the diversion supports: "augmentative service supports, consultation, mobile teams, and training to those supporting the person." Also, interviews with the officials and staff responsible for that analysis.

Nothing further needed on the non-compliance matter.

Obtaining Additional Information

Nothing further needed on the non-compliance matter. On the data analysis:

EC 93. Diversion	Monitor Document Review	Monitor Interviews	

Supports & Data Analysis			

EC 94. Licensure Required Under CPA

94. All sites, programs and services established or utilized under this Comprehensive Plan of Action shall be licensed as required by state law.

Comments Regarding DHS Information

- EC 94 requires licensure, if applicable, for "all sites, programs and services" under the CPA.
- DHS does not report any data regarding EC 94.
- The DHS *September 2015 Gap Report* states that MLB will maintain licenses for its "settings" and JOQACO "will verify."
- DHS reports that "services funded through Medical Assistance" will be from "providers registered with the Department." No data is reported on this.

DHS Data: *September 2015 Gap Report*
2015 Compliance Annual Report

Compliance Assessment

EC 94. Licensure Required Under CPA			Inconclusive

Areas Needing Additional Information

Licensure and registration information.

Obtaining Additional Information

EC 94. Licensure Required Under CPA	Monitor Document Review	Monitor Interviews	

EC 95. Cambridge Residents Move to Community

95. Residents currently at MSHS-Cambridge transition to permanent community homes.

Comments Regarding DHS Information

- The final person leaving MSHS-Cambridge transitioned to a permanent community home in August 2014.

DHS Data: *September 2015 Gap Report*
2015 Compliance Annual Report (mislabels this requirement as EC 96)

Compliance Assessment

EC 95. Cambridge Residents Move to Community	Compliance		

Areas Needing Additional Information

None.

Obtaining Additional Information

EC 95. Cambridge Residents Move to Community	None

EC 96. Staff Training Emphasizes Community

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.

Comments Regarding DHS Information

- The DHS report erroneously copies EC 95 as EC 96. (p. 62, September 2015 Gap Report). In the Gap Report, no information is stated for EC 96.
- Therefore, the Court Monitor looked to the status report for *September 15, 2014* that is reported in the May 2015 Eighth Compliance Update Report (covering March 1 through April 30, 2015) (pp. 392-393). The 2014 data is referenced in the May 2015 Report.
- DHS reports that Cambridge successor and remaining Cambridge staff received community-oriented training. A "staff training plan" is referenced, as are the MLB "Training Tracker" documents for various dates.
- No data is reported showing the timeliness of completeness of the training, or the content of the staff training plan.

DHS Data: September 2015 Gap Report
May 2015 Eighth Compliance Update Report

Compliance Assessment

EC 96. Staff Training Emphasizes Community			Inconclusive

Areas Needing Additional Information

Review of the training plan for staff, its content and its implementation.

Obtaining Additional Information

EC 96. Staff Training	Monitor Document Review	Monitor Interviews	

Emphasizes Community			

[Note: There is no EC 97]

EC 98. Successful Life Project

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.

Comments Regarding DHS Information

- **Purpose of EC 98 and Fundamental Changes in Process**
  - EC 98 requires a safeguarding structure to benefit individuals who left the METO/Cambridge institution since the settlement agreement was written. The intention is to help prevent re-institutionalization and other transfers to more restrictive settings, and to maintain the most integrated setting for those individuals.
  - The EC 98 safeguard called the Successful Life Project (SLP) has had a number of configurations. Less than two months before the August 2016 Report's closing period, SLP was moved within the DHS organizational structure. "On April 6, 2016, JOQACO assumed supervision of SLP." (p. 58).
  - Major changes are occurring. There are two staff vacancies; position descriptions are in flux; and there are "changes to SLP approach and processes." (p. 59). Efforts are in progress to evaluate SLP's impact and the quality of its clinical supports. (p. 60).
- **Outcomes and Quality of Life**
  - As shown in its discussion of the tools discussed below, DHS is currently looking at plans for individuals.
  - DHS is not yet able to provide more than anecdotal information responsive to the Court's interest on whether individuals' lives are being improved by the Department's efforts:
    - "While the ECs examined here are about evaluation tools used to review the quality of plans developed in the provision of services to persons with disabilities, the Court's March 18, 2016 Order seems to seek information regarding a more direct measure – are individuals'

lives being improved by the Department's efforts? The Department is currently involved in multiple survey development projects and data collection improvements that, when complete, should render data to that point. In the interim, the Department has collected a few examples of results of services for the Court's consideration." May 2016 Report at 31.

- **Initial Visits**
  - More than 263 individuals are under the charge of the SLP. The SLP during its initial stage, within the year from the CPA, visited and assessed their circumstances.[25]
- **Positive Behavior Support System Evaluation Tool (PBS SET)**
  - The May 2016 Report describes an evaluation tool being used to assess the circumstances of individuals served by the SLP. It is called PBS-SET (formerly, PBS-CET). During the reporting period, **a PBS-CET was completed for 8 individuals** (the results for 1 of the 8 became irrelevant as the person moved to a new home).
  - **Of about 113 recommendations by the SLP staff for the remaining 7 individuals, only 19 recommendations were implemented.** The Internal Reviewer acknowledges that "It is notable that only a fraction of the recommendations were implemented for each person during the reporting period." While not too many changes should be implemented simultaneously, he states that "h the outcome of positive supports should be a comprehensive plan addressing lifestyle, instructional, and support elements." May 2016 Report at 29.
- **Person Centered Plan Report Scoring Criteria and Checklist**
  - This tool is to be used to assess transition plans for individuals leaving MLB.
  - It is reported to have been **completed for 3 individual's' plans**. May 2016 Report at 30

- **Activities During August 2016 Report Period. See Order of June 21, 2016 at 6, n. 3.**
  - During the reporting period, SLP provided supports to 87 individuals in a variety of settings including (highest three settings: 57 corporate foster care community settings, 9 own home, and 7 in state operated facilities (MSH, MSOP and MLB). DHS is in the process of developing mechanisms to evaluate improvement in individuals' lives; DHS does not yet have a

[25] As of September 30, 2015, SLP had conducted 263 initial assessments of individuals who are in its charge. 55 additional individuals on the roll were not yet assessed at that time for a variety of reasons. September 2015 Gap Report at 63.

methodology for evaluating whether DHS efforts "have had a positive impact on the lives of class members or persons in the therapeutic follow-up group." (p. 82).
  - DHS describes positive changes for 10 individuals. 3 of the 87 were transferred to more restrictive settings during the reporting period.

- **Verification by JOQACO**
  - JOQACO's verification consisted of reviewing documents regarding a random sample of 36 of the 87 individuals who "received supports from the SLP during this reporting period." (p. 63). JOQACO also interviewed three case managers.
  - JOQACO did not interview individuals, their families/guardians or providers.
  - JOQACO did not visit any institutional or community settings serving the SLP beneficiaries.
  - JOQACO did not perform any verification regarding the SLP group beyond the 87.

DHS Data: *August 2016 Report*
September 2015 Gap Report
May 2016 Report

Compliance Assessment

EC 98. Successful Life Project			Inconclusive

Areas Needing Additional Information

The results of the many changes occurring need to be evaluated. It happens that 87 of the total 263 SLP received follow-up during this report period; the SLP enterprise seeks to protect the entire group and an analysis needs to consider whether there are others who, had they been attended to, had a need for follow-up (for example, people living at their own homes, in nursing homes or state facilities). Interviews with individuals, families/guardians, providers and case managers are essential, along with visits to settings and services.

Obtaining Additional Information

EC 98. Successful Life Project			Monitor with Consultant

EC 99. Rule 40 Modernization: Scope

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)."

Comments Regarding DHS Information

- The EC requires that the rule cover "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." This expanse includes, among other things, Minnesota Security Hospital and Anoka Metro Regional Treatment Center. The rule must also "reflect current best practices, including, but not limited to the use of positive and social behavioral supports."
- The Rule was adopted with the EC 99 scope. MN State Register, 40 SR 179. However, questions have arisen regarding whether the use of mechanical restraints and seclusion in MSH, AMRTC and other settings is consistent with the rule and the CPA generally.
- This litigation was triggered by a report exposing, among other things, the use of mechanical restraints at a state institution for people with developmental disabilities.[26] The Settlement Agreement looked to "extending the application" of the Agreement "to all state operated locations" serving

[26] September 2008, Minnesota Ombudsman on Mental Health and Developmental Disabilitiess Report, *Just Plain Wrong, Evaluating Minnesota Extended Treatment Options (METO) Program* at 1 (September, 2008).

people with developmental disabilities who would meet METO/Cambridge admission standards.[27]

- The Court ordered that the Rule 40 modernization would address "*any emergency use* of restraint or seclusion."[28] The CPA prohibits mechanical restraint at the original facilities. The CPA's System Wide Improvement goals extend beyond the "Facilities" defined in the Settlement Agreement.[29] The CPA mandated a no-exceptions scope for the rule replacing Rule 40 (EC 99) ("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 DHS stated in the CPA, it will "establish a plan to prohibit use of seclusion and restraints for programs and services licensed or certified by the department." Indeed, the rule modernizing Rule 40 under the CPA prohibits mechanical and other aversive techniques:
  - "The license holder is prohibited from using chemical restraints, *mechanical restraints*, manual restraints, time out, seclusion, or any other aversive or deprivation procedure, as a substitute for adequate staffing, for a behavioral or therapeutic program to reduce or eliminate behavior, as punishment, or for staff convenience." Minnesota Statutes, section 245D.06, subdivision 5 (emphasis added).[30]

DHS Data: September 2015 Gap Report

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[27] (Doc. No. 136-1 at 3, §7):

> The State also agrees that its goal is to utilize the Rule 40 Committee and Olmstead Committee process described in this Agreement to *extend the application of the provisions in this Agreement to all state operated locations* serving people with developmental disabilities with severe behavioral problems or other conditions that would qualify for admission to METO, its Cambridge, Minnesota successor, or the two new adult foster care transitional homes. (emphasis added)

[28] (Doc. No. 224) (quoting the "Department's Closing Words," *Rule 40 Advisory Committee Recommendations on Best Practices and Modernization of Rule 40, Final Version* (July 2, 2013) at 36 (Doc. No. 219)).

[29] CPA at 2 ("the "scope of DHS obligations" to individuals with developmental disabilities under the System Wide Improvements (§X) is not limited to residents of the Facility."). The Rule 40 modernization, which is §X.C. of the CPA, is thus not limited to residents of the original settlement "Facility" or its successors.

[30] Similarly, the *Olmstead* Plan addresses DHS' Chapter 245D rules prohibiting non-emergency use of restrictive procedures, which includes restraints. (Doc. No. 571, Att. 1 at 80-81). The updated Olmstead Plan was approved. (Doc. No. 578 at 10).

Compliance Assessment

EC 99. Rule 40 Modernization: Scope			Inconclusive

Areas Needing Additional Information

Information regarding the use of mechanical restraints and seclusion at MSH, AMRTC and other locations. Assessment would be considerably facilitated through use of the DHS collected BIRF reports and the digital data system for such events at MSH and AMRTC, linking easily to individual information.

Obtaining Additional Information

EC 99. Rule 40 Modernization: Scope	Monitor Document Review	Monitor Interviews	

EC 100. Rule 40 Modernization: Adoption

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.

Comments Regarding DHS Information

The Rule was adopted. MN State Register, 40 SR 179.

DHS Data: *September 2015 Gap Report*
2015 Compliance Annual Report

Compliance Assessment

EC 100. Rule 40 Modernization: Adoption	Compliance		

Areas Needing Additional Information

None.

Obtaining Additional Information

EC 100. Rule 40 Modernization: Adoption	None

EC 101. Rule 40 Modernization: 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.

Comments Regarding DHS Information

- The Proposed Rule incorporates the stated temporary use of monitored individual medical restraints, after DHS considered the input of Dr. Fredda Brown.

DHS Data: September 2015 Gap Report
2015 Compliance Annual Report

Compliance Assessment

EC 101. Rule 40 Modernization: Medical Restraint	Compliance		

Areas Needing Additional Information

None.

Obtaining Additional Information

EC 101. Rule 40 Modernization: Medical Restraint	None

EC 102. Rule 40 Modernization: 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.

Comments Regarding DHS Information

- The Proposed Rule, with some changes, was adopted after notice and some process.
- The compliance assessment here is not intended to express and opinion on any issues addressed in the EC 103 process.

DHS Data: *September 2015 Gap Report*

Compliance Assessment

EC 102. Rule 40 Modernization: Proposed Rule	Compliance		

Areas Needing Additional Information

None

Obtaining Additional Information

EC 102. Rule 40 Modernization: Proposed Rule	None

EC 103. Rule 40 Modernization: Issue Resolution

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.

Comments Regarding DHS Information

- EC 103 contemplates that there may be suggestions that there are elements which are not adequately or properly addressed in the Adopted Rule replacing Rule 40. Such suggestions were made.
- DHS reports that it has been meeting on the suggestions with the Ombudsman for Mental Health and Developmental Disabilities and the Governor's Council on Developmental Disabilities since the fall of 2015, with some interruptions.
- EC 103 requires that the suggestions be considered in the "process for modifications of the *Olmstead* Plan." Unresolved issues may be presented to the Court and "will be resolved by the Court."

- While discussion of this issue understandably has taken place, there is a cost to delay in resolving the matter; individuals intended to benefit from the Adopted Rule may be receiving aversive interventions that would be prohibited if the Rule were otherwise.

DHS Data: *August 2016 Report*

Compliance Assessment

EC 103. Rule 40 Modernization: Issue Resolution	Issues should be resolved by the Court if not resolved through *Olmstead* modification process.

Areas Needing Additional Information

Discussion with parties regarding status of suggestions for the Adopted Rule.

Obtaining Additional Information

EC 103. Rule 40 Modernization: Issue Resolution		Monitor Interviews	

EC 104. Rule 40 Modernization: Rule 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.

Comments Regarding DHS Information

- The Positive Supports Rule became effective on August 1, 2015, replacing Rule 40, two months before the September 30, 2015 end of the reporting period for the Gap Report.
- EC 104 imposes two obligations on DHS:
  - Implementation of the Positive Supports Rule, and

- Taking other steps to "implement the recommendations of the Rule 40 Advisory Committee." *See* EC 102.[31]

- Neither the September 2015 Gap Report nor the August 2016 Report cover compliance with these two obligations. Therefore, no assessment is possible in this Report.
- *See* discussion above at EC 99.

DHS Data: *September 2015 Gap Report*
August 2016 Report

Compliance Assessment

EC 104. Rule 40 Modernization: Rule Implementation			Inconclusive

Areas Needing Additional Information

Information is needed regarding both obligations: implementation of the Rule and of the Advisory Committee recommendations. The changes wrought through this provision are statewide and interviews, document review, and consultation are appropriate.

Obtaining Additional Information

EC 104. Rule 40 Modernization: Rule Implementation	Monitor Document Review	Monitor Interviews	Monitor with Consultant

[31] EC 102 ("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.").

XI. Conclusion

The Court Monitor respectfully submits this Compliance Assessment to the Court.

Respectfully submitted,

David Ferleger

November 22, 2016