

provide them with constitutionally adequate treatment in state psychiatric hospitals;

WHEREAS the District Court certified this case pursuant to Federal Rule of Civil Procedure 23(b) to proceed as a class action.

WHEREAS the Defendants, after the District Court denied their Motion to Dismiss, filed an Answer that denied liability;

WHEREAS Plaintiffs and Defendants desire to resolve this lawsuit amicably and to avoid the risks and expense of further litigation;

NOW, THEREFORE, Plaintiffs and Defendants enter into this Settlement Agreement.

II. Definitions

1. "AEs" means the Administrative Entities that contract with the Department of Public Welfare to administer the community mental retardation system in specific geographic areas.

2. "Base services" means community mental retardation services funded with state and local appropriations.

3. "Class members" means all individuals with mental retardation who, on or after September 8, 2009 were institutionalized in state psychiatric facilities and were not subject to the jurisdiction of the criminal courts. Individuals who have been determined incompetent to stand trial or who have been adjudicated not

guilty by reason of insanity or guilty but mentally ill are not class members. Individuals on parole and those who have pending charges are class members unless at some point in the future they are adjudicated in the criminal justice system.

4. "Class representatives" for purposes of this Agreement means Plaintiffs Leah Jimmie, Josette Halechko, Janice Slater, Lewis Bowers, Ronald Pearson, and Williams Sacks.

5. "CSP" means the Community Support Plan that identifies the community service needs of a state hospital resident.

6. "DPW" means the Department of Public Welfare, its officials, employees, and agents, and their successors.

7. "HCSIS" means the Home and Community Services Information System.

8. "ICF/MR" means intermediate care facility for persons with mental retardation.

9. "ISP" means the Individual Support Plan that identifies community mental retardation supports and services for individuals with mental retardation.

10. "ITP" means the Individual Treatment Plan that sets forth the treatment goals and objectives and strategies to meet those goals and objectives for residents of the state hospitals.

11. "Mental Retardation Waiver programs" means the Medical Assistance home and community-based services programs administered by ODP, *i.e.*, the Consolidated Waiver and Person/Family Directed Support Waiver.

12. "ODP" means DPW's Office of Developmental Programs, its officials, employees, and agents, and their successors.

13. "OMHSAS" means DPW's Office of Mental Health and Substance Abuse Services, its officials, employees, and agents, and their successors.

14. "State hospitals" means the state psychiatric hospitals operated by OMHSAS.

III. Mental Retardation Eligibility and Waiver Program Assessments

1. On or before February 28, 2010, OMHSAS will identify all class members described in Section II.3

2. ODP will have a team of Ph.D-level psychologists and Qualified Mental Retardation Professionals review the class representatives and class members identified by OMHSAS pursuant to Section III.1 to assess whether they meet the eligibility criteria for community mental retardation services in Pennsylvania using the standards and processes set forth in 55 Pa. Code § 4210.101a. ODP will complete these assessments no later than May 30, 2010.

3. For all class representatives and class members determined by ODP pursuant to Section III.2 to be eligible for community mental retardation services,

ODP will determine whether they need an ICF/MR level of care so as to be eligible for services under the Mental Retardation Waiver programs. DPW will use the standards set forth in ODP Bulletin 00-08-04 (May 2008) to make that assessment. ODP will complete these determinations no later than June 30, 2010.

4. On or before July 31, 2010, DPW will provide Plaintiffs' counsel with lists of the following:

- a. all class representatives and class members identified as eligible for community mental retardation services and needing an ICF/MR level of care; and
- b. all class representatives and class members who have been determined by ODP not to be eligible for community mental retardation services and the reasons for those determinations; and
- c. all class representatives and class members identified as eligible for community mental retardation services, but not needing an ICF/MR level of care and the reasons for those determinations.

5. No later than September 15, 2010, Plaintiffs' counsel will notify Defendants' counsel as to which, if any, determinations made pursuant to Section III.2 or III.3 they want to be reviewed by an independent expert.

6. If Plaintiffs' counsel makes any challenges pursuant to Section III.5, DPW will retain and pay an independent expert to review those determinations. In identifying an independent expert, Plaintiffs' counsel may make recommendations to DPW. DPW, however, will have the authority to select the independent expert subject to the approval of Plaintiffs' counsel which will not be unreasonably withheld. Unless otherwise agreed by the parties, the independent expert will be retained no later than October 31, 2010.

7. The independent expert will complete his or her review of any challenged determinations and provide the parties with a written report of his or her determinations no later than December 31, 2010 unless otherwise agreed by the parties.

8. The independent expert's determinations will be conclusive and the parties agree to abide by them.

9. All individuals with mental retardation diagnoses admitted to state hospitals after the evaluations required by Sections III.1-III.3 are completed will be assessed to determine if they are eligible for mental retardation services pursuant to Section III.2 and need the level of care provided by an ICF/MR pursuant to Section III.3. DPW will notify Plaintiffs' counsel in the status reports required by Section VII of this Agreement regarding these determinations.

IV. Discharge Planning, Community Services, and Funding

A. Identification of Appropriate Community Services

1. DPW will develop CSPs for all individuals who are determined to be eligible for mental retardation services pursuant to the process set forth in Section III. The CSPs will identify, as appropriate, community mental retardation and mental health services which the individual needs and for which he or she is eligible. Staff from OMHSAS, ODP, and the AEs will be involved in the development of the CSPs.

2. DPW will assure that the AEs develop ISPs for all individuals who are determined to be eligible for mental retardation services pursuant to the process set forth in Section III. The ISPs will identify all appropriate mental retardation and mental health services the individuals need and for which they are eligible. For any individuals determined not to be eligible for the Mental Retardation Waiver programs, the ISPs will identify appropriate base services subject to available funding.

3. DPW will not discharge to a personal care home any individual determined to be eligible for Mental Retardation Waiver programs, provided, however, that Plaintiffs' counsel may waive this prohibition if qualified professionals recommend placement of an individual in a special program that is licensed as a

personal care home (*e.g.*, programs for people with brain injuries or people with mental illness who are medically fragile).

4. DPW will assure that residential service providers identified for individuals must be actively involved with the discharge planning process and the transition from hospital to community services.

5. Within ninety (90) days of the execution of this Agreement, DPW will establish a Review Committee, comprised of a person designated by ODP and a person designated by OMHSAS, with authority to act on behalf of DPW to address impediments (other than funding-related impediments) to the discharge of class representatives and class members who have been identified as appropriate for discharge (*e.g.*, if an AE refuses to develop a community program for an individual based on its conclusion that he or she is not appropriate for discharge). A class representative or class member, his or her advocate or family, members of his or her treatment team, DPW officials or staff, or Plaintiffs' counsel can request that the Review Committee intervene to overcome these non-funding-related impediments to discharge.

6. Any individual identified as eligible for Mental Retardation Waiver programs pursuant to the process set forth in Section III but who is or has been discharged from a state hospital before funding for such services under this

litigation is available remains eligible to receive such Waiver services under this Agreement.

- a. DPW will enroll in HCSIS or future computerized tracking systems all individuals identified as eligible for Mental Retardation Waiver programs pursuant to Section III.
- b. DPW will assure that there is ongoing participation of both the OMHSAS and ODP systems as part of the treatment/habilitation support teams for eligible individuals.
- c. DPW will assure that, when funding becomes available, the AEs offer such services to eligible persons who have been discharged.

B. Funding for Community Services

1. DPW will request that the Governor seek funding from the Legislature sufficient to provide appropriate community mental retardation and mental health services as follows:

- a. in Fiscal Year 2010-2011, funding to provide community services to least 20 individuals identified as eligible for community mental retardation services pursuant to Section III ;

- b. in Fiscal Year 2011-2012, funding to provide community services to at least 35 individuals identified as eligible for community mental retardation services pursuant to Section III;
- c. in Fiscal Year 2012-2013, funding to provide community services to all remaining individuals identified as eligible for community mental retardation services pursuant to Section III.

2. For each fiscal year in which the Legislature appropriates funding requested by DPW pursuant to Section IV.B.1, DPW will provide community services to the number of persons identified in that Fiscal Year.

3. If DPW chooses to close a state hospital or downsize a unit where one or more class members reside during the term of this Agreement, it will use the funds available due to that closure or downsizing to provide community services to those class members.

4. For any fiscal year that the Governor does not include the funding requested by DPW pursuant to Section IV.B.1 or the Legislature does not appropriate sufficient funds to implement Section IV.B.1, the process set forth in this sub-section will be utilized by the parties.

- a. Within sixty (60) days of the Governor signing the budget, Defendants' counsel will provide written notice to Plaintiffs' counsel to identify the amount of funds available for

implementation of the plan and to describe how DPW will use available funds to implement the plan and the expected number of individuals to be served in the fiscal year.

- b. Within twenty (20) days of receipt of notification, the parties will meet to discuss the funding shortfall and will attempt to reach consensus to revise the time frames for discharges and service development set forth in Section IV.B.1. If the parties cannot reach consensus on revised time frames, they will ask a United States Magistrate Judge to mediate the dispute.
- c. No later than 120 days after final approval of the budget by the Legislature, the parties will execute an addendum that reflects the final revisions of the time frames for discharges and service development in Section IV.B.1. The addendum will be incorporated by reference in this Agreement.
- d. Plaintiffs can choose to reinstate the litigation, rather than continue to use the alternative dispute resolution process set forth in Section IV.B.4(a)-(c), if by July 1, 2013 DPW has not provided community services to at least 75 percent of the persons identified as eligible for community mental retardation

services under Section III or some other percentage to which the parties have agreed.

V. Enhanced Services in State Hospitals

1. DPW will implement the Protocol to Improve Services to Class Members (Attachment 1) that is incorporated by reference in this Agreement.

VI. Incident Reporting

1. DPW will provide Plaintiffs' counsel with copies of incident reports concerning class representatives or class members no later than five (5) business days of the occurrence of the incidents. The incident reports will include the date of the incidents, the individual(s) involved, the nature of the incidents, and what, if any, actions were taken in response to the incidents (*e.g.*, use of restraints, PRN medication, change in privilege level, investigation). DPW also will provide Plaintiffs' counsel with copies of any investigation reports relating to any incidents reported under this Section within five (5) business days of the completion of the investigation reports.

VII. Status Reports

1. Beginning July 1, 2010 and every twelve (12) months thereafter, DPW will issue status reports to Plaintiffs' counsel that describe the status of the following activities:

- a. funding requests by DPW to the Governor for services under Section IV.B.1; and
 - b. inclusion of funding in the Governor's Executive Budget submitted to the Legislature for services under Section IV.B.1.
2. Beginning July 1, 2010 and every six (6) months thereafter, DPW will issue status reports to Plaintiffs' counsel that describe the status of the following activities:
- a. discharge of class representatives and class members, including information on the services provided at discharge and funding sources for those services (*e.g.*, name and address of community residential placement);
 - b. admissions of persons with mental retardation diagnoses to the state hospitals and determinations required by Section III; and
 - c. implementation of the Protocol to Improve Services to Class Members (Attachment 1).

VIII. Approval, Enforcement, Jurisdiction, and Attorneys' Fees

1. Plaintiffs will petition the District Court for preliminary approval of the Settlement Agreement and for permission to provide class notice and to schedule a fairness hearing. If the District Court grants preliminary approval, Plaintiffs will petition for final approval of the Settlement Agreement.

2. Plaintiffs may file a motion for specific performance to enforce alleged violations of the Settlement Agreement except as to the following issues:

- a. Plaintiffs' sole remedy for disagreements relating to class representatives' and class members' eligibility for community mental retardation services, including Mental Retardation Waiver programs, is to submit the issues to the independent expert pursuant to Sections III.5-III.8.
- b. Plaintiffs' sole remedy when the Governor fails to submit or the Legislature declines to appropriate full funding for the development of community services pursuant to Section IV.B.1 is the alternative dispute resolution process set forth in Section IV.B.4(a)-(c) or reinstatement of the litigation if the criteria set forth in Section IV.B.4(d) is satisfied.

Defendants reserve the right to assert any available defenses to a claim for specific performance.

3. This Settlement Agreement is not nor is it to be construed as a Consent Decree and does not operate as an adjudication on the merits of the litigation. Plaintiffs may not seek a remedy of contempt of court for any violation of the Agreement.

4. By entering into this Settlement Agreement, Defendants do not admit any liability and Plaintiffs do not concede the validity of any defense.

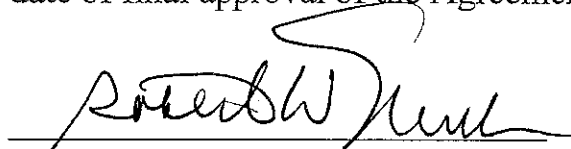
5. The Settlement Agreement will be binding on all parties, as well as their successors, only if the Agreement is approved by the District Court, provided, however, that Defendants agree to comply with the terms of the Agreement, including the attached Protocol to Improve Services to Class Members, pending the Court's ruling on approval of the Agreement. If the Court denies approval of the Agreement or if final approval is overturned on appeal, the litigation will be reinstated in the same procedural posture as it was at the time of the Agreement.

6. If the District Court approves the Settlement Agreement, it will retain continuing jurisdiction over this matter for purposes of interpretation and for purposes of enforcement to the extent permitted by Section VIII.2.

7. The Settlement Agreement will terminate ninety (90) days after the provision of community services to the last person identified as eligible for community mental retardation services pursuant to Section III of this Agreement or upon reinstatement of the litigation, whichever is earlier.

8. Defendants will pay Plaintiffs' counsel, subject to the District Court's approval, the sum of \$210,000 for attorneys' fees, litigation expenses, and costs incurred through final approval of the Settlement Agreement. Nothing in this Agreement should be construed to entitle or preclude payment to Plaintiffs' counsel

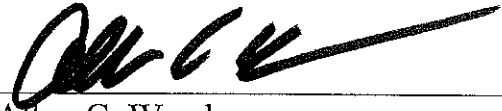
of attorneys' fees, litigation expenses, and costs incurred in this matter after the date of final approval of the Agreement.



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Dated: July 28, 2010



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Dated: July 29, 2010

PROTOCOL TO IMPROVE SERVICES TO CLASS MEMBERS

- I. **Placement of State Hospital Residents with Intellectual Disabilities (ID)**
 - A. Initially, services and supports for class members in state hospitals will be provided on the units where they reside; they will not be placed into separate or specialized units.
 - B. Within ninety (90) days of the execution of the Settlement Agreement (Agreement), the Multidisciplinary Teams for Residents with Intellectual Disabilities, created pursuant to Section II of this Protocol, will review each individual class member's treatment needs to consider the appropriateness of moving him/her to another living area for continued treatment. The decision to relocate any class member will be based on the individual's clinical treatment and support needs.
 - C. The Multidisciplinary Teams for Residents with Intellectual Disabilities will review persons with ID admitted to the state hospitals in the future to determine their appropriate placement within the facility.

- II. **Multidisciplinary Teams for Residents with Intellectual Disabilities (MTIDs)**
 - A. DPW will create a Multidisciplinary Team for Residents with Intellectual Disabilities (MTIDs) at each state hospital.
 - B. The Members of the MTIDs will receive training (as described in Section II of this Protocol).
 - C. Within forty-five (45) days of the execution of the Agreement, DPW's Office of Mental Health and Substance Abuse (OMHSAS) and Office of Developmental Programs (ODP), in consultation with each state hospital, will designate MTID members at each state hospital, and identify a lead for each MTID. The MTIDs will include members from the state hospitals, including at minimum a psychiatrist, a physician, a psychologist, a nurse, a vocational therapist, an occupational therapist, and a social worker, and from community mental health and mental retardation programs. Peers, family members, and advocates will be included. The MTID members within a state hospital may or may not all work on the same state hospital living area.

- D. The MTIDs will have primary responsibility to implement this Protocol for all class members regardless of the living area where they live, for the duration of their hospitalization. The MTIDs will also be responsible for implementing these approaches in this Protocol for individuals with ID who may be admitted to state hospitals in the future.
- E. The MTIDs will implement and oversee the clinical and treatment supports for those individuals. The roles and responsibilities of the MTIDs will include:
 - 1. comprehensive, multimodal, diagnostic and functional behavioral assessments for all class members, including compiling biopsychosocial histories as needed (see Section IV.B);
 - 2. case coordination (see Section VI);
 - 3. participation in the development of individualized treatment/habilitation plans, including assuring that treatment plans are based on the results of the multimodal diagnostic assessment information (see Section IV.C)
 - 4. participation in the development of Community Support Plans (CSPs) and Individual Support Plans (ISPs). The CSPs and ISPs will include active and ongoing discharge planning for all class members (see Section V).

III. **Staff Training**

- A. DPW will assure that all state hospital direct care and clinical staff members are provided with specialized training before working directly with class members.
- B. Within ninety (90) days of the date of execution of the Agreement, DPW (OMHSAS and ODP) will issue a Request for Proposals (RFP) for a Comprehensive Dual Diagnosis Training Plan for all staff members at the state hospitals who may come into contact with individuals with a dual diagnosis. The RFP will detail the minimum training requirements that must be conducted under this Section. The RFP also will require the contractor to be available for consultation with the MTIDs as needed for a period of at least two (2) years after the execution of the Agreement. This RFP will be issued in

conjunction with an RFP for Independent Monitoring and Evaluation (see Section VII below). Respondents may submit proposals for one or both components of this combined RFP.

- C. DPW will provide a draft of the RFP to counsel for Plaintiffs for their input no later than sixty (60) days after the date of execution of the Agreement.
- D. DPW will issue the RFP no later than ninety (90) days after the date of execution of the Agreement and will enter into a contract for the RFP to provide training no later than 180 days after the execution of the Agreement.
- E. The Training Plan will consist of multiple levels in which the training topics are geared to the staff members' roles, addressing the unique responsibilities of each type of staff person as set forth in Section II.F.
- F. The Training Plan will include mandatory introductory training for all new state hospital staff members as part of their orientation.
- G. Training topics to be covered will include (but not be limited to):
 - 1. For direct care staff: Overview of ID and dual diagnoses of people with mental illness/ID; learning and treatment challenges of residents with ID; the integrative mental health treatment model; trauma-informed care and positive approaches to management of psychiatric and behavioral challenges; objective means of evaluating treatment outcome data.
 - 2. For physicians: the integrative mental health treatment model; Medical Characteristics of Individuals with ID and how they can contribute to psychiatric/behavioral challenges.
 - 3. For medical and pharmacy staff that prescribe and/or monitor effects or side effects of psychotropic medication: the integrative mental health treatment model; psychopathology in persons with ID; appropriate candidates for psychotropic drug therapy; treatment, management, and control of behavioral symptoms; selecting specific psychotropic drug regimens; use of multiple drugs in the same patient; measurement and documentation of side effects; maintenance therapy; and use of PRN medications.

4. For staff who conduct intake and diagnostic assessments: the integrative mental health treatment model; multimodal diagnostic assessments; selection of treatment targets based on assessment data; assessment of psychological pathologies in persons with ID; objective means of evaluating treatment outcome data.
 5. For psychologists: the integrative mental health treatment model; psychopathology in persons with ID; psychotropic drug therapies and side effects; empirically-based psychosocial therapies for people with ID; objective means of evaluating treatment outcome data.
 6. For staff involved in development and monitoring of Individual Treatment Plans: the integrative mental health treatment model; diagnostic-intervention relationships; objective means of evaluating treatment outcome data.
 7. For case coordination staff: the integrative mental health treatment model; psychopathology in persons with ID; psychotropic drug therapies and side effects; empirically-based psychosocial therapies for people with ID; community resources for people with ID and mental illness; objective means of evaluating treatment outcome data.
- H. The Training Plan will specify core competencies and describe skills that will be demonstrated by staff as a result of the training.
- I. All staff assigned to the MDITs will receive initial training and annual specialty training.
- J. Training will begin no later than seven (7) months from the date of execution of the Agreement. Training of MDIT members will be completed no later than nine (9) months from the date of execution of the Agreement and training of all staff will be completed within 18 months from the date of execution of the Agreement.

IV. **Assessment and Treatment**

A. Integrative mental health treatment model

1. All class members, as well as other individuals with ID who may be admitted to state hospitals in the future, will receive treatment consistent with an integrative mental health treatment model that integrates their individual mental health treatment needs, habilitation treatment needs, and their vocational treatment needs and uses therapies, teaching, and training methods and approaches that are designed for individuals with ID. This Model will be implemented through:
 - (a) Extensive individualized multimodal diagnostic assessments;
 - (b) Functional analysis of problem behaviors that resulted in admission, contribute to continued institutionalization, or present barriers to discharge;
 - (c) An assessment process that is designed to identify the individual's psychological resources and strengths as well as his/her pathologies;
 - (d) Individualized treatment plans that address patient-specific needs for support.
 - (e) Treatment and supports that incorporate the principles of Positive Approaches/Positive Practices and trauma-informed care.

B. Multimodal Diagnostic and Functional Behavioral Assessments

1. Comprehensive, multimodal diagnostic and functional behavioral assessments of all class members will be conducted by the appropriately trained and credentialed members of the MDITs within one (1) year of the execution of the Agreement.
2. These assessments will be conducted by staff members previously trained pursuant to Section III.
3. Any individual with a diagnosis of intellectual/developmental disabilities admitted to a state hospital in the future will receive

individualized, multimodal diagnostic and functional behavioral assessments within fifteen (15) days of admission. These assessments will be performed by the appropriately credentialed and trained members of the MDITs. To the extent that individuals are admitted prior to the training of the MDITs, the MDITs will review their assessments under this sub-section within one (1) year of the execution of the Agreement.

C. Individualized Treatment Plans (ITPs)

1. All class members will have new Individualized Treatment Plans (ITPs) developed within one (1) year of the execution of the Agreement. The ITP is the document that outlines the comprehensive approach to habilitation and mental health and other treatment supports the individual is to receive while residing at the state hospital. The ITP contains details of each service to be provided, treatment plan goals, and expected outcomes.
2. All individuals with intellectual/developmental disabilities admitted to a state hospital in the future will have ITPs developed within thirty (30) days of admission. To the extent that individuals are admitted prior to the training of the MDITs, the MDITs will review their ITPs under this sub-section within one (1) year of the execution of the Agreement and revise them as needed.
3. ITPs will incorporate the results of the multimodal diagnostic and functional behavioral assessments.
4. The ITPs will be based on an integrative mental health treatment model and reflect therapies, teaching, and training methods and approaches that are designed for people with ID.
5. All ITPs will be developed in accordance with state hospital policies and procedures and accreditation/certification agency requirements.
6. For all class members, the ITPs will be created with input from and review by the MDITs and will include specialized content specific to dual diagnosis issues.

- (a) The ITPs will include treatments that address patient-specific learning, emotional, motivational, and related features of individuals with ID.
 - (b) The ITPs will address any specific behavioral difficulties, including specific proactive treatment supports based on a functional analysis of biomedical, psychological, and social/environmental conditions involved in the behavioral issues.
 - (c) The ITPs will address the reasons for admission (both psychiatric and behavioral) that may represent barriers to community placements, as well as any symptoms or behaviors acquired since admission that may represent barriers to discharge.
7. The ITPs will be routinely reviewed by the treatment teams and the MTIDs to assure ongoing evaluation of the efficacy of treatment using objective, outcome-based measures and to make adjustments as needed.

D. Approaches to Challenging Behavior

- 1. Incentive/privilege level systems are documented as part of the ITPs and as such will be reviewed and modified accordingly for each class member and all other state hospital residents with ID within nine (9) months of the execution of the Agreement, in accordance with Section IV.C.
- 2. For class members and other state hospital residents with ID, these incentive systems will be tailored to meet their individual needs, based on each person's level of cognitive ability and motivational characteristics, as determined by the results of the multimodal diagnostic and functional behavioral assessments (see Section IV.B).
- 3. State hospital staff members will inform class members and others state hospital residents with ID of the incentive system in a manner designed to ensure they understand expectations and incentives for participation and accomplishment of goals.

4. Contingencies, reinforcements and consequences will be determined based on the individual's ability to understand and modify behavior accordingly. For example: If a class member or other individual with ID participates successfully in a day program, vocational program, or other activity, that activity should not be withheld as a consequence for problematic or challenging behavior that occurs in the living area or elsewhere.
5. The MTIDs are responsible to oversee the modification of incentive/privilege levels for class members and other state hospital residents with ID; to assure that the incentive/ privilege levels are understood by these individuals; to monitor the implementation of the incentive/privilege levels; to evaluate their success for each individual; and to refine them as needed.

V. Discharge Planning: The Community Support Plan (CSP) Process

- A. Discharge planning for class members and others state hospital residents with ID will be accomplished through the Community Support Plan (CSP) process now utilized by DPW in all state hospitals. Community Support Plans (CSPs) for class members will be initiated or reviewed within thirty (30) days of the date of execution of the Agreement. The MTIDs will review the CSPs of class members and other state hospital residents with ID within nine (9) months of the execution of the Agreement and, if needed, will make appropriate modifications to the CSPs.
- B. The CSP process is a comprehensive team approach to discharge planning, transition planning, and identifying and securing the supports and resources necessary for the individual to successfully return to the community. The CSP process includes a Peer to Peer assessment, a Family to Family assessment and a clinical assessment. Peer and Family advocates, as well as DRN advocates or their designees, will be included in all aspects of the CSP process whenever possible for class members. Class members will be encouraged to invite Peer Supporters to participate in their planning meetings.
- C. For class members, participants from the community programs will be included in the CSP process. Specifically, representatives from the individual's Administrative Entity and/or County MH/MR program and Supports Coordination unit, as well as representatives from ODP,

will participate in the CSP process. The CSP process will be conducted jointly with the Individualized Support Plan (ISP) process which is currently utilized by DPW to develop service plans for persons with ID. ISPs contain descriptions of all services and supports the individuals need to be successful in the community as well as the costs of the services to be provided.

- D. All CSPs will include discharge plans with specific measurable criteria that interface with the treatment provided.
- E. Members of the MDITs will participate in the CSP process. MDIT members will provide information from the individual's ITP and other clinical feedback to identify the individual's strengths, needs, and goals for discharge. The MDIT will review all completed CSPs. Each MDIT will designate a lead community representative who will be responsible for monitoring CSPs for all class members and other state hospital residents with ID. Functioning as an advocate, this lead community representative will ensure that the discharge and transition process moves forward, supporting the outcome of timely discharge to the community.
- F. All class members will be provided support and an opportunity to develop a Wellness Recovery Action Plan (WRAP) and a Mental Health Advance Directive. Biographical timelines will be conducted for class members as recommended by the Multidisciplinary Transition Teams.

VI. Case Coordination

- A. At each state hospital, the MTID will assume responsibility for monitoring the treatment and discharge of class members and other state hospital residents with ID. This includes, but is not limited to: ongoing review of intake; completion of multimodal diagnostic and functional behavioral assessments; review of ITPs; oversight of incentives/privilege levels; and coordination with CSP/ISP (discharge/transition plan) development.
- B. The MTIDs will assure that all necessary assessments and treatment plans are undertaken in accordance with the timelines and standards of this Protocol and any other applicable DPW regulations and policies.

- C. The MTIDs will review all incidents concerning class members that result in restraint or isolation, administration of STAT medications, denials of privileges, and all incidents of alleged abuse (whether by staff or other patients) on an ongoing basis to assure timely modification of ITPs. The MDITs also will review that incident reports and responses involving class members meet all Performance Improvement and Risk Management requirements.

VII. Independent Monitoring and Evaluation of Efficacy of Services to Class Members

- A. Within ninety (90) days of the execution of the Agreement, DPW will issue a Request for Proposals (RFP) for Independent Monitoring and Evaluation services, to monitor and assess compliance with the implementation requirements of this Protocol. The RFP will require applicants to address the specific requirements that must be met under this Section. This RFP will be issued in conjunction with the Comprehensive Dual Diagnosis Training Plan RFP described in Section III above. Respondents may submit proposals for one or both components of this combined RFP.
- B. DPW will provide a draft of the RFP to counsel for Plaintiffs for their input no later than sixty (60) days after the date of execution of the Agreement.
- C. The contractor selected for the Independent Monitoring and Evaluation project will be responsible for the following activities:
 - 1. Development and implementation of a tracking system that collects objective data to evaluate measurable outcomes against best practice standards for care to assess the services provided to class members and other state hospital residents with ID;
 - 2. Identification of criteria to measure outcomes and development of survey tools to gauge compliance and quality; Criteria for outcomes measures will be identified, and survey tools will be developed to gauge compliance and quality.
 - 3. Assessment of DPW's compliance with this Protocol will be reviewed one (1) year after the execution of this Agreement and annually thereafter for four (4) years. The annual assessments will include:

- (a) Review of records of at least a representative sample of class members and other state hospital records with ID.
 - (b) On-side visits to one or more state hospitals.
 - (c) Patient and staff interviews.
 - (d) Other activities determined to be necessary by the contractor and agreed upon by DPW.
 - 4. Submission of written report of findings to DPW's Statewide Task Force (see Section VIII.A below) and to Plaintiffs' counsel. The initial report will be submitted no later than 15 months after the execution of the Agreement and every 12 months thereafter. The findings will note areas of compliance and/or non-compliance with Sections I through VI of the Agreement. For any areas of non-compliance, DPW will provide a written plan of correction that the contractor will evaluate and approve, making any necessary changes.
 - 5. Review of implementation of any plans of correction within six (6) months after they are approved and submission of written reports within thirty (30) days of whether DPW has cured any deficiencies.
- D. DPW is responsible to take the steps necessary under this Section to support the Independent Monitoring and Evaluation, including:
- 1. issuing an RFP for the Independent Monitoring and Evaluation project within ninety (90) days after execution of the Agreement;
 - 2. entering into a contract pursuant to the RFP no later than 180 days after execution of the Agreement;
 - 3. developing plans of correction in response to any findings of non-compliance by the contractor; and
 - 4. implementing the plans of correction as ultimately approved by the contractor.

VIII. Assessment of Community Resources and Services

A. Statewide Task Force

1. DPW will appoint a statewide Dual Diagnosis Task Force to oversee a comprehensive assessment of Pennsylvania's community resources and services for individuals with dual diagnoses of ID and mental illness. The Task Force will include representatives of ODP and OMHSAS as well as representatives from the Disability Rights Network of Pennsylvania, the Administrative Entities or county mental health and mental retardation programs, peers, family members, and other stakeholders that DPW determines to be appropriate.
2. The members of the statewide Task Force will be appointed within forty-five (45) days from the date of execution of the Agreement.
3. The functions of the Task Force will include (but not be limited to):
 - (a) Development and undertaking of a statewide resource assessment regarding supports for individuals with dual diagnosis in the community programs of both OMHSAS and ODP.
 - (b) Collaboration with expert consultants.
 - (c) Review/oversight of implementation of expert consultants' recommendations as deemed appropriate.
 - (d) Development of program evaluation tools to support ongoing quality improvement in dual diagnosis services in the community programs.
 - (e) Review of monitoring reports of class members' treatment in state hospitals pursuant to Section VII above.
 - (f) Review of class members' status and progress in community programs after they are discharged from state hospitals.

- (g) Statewide oversight and review of ongoing implementation of this Protocol.
 - (h) Documentation of all reviews and recommendations.
 - (i) Provision of feedback to DPW leadership regarding results of reviews and progress of Settlement Agreement implementation.
- B. In furtherance of the Task Force's assessment of community services, DPW will require the county mental health and mental retardation programs to identify in their needs-based assessments for FY 2011-2012 any gaps in services for individuals with dual diagnoses of mental illness and ID.
 - C. Within one (1) year of the execution of the Agreement, the Statewide Task Force will issue a written report to DPW and to Plaintiffs' counsel regarding community services for individuals with dual diagnoses of mental illness and ID in all regions of Pennsylvania. The report will identify any gaps in services (either statewide or at the local level), the impact of those gaps, and recommendations for addressing those gaps.
 - D. Within three (3) months of receipt of the written report under Section VIII.C, DPW will issue a written response to the report to address how it intends to address any gaps in services and provide a copy of that report to Plaintiffs' counsel.
 - E. Beginning one (1) year after the execution of the Agreement and every six (6) months thereafter during the term of the Agreement, the Statewide Task Force will issue a written report to Plaintiffs' counsel that identifies all class members who have been in state hospitals for longer than one (1) year and that identifies for each class members what efforts, if any, have been made to discharge the individual, and the reason(s) for the individual's continued hospitalization.

IX. DPW Policy for Support for Dual Diagnosis Initiatives

- A. OMHSAS and ODP will develop an Operating Agreement (OA) to delineate the roles and responsibilities of both agencies in providing services and supports to individuals with dual diagnoses, both in the community programs and in state facilities. The OA will describe

DPW's process for program planning, program development, quality management and oversight. The OA will also clearly describe the process and expectations related to respective funding responsibilities. The OA will be published no later than six (6) months from the date of the execution of the Agreement.

- B. OMHSAS and ODP will jointly develop a statewide protocol to respond to potential referrals for state hospital or state center admission of individuals with intellectual/developmental disabilities and mental health treatment needs. This protocol will incorporate the functions and activities of the existing Positive Practices Resource Team (PPRT) and will specify methods used to divert from admission to appropriate community based services and supports. This protocol will be included in the OA pursuant to section IX.A. This protocol will be implemented no later than six (6) months from the date of the execution of the Agreement.
- C. OMHSAS and ODP will publish a joint Bulletin on Dual Diagnosis to disseminate information and delineate expectations for providers regarding services and supports available to individuals with intellectual/developmental disabilities and mental health treatment needs, both in the communities and in the state hospitals and state centers. The joint Bulletin will include requirements for implementation of the OA pursuant to Section IX.A. The joint Bulletin will be published no later than six (6) months from the date of the execution of the Agreement.

X. Implementation Timeline

TIME FRAME (FROM DATE OF EXECUTION OF THE AGREEMENT)	ACTION TO BE TAKEN
30 days	Community Support Plans (CSPs) for class members initiated or reviewed (section V.A.)
60 days	Draft Request for Proposals (RFPs) submitted to Plaintiffs' counsel for review and comment (sections III.C and VII.B)
45 days	Members of the Statewide Task Force appointed by ODP and OMHSAS (section VIII.A)
45 days	ODP and OMHSAS designate team members/identify leads for Multidisciplinary Teams for Residents with Intellectual Disabilities (MTIDs) at each state hospital (section II.C)
90 days	Requests for Proposals (RFP) for a Comprehensive Dual Diagnosis Training Plan issued by DPW (section III.B)
90 days	Requests for Proposals (RFP) for Independent Monitoring and Evaluation issued by DPW (section VII.A)
90 days	State hospitals review class members' treatment needs, and consider the appropriateness of moving to another living area for continued treatment (section I.B)
120 days	Deadline for proposals for both RFPs (section III.D)
180 days	Contracts awarded for both RFPs (section III.D)
6 months	ODP/OMHSAS Operating Agreement published (section IX.A)
6 months	ODP/OMHSAS protocol for state facility and state center diversion published (section IX.B)
6 months	ODP/OMHSAS joint Bulletin on Dual Diagnosis published section IX.C)
7 months	Training begins for all state hospital staff (section III.J)
9 months	Incentive/privilege level systems reviewed and modified as needed for each class member (section IV.D)

TIME FRAME (FROM DATE OF EXECUTION OF THE AGREEMENT)	ACTION TO BE TAKEN
9 months	CSPs will be reviewed by MDITs for class members
9 months	Training completed for all MDIT members (section III.J)
1 year	Multimodal Diagnostic and Functional Behavioral Assessments of all class members conducted by appropriately trained and credentialed members of the MDITs (per section IV.B)
1 year	All class members will have new Individualized Treatment Plans (ITPs) developed (per section IV.C)
1 year (and annually for each of the next 4 years)	Initiation of Independent Monitoring/Program Evaluation Review
1 year	Statewide Task Force will provide Plaintiffs' counsel with a list that identifies all class members who have been hospitalized longer than one year, efforts to discharge them, and obstacles to discharge
1 year	Statewide Task Force will submit to DPW and Plaintiffs' counsel a written report to identify gaps in community services and make recommendations to address those gaps
15 months (and annually thereafter for each of the next 4 years)	Independent Monitor will submit to Statewide Task Force and Plaintiffs' counsel written report on compliance with the Protocol
15 months	DPW will issue a written report, copied to Plaintiffs' counsel, to respond to the report on gaps in community services submitted by the Statewide Task Force
16 months (and annually thereafter for each of the next 4 years)	DPW will submit written plan of correction to the Independent Monitor, as needed, to address any compliance issues
18 months	Training completed for all state hospital staff
22 months (and annually thereafter for each of the next 4 years)	Independent Monitor will assess implementation of any plan of correction

23 months (and annually thereafter for each of the next 4 years)	Independent Monitor will submit written report to DPW that states whether deficiencies have been cured by plan of correction
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