IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA Plaintiff (s) v. COMMONWEALTH OF PUERTO RICO ET AL Defendant (s)	CV. 99-1435 (GAG)

ORDER ADOPTING JOINT COMPLIANCE ACTION PLAN

The Court hereby APPROVES and ADOPTS in its entirety the parties' Joint Compliance Action Plan (JCAP), submitted on October 06, 2011 (Dkt. 1181). The approved JCAP is hereby docketed as attachment # 1 to this order. The parties and their counsel are highly commended for their hard and diligent work in agreeing to this agreement.

In light of the above, this case is hereby administratively closed. Notwithstanding, all existing court orders, as amended, remain in full force and effect, as per the JCAP.

The Court hereby RETAINS full jurisdiction to monitor and enforce the JCAP. The Court intends to retain jurisdiction for a minimum of three (3) years. This period, however, may be shortened or extended by the Court if warranted to ensure full compliance with the JCAP.

Finally, the court notes that the JCAP is on up to date compilation of all stipulations and orders in this case. However, in the JCAP the Commonwealth has voluntarily assumed additional obligations which benefit all the MRP population.

In sum, the JCAP constitutes the culmination of months of intense discussion, review and evaluations between the United States Department of Justice, the Commonwealth Department of Health, and the Court Monitor, Dr. McGee. It is important to note that the "administrative closure" of this twelve (12) years old case in no way underscores the Constitutional and legal rights of the MRP participants as citizens of the United States. To the contrary, the Court now expects the Commonwealth to fully and readily comply with the JCAP.

SO ORDERED.

In San Juan, Puerto Rico, this 19th day of October, 2011.

s/Gustavo A. Gelpí
U.S. District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA,	
Plaintiff,	CIVIL NO. 99-1435 (GAG)
vs.	
COMMONWEALTH OF PUERTO RICO, *et al.*	
Defendants.	

JOINT COMPLIANCE ACTION PLAN

I. INTRODUCTION

In April 1999, pursuant to the Civil Rights of Institutionalized Persons Act ("CRIPA"), 42 U.S.C. § 1997, the United States filed this civil action against the Commonwealth of Puerto Rico and pertinent officers, alleging violations of the constitutional and legal rights of a group of persons with developmental disabilities served by the Commonwealth's Mental Retardation Program ("MRP"). Near the time of the filing of the action, the parties entered into a remedial settlement agreement, which set forth preliminary requirements for the Commonwealth to better meet the needs of hundreds of then-institutionalized participants with developmental disabilities. In subsequent years, the parties entered into several other agreements, including one which provided for a Joint Compliance Coordinator ("JCC") to monitor compliance efforts, as well as an extensive plan to transition the participants from institutional settings to integrated community placements. The Court has entered each of these agreements as an Order of the Court.

While the Commonwealth has made notable progress in certain areas, there remain pending goals to be fully achieved in certain other areas. In light of this, the Court has mandated collective efforts to try to reach agreement on an action plan to discipline and structure future Commonwealth efforts towards achieving compliance. After much collaboration, including input from the JCC, the parties have agreed upon a plan, hereinafter called the "Compliance Action Plan," that is consistent with the parameters and framework of the existing remedial documents already agreed upon by the parties and adopted by the Court.

II. BACKGROUND

A. Existing Legal Framework on Substantive Issues

There are three primary substantive Court Orders in this case that define the Commonwealth's obligations to MRP participants: the Interim Settlement Agreement ("ISA"), the Supplemental Interim Settlement Agreement ("SISA"), and the Community-Based Service Plan ("CBSP"). Before this case may be closed, the Commonwealth needs to adequately comply

with each provision of these three existing Court Orders. Set forth below is a summary outline of these three primary substantive Court Orders.

(1) The Interim Settlement Agreement was adopted by the Court on May 4, 1999. In the ISA, the parties recognized that the rights of the participants that are part of this lawsuit "are secured and protected by the Constitution and laws of the United States." The parties entered into the ISA "for the purpose of avoiding protracted and adversarial litigation." The ISA generally outlines specific remedial measures for the institutions open at that time. However, it also provides ongoing obligations on the Commonwealth to meet MRP participant needs going forward. Three of the most important requirements of the ISA mandate that the Commonwealth provide MRP participants with adequate health care, psychiatric care, and safety:

a. With regard to health care, the ISA requires that the Commonwealth "ensure that [MRP participants] receive adequate preventive, chronic, routine, acute, and emergency medical and nursing care in accordance with generally accepted standards of care." ISA § II.G;

b. With regard to psychiatric care, the ISA requires that the Commonwealth "provide adequate and appropriate routine and emergency psychiatric and mental health services in accordance with accepted professional standards to [MRP participants] who need such services." ISA § II.F.; and

c. With regard to safety, the ISA requires that the Commonwealth "ensure that [MRP participants] are provided with reasonably safe conditions and that they are free from staff abuse and neglect. The Commonwealth shall prevent undue risk of harm associated with the aggression or other maladaptive behaviors of other [participants]." ISA § II.D.

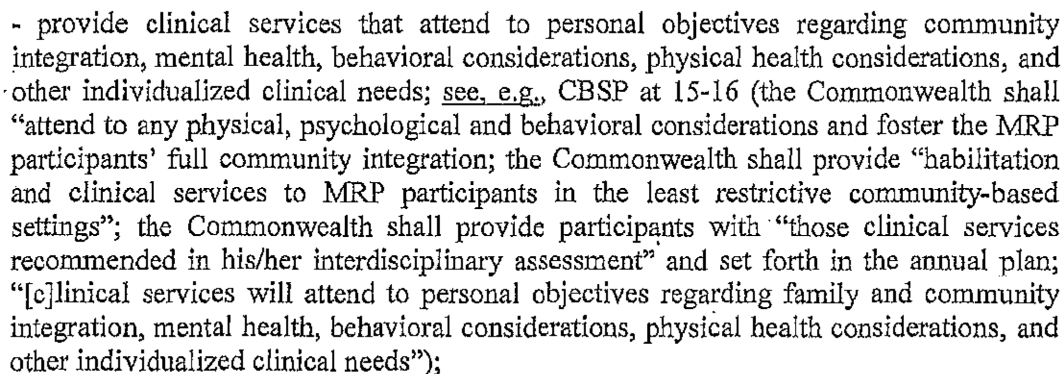
(2) The Supplemental Interim Settlement Agreement was adopted by the Court approximately a year later in 2000, and installed Dr. John J. McGee as the Court's agreed-upon monitor (called the "Joint Compliance Coordinator or 'JCC'").[1] The SISA also re-asserted the ongoing viability of the ISA: "The Interim Settlement Agreement shall remain in full force and effect." SISA § 1. The SISA recognized that "despite defendants' efforts to achieve remediation pursuant to the terms of the Interim Settlement Agreement, full compliance with its terms in accordance with the prescribed time deadlines has not been achieved." SISA at 1.

(3) The Community-Based Service Plan was jointly agreed upon by both parties, and then filed with the Court by the Commonwealth in September 2001. The Court entered the CBSP as an Order of the Court in October 2001. The CBSP is a much more extensive and detailed set of requirements that requires the Commonwealth to: (i) provide community-based placement and treatment to participants in the most integrated setting whenever appropriate, and to effectively foster their independence and participation in the local community in a manner consistent with Olmstead v. L.C., 527 U.S. 581 (1999); and (ii) provide participants with adequate protections,

1 A few months ago, the Court appointed an assistant to the JCC, who is to work exclusively under the direct supervision and instruction of Dr. McGee. Order Appointing Assistant to Court Monitor, Oct. 29, 2010 (Doc. 1049).

services, and supports to meet their individualized needs in the community at all times. Among many other detailed provisions, the CBSP requires the Commonwealth to:

- ensure that each participant's individualized plan is appropriate and implemented fully to meet the ongoing needs of each participant; provide the type, quantity, duration, and level of support in the community for each participant according to the participant's individualized needs, capabilities, and desires; and ensure that each participant receives needed care in the areas of health, safety, and personal and social needs as set forth in each participant's individualized plan; see, e.g., CBSP at 10-11 (the Commonwealth shall ensure that "the type, quantity, and duration of supported-living services received by the MRP participants [is] determined on an individualized basis, according to each MRP participant's needs and capabilities" as established in each participant's annual plan; the Commonwealth shall "assure that each MRP participant receives support services in accordance to his/her needs" pursuant to each participant's annual plan);



- provide clinical services that attend to personal objectives regarding community integration, mental health, behavioral considerations, physical health considerations, and other individualized clinical needs; see, e.g., CBSP at 15-16 (the Commonwealth shall "attend to any physical, psychological and behavioral considerations and foster the MRP participants' full community integration; the Commonwealth shall provide "habilitation and clinical services to MRP participants in the least restrictive community-based settings"; the Commonwealth shall provide participants with "those clinical services recommended in his/her interdisciplinary assessment" and set forth in the annual plan; "[c]linical services will attend to personal objectives regarding family and community integration, mental health, behavioral considerations, physical health considerations, and other individualized clinical needs");

- establish a quality assurance system to ensure that adequate and appropriate protections, services, and supports are provided to participants at all times; see, e.g., CBSP at 6-7 (the Commonwealth shall "establish a quality assurance system consistent with the mission of this CBSP in order to ensure that appropriate protections, services and supports are provided to MRP participants at all times"; the Commonwealth shall "establish a quality assurance component to ensure that [each participant's plan] is appropriate and implemented fully to meet the ongoing needs of each MRP participant");

- provide an adequate and appropriate number of community staff, including adequate service mediators, who will ensure that the community placements are appropriate and that they meet the individualized needs of each participant; see, e.g., CBSP at 10, 12 (the Commonwealth shall "ensure that there is adequate and appropriately trained staff to provide a safe, secure and habilitative community placement and day programming environment to MRP participants"; the Commonwealth shall ensure that each community provider will provide an "adequate and appropriate number of staff ... to ensure that the MRP participant receives the needed care in the areas of health, safety, and personal and social needs" as set forth in the annual plan of each participant);

- ensure that participants who have transitioned to community-based homes have a reliable and safe means of transportation within the community at all times; see, e.g., CBSP at 14 (the Commonwealth "will diligently coordinate transportation services so that all MRP participants, who have been transitioned to community settings, have a reliable means of transportation"; the Commonwealth "will arrange with each supported-living-service provider to assure available and appropriate transportation for participation in the community life");

- expand community services and supports to meet the needs of participants in the community; see, e.g., CBSP at 13 (the Commonwealth "will evaluate currently available community resources and expand community residences, services and supports to meet the personal needs of MRP participants recommended for community ... and will establish a schedule to develop such settings and services");

- ensure that participants are free from abuse and neglect in the community and that any identified deficiencies are remedied promptly; and for all other incidents, ensure that direct care and supervisory community staff follow up appropriately to protect the participants from harm, prevent the occurrence of similar incidents in the future, and develop and implement plans to protect participants from risk of further harm; see, e.g., CBSP at 9-10 (the Commonwealth "will review and implement its protocol on abuse and neglect to ensure that MRP participants are free from abuse and neglect in their new community-based treatment or placement," such that this "protocol will ensure that identified deficiencies are remedied promptly"; the Commonwealth shall ensure that "for all incidents ... direct care community staff and supervisory community staff follow up appropriately to protect the MRP participants from harm and to prevent the occurrence of similar incidents in the future"; the Commonwealth "will identify potential victims of assault and frequent aggressors," and for potential victims, the Commonwealth "will develop and implement plans to protect them from risk of further harm");

- provide services to enable participants to successfully and securely achieve independent living skills such as feeding, mobilization, dressing, personal hygiene, and all other self-help activities; and ensure that all participants receive adequate habilitation services that foster their fullest development, independent living, adaptive skills, and community integration, and attend to any physical, psychological, and behavioral considerations; see, e.g., CBSP at 11 (the Commonwealth shall ensure that community staff "will provide all the help the MRP participant needs in order to successfully and securely achieve independent living tasks such as feeding, mobilization, dressing, personal hygiene, and all other self-help activities"); and

- provide participants with vocational and job experiences, such as supported and competitive employment opportunities, that will encourage the development of appropriate work habits, attitudes, and job-related motor and psychosocial skills; see, e.g., CBSP at 15-16 (the Commonwealth "will provide each MRP participant appropriate habilitation and pre-vocational skills training and services for the development of independent living

and community integration"; the Commonwealth "will provide its MRP participants with basic vocational experiences that will encourage the development of appropriate work habits, attitudes and job-related motor and psychosocial skills"; the Commonwealth will develop "vocational alternatives for MRP participants, such as supported and competitive employment opportunities").

In a subsequent Transition Order, while summarizing progress made in the case to date, the Court reiterated the importance of these Orders, and directed the Commonwealth to "fully comply with all existing Court Orders in this case," including the ISA, the SISA, and the CBSP. Transition Order, Dec. 10, 2008 (Doc. 794), at 2. In the Transition Order, the Court re-emphasized the specific thrust of the earlier Orders, and, among many requirements, stressed that the Commonwealth is to:

- keep participants safe and ensure that appropriate remedial measures are developed and implemented in response to incidents and investigations;

- ensure that all participants are provided with adequate and appropriate health care services to meet the individualized needs of each participant;

- ensure that participants with a mental illness receive adequate and appropriate psychiatric services; and

- maintain and enhance the MRP's quality assurance system to track and follow-up on participants and their ongoing needs.

Id. at 2, 3. The Court has reinforced all this in several subsequent Orders. See, e.g., Order, Aug. 17, 2009 (Doc. 884), at 1 ("The Court expects the Commonwealth to ensure the health, safety, and welfare of participants by complying with the Court's many orders."); Order, Dec. 11, 2009 (Doc. 926) ("the court expects the Commonwealth to fulfill all of its continued obligations towards the participants, as required by the Constitution and Laws of the United States"); Order, Aug. 2, 2010 (Doc. 1001) ("no action will be taken that places in jeopardy the constitutional rights of program participants").

B. Current Compliance Landscape

As referenced above, the Commonwealth has taken a number of steps to implement the requirements of the various Court Orders. For example, it is undisputed that the Commonwealth has transitioned to the community a significant number of participants in dozens of integrated homes. See Transition Order, Dec. 10, 2008 (Doc. 794), at 1 ("the Commonwealth has to this date opened 55 community homes and eight developmental centers"); see also Commonwealth's Informative Motion Regarding the Mental Retardation Program, June 16, 2011 (Doc. 1145), at 1 ("Total Number of Community Homes - 53"). Moreover, the Commonwealth has engaged a significant number of support and direct personnel to provide needed services to the MRP participants.

There remain, however, pending goals yet to be fully achieved in certain other areas. There are outstanding issues with regard to health care, mental health services, habilitation, and participant safety. Moreover, not all MRP participants who need integrated employment and/or vocational opportunities currently have them. For example, the Court has stressed that the Commonwealth is to continue "important ongoing efforts to find employment and/or vocational opportunities for qualified participants, and maintain employment and vocational opportunities for those participants that qualify." Transition Order, Dec. 10, 2008 (Doc. 794), at 3. The Court has repeatedly directed the Commonwealth to address outstanding needs in this area. See, e.g., Order, Jan. 9, 2009 (Doc. 799), at 1; Order, Aug. 17, 2009 (Doc. 884), at 2 ("The Court reiterates the need for the Commonwealth to address the outstanding vocational needs of dozens of participants."); Court Mins. of Proceedings and Order, Oct. 8, 2009 (Doc. 899), at 2 ("Vocational/Job area needs to be fully advised by Commonwealth."); Order, Dec. 11, 2009 (Doc. 926), at 1; Tr. of Status Hr'g (Dec. 16, 2010), Dec. 24, 2010 (Doc. 1074), at 8 (the issue of participant employment remains unresolved; the Commonwealth must implement needed remedial steps – "I've been waiting too long for this to happen, and steps have to be taken"); and Court Mins. of Proceedings and Order, Apr. 27, 2011 (Doc. 1117), at 2 ("The Puerto Rico Department of Health needs to maximize work by participants in the community.").

C. Maintenance of Current Efforts

In its Transition Order, the Court stressed that the Commonwealth is to "ensure the continuity of the protections, supports, and services currently provided to participants," such that they are "not interrupted or diminished," and such that "any progress and momentum toward meeting participants' needs under Olmstead will not be lost." Transition Order, Dec. 10, 2008 (Doc. 794), at 2. In that Order, in addition to what was listed in the previous section, the Court specified a number of services that the Commonwealth should continue, including:

- Maintain the system of integrated community homes and day programs to ensure that the participants are placed and served in the most integrated setting;

- Pay providers on time each month for legitimate invoices, and maintain the MRP's provider payment tracking, reporting, and follow-up system;

- Provide participants with adequate and appropriate habilitation and training services in integrated community settings according to the individualized needs of each participant;

- Provide necessary habilitation, training, protections, supports, and services to participants at the community-based Developmental Centers;

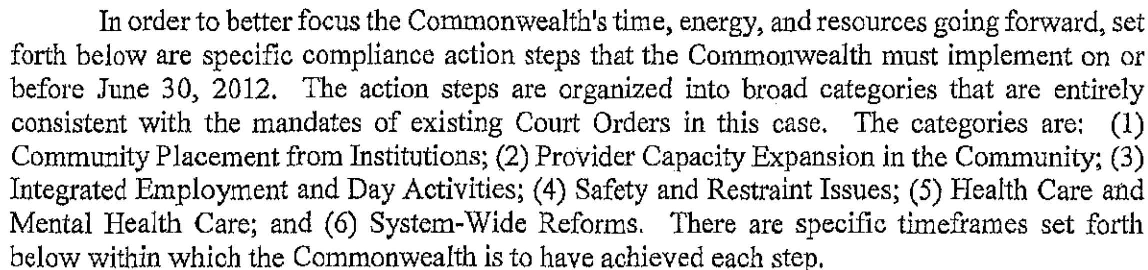
- Maintain service mediators for all participants; and

- Ensure that service mediators identify unmet needs and develop, implement, and oversee remedial measures based on participant needs.

Id. at 3-4.

The Court has issued a series of subsequent Orders that similarly reinforce the need for the maintenance and continuity of supports and services, especially in light of recent fiscal constraints. See, e.g., Order, Aug. 17, 2009 (Doc. 884), at 2 ("The Court urges the Commonwealth to maintain programmatic and leadership continuity within the MRP in order to better ensure needed programs, services and protections to the participants"); Mins. of Proceedings and Order, Oct. 8, 2009 (Doc. 899), at 1 ("There have been no budget cuts, staffing decreases, no freezing of positions and no fiscally negative moves. The Commonwealth submits situation will continue. MRP Program will request the Health Department to disburse remaining moneys for first semester. This is essential so that services remain uninterrupted"); Order, Feb. 25, 2010 (Doc. 954) ("services to the participants of the program shall remain uninterrupted"); Mins. of Proceedings and Order, Aug. 19, 2010 (Doc. 1010) ("The Court reminds the Secretary [of Health] that, as agreed by the parties, the services to the participants shall remain uninterrupted unless otherwise ordered").

III. COMPLIANCE ACTION PLAN



In order to better focus the Commonwealth's time, energy, and resources going forward, set forth below are specific compliance action steps that the Commonwealth must implement on or before June 30, 2012. The action steps are organized into broad categories that are entirely consistent with the mandates of existing Court Orders in this case. The categories are: (1) Community Placement from Institutions; (2) Provider Capacity Expansion in the Community; (3) Integrated Employment and Day Activities; (4) Safety and Restraint Issues; (5) Health Care and Mental Health Care; and (6) System-Wide Reforms. There are specific timeframes set forth below within which the Commonwealth is to have achieved each step.

1. *Community Placement from Institutions*

A. On or before October 31, 2011, the Commonwealth shall re-evaluate the remaining MRP participants who currently reside in the Instituto Psicopedagogico, John Christmig, Centro Shalom, or Modesto Gotay institutions, and then develop and implement a plan to place them into integrated community residential settings in a manner consistent with Olmstead and the CBSP.

B. If there are obstacles, other than family member or guardian objections, to placing any particular MRP participant out of any of the institutions in a manner consistent with Olmstead and the CBSP, on or before November 15, 2011, the Commonwealth shall list the obstacles, if any, and then develop and implement the steps necessary to overcome these obstacles.

C. On or before January 31, 2012, the Commonwealth will set up individual meetings with the MRP participants' family members or guardians who are opposed to placement from an institutional setting to discuss alternative placement within the community in a manner consistent with Olmstead and the CBSP. Specifically, in these meetings, the Commonwealth will offer an actual, available community residential placement, with adequate and appropriate protections,

supports, and services, as an alternative to the institutional placement, in a manner consistent with Olmstead and the CBSP. Whenever possible, Commonwealth official(s) will take the family members and guardians on a tour of the offered community placement, as well as other community placement sites that are already serving MRP participants successfully. Throughout this process, the Commonwealth shall document its efforts to offer and provide integrated community residential and other services and supports for each of these MRP participants. At the end of this period, the Commonwealth shall inform the Court of the result of such endeavors and, for those family members and guardians who continue to oppose placement, the Commonwealth may request the Court to provide guidance as to the need to continue to educate opposed family members and guardians about the viability and appropriateness of community placement for the affected MRP participants.

D. On or before March 1, 2012, the Commonwealth shall develop and implement a plan to address and give appropriate follow-up with regard to the placement needs of other MRP participants who currently reside in mental homes, ASSMCA homes, or other settings that may not be truly integrated.

E. Consistent with CBSP requirements, the Commonwealth will ensure that appropriate transition plans are developed and implemented when an MRP participant is transferred from an institution to a community setting and/or between community homes. Once placed in community settings, this plan shall ensure that the MRP participants receive all necessary protections, supports, and services in accordance with the CBSP.

2. *Provider Capacity Expansion in the Community*

On or before January 31, 2012, the Commonwealth will develop and implement effective measures to expand available residential and other provider capacity in the community such that the community capacity will be sufficient to enable the Commonwealth to provide the MRP participants with adequate and appropriate protections, supports, and services to meet their individualized needs and ensure their health, safety, and welfare. The intent here is to reduce the number of persons residing in each community home, to increase the level of individual attention devoted to participants day-to-day in the community homes, to create a more peaceful and therapeutic living environment in the community homes, and to improve outcomes for participants day-to-day. These measures will include effective ongoing outreach efforts to regularly increase the number of high-quality prospective residential providers available and able to adequately and appropriately meet the needs of MRP participants.

3. *Integrated Employment and Day Activities*

A. On or before November 30, 2011, the Commonwealth will re-evaluate all MRP participants who have been previously identified as able to work. This shall include, at a minimum, each participant: who has ever had a full-time or a part-time job in an integrated community or other setting; who has already been determined as having potential for employment; who has already been determined as being promoted for employment; who has ever worked in a micro-enterprise or

similar type of work arrangement based out of a diurno; or who has ever worked in a brigade. The re-evaluations shall focus on each MRP participant's work interests and abilities. The results of each re-evaluation shall be set forth in writing. The results of each re-evaluation shall include concrete action steps with timeframes so as to maximize full employment opportunities and/or work-related activities in integrated community settings according to each person's individualized needs. For those MRP participants who are already working, the re-evaluations shall also include action steps to ensure that each MRP participant is working in an integrated community setting and is not underemployed. (Given the current economic situation, "work-related activities" may include any regularly-scheduled community work that is not remunerated for a time; nonetheless, the Commonwealth will continue its efforts to find paid employment for participants engaged in non-paid work-related activities. "Integrated" in this section means in the community, outside of the home and/or diurno.)

B. On or before January 31, 2012, the Commonwealth shall implement the actions steps in the written re-evaluations referenced above; this shall include placing MRP participants identified as able to work and/or underemployed into integrated employment and/or other appropriate work-related activities in integrated community settings that meet their individualized needs.

C. On or before April 30, 2012, the Commonwealth will evaluate the rest of the MRP participants to determine whether they can handle and/or benefit from integrated employment or other appropriate work-related activities. These evaluations shall focus on each person's work interests and abilities. The results of each evaluation shall be set forth in writing. The results of each evaluation shall include concrete action steps with timeframes so as to maximize full- or part-time employment opportunities and/or work-related activities in integrated community settings according to each person's individualized needs.

D. On or before May 31, 2012, the Commonwealth shall implement the actions steps in the written evaluations referenced above; this shall include placing MRP participants identified as able to handle and/or benefit from integrated employment or other appropriate work-related activities into integrated employment and/or other appropriate work-related activities in integrated community settings that meet their individualized needs.

E. Whenever a determination is made that an MRP participant will not benefit from or cannot handle full- and/or part-time integrated employment and/or other appropriate work-related activities, the Commonwealth shall develop and implement an individually tailored program, on or before May 31, 2012, to provide each MRP participant with more meaningful integrated activities throughout each day. The Commonwealth shall use the results of the aforementioned evaluations to guide this process. To that end, the Commonwealth shall significantly increase individualized skills training and habilitation activities for each MRP participant day-to-day, that include real-life variables, in the community whenever appropriate and/or possible, with outcome measures that will be meaningful to participants, with an emphasis on providing training in functional contexts.

F. On or before May 31, 2012, the Commonwealth shall identify those MRP participants who typically remain at home and do not attend services at a diurno on a regular basis; the Commonwealth shall then conduct an individualized assessment to determine why these individuals do not participate more in integrated activities in the community or in regular diurno activities. For each MRP participant, the Commonwealth shall develop and implement a new or revised individualized plan to involve these participants in community life and/or diurno activities to the extent they can handle it, and as is appropriate according to their individualized needs.

G. With regard to non-work-related activities for all MRP participants, the Commonwealth shall emphasize participant involvement in and with the community as much as possible and appropriate, according to each participant's individualized needs. Such community activities may include community ad hoc volunteer activities and community business and recreational outings, such as going to grocery stores, pharmacies, restaurants, theaters, libraries, and places of religious expression. The Commonwealth shall develop and implement a plan to ensure that community providers are meeting contractual and other obligations with regard to the requirements of this paragraph.

H. On or before November 30, 2011, the Commonwealth shall review its quality assurance measures and structures to ensure that areas such as staffing, transportation, and other resources are adequate to meet the MRP participants' needs for employment and other community integration activities and opportunities.

I. On or before January 3, 2012, the Commonwealth shall evaluate the internal MRP structure and available MRP staff and other resources to determine if they are adequate and appropriate to provide the MRP participants with integrated employment and other work-related services, including habilitation activities. This evaluation shall include the need for job coaches and job promoters, if any. If additional qualified staff or other resources are needed, on or before January 31, 2012, the Commonwealth will obtain them for the MRP through appointment, direct hiring, and/or transfer of qualified personnel within the MRP, the Commonwealth Department of Health, and/or any agency of the Commonwealth. The Commonwealth shall ensure that all staff, especially those from other agencies outside the MRP, are properly trained to meet participant needs.

4. *Safety and Restraint Issues*

A. On or before January 3, 2012, the Commonwealth will conduct a safety and welfare assessment of the MRP participants and their community residences, and then, whenever necessary, will develop and implement remedial measures to ensure participants' safety and welfare according to their individualized needs. To this end:

1. The Commonwealth shall identify and analyze participant-to-participant interactions that create risk of harm and/or actual harm, and then develop and implement measures to address these risk factors to prevent participants from harming themselves or others.

2. The Commonwealth shall identify vulnerable MRP participants who are at higher risk of harm, and implement measures to minimize or eliminate potential risk factors.

3. The Commonwealth shall identify aggressor participants and develop and implement measures to minimize or eliminate potential triggers for aggression.

B. On or before January 3, 2012, the Commonwealth will revise its incident reporting and investigation protocols to ensure the standardized, complete, and in-depth investigation of all serious incidents involving MRP participants so as to improve participants' safety and welfare. Consistent with criteria set forth in CBSP § II.C, whenever a serious incident occurs involving an MRP participant, it will be reported promptly and then investigated within 45 days. For purposes of this Compliance Action Plan, serious incidents include: allegations of abuse (e.g., physical, emotional, sexual), allegations of neglect, serious injuries, fractures, lacerations, bruises, risk of harm, aggression to staff and others, aggression to peers, self-injuries, elopements and attempts, PICA, sexually inappropriate behaviors, use of restraints (physical, mechanical, or chemical), suicides or attempts, and property damage. On or before January 3, 2012, the Commonwealth will – as a result of said reporting and investigation – begin the regular practice of analyzing patterns and trends of MRP participant incidents with regard to a number of meaningful variables, such as individual, home, site, provider, staff, shift, time of day or night, as well as any other pertinent factors, in order to better understand the precipitating causes, if any, and how incidents could be prevented in the future. The Commonwealth shall then develop and implement remedial measures to address any individual and/or systemic issues that arise from the investigations and any analysis of the incident data.

C. The Commonwealth shall develop and implement effective measures to minimize significantly or eliminate entirely the use of mechanical, physical, and chemical restraints on MRP participants. (Restraints may be used for medical reasons, however, the Commonwealth shall ensure that restraints labeled as "medical" restraints are not, in fact, used for behavioral control.) The Commonwealth shall prohibit use of standing PRN or "stat" orders for chemical restraints.

5. *Health Care and Mental Health Care*

A. On or before January 3, 2012, the Commonwealth shall develop and implement an effective communication system and/or protocol to promptly alert all health care and other pertinent service and support personnel to significant changes in a participant's health status and/or mental health status.

B. Currently, health care, psychiatric care, and other pertinent information about any one particular participant are scattered and located in many different places. Certain critical information is located within the participant's home; certain critical information is located within the participant's diurno[2]; certain critical information is contained within the notes of the service

[2] Nursing and other health-related professionals working at each diurno gather health care, mental health care, and other information about participants.

mediators; and certain critical information is located within the offices of the participant's community doctors.[3] Given this, to better ensure informed and comprehensive evaluations and treatments with complete and current data, the Commonwealth shall develop and implement, on or before May 31, 2012, a system to promptly gather and coordinate all of this information between and among the various sites and sources, but especially so that it will be accessible to the MRP participants' community doctors, including primary care physicians, psychiatrists, and any other physician that treats each participant regularly while conducting ongoing assessments and providing ongoing treatments. The Commonwealth shall continue to gather and consolidate pertinent participant information, on a regular basis and whenever needed. To facilitate this, on or before October 31, 2011, the Commonwealth shall compile a list of all MRP participants with the name, location, and contact information of their community doctors, including primary care physicians, psychiatrists, and any other physician that treats each participant regularly.

C. On or before January 3, 2012, the Commonwealth shall establish a Clinical Evaluation Unit which will serve several purposes: it will regularly re-evaluate MRP participants; it will regularly review the adequacy and appropriateness of the course of health care and mental health care MRP participants are receiving through their primary care community physicians; whenever necessary, it will promptly raise red flags and actively advocate on behalf of the MRP participants when the assessments, diagnoses, treatments, and/or follow-up monitoring they are receiving through their primary care community physicians do not meet the individualized needs of the participants and/or comport with generally accepted practice; and it will serve as a mobile crisis team, providing prompt, flexible, mobile expert support and advice to the community homes and diurnos in special situations, such as health care and/or mental health care emergencies, crisis interventions, and transitions. A qualified physician with adequate experience successfully treating persons with developmental disabilities shall lead and direct the Clinical Evaluation Unit.

D. The Clinical Evaluation Unit's mobile crisis team shall deliver comprehensive, individualized, and flexible treatment and supports to participants where they live and work. The Clinical Evaluation Unit's mobile crisis team component shall be multi-disciplinary and shall include a nurse and/or mental health clinicians. The mobile crisis team services are to be highly individualized and customized to address the constantly changing needs of the participant over time. Among the mobile services to be provided are: crisis services, case management, nursing services, mental health services, and other supports and services critical to a participant's ability to live successfully in the community. Mobile crisis team services shall be available 24 hours per day and seven days per week.

[3] Under the current system in Puerto Rico, the community doctors have primary responsibility for conducting health care and mental health care assessments, formulating diagnoses, and ordering treatment and follow-up for the participants. There is a concern that some community doctors may conduct only cursory monthly reviews simply to continue a particular medication regimen and that these reviews are not the in-depth and comprehensive assessments many participants require in order to adequately address their health care and mental health care needs.

E. To facilitate the effectiveness of the Clinical Evaluation Unit's advocacy efforts, on or before January 3, 2012, the Commonwealth shall develop and implement a system that will enable the Unit director or designee to promptly communicate concerns when necessary with the community doctors. The purpose of these discussions, ultimately, is to improve participants' health care and mental health care outcomes by clarifying with the community doctors what are the appropriate diagnoses, treatments, and follow-up monitoring in individual cases such that they are based on an in-depth, expert, and comprehensive assessment. Any subsequent discussions, if necessary, should include information about any adverse health care, mental health care, or other outcomes for the participant that may have occurred since the last discussion, and that may implicate the future course of treatment for that participant.

F. On or before January 3, 2012, the Commonwealth shall develop and implement a protocol to address situations where a health care and/or mental health care provider may have taken action or failed to take action that endangers the health, safety, and/or welfare of any of the MRP participants. This shall potentially include contacting licensing agencies and/or the office of the patient ombudsman with regard to areas of concern.

G. On or before March 31, 2012, the Commonwealth shall ensure that each MRP participant's health care and mental health care plan and/or treatments are implemented properly, day-to-day, to meet each participant's individualized health care and mental health care needs. The Commonwealth shall ensure that each MRP participant receives necessary health care and mental health care services in a timely manner, whenever necessary, to evaluate and/or treat each participant's health care and mental health care problems. The Commonwealth shall develop and implement an expanded system to regularly monitor each MRP participant's health and mental health status and progress to prompt changes, whenever warranted, in each participant's health care and/or mental health care plan and/or treatments.

H. On or before May 31, 2012, the Commonwealth shall develop and implement a protocol to gather information from various sites and sources regarding the health care and mental health care needs of the MRP participants in order to identify "at-risk" participants who may require heightened and enhanced attention and focus. This priority at-risk group shall consist, at least, of those MRP participants who:

- have a seizure disorder;
- are non-ambulatory;
- have developed or are at risk of developing a bowel impaction or bowel obstruction;
- have developed or are at risk of developing a decubitus ulcer or skin breakdown;
- are at risk of choking and/or aspirating; have dysphagia, difficulty swallowing, chewing, or retaining, food or liquids; have had aspiration pneumonia or other recurrent pneumonias; cannot feed themselves; or currently use a feeding tube;
- use a tracheotomy tube;
- have suffered significant weight loss/gain that puts them outside their ideal body weight; or
- have a mental illness.

The Commonwealth shall create separate lists for each at-risk condition. Some participants may appear on one or several priority at-risk lists.

I. For these priority at-risk MRP participants, on or before May 31, 2012, the Commonwealth shall work with the participants' community doctors, including primary care community physicians, psychiatrists, and any other physician that treats the participant regularly, to help these community doctors, whenever possible, promptly develop and implement tailored and intensive protections, supports, and services, where appropriate, that meet the participants' individualized needs. The intent is that the Commonwealth will, whenever possible, prompt these community doctors to develop and implement strategies to provide proactive health care and mental health care such that participant seizures, bowel impactions and obstructions, aspiration and aspiration pneumonia, decubitus ulcers and skin breakdown, and the adverse consequences of other at-risk conditions including mental illness will be minimized or eliminated.

J. The Commonwealth shall thereafter, on a regular basis, and from all pertinent sites and sources, compile incident, outcome, and intervention and/or treatment information and data for each priority MRP participant on any at-risk list referenced above. The Commonwealth shall then analyze, share with appropriate professionals/staff including the primary care and other community physicians, and utilize this information and data to help develop and implement remedies to address the individualized needs of each MRP participant.

K. For those priority at-risk MRP participants with a seizure disorder, on or before May 31, 2012, whenever possible, the Commonwealth shall take maximum efforts to ensure that they receive a comprehensive evaluation using a detailed diagnostic work-up, by an experienced neurologist, at least annually, or more frequently as required by each participant's condition.

1. Such neurologist shall ensure that those participants having more than ten seizures in one year receive appropriate and effective neurological interventions. Conversely, a neurologist shall ensure that it is still appropriate for each participant who has remained seizure-free for the past two years to continue to receive anticonvulsant medication.

2. Such neurologist shall document the rationale and need for anticonvulsant medication in all cases, including whether the potential harmful effects of the anticonvulsant medication on a participant's quality of life outweigh the potential benefits of the use of the medication. The use of intra-class polypharmacy shall be minimized, and whenever it is used, the neurologist shall fully justify its use in that participant's treatment plan.

3. The Commonwealth shall take proactive steps to formalize a relationship with the Epilepsy Foundation of Puerto Rico so as to develop and implement measures to improve proactive care for participants with a seizure disorder.

L. For those priority at-risk MRP participants with aspiration and related risks, on or before May 31, 2012, the Commonwealth shall develop and implement a system to ensure that staff do not engage participants in any mealtime/eating practice that poses an undue risk of harm to any

participant, including assisting a participant to eat or drink who is improperly positioned or aligned, assisting a participant to eat or drink while the participant is coughing or exhibiting distress, assisting a participant to eat or drink with bites that are too large and/or faster than he or she can safely chew or swallow food and/or liquids. The Commonwealth shall ensure that non-ambulatory participants be kept in proper alignment and not be laid flat on their backs during or after a meal until sufficient time has passed to allow digestion of food and/or liquids.

M. For those priority at-risk MRP participants with a mental illness, on or before May 31, 2012, the Commonwealth shall develop and implement a system to continually ensure that any psychiatric diagnosis shall be consistent with current accepted DSM criteria, that no participant shall have a current mental health diagnosis that is not clinically justified in the record, and that no participant shall be prescribed psychotropic medication in the absence of a clinically justifiable diagnosis of mental illness. In addition, given the high percentage of participants who currently take psychotropic medication, the Clinical Evaluation Unit shall review the current medication regimen of each participant to determine whether the type and dosage of the medication is appropriate and necessary, and then, if necessary, suggest any needed changes in the medication regimen. In completing this review, the Clinical Evaluation Unit will take into account whether the harmful effects of the participant's mental illness clearly outweigh the possible harmful side effects of the psychotropic medication; whether reasonable alternate treatment strategies are likely to be less effective or potentially more dangerous than the medication; and whether the decision-making process for titrating medications up or down is clearly and fully set forth in each participant's record. To minimize the use of typical or "first generation" anti-psychotic medications, the Clinical Evaluation Unit shall ensure that there is full justification of their use in any participant's treatment plan. To minimize the use of intra-class polypharmacy, the Clinical Evaluation Unit shall ensure that there is full justification of its use in any participant's treatment plan.

N. On or before January 3, 2012, the Commonwealth shall create a mortality review committee, comprised of well-respected health care and quality review professionals . The purpose of the mortality review committee is to identify and promptly make recommendations with regard to any preventable causes of illness and/or death so that other similarly situated participants will not suffer preventable illness or death.

1. The chairperson of the mortality review committee shall be independent and external to the MRP and shall not play a part in delivering health care or guiding the suggested delivery of health care to any participant; this includes the community doctors, as well as personnel within the Clinical Evaluation Unit.

2. The mortality review committee shall meet regularly to address individual and systemic issues related to each death.

3. The committee shall have full and complete access to pertinent health care records and other documents, physicians and primary health care providers, and staff under the control of the program and authority to request pertinent information and/or documents under the control of a third-party.

4. The committee, including the committee chairperson, shall conduct appropriate interviews, and review and discuss any necessary supporting documentation related to the course of care leading up to each death, including: the death incident report, the completed death investigation, documents from the participant's chart, any autopsies that may have been performed, and reviews from all pertinent disciplines.

5. Using a root-cause analysis, the committee, including the committee chairperson, shall identify preventable causes of illness and/or death, if any, in each individual case. If there is to be no autopsy, a final report will be issued within 30 days of each death. If there is to be an autopsy, a preliminary report will be issued within 30 days of each death; the preliminary report will be finalized within 30 days of receipt of the autopsy report.

6. The committee shall make written recommendations for remedial action, whenever appropriate, with regard to individual and systemic issues related to the death.

7. The Commonwealth shall ensure the prompt and effective implementation of all of the committee's recommendations, whenever appropriate. If there is a valid reason for not implementing a recommendation, the Commonwealth shall document a full justification as part of the record. The mortality review committee shall continue to monitor all recommendations for remedial action until they are implemented as appropriate.

6. *System-Wide Reforms*

A. As part of its larger quality assurance efforts, the Commonwealth shall develop and implement a comprehensive quality assurance program to track and analyze MRP participant safety and welfare issues and outcomes, health care issues and outcomes, and psychiatric care issues and outcomes. The Commonwealth shall then develop and implement prompt and effective measures to address patterns and trends that adversely impact the safety, welfare, health, and mental health of participants, so as to minimize or eliminate their occurrence in the future.

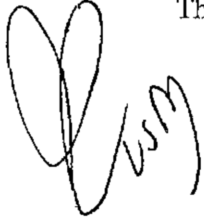
B. On or before October 31, 2011, the Commonwealth shall create a toll-free telephone crisis hotline that people can use to gain assistance for MRP participants experiencing a crisis, including a health care emergency, a mental health or behavioral emergency, or other emergent situation and/or significant unmet needs requiring timely attention. This crisis hotline will be staffed 24 hours per day, seven days per week by qualified and trained professionals who can effectively assist the caller resolve outstanding issues.

C. On or before October 31, 2011, the Commonwealth shall create and formalize a system-wide email system to facilitate prompt communication to, from, and/or between the Commonwealth, its network of community residential and other providers, the diurnos, the community doctors and other professionals, and the MRP participants themselves, with regard to matters associated with delivering appropriate health, mental health, safety, and welfare outcomes to MRP participants. This email system will facilitate the Commonwealth's broadcast of system-wide alerts, bulletins, and/or notices on how to deliver and/or obtain needed protections, services, and supports to MRP participants. The system will also better enable providers and participants to more quickly communicate outstanding individual and/or systemic issues and concerns to Commonwealth officials for prompt resolution.

IV. LEGAL FRAMEWORK

Once entered by the Court, this Compliance Action Plan is legally binding and judicially enforceable by the parties. All provisions of this Compliance Action Plan will have ongoing effect until the dismissal of this action. By December 15, 2011, the parties shall develop and submit to the Court for approval a legal framework to address jurisdictional issues associated with partial and/or full compliance with the terms of existing Court Orders in this case.

The undersigned agree to the form and content of this Compliance Action Plan.



Respectfully submitted, on October 6, 2011

FOR THE UNITED STATES

THOMAS E. PEREZ
Assistant Attorney General
Civil Rights Division

EVE L. HILL
Senior Counselor to the Assistant Attorney General
Civil Rights Division

JONATHAN SMITH
Chief
Special Litigation Section

BENJAMIN O. TAYLOE
Deputy Chief
Special Litigation Section

s/ Richard J. Farano
RICHARD J. FARANO (DC Bar 424225)
Senior Trial Attorney
United States Department of Justice
Civil Rights Division
Special Litigation Section
950 Pennsylvania Avenue, NW
PHB – Room 5020
Washington, DC 20530
(202) 307-3116
richard.farano@usdoj.gov

FOR THE COMMONWEALTH OF PR

ALDARONDO & LÓPEZ-BRAS, PSC
ALB PLAZA, Suite 400
#16 Carr. 199
Guaynabo, Puerto Rico 00969
Tel. (787) 474-5447
Fax (787) 474-5441
Email – alb@alblegal.net

s/ Eliezer Aldarondo Ortiz
ELIEZER ALDARONDO ORTIZ
USDCPR No. 125402
E-mail – ealdarondo@alblegal.net

s/ Sheila Torres Delgado
SHEILA TORRES DELGADO
USDCPR No. 22706
E-mail – stores@alblegal.net

s/ José Figueroa Santaella
JOSÉ FIGUEROA SANTAELLA
USDCPR No. 224112
E-mail – jfigueroa.alb@gmail.com

WHEREFORE, the parties to this action having agreed to the provisions in the Compliance Action Plan set forth above, and the Court being advised in the premises, this Compliance Action Plan is hereby entered as an Order of this Court.

It is so ordered, this 19th day of October, 2011, at San Juan, Puerto Rico.

HON. GUSTAVO A. GELPI
United States District Court Judge