

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	Civil No. 3:12cv59-JAG
)	
v.)	
)	
COMMONWEALTH OF VIRGINIA,)	
)	
Defendant,)	
)	
and)	
)	
PEGGY WOOD, et al.,)	
)	
Intervenor-Defendants.)	
_____)	

**UNITED STATES’ MEMORANDUM REGARDING THE COMMONWEALTH’S
COMPLIANCE WITH THE SETTLEMENT AGREEMENT**

I. Introduction

Pursuant to the Court’s order of January 21, 2020, ECF 365, the United States provides its assessment of the Commonwealth’s compliance with the Settlement Agreement (Settlement) in the chart provided at Attachment A. The chart sets out the Settlement’s provisions, and, for each provision, states whether the Commonwealth has achieved sustained compliance with the provision, as required by the Settlement; is not in compliance with the provision; or has achieved compliance for one period but has not yet demonstrated sustained compliance.

The Settlement establishes a process to determine whether the Commonwealth has complied with the requirements of the Settlement. Pursuant to Section VI.B: “The Independent Reviewer shall conduct the factual investigation and verification of data and documentation

necessary to determine whether the Commonwealth is in compliance with this Settlement Agreement, on a six-month cycle continuing during the pendency of the Agreement.” Further, “[t]he Independent Reviewer shall file with the Court a written report on the Commonwealth’s compliance with the terms of this Agreement within 60 days of the close of each review cycle.”

§ VI.C. The Independent Reviewer’s compliance assessments are presumed correct unless demonstrated otherwise. *See, e.g.*, § VII.B.2 (“The Party that disagrees with the Independent Reviewer’s assessment of compliance shall bear the burden of proof.”). The Parties and the Independent Reviewer have abided by this process. Accordingly, the United States has relied on the Independent Reviewer’s compliance determinations in the Report of the Independent Reviewer on Compliance with the Settlement Agreement, April 1, 2019 – September 30, 2019, which was submitted to the Court in December 2019, ECF 357, and in his previous reports,¹ and has adopted the Independent Reviewer’s determinations in all but a few instances, falling into four categories. None of these categories reflect substantive disagreement with the Independent Reviewer, as discussed below.

First, in limited instances, primarily as to Settlement provisions regarding the Commonwealth’s Training Centers, the Independent Reviewer has not made compliance determinations. As the Independent Reviewer has stated: “The Independent Reviewer does not monitor services provided in the Training Centers. The following provisions are related to internal operations of Training Centers and were not monitored: Sections III.C.9, IV.B.1, IV.B.2, IV.B.8, IV.B.12, IV.B.13, IV.D.2.b.c.d.e.f., and IV.D.3.a-c.” ECF 357 at 31. These provisions

¹ There are a few provisions which the Independent Reviewer previously assessed but no longer assesses for compliance. Accordingly, the United States has adopted the Independent Reviewer’s previous assessment of compliance. *See, e.g.*, III.C.6.b.ii.F (“By June 30, 2012, the Commonwealth shall have at least one mobile crisis team in each Region....”) (last assessed in period 5 and found to be in sustained compliance by the Independent Reviewer at that time).

relate to discharge planning and discharges from the Training Centers. The United States accepts that the Commonwealth is in compliance with these provisions, based on the Independent Reviewer's assessments of individuals who have been discharged from Training Centers and the United States' periodic review of discharge planning. For a similar reason, the United States accepts that the Commonwealth is in compliance with provision IV.B.14, which addresses the Commonwealth's collection and analysis of information about barriers to discharge from the Training Centers.

Second, the Independent Reviewer does not monitor III.C.6.b.iii.C and has questioned whether this provision should be retained. See ECF 357 at 31. This provision addresses circumstances when a community provider may offer an alternative community placement to an individual who is receiving crisis stabilization services and already has an existing community placement. The Parties agree that this provision should not be retained and compliance should not be assessed.

Third, the Independent Reviewer has never assessed compliance with provisions III.A and V.A of the Settlement. These provisions require the Commonwealth to develop and provide community services in order to prevent unnecessary institutionalization of people with IDD and to provide them opportunities to live in the most integrated settings, § III.A, and to develop and implement a quality and risk management system in order to ensure that services are of good quality, available, and accessible; meet individuals' needs; and help individuals achieve positive outcomes, including the avoidance of harms, stable community living, and increased integration, independence, and self-determination, § V.A. The way the Commonwealth complies with these provisions is through compliance with all the subordinate provisions in Section III and Section

V, respectively. Because the Commonwealth is not in compliance with all the subordinate provisions, the United States has marked both of these provisions as not in compliance.

Fourth, the United States believes that the Commonwealth has complied with III.C.7.b.i.B.2.a, which requires the Commonwealth to establish employment targets, although the Independent Reviewer has not made this finding. The bases for the Independent Reviewer's prior noncompliance findings for this provision have been incorporated into the compliance indicators for III.C.7.a, which requires the Commonwealth to provide integrated day opportunities, and which the Independent Reviewer and the United States agree is in noncompliance. *See* ECF 364-1 at 13-17. Accordingly, the United States believes that compliance with this area of the Agreement will best be assessed through the indicators for III.C.7.a, which include revised employment targets.

Finally, the Independent Reviewer's next assessment, covering October 1, 2019 – March 30, 2020, is due June 13, 2020. The United States anticipates being able to provide more current information on the status of compliance after that report is completed.

Respectfully submitted,

Dated: April 1, 2020

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CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of April, 2020, I will electronically file the foregoing UNITED STATES' MEMORANDUM REGARDING THE COMMONWEALTH'S COMPLIANCE WITH THE SETTLEMENT AGREEMENT with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

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