

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

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civ. No. 99 - 1435 (GAG/MEL)
	)	
THE COMMONWEALTH OF PUERTO RICO, <i>et al.</i> ,	)	
	)	
Defendants.	)	
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**UNITED STATES’ NOTICE OF FILING OF INITIAL BENCHMARK GUIDELINES**

At a status hearing on October 26, 2016, and again in subsequent orders, the Court directed the United States, by December 15, 2016, to develop reasonable and measurable compliance benchmark guidelines with achievable deadlines to further clarify how the Commonwealth may come into full compliance with existing Court orders in this case. Order to Clarify, Oct. 31, 2016, ECF No. 1927, at 3; Minute Order, Dec. 6, 2016, ECF No. 1946, at 1. In compliance with the Court’s directives, the United States now submits its initial benchmark guideline document.

In an attempt to be collaborative and to gain consensus, on December 4, 2016, the United States provided a draft of the benchmarks to the office of the Joint Compliance Coordinator (“JCC”) and to counsel for the Commonwealth. Before the status hearing with the Court on December 6, 2016, we had face-to-face discussions with the JCC and counsel for the Commonwealth on the substance and structure of the draft benchmarks. After these conversations, the United States then modified the draft to incorporate their preliminary input.

The attached benchmarks are based primarily, but not exclusively, on the requirements set forth in the Joint Compliance Action Plan (“JCAP”), Oct. 19, 2011, ECF No. 1185 and 1185-1. To facilitate ease-of-use, the benchmarks summarize and cite to, but purposely do not repeat, the exact language of the JCAP; repeating all of the JCAP language would have made the document too lengthy and cumbersome. Instead, the benchmark document is intended to serve as a more informal working tool to clarify expectations, impose discipline on implementation efforts, and generally assist the Commonwealth in gaining momentum towards achieving compliance with the JCAP and the other Court orders in this case. Given this, the United States does not endorse or recommend replacing the Court-ordered language of the JCAP with the language in the benchmark document; ultimately, compliance is to be measured by the language contained in the JCAP.

The benchmarks contain specific initial deadlines for most of the items. These deadlines are included simply to create structure and to discipline Commonwealth efforts going forward to create positive momentum. The benchmark deadlines are not an endorsement or waiver by the United States that the existing JCAP deadlines be replaced or extended. Indeed, it is important to note that all of the JCAP deadlines have already passed.

It is understood that the Commonwealth is to engage in ongoing compliance efforts beyond the initial deadline set forth in the benchmark table whenever warranted by the benchmark requirement.

All lists referenced in the benchmarks are to be updated regularly. Going forward, all initial and updated lists are to be provided promptly upon completion to the office of the JCC and to the United States.

We hope and expect that the benchmark document will not only prompt the Commonwealth to achieve compliance sooner and better, but will also facilitate review and reporting by the office of the JCC. The benchmarks neatly separate out into discrete elements the JCAP outcome criteria from the process elements that support the outcomes. The nature of the table will enable the JCC to readily recognize achievement of many straightforward process elements that may be easier for the Commonwealth to accomplish; we expect that this will generate positive momentum. The benchmarks table should also better enable the JCC to clearly determine if the process elements have produced desired outcomes that ensure the health, safety, and welfare of the participants, as is required by the JCAP and other Court orders.

The United States requests that the Court merely note and approve this initial benchmark document, but not enter it as a Court order, at this time. The United States expects to modify the benchmarks in the future, especially once more complete and richer data is produced through the new Therap system in 2017 and beyond. Given this, it is important to retain a somewhat flexible benchmark construct going forward that will enable us to make common-sense modifications whenever appropriate. The United States expects to work collaboratively with the JCC and the Commonwealth whenever a modification is warranted.

We will provide updates to the Court as the benchmarks evolve and as the Commonwealth's compliance efforts progress.

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Respectfully submitted,

**FOR THE UNITED STATES:**

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**CERTIFICATE OF SERVICE**

I hereby certify that on December 15, 2016, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which sent notification of such filing to all counsel of record.

/s/ Richard J. Farano  
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