

**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.	)	
_____	)	

**JOINT ACTION PLAN**

At the status hearing on March 7, 2019, the Court issued a series of orders from the bench that directed the parties to craft, and then submit to the Court by March 29, 2019, a joint action plan with regard to substantive agenda and other items that arose during the hearing. The Court specified that it wanted a realistic plan with deadlines that the Court could adopt. The Court encouraged the parties to be as creative as possible in developing the plan. The Court told the parties to collaborate with Joint Compliance Coordinator (JCC) personnel before finalizing it.

The specific plan items are to address how to: (1) rectify deficiencies set out in the Commonwealth's internal Social Security audit report and implement its corrective action plan; (2) facilitate quicker and more complete roll-out of the Therap electronic database platform system-wide and ensure that there are no technological issues that impede effective platform implementation; (3) expand the Commonwealth's respite program across the system to better meet unmet needs for respite; (4) complete an independent provider rate study to modify the current process to better tie provider rates to the individualized needs of the participants served by each provider; (5) increase the number of people working in integrated competitive employment and maximize employment hours; (6) improve mortality review and reporting, and

implement report recommendations and other steps to address deficiencies and preventable causes of illness and death for similarly situated participants; and (7) address issues related to participant 599 and associated issues at community home Dulce Amanecer II.

Since the hearing, the parties have exchanged draft action plan proposals and have included top officials from the JCC office in the discussions. The parties hereby submit their joint action plan. It is endorsed by the office of the JCC. For all of the items below, the Commonwealth agrees to immediately provide the JCC and the United States with copies of assessments and action plans, as well as implementation summaries, when they are ready.

I. Social Security Audit Report and Implementation of Corrective Action Plan

On September 14, 2018, the Commonwealth's Internal Auditor Office issued a report on its audit of Social Security accounts where the Commonwealth's Department of Health is the benefit representative on behalf of individuals identified as "participants" in this Court's prior orders.<sup>1</sup> The review period was July 1, 2014 to June 22, 2018, roughly a four-year period. The report found a number of irregularities, including some mishandling of Social Security funds and generally poor oversight and control of such funds. The audit report included nine primary findings related to: deficiencies in account statements, deficiencies in the management of participant files, delays in sending and depositing Social Security checks, errors in the issuance

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<sup>1</sup> The Commonwealth first provided the United States with a copy of this report, in Spanish, shortly before the status hearing on December 17, 2018. Per an order of the Court, the Commonwealth provided the Court and the United States with an English version of the audit report on January 15, 2019. Motion in Compliance with Order, ECF No. 2366. On December 19, 2018, the Court issued a show cause order asking for the parties' input on why the audit report should not be made public. ECF No. 2353. After hearing from the parties (United States' response, Dec. 20, 2018, ECF No. 2354 and Commonwealth's response, December 20, 2018, ECF No. 2355), the Court ordered that the audit report be made public prior to the next status hearing. Order, Dec. 21, 2018, ECF No. 2357.

of such checks, lack of bank reconciliation in certain accounts, misappropriation, lack of control of access to Social Security file areas, instances of poor account oversight and controls, and unauthorized opening of participant bank accounts. The audit report also included 22 recommendations.

On December 21, 2018, the Commonwealth provided the JCC and the United States with an early version of its audit report Corrective Action Plan (CAP); the document was in Spanish. On January 8, 2019, the Commonwealth provided the JCC and the United States with an English translation of the CAP and on February 20, 2019, the Commonwealth provided the JCC and the United States with an updated English version of the CAP. The items in the CAP are generally related to the 22 recommendations in the audit report. Almost all of the items in the February version of the CAP have an estimated compliance date on or before March 29, 2019. On March 4, 2019, the Commonwealth provided the JCC with yet another updated version of the CAP (in Spanish). The JCC office informs us that the Commonwealth has listed some CAP objectives as either accomplished or as partially accomplished.

The JCC office asserts though that many of the identified concerns about the improper handling and oversight of Social Security funds remain: there is no confirmation yet that the funds are segregated or allocated in each of the participant's accounts with proper identification of the bank or financial institution; there is no assurance that internal accounting is done properly; there are insufficient details on security measures to ensure safekeeping of records at the central office; and it is unclear if there are sufficient controls on the opening of participant bank accounts.

In response to the JCC, the Commonwealth asserts that the Puerto Rico Department of the Treasury has instructed the Department of Health that Treasury has not authorized the

creation of individual accounts for the participants. Instead, the Commonwealth asserts that Treasury advised Health that it could only open one account that was controlled by the government. The Commonwealth further asserts that it has already implemented certain remedial security measures based on the findings of the audit report; specifically, the Social Security files were moved to a private, locked office where only the employees working with the Social Security files have access to them. The Commonwealth pledges to maintain the confidentiality of the files going forward. Finally, the Commonwealth reports that DSPDI is currently working on a procedure to implement the recommendations of the audit report so as to impose sufficient controls on the opening of participants' bank accounts in private institutions.

As noted by the JCC at the recent status hearing, the Commonwealth has retained a team of independent public accountants, BDO, to review the audit report and then to help the Commonwealth ensure implementation of remedial measures to address deficiencies in the report. The JCC office has informed the parties that it is concerned that the Commonwealth's contract with BDO is too limited in that it does not include many of the services needed for BDO to help the Commonwealth comply with the CAP. The JCC office suggests that the BDO contract be expanded to include all needed services to enable full review of the audit report, its recommendations, and the CAP, so as to ensure that participant Social Security funds are properly administered by the Commonwealth and its Department of Health.

The Commonwealth asserts that the JCC had never before raised with the Commonwealth any issues or concerns related to the BDO contract. Nonetheless, the Commonwealth reports that it is working to amend the BDO contract to add more duties and time in order to enable implementation of the recommendations and corrective actions necessary to address the findings of the audit report.

The Commonwealth agrees to the following on the Social Security report and CAP:

1. By July 30, 2019, the Commonwealth will ensure that all 22 recommendations in the audit report, as well as those items in the latest version of the CAP, are implemented to address outstanding deficiencies in the audit report; the Commonwealth will also by this date address with particularity the concerns of the JCC office as set forth above;
2. By May 1, 2019, the Commonwealth will ensure that current policies, procedures, and practices comport with generally accepted standards for the proper handling and oversight of participant Social Security accounts, such that deficiencies outlined in the audit report will not recur; and
3. By July 30, 2019, with the input of the independent public accountants, the Commonwealth will file a public report with the Court that describes how all of the report recommendations and CAP elements have been fully addressed and describe how reforms currently in place will eliminate or minimize the risk of such deficiencies occurring in the future.

II. Prompt System-Wide Roll-Out of the Therap Electronic Database Platform

A couple of years ago, the Commonwealth entered into a contract with Therap Services to design and implement an electronic incident and recordkeeping system to routinely compile better and more timely information system-wide about the current health, safety, and welfare of individual participants. This database holds the promise of enabling the Commonwealth to proactively identify individual participant crises or declines and then to mobilize more quickly to provide needed services and supports to help address situations of concern before they worsen. The data from the electronic system will also reveal overall trends and discrete problem areas, making system-wide reform easier and more effective. The United States has repeatedly applauded the Commonwealth for starting this work with Therap.

On a number of occasions, Therap officials have addressed the Court, providing updates about their progress in developing and implementing the electronic platform system-wide.

Therap's progress was very good until the hurricanes hit in 2017. After that, extensive damage

to infrastructure and lingering power outages combined with intermittent access to the internet have all prevented the database from being rolled out on schedule throughout the DD system.

The JCC asserts that issues associated with the 2017 hurricanes should no longer be an impediment to the full roll out of the Therap platform system-wide. The JCC asserts that internet connectivity is now a non-issue given that there are affordable, mobile internet solutions that are readily available which can and should be used to overcome any infrastructure inadequacies. The JCC also asserts that battery-operated laptops can provide needed flexibility at the community site if ever power goes out in the future. The JCC emphasizes that failure to fully deploy Therap severely hinders the ability of the JCC to monitor the Commonwealth's compliance with the JCAP and that only through a fully functional Therap will the Commonwealth be able to realize the fruits of the investment it has already made on this system.

Currently, Therap is "live" at only a few community locations. Data entry into the electronic Therap platform is occurring at only five CTS facilities: Aguadilla, Aibonito, Ponce, Rio Grande, and Vega Baja. It is still not possible to do data entry at Cayey and Bayamon due to lingering power grid problems. Only a dozen community homes are active with the Therap database: seven group homes (Elvira, Tio Isaac, Pacto de Amor, Porta del Sol, Mekaddesh, Casa de Amor, Nueva Esperanza) and five substitute homes. In March, DSPDI and other Commonwealth officials met with Therap representatives to discuss outstanding issues and there are calls and meetings scheduled in April.

The Commonwealth agrees to the following with regard to Therap:

1. By May 1, 2019, the Commonwealth will complete an IT/technology assessment of its DD system to identify areas of concern that may impede full implementation of the Therap electronic platform, including but not limited to problems with the power grid, internet access, and other infrastructure problems; if necessary, the Commonwealth will approach Scott Cragg to obtain his input on how to address any outstanding issues;

2. By May 15, 2019, the Commonwealth will develop an action plan to address outstanding issues identified in the assessment;
3. By August 1, 2019, the Commonwealth will fully implement the action plan;
4. By October 15, 2019, the Commonwealth will ensure that the Therap electronic platform is being utilized in all seven CTS facilities and all group homes;
5. By August 1, 2019, the Commonwealth will ensure that the Therap electronic platform is being utilized in all substitute homes;
6. By August 1, 2019, the Commonwealth will ensure that the Therap electronic platform is being utilized in the three private institutions (Shalom, Modesto Gotay, and the Instituto Psicopedagogico), as well as non-traditional sites including Casa Elvira and any ASSMCA or other locations where a DD participant is living;
7. By the dates set forth in items 4-6 above, the Commonwealth will ensure that all appropriate staff have been trained on the platform and that data entry is completed or underway at each location;
8. By September 1, 2019, the Commonwealth, in coordination with the JCC, will commence testing the service via simulation of events in the community homes and DSPDI to test response times and appropriateness; and
9. In the upcoming 2019-2020 contracts with community providers, the Commonwealth will include provisions that will ensure effective implementation of the Therap electronic platform.

### III. Respite Program Expansion

Providing respite services to families in need has been an integral component of the system-wide reform efforts in this case since the Court entered the Community-Based Service Plan in 2001. Respite arose as an issue at the Public Hearing in March 2018; the parties have addressed it with the Court at a number of different hearings since then.

For many years now, the participants' families have repeatedly called for additional respite services throughout the system to help them care for their loved ones. The need for respite services was a main topic at the Town Hall meeting in Vega Baja on March 6, 2019.

Although the Commonwealth has made some inroads providing day respite to several dozen families through its valuable “ama de llaves” program, and to some extent through its day services at the CTS facilities, there remains a lack of comprehensive respite services for participants and their families; this includes the lack of overnight respite services.

The Commonwealth agrees to the following with regard to respite:

1. By April 19, 2019, the Commonwealth will meet with leadership at APIADI, the DD family association, as well as other relevant groups, to discuss outstanding issues and to solicit input on possible solutions to address unmet needs for respite across the system, including the prospect of starting a time-sharing program that could provide limited day, as well as overnight, community respite solutions, where people, who are already sensitive to DD issues, would be providing respite relief; reimbursement for providing respite will be an integral part of the discussions;
2. By May 31, 2019, based on the discussions with APIADI, the Commonwealth will develop an action plan with implementation dates;
3. By September 30, 2019, based on discussions with APIADI and the other groups, the Commonwealth will initiate a trial or pilot program offering overnight respite services (ORS) within the Commonwealth’s community home network; in conjunction with the JCC office, the Commonwealth will establish priority acceptance criteria to best ensure that those most in need of ORS will get it on a priority basis; the Commonwealth will provide the JCC and the United States with summary reports on the implementation of the ORS trial;
4. By July 31, 2019, the Commonwealth will talk with national organizations and/or other providers of respite services on the mainland to gather ideas on how the Commonwealth might expand respite; the JCC and the United States will facilitate those communications where possible;
5. By July 31, 2019, the Commonwealth will perform an island-wide assessment to determine the unmet need for ama de llaves services; the assessment will detail the extent of the unmet need, as well as lists of families with an unmet need specifying the number of hours of ama de llaves service they require;
6. By August 31, 2019, the Commonwealth will develop an action plan on how to meet the unmet need for ama de llaves or other respite services, including ORS, based on the assessment;
7. By January 31, 2020, the Commonwealth will implement the action plan; and



8. By May 31, 2019, the Commonwealth will develop a plan to provide special respite events throughout the year to assist in meeting unmet needs for respite; this should include, but not be limited to offering seasonally targeted services that align with the needs of participants and their families, e.g., during summer months.

IV. Independent Provider Rate Study

At the Public Hearing in March 2018, the parties discussed the prospect of a provider rate study with the Court. At that hearing, the Commonwealth embraced the idea of a rate study and committed to pursuing it, but as of today, the Commonwealth has yet to enter into a contract with an organization to do the rate study. Last year, the Commonwealth considered a proposal from CORE at the University of Puerto Rico. More recently, the Commonwealth has considered a separate proposal from another group within the University. We understand that the JCC has raised concerns with regard to the UPR proposal; the concerns include a lack of DD expertise, lack of experience doing DD rate studies, and possible conflicts of interest.

The United States agrees that the Commonwealth should commission a rate study to rebalance existing rates away from the somewhat arbitrary process currently in place to one that pays providers for services and supports based on the individualized needs of each participant. Jurisdictions routinely engage private companies to perform rate studies to assist in establishing rate methodologies that are transparent and reliably meet individual needs. The United States has provided the Commonwealth with technical assistance in identifying resources to help the Commonwealth in obtaining a reliable rate study.

The Commonwealth agrees to the following with regard to the provider rate study:

1. By July 31, 2019, the Commonwealth will solicit bids from companies with experience conducting provider rate studies for a DD population;
2. By October 31, 2019, the Commonwealth will enter into a contract with the company to perform the rate study; the contract will require the company to complete the rate study and issue a report with recommendations within six months;

3. Should the Commonwealth fail to meet the October 31, 2019 deadline, the JCC asserts that it will move the Court to seek authorization to directly secure the services of a private company to complete the rate study to bring the Commonwealth closer to compliance;
4. By April 30, 2020, the Commonwealth will develop a plan to implement the recommendations to better ensure that provider rates correspond to the needs of the participants; the Commonwealth will file this plan with the Court; and
5. By August 31, 2020, the Commonwealth will implement a rate structure based on the plan to ensure that provider rates correspond with participants' needs.

V. Increase Participants Working in Integrated Competitive Employment

The number of participants who are working in competitive employment is low and has remained low for many years now. As of November 30, 2018, there were only 15 participants who were employed. This represents only 2.3 percent of all participants receiving services from DSPDI; this percentage is far below the 25 percent figure set out in the agreed-upon benchmarks. Even those with jobs are not working close to full time. As of November 30, 2018, 12 of the 15 participants worked 15 or fewer hours per week. There are dozens of individuals who are unemployed but looking for work, self-employed, toiling in CTS sheltered workshops, or who otherwise may be appropriate for competitive employment in the community.

The Commonwealth reports that it has been undertaking new job promotion and outreach efforts through job fairs with potential employers like Starbucks, supermarkets, restaurants, big box and department stores, and fast food restaurants. Unfortunately, it appears that these efforts thus far have only yielded jobs for a handful of participants.

The JCC reports there may be insufficient personnel to help participants find jobs; for example, there are no job promoters at the Bayamon, Ponce, or Vega Baja CTSs.

The Commonwealth has recently entered into a contract with CORE at the University of Puerto Rico to introduce greater rigor, better tools and instruments, and more expertise at the assessment and planning phase to help prompt more people to gain competitive employment in the community. Per the contract, the PUENTE Program is currently underway and expected to be completed by November 30, 2019.

Last year, the federal government awarded \$1M in funding to Puerto Rico per the Workforce Innovation and Opportunity Act (WIOA) to help people with disabilities obtain employment after the hurricanes of 2017. Specifically, the federal government awarded the money to the Labor Development Program (“PDL”) within the Commonwealth’s Department of Economic Development and Commerce (“DDEC”); PDL manages federal WIOA funds. The purpose of WIOA is to facilitate people with disabilities pursuing competitive employment, reimbursed with at least the minimum wage, in integrated community settings, before settling into sheltered workshops at places like the CTSs. To qualify for this funding, a person must have a qualifying disability and must have been affected by Hurricanes Irma or Maria; almost all of our participants would meet this test.

The JCC office informs the parties that it is reaching out directly to companies to help promote meaningful employment for the participants.

The Commonwealth agrees to the following with regard to participant employment:

1. By May 1, 2019, the Commonwealth will identify and create a list of those participants who are unemployed but looking for work, self-employed, toiling in CTS sheltered workshops, or who otherwise may be appropriate for competitive employment in the community;
2. By August 1, 2019, the Commonwealth will develop individualized plans to help link these individuals to competitive employment to work the maximum number of hours according to their individualized needs;

3. By September 1, 2019, the Commonwealth will begin to implement the individualized plans; the Commonwealth will notify the JCC and the United States monthly of individuals who have gained employment as a result of the implementation of these plans and will provide the percentage of those employed until the Commonwealth hits the 25 percent target;
4. By May 1, 2019, the Commonwealth will implement a new, ongoing, and effective initiative to conduct job promotion and outreach efforts, including through job fairs and other means, with potential employers;
5. By April 1, 2019, the Commonwealth will do an internal assessment of the need for additional employment personnel to meet the employment needs of participants; this will include determining if there is a need for additional job promoters at the CTS facilities, job coaches in the community, or other job support personnel;
6. By July 1, 2019, the Commonwealth will hire needed personnel per the assessment;
7. By July 1, 2019, the Commonwealth will direct CORE to develop and implement measures to increase the number and percentage of participants who are working in competitive employment; the Commonwealth will work with CORE to obtain reliable data for analysis at each of the points of interaction, including access to databases, personnel information regarding professional credentials, and documentation of ongoing training and education;
8. By April 1, 2019, the Commonwealth will do a review of the use of WIOA funds to date, with details on how many participants have been impacted, what supports and services have been provided, and how many individuals have gained employment in part because of WIOA funding;
9. By October 31, 2019, the Commonwealth will develop an action plan to fully utilize any unused WIOA funds to help the participants gain employment; and
10. By December 1, 2019, the Commonwealth will implement the action plan.

VI. Mortality Review and Reporting and Implementation of Needed Remedial Measures

In 2011, the JCAP required the Commonwealth to develop and implement an effective mortality review process. In the past year, the Commonwealth has begun to do meaningful reviews of participant deaths through its Mortality Review Committee (MRC), headed by Dr. Rodriguez Llauger. The Commonwealth provides the JCC and the United States with the MRC reports as they are completed. The Commonwealth reports that there were 19 deaths in 2017,

and that the MRC has issued mortality reports for 14 of them. The Commonwealth reports that there were 20 deaths in 2018, and that the MRC has completed mortality reports for 14 cases. The Commonwealth reports that two participants have died in 2019, and that MRC reports are not yet available for either case. The Commonwealth has only completed one MRC report in the most recent 30-day period. The JCC office asserts that this lack of progress is unacceptable and reiterates the urgent need for the Commonwealth to expand the capacity of the MRC.

The Commonwealth asserts that this type of clinical mortality report is typically understood to take significantly more time than the expectations under consideration here. The Commonwealth represents that the Joint Commission, for example, allows 45 business days to prepare a comprehensive report similar to the DSPDI mortality and morbidity reports. The Commonwealth believes that “fast pace” production for this type of analytical report is not only unusual, but also rather ill-advised and unjustified. The Commonwealth asserts that initially, due to the backlog of cases waiting to be examined, DSPDI decided to concentrate on producing MRC reports focused on the relevant circumstances surrounding the main cause of death and the principal co-morbidity factors. The Commonwealth believes that this had the advantage of allowing for a fact-oriented review, while significantly reducing the amount of time per report. Using this approach, the Commonwealth asserts that it was possible to produce an average of three to four reports per month, depending on the complexity. The Commonwealth reports that, nevertheless, the format was expanded based on input from the JCC in an effort to better ensure thoroughness. The Commonwealth reports that all of the available, relevant clinical information is now being examined. The Commonwealth reports that this expanded scope has, on average, tripled the amount of information under review for each report. The Commonwealth has informed the JCC that the MRC reports can be as thorough as desired, but the cost of this is

additional time per report.

In most of the individual reviews, the MRC process is finding deficiencies, sometimes finding preventable causes of illness or death. There are particular concerns associated with individuals who lived at one of the three private institutions or at one particular community home, Dulce Amanecer II. The MRC reports include recommendations to address identified deficiencies and preventable causes. The Commonwealth represents that the MRC director meets regularly with DSPDI leadership to discuss outstanding issues and needed remedial measures. The Commonwealth has not yet produced consistent data on the implementation of remedial measures to address outstanding issues.

The Commonwealth agrees to the following with regard to mortality:

1. By May 1, 2019, the Commonwealth will do an assessment of MRC capacity;
2. By August 31, 2019, the Commonwealth will implement measures to address capacity shortages, including hiring additional personnel to work in the MRC and/or at DSPDI to implement MRC recommendations; by that date, the Commonwealth will provide the JCC and the United States with a summary of implementation efforts to date;
3. If by September 30, 2019, the Commonwealth has failed to hire the needed experts to complete the MRC report backlog, the JCC asserts that it will move the Court to seek authorization to secure the needed services through independent contractors to bring the Commonwealth closer to compliance;
4. By August 1, 2019, the MRC will complete reviews and reports for all participant deaths for calendar years 2017 and 2018;
5. By September 1, 2019, the MRC will complete reviews and reports for all participant deaths in calendar year 2019 through May 1, 2019;
6. By September 1, 2019, Dr. Aceves will conduct a sample of shadow mortality reviews to assess the adequacy of the MRC review and report process thus far; thereafter, the JCC will periodically monitor the adequacy of the MRC reviews and reports;

7. By October 1, 2019, the MRC will complete a comprehensive review of deaths from 2017 through May 1, 2019, and issue a report that identifies recurring and cross-cutting issues, patterns, or trends, and make recommendations on how to fix these problems systemically across the Commonwealth's service delivery system;
8. By November 1, 2019, the Commonwealth will develop an action plan on how to effectively implement remedial measures to address all of the recommendations in the individual MRC reports and the comprehensive systemic report; the plan will include a process to maintain a list of individuals at high risk, as well as a list of those who are in crisis or decline; the plan will focus on the role of the CEEC in being more proactive in identifying individuals in crisis or decline and in promptly providing them with services and supports to help address their individualized needs; the plan will include a focus on how to address deficiencies at the three private institutions and at Dulce Amenecer II; the Commonwealth will develop this plan in close consultation with the JCC; and
9. By December 1, 2019, the Commonwealth will implement the plan.

VII. JCC Report on Participant 599 and Associated Issues at Dulce Amenecer II

On February 25, 2018, the JCC filed with the Court under seal a special report on its investigation of the adequacy of the services and supports provided to participant ECS, along with findings related to his health and welfare. JCC Mot. Submitting Special Rep., ECF No. 2387. The JCC submission consisted of several documents in Spanish, including the report itself, notarized witness accounts, supporting documentation, and photographs, as well as some documents in English, including an executive summary of the special report, a JCC summary of a medical record review, and minutes of onsite visits originally filed with the Court in June 2017. On March 1, 2019, the United States sent the JCC a letter thanking the JCC for doing the report, agreeing with the JCC's recommendations, and suggesting a few additional remedial steps.

The Commonwealth agrees to the following with regard to the JCC special report:

1. By May 1, 2019, the Commonwealth will develop an action plan to address the recommendations set forth in the JCC special report and in the United States' letter; and
2. By July 1, 2019, the Commonwealth will implement the plan.

VIII. Conclusion

The parties respectfully request that the Court adopt the plan and its deadlines.

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Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on March 29, 2019, 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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