

***STANLEY LIGAS, et al. v. JULIE HAMOS, et al.***

**Third Annual Report of the Monitor**

**September 30, 2014**

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**Section 1 – Introduction**

This report is respectfully submitted to the Court, the Parties and the Intervenors in accordance with the *Ligas* Consent Decree (Decree) approved and filed by the Court on June 15, 2011. Specifically, the Decree requires that:

The Monitor shall file annual reports to the Court, which shall be served on all Parties and Intervenors and be made publicly available. Such reports shall include the information necessary, in the Monitor's professional judgment, for the Court, Plaintiffs and Intervenors to evaluate Defendants' compliance or non-compliance with the terms of the Decree.<sup>1</sup>

The Monitor's First Annual Report was submitted to the Court and the parties on September 27, 2012, and the Monitor's Second Annual Report was submitted on September 30, 2013. This third report addresses those activities that took place in the past year. The Monitor has engaged in numerous activities consistent with Section XIV (Monitoring and Compliance) of the Decree. There have been sixteen parties' meetings since the approval of the Decree. During each of these meetings, the Monitor has given a verbal report of progress and concerns

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<sup>1</sup> Consent Decree, Section XIV, ¶34, at Page 19.

regarding compliance as well as a review of activities. The Monitor has also met with and talked to counsel and representatives of the parties and intervenors separately on an ongoing basis. No prior drafts of this report or any part of this report have been submitted to the parties, intervenors or anyone else. This report was delivered by email to the parties and intervenors on October 1, 2014.

This report is organized in five sections. Following the introduction is a section describing the activities of the Monitor during the past year and anticipated activities for the next year. This is followed by a brief and general description of actions taken by the Defendants during this period. The next section is the primary section, which includes a sequential description of activities and findings listed in order of requirements of the Decree and as listed in the established Compliance Standards developed by the Monitor in accordance with the Decree.<sup>2</sup> Finally, the Monitor has included some brief overall comments designed to communicate a broad description of progress and successes thus far, as well as anticipated possible roadblocks to compliance in the future.

This report includes no finding of noncompliance. There are, however, several concerns identified, which, if not effectively addressed, could result in non-compliance. There are also four specific recommendations incorporated in this report which will be discussed by the parties at the next scheduled parties' meeting on November 21, 2014. The Monitor is not requesting the Court to take any action on these matters at this time.

There is another instance during this reporting period when it was necessary for the Monitor work with the parties to resolve an issue of compliance. This issue is regarding the reimbursement rates for ICFs/DD. In this instance, the intervenors invoked a claim of non-compliance pursuant to Paragraph 35 of the Decree. On

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<sup>2</sup> Consent Decree, Section XIV, ¶32, at pages 17 and 18.

August 1, 2014, the Monitor issued a special report that did not find non-compliance with the Decree. This issue has yet to be fully resolved. (See Section 4, Resources and Capacity, for further details.)

There are no findings of noncompliance in this report.

## **Section 2 - Activities of the Monitor**

The Monitor was appointed by the Court on July 19, 2011 and began monitoring activities on August 3, 2011. Activities of the Monitor during the first and second year of implementation are fully described in the First and Second Annual Reports filed with the Court. During the past year, the Monitor has continued to engage in numerous activities designed to initiate and encourage necessary compliance-related actions, assist the Defendants in the implementation of the Consent Decree requirements, facilitate communication between the parties, inform the class members, families and members of the general public about the requirements of the Decree as well as evaluate overall compliance.

It is important to state once again that the Monitor has continued to receive full cooperation and support from the Defendants, including the Department of Human Services, Department of Healthcare and Family Services, the Governor's Office, the Attorney General's office and, in particular, the management team and staff at the Division of Developmental Disabilities (DDD). DDD has provided the Monitor with continuous and unfettered access to program staff, class members, class member records and other requested information and documents. Plaintiffs' counsel and representatives as well as counsel for the Intervenors have also been readily available and responsive to the Monitor whenever called upon. In all of the parties' meetings, discussions have been productive and on point toward the goal of compliance with the Decree.

The Monitor has also experienced full cooperation and support from the community service providers, ICF/DD facility staff, advocacy organizations and family associations throughout the state of Illinois through the provision of information, facilitation of meetings and direct input on issues relating to compliance activities.

Class members, as well as their guardians and families have also been forthcoming and responsive to the Monitor and continuously expressed a willingness to participate in activities and share their experiences in order to assist the Monitor in evaluating compliance.

Activities of the Monitor over the past year include the following:

- ✓ The Monitor continued to hold separate meetings and phone calls with all counsel to discuss expectations and obtain various perspectives on challenges pertaining to compliance activities.
- ✓ The Monitor has facilitated each of the parties' meetings as well as special single issue meetings and conference calls. Quarterly meetings during this reporting period were held on October 9, 2013, January 9, 2014, May 1, 2014 and August 26, 2014. The next parties' meeting is scheduled for November 21, 2014. These parties' meetings are scheduled routinely, at least each quarter, in order to maintain a regular line of communication among the parties and to document progress and concerns on a timely basis. To increase efficiency and productivity, these meetings have been bifurcated to include full participation of the parties and intervenors for discussion and input relating to paragraphs 4-10, 25 and 45 of the Decree and class counsel and defendants' participation with regard to the discussion of the remaining provisions of the Decree.
- ✓ Continuous meetings, emails and phone calls have been conducted with key staff at DDD and DHS who have specific responsibilities relating to implementation of compliance related activities. The Associate Director of DDD has been the key liaison with the Monitor in facilitating meetings, document production and development and coordination of compliance activities.
- ✓ The Monitor has continued to devote a significant amount of time and effort to continue to provide information sessions, listening sessions and "town hall" meetings across the state to class members, potential class members, families, guardians, community service providers, advocacy organizations, ICF/DD providers, PAS agencies and other stakeholders. These sessions provided an overview of the Decree and Implementation Plan as well as an update of compliance activities and ways stakeholders can play a vital role in providing information and feedback on *Ligas* related issues. Audiences of more than 40 of these information and listening

sessions over the past three years have included more than 4,600 participants.

- ✓ Regularly scheduled meetings are held with the DDD Director to review progress and challenges related to implementation activities designed to develop strategies to address current issues. The Monitor has also had several meetings with the DHS Secretary to provide an update of activities and any concerns about overall compliance.
- ✓ The Monitor has also met on a quarterly basis with the Governor's office to provide an overview of activities and discuss any overall compliance concerns.
- ✓ The Monitor has reviewed hundreds of documents provided by the defendants, class counsel, service providers, PAS agencies, advocacy organizations and families that have provided significant information, insight and perspective to compliance activities and challenges.
- ✓ The Monitor has reviewed all information on the defendants' various websites relevant to compliance activities and policies that relate to the Decree. The Monitor has worked directly with DDD staff to review and modify information on the *Ligas* page or the DDD website.
- ✓ The Monitor has provided his telephone and email contact information widely across the state in order to hear directly from class members, families, guardians, service providers and PAS agencies about questions and concerns relative to implementation of compliance related activities. As a result, there have been scores of inquiries and concerns received which require specific follow-up and clarification with the defendants. This process has helped clarify many policy questions that have emanated as result of new compliance activities.
- ✓ The Monitor participates in monthly scheduled conference calls with class counsel and the defendants to discuss individual class member issues and concerns. These calls have been quite helpful in resolving individual issues and have also been informative in identifying systemic issues and policies that may affect compliance with the Decree.
- ✓ The Monitor also participates in meetings of the *Ligas* Class Member/Family Advisory Group that has been formed for the parties to hear directly from class members and their families regarding their experiences as members of the *Ligas* class.

### Section 3 - Overall Activities of the Defendants

During year three of implementation of the Decree, the defendants have continued to work steadfastly on the specific actions described in the *Ligas* Implementation Plan as well as issues articulated in the Monitor's Second Annual Report. A number of new activities are also now underway which are designed to ensure compliance with the Decree. Resources for implementation, however, are significantly strained, as the Governor's budget, calling for expanded funding to address the continued growth in community services and supports was rejected by the legislature.

Some of these activities over the past year by the defendants include the following:

- ✓ The defendants have once again exceeded their requirements to initiate services for class members who are on the waiting list and class members in ICFs/DD. As of September 1, 2014, 1,969 class members who live at home have initiated services and 741 additional class members living in ICFs/DD have moved. Additionally, 397 class members were served over the past year who were found to be in crisis. These accomplishments should not be understated.
- ✓ Implementation of the *Ligas* Service Transition Plans (LSTP) for class members who move is now fully underway. The defendants have retained a consultant to assist in the development of quality assurance mechanisms to review transition plans in the future.
- ✓ The Outreach contractor made ongoing progress toward contacting potential class members to provide information on possible service options as called for in the Decree and the Implementation Plan.
- ✓ There has been continuous "clean-up" activity with regard to the Prioritization of Urgency of Need for Services (PUNS) waiting list of class members in order to provide increased accuracy and credibility in the selection processes for class members on the list.

- ✓ The speed of responsiveness in which the provision of crisis services for *Ligas* class members has continued to improve through the implementation of the defendants' corrective action plan.
- ✓ The defendants have continued ongoing reviews with each of the eighteen Pre-Admission Screening (PAS) agencies to evaluate movement of class member activities from the PUNS list as well as transition of class members from ICFs/DD to community-based settings.
- ✓ The defendants have instituted policy changes to eliminate some pre-screening procedures for class members leaving ICFs/DD, thereby streamlining the overall process by weeks.

There are also a number of encumbrances that have continued to interfere with implementation activities and, thereby, threaten substantial compliance. Some of these encumbrances include the following:

- ✓ As mentioned above, the Governor's budget request for increased funding to meet the growing demand due to implementation of *Ligas* compliance activities was rejected by the legislature. If these budget shortfalls are not soon addressed, there is little likelihood that compliance with all of the requirements can be assured.
- ✓ Opportunities for employment and a path to employment for class members continue to be extremely limited. Initial analyses of Transition Plans for class members revealed that real employment is not even discussed as an option for the majority of class members.
- ✓ Despite efforts by the defendants, as identified in the Monitor's First and Second Annual Reports, reimbursement rates of funding for community-based settings remain among the lowest in the country. These low rates continue to contribute to limited options for class members entering services.
- ✓ Many class members who were selected for funding for a Community Integrated Living Arrangement (CILA) chose home based services and some cited the lack of flexibility in the CILA program as the reason for this selection.

The issues listed above and more will be discussed in detail in the body of this report.

## **Section 4 – Compliance Requirements and Activities**

This section provides a specific review of the compliance requirements in each of the nine major areas of compliance, which include the following:

1. Resources and Capacity
2. Class Member List(s)
3. Transition Service Plans
4. Transition for Class Members in ICFs/DD
5. Crisis Services
6. Transition for Class Members on Waiting List
7. Outreach
8. Implementation Plan
9. Data Reports
10. Dispute Resolution

Each area of compliance is listed below in a separate section that includes: a description of the requirements in the Consent Decree; timeframes or deadlines for compliance; related activities described in the Implementation Plan and; the status of implementation of compliance activities by the defendants. In accordance with this provision, this section is considered by the Monitor as the primary measure of compliance with the Decree. For some of the requirements, the deadlines for implementation of the specific timeframes may not have yet transpired. In these instances, the Monitor will report on activities that have occurred so far and, where appropriate, the likelihood that these actions will lead to timely compliance.

This section also includes comments about the activities of the *Ligas* Class Member and Family Advisory Committee, which was established during the second year of implementation.

## **Resources and Capacity**

The Decree requires resources for community services to be provided consistent with the choice of a class member and the requirements of paragraphs 17 through 19, and 21 through 23 of the Decree. Resources necessary to meet the needs of individuals with developmental disabilities who choose to receive services in ICFs/DD shall be made available and such resources will not be affected by Defendants' fulfillment of their obligations under the Decree. Funding for services for individuals with developmental disabilities will be based on the individual's needs using federally approved objective criteria regardless of whether the individual chooses to receive services in an ICF/DD or in a community-based setting. Amendments to the state Medicaid plan will continue to include ICF/DD services as an alternative choice for long term services.<sup>3</sup> Annual budgets will be sufficient to fund the services necessary to comply with the Decree consistent with the choices of individuals with developmental disabilities, including class members.<sup>4</sup>

The Implementation Plan calls for a continuation of activities to develop new community services providers and the voluntary conversion of ICFs/DD to community-based services.<sup>5</sup> The Implementation Plan also calls for the development of annual budget proposals to incorporate the necessary resources to carry out the provisions of the Decree. The Plan also includes resources for a listing of specific contractual agreements necessary to address the anticipated increase in demand for services, additional DDD staff to be hired in order to manage compliance and prepare compliance-related reports and funding for direct services for class members as they are identified to receive community services.<sup>6</sup>

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<sup>3</sup> ¶ 4 of June 15, 2011 Consent Decree at page 7

<sup>4</sup> ¶ 5 of June 15, 2011 Consent Decree at pages 7 and 8.

<sup>5</sup> Ligas Implementation Plan, 3/25/14, Section IV, Page 13.

<sup>6</sup> Ligas Implementation Plan, 3/25/14, Section X, Page 26-27.

In order to comply with the provisions of the Decree regarding resources, the defendants engaged in numerous activities. These activities include the following:

- A *Ligas* proposed budget was developed by the Governor for Fiscal Year 2015. This budget calls for the increase of \$26.6 million in new funds for full implementation of *Ligas* activities. The Governor’s proposed FY15 budget overall for DDD was \$1,641,662,300. This included the increases necessary to annualize funding for services and supports that began in FY2014 as well as \$30 million in new funds for long-needed increases in salaries for direct-support staff in community-based services and ICF/DD services.

The Governors’ proposed FY15 budget was rejected by the legislature who, instead, approved a budget for DDD for \$1,556,421,600. This amount represents a “flat-line” budget of no increase whatsoever and an enormous shortfall of \$82.4 million less than requested. This amount is clearly inadequate and, if not addressed through the supplemental budget process later this fiscal year, could seriously jeopardize the gains in resources made over the past two years.

- The defendants’ data reports also indicate that spending for ICF/DD services has remained relatively constant, with an FY 2015 budget projection of \$252 million. Although this amount is slightly lower than FY 2014, there are clear trends and projections for fewer individuals to be served in ICF/DD facilities. The chart below illustrates the ICF/DD budget activity over the past four years.

<b>Fiscal Year</b>	<b>ICF/DD Census</b>	<b>Budget (In Millions)</b>	<b>Per Person Annual Budget</b>
FY2011	6,427	\$392.8	\$60,993
FY2012	6,414	\$381.1	\$59,417
FY2013	6,074	\$372.4	\$61,311
FY2014	5,608	\$356.3	\$63,810
FY2015*	5,550	\$352.0	\$63,423

\*Projected

Regarding the expenditures of ICF/DD services, the intervenors invoked a notice of non-compliance relating to funding for ICF/DD services on January 7, 2014. After unsuccessful attempts by the parties and the

Monitor to resolve this issue informally, the Monitor issued a Special Report on August 1, 2014. While the Monitor did not find the defendants out of compliance with the Decree in this Report, there have been and remain to be serious concerns about the rates and rate structure for ICF/DD services as well as home and community-based services.

- The *Ligas Implementation Team* has been fully funded and is in place. Positions for this team includes the following:
  - Compliance Coordinator (1 position)
  - Program and Data Support Staff (1 position)
  - Bureau of Quality Management Staff (7 positions)
  - Bureau of Transition Services Staff (4 positions)
  - Appeals Unit Staff (1 position)
  - Rates Section Staff (1 position)
  - Medicaid Waiver Staff (3 positions)

In the Monitor's Second Annual Report, 17 of these 18 positions had been filled. At this juncture, all 18 positions have now been secured and their responsibilities are being fulfilled.

The *Ligas* budget also calls for contractual agreements as specified in the Implementation Plan. Specific allocations for contractual services include the following:

- ✓ Outreach activities. Funds for the independent outreach contractor and related costs.
- ✓ Increased funding for PAS agencies to include:
  - Increased eligibility determinations
  - Development of *Ligas* Service Transition Plans
  - Increased PUNS enrollment activity
  - New ISSA Services

- ✓ An independent contractor has been hired to provide training and technical assistance to PAS agencies in the development of *Ligas* Service Transition Plans. This contractor has already made a significant contribution to transition plan compliance requirements. (see section on Transition Planning)
- ✓ An independent Illinois entity has been contracted to provide family support and advocacy to waiting list class members and their families on a statewide basis. The *Ligas Family Advocacy* program (LFA) is now fully operational and staffed. Families of class members have already started to indicate their pleasure and satisfaction with the services that the LFA program provides.
- ✓ For class members in ICF/DD setting and for those class members in Community Integrated Living Arrangement (CILA) settings, there has been an increase in the monthly Personal Needs Allowance (PNA). Effective September 1, 2014 the monthly allocation for PNA will be increased to \$60. This represents a 100% increase for those living in ICF/DD settings, and 20% increase for those living in CILA settings.

In January 2014, the Federal Rules (1915[c]) regarding home and community-based waiver settings were modified. Timeframes were established the US Commission on Medicare and Medicaid (CMS) whereby states could develop a transition plan to comply with the new rules. These rules contain new definitions of settings as well as provisions for assurances of services being provided in the most integrated setting. The rules also include new requirements for person-centered planning for individuals in home and community-based settings. Illinois chose to submit its transition plan, after seeking broad stakeholder input, by March of 2015. The Monitor, in conjunction with the parties, should follow this transition plan process closely as implementation of these new rules will have significant impact on *Ligas* class members.

## **Concerns Regarding Resources**

The actions above illustrate a clear commitment by the defendants to allocate significant resources to implement the necessary activities to comply with the Decree. There are still some key areas, however, which will require direct attention and, in some instances, additional resources, as defined below.

Despite the modest enhancements to the reimbursement rates for community services cited in the Monitor's First Annual Report, the overall rates for community services remain among the lowest in the country. There have been no cost-of-living increases in community-based services' rates for more than 7 years.

Community services' providers have continued to report to the Monitor that they would be willing to expand community services, especially small CILA settings, if the rates were realistic and commensurate with actual costs for providing services in smaller, often more desirable settings. As a result, the significant majority of community-based settings developed have been large 7-8 person settings, very often not the choice of the class members, and certainly not consistent with best practices. Rates for supported employment services are also comparatively low, resulting in no available employment services in many parts of the state. It will be important for Illinois to move forward and establish a rate structure that promotes community flexibility, individual choice and fully integrated activities. Efforts to move forward to adjust rates for community services have not been productive.

As reported above, there are also serious concerns about the rates and rate structure for ICF/DD services. In their written submissions on this issue, the intervenors made a solid and credible argument that these rates are problematic. There has been no cost-of-living increases for ICF/DD services since 2008.

The degree of anxiety over the rates and rate structure has continued to escalate during the three years of implementation. The time has come to obtain clarity and direction on the issue of rates for services in Illinois.

**Recommendation #1** – By March 31, 2015, the defendants, with input from the parties, intervenors and Monitor, should develop contractual parameters and identify an independent contractor to analyze and evaluate the rates and rate structure for home and community-based services and supports as well as rates for ICF/DD services. Once this contractor is identified, a report should be submitted with a full analysis and recommendations by September 30, 2015.

Another issue with regard to resources that warrants immediate attention is the need for additional support within DHS, and, in particular, DDD to implement key activities related to the Decree. The lack of an employment coordinator significantly reduces the likelihood of successful implementation of employment services' initiatives. The lack of an assigned Medicaid waiver manager makes it nearly impossible for DDD to continuously evaluate the effectiveness and flexibility of the waiver, and fashion policy recommendations for change. There is also the absence of a management position to oversee and communicate with the 18 independent PAS/ISSA agencies responsible for screening, evaluation, transition planning and service coordination for *Ligas* class members. Due to the success of *Ligas* activities, the number of people supported by DDD is increasing rapidly. Since the approval of the Decree, it is estimated that the number of people served by the home and community-based waiver will increase by more than 20% over the next few years. The many tasks needed to keep up with this expansion have been placed on the shoulders of the current DDD staff structure. The time is now overdue to develop a management structure to respond to the rapid growth due to implementation of *Ligas* activities.

**Recommendation #2** – The defendants should establish the following new positions within DDD:

1. **DDD Director of Employment.** It has been stated repeatedly by the Monitor and other entities that the opportunity for employment for class members is not being considered during the transition planning process, or not being offered, or simply not available in certain regions of the state. This situation will not change without direct staff management responsibilities assigned to oversee an outcome-based plan to increase employment opportunities for class members.
  
2. **DDD Director of Waiver Services.** As stated in this report and previous reports, the number of class members served through the home and community-based waivers has expanded exponentially. As the new waiver rules are more numerous and complex, CMS oversight has become more vigorous and the waiver operational modifications are in the state of continuous change, specific management support is sorely needed.
  
3. **DDD Director of Service Coordination** – As stated above, the 18 service coordination agencies require management oversight, technical assistance, guidance and policy direction in order to maintain services, waiting list responsibilities and facilitation of class member choice. The agencies are the lynchpin of implementation of *Ligas* activities.

## **Class Member List(s)**

The Decree requires the defendants to maintain a statewide database in which all Class Members are enrolled.<sup>7</sup> Defendants are also required to promptly revise the class member database and waiting list data.<sup>8</sup>

The Implementation Plan describes the process for the development and maintenance of a class member list that will be accessible to the Monitor and Class Counsel. Intervenors' counsel will have access to the class list as provided in the Implementation Plan. DDD will use its PUNS database to maintain a list of Waiting List class members. The Plan also calls for DDD to review the adequacy of the PUNS database.

Upon recommendation by the Monitor and agreement of the parties and intervenors, the defendants have developed and maintained two class member lists.

There is now a list of class members pursuant to ¶2 (a) of the Decree, who: qualify for Medicaid Waiver services; live in an ICF/DD with nine or more residents and; have affirmatively requested community-based services or placement in a community-based setting. As of September 23, 2014 there were 1,217 class members in this category. The defendants maintain a list that contains, at a minimum: the names of individuals; the documentation to verify their written affirmative request; date of birth; social security number and; the name of the facility in which they live.

Since the Monitor's First Annual Report, the accuracy and veracity of this list has improved significantly. The most recent list has been reviewed and re-reviewed and appears to be consistent with the requirements. A senior staff member within

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<sup>7</sup> ¶8 June 15, 2011 Consent Decree at Page 8.

<sup>8</sup> ¶9 June 15, 2011 Consent Decree at Page 9.

DDD has been assigned to maintain this list and inform the Monitor of particular updates and concerns. A monthly review and update of ICF/DD class member list is conducted with PAS agencies. This monthly review entails checking for sufficient documentation, inquiring about the status of community transition of class members, verifying that transition plans are being developed, where appropriate and identifying any problems that may interfere with community transition.

There is also a list of class members pursuant to ¶2 (b) of the Decree who: qualify for Medicaid Waiver services; live in a family home and; are in need of and have affirmatively requested home and community-based services or services in a community-based setting. These individuals are known as Waiting List Class Members. As of September 23, 2013, there were 15,190 class members in this category. This list is also maintained as a subset of the overall waiting list (Commonly known as the PUNS list) for services.

As reported in the Monitor's First Annual Report, development and refinement of this list has also proven to be quite challenging. Utilization of this initial list revealed that much of the class member information was outdated and/or inaccurate. A large number of addresses were incorrect and some individuals had moved out of state. Contact information was often inaccurate or outdated. Some individuals on the initial list are now deceased. In more than 400 other instances, after individuals were contacted, it was determined that they no longer needed or wanted home and community-based services or services in a community-based setting.

DDD took immediate and deliberate actions to address these problems. The PAS agencies have the primary responsibility to update the information on the waiting

list. Communications were sent to each PAS agency with clear instructions on updating data on the waiting list and reminding them of their responsibility regarding individual updates. DDD assigned a key staff member as well as an additional professional staff member to maintain and update this list as a high priority. These two staff are and have been in constant communications with PAS agency representatives to correct inaccurate data and update waiting list information.

The Monitor has worked closely with DDD to ensure that the waiting list of class members is updated. This list has grown by more than 2,000 class members over the past two years. This is due, in part, to a number of individuals “aging in” to the class by virtue of turning 18 years old. In other instances, families have requested that their loved one be added to the waiting list because of the renewed hope that implementation of the *Ligas* Decree has engendered.

This past year, a number of additional steps were taken to improve the veracity of the PUNS list. DDD established an automated process to add new class members from PUNS who become eligible due to age or other new adults on the list. There is also an ongoing process to remove individuals from the class list if they are no longer eligible for a valid reason such as moving out of state, ineligible for Medicaid, etc. There is also a PUNS workgroup that has recommended a proposal to facilitate annual updates to the PUNS record system. DHS has requested resources through the Balancing Incentive Program (BIP) funds to disperse to PAS agencies as one-time awards for additional resources to assist with the backlog of overdue PUNS updates. DDD is waiting for confirmation of utilization of these funds from CMS.

As an overall note, and as reported in the Monitor’s first two reports, the problems identified in the class member lists’ issue are also symptomatic of a more endemic issue within DDD – the lack of a comprehensive integrated data system. It has become increasingly important for DHS to address this issue and develop a plan to address the overall need for a data system that is responsive and consistent with the ever-growing challenges within DDD and DHS. The Monitor recognizes that development of a comprehensive data system will require a significant initial investment of resources. The outcome of such an endeavor, however, would help ensure effectively coordinated services for *Ligas* class members and others.

## Transition Service Plans

The Decree requires the defendants to develop transition plans for all class members who are selected to be served pursuant to the Decree. Transition plans shall describe all services required, how they will be developed and obtained, and a timetable for transition.<sup>9</sup> Transition plans will be developed by a Qualified Professional in conjunction with the class member, guardian and others, as appropriate.<sup>10</sup>

The process for transition planning will include the class member's personal vision, preferences, strengths, and needs in home, community and work and shall reflect the value of supporting relationships, productive work, participation in community life and personal decision making.<sup>11</sup> Services and supports will be integrated into the community and consistent with choices of class members and guardians. Transition plans shall not be limited by the current availability of services but be within the confines of the waiver and State Plan.<sup>12</sup> Transition plans for class members who are determined to be in crisis will be developed.<sup>13</sup>

The Implementation Plan called for a phase-in process for the completion of a transition service plan for each class member seeking services in a community-based setting. The Plan outlines an 18-month long process that included a pilot trial period, re-evaluation and state-wide implementation by July 1, 2013. This process ensured coordination required between PAS/ISC agencies and class members.<sup>14</sup>

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<sup>9</sup> ¶11 June 15, 2011 Consent Decree at Page 9.

<sup>10</sup> ¶12 June 15, 2011 Consent Decree at Page 9.

<sup>11</sup> ¶13 June 15, 2011 Consent Decree at Page 9 & 10.

<sup>12</sup> ¶14 June 15, 2011 Consent Decree at Page 10.

<sup>13</sup> ¶21.(b) June 15, 2011 Consent Decree at Page 12.

<sup>14</sup> Ligas Implementation Plan, 2014 Revisions, 3/25/14 Section VI, Page 18-20

With regard to the transition planning process for class members in crisis, DDD designed modifications to the existing Crisis Funding Request and developed the *Crisis Transition Plan and Funding Request*. This form and format, along with detailed instructions, were posted on the DDD website and disseminated to all PAS agencies for input. These documents were finalized and were required to be utilized by all PAS agencies statewide beginning September 14, 2012. Since this crisis transition planning form is a relatively minor adaptation to an existing form, a pilot process was not considered necessary.

The Monitor is generally pleased with the progress the defendants have made toward the development and operationalizing of a Transition Service Plan. Finally, it can now be assured that every class member that moves has a transition plan in place. Converting a system from virtually no transition service planning to a person-centered approach as required in the Decree necessitates a carefully planned and deliberate process that will continue to take time to evolve. As these *Ligas* Transition Service Plans are evaluated by DDD, the Consultant and the Monitor, needed modifications will be completed and training and technical assistance, as necessary, will be implemented.

A key component of this process has been the training of PAS agencies and others on effective person-centered planning. The 2014 *Ligas Implementation Plan* called for a consultant to be identified to work with the DDD Bureau of Transition Services to review transition plans and train PAS agencies and providers on their development.<sup>15</sup> This consultant, Dr. Mark Friedman, was hired in August 2013 and has now completed a year of work.

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<sup>15</sup> *Ligas Implementation Plan, 2013 Revisions*, Section X, at page 24

For the past year, Dr. Friedman has worked closely with DDD staff, the Monitor and all 18 PAS agencies to improve the quality and effectiveness of Ligas Transition Service Plans (TSP). Dr. Friedman recently (9/25/14) submitted a report to DDD on the status of the quality of the transition plans. Highlights of Dr. Friedman's report include the following:

- Two rounds of training were conducted that included all PAS agencies that had developed TSPs during 2013. This training included hands-on consultation using real examples of TSPs to identify strengths and deficiencies.
- A comprehensive review of 114 TSPs was conducted utilizing a method of evaluation and checklist that was reviewed by the Monitor and DDD management staff. As a result, a proficiency profile was developed for each PAS agency, including a score for each element of measurement.
- Overall findings by Dr. Friedman revealed the following:
  - The most serious deficiency was the low scoring in the level of participation of the class member in transition planning. In only 47% of the plans reviewed, was there evidence that the class member was present in the transition planning.
  - Employment opportunities were not being offered or considered in most TSPs.
  - Class members with a high level of behavior or medical needs were often unable to obtain CILA service due to lack of available providers willing or able to provide these services.
  - TSPs were not being effectively utilized as the foundation for the development of the ISP following placement.
  - Choices of activities and services were often limited due to unresolved barriers in certain regions of the state.
  - Review of TSPs showed marked improvement over the period of a year.
  - Revisions to the TSP were necessary to address some of the noted deficiencies.

To address the deficiencies in his report, Dr. Friedman also offered a number of recommendations, some of which include the following:

- Finalize and disseminate revisions to the TSP Form and Instructions.
- Develop tracking method of class members with a TSP who have not obtained services due to unsolved barriers.
- Provide training to class members on how to effectively participate in the TSP process,
- Continue technical assistance and training to PAS/ISC agencies, focusing on those agencies with the lowest proficiency scores.
- Finalize the process for the DDD Bureau of Transition Services to review TSPs.
- Hire a DDD Director of Employment. Create an employment workgroup within DDD. Provide training for day services and residential providers on employment.
- Provide more opportunities for less than 24-hour CILA services.

As part of Dr. Friedman's contract, he also coordinated several training seminars and webinars on employment opportunities for class members. A nationally acclaimed employment expert was identified and retained to conduct these training seminars. These training opportunities were specifically targeted to PAS/ICS agencies and community service providers. Four more employment training opportunities are also scheduled over the next several months in various regions of the state, as well as webinar opportunities for those who choose to participate on-line.

The Monitor will review Dr. Friedman's report with the parties at the next scheduled parties' meeting to discuss his findings and recommendations and next steps to be take.

## **Follow-up on Specific Compliance Finding with Regard to Transition Planning**

The Monitor's Second Annual Report issued a finding of non-compliance with regard to the lack of transition planning for those class members previously living at St. Mary's Square ICF/DD. As a consequence, the Monitor recommended that DHS, in conjunction with the Monitor, conduct a full investigation of this matter and develop a report with findings and recommendations.

The defendants accepted this finding and DDD conducted a full review of each class member who moved from St. Mary's Square, with the primary focus on the assurance of the development of a retroactive Modified Ligas Transition Service Plan. A schedule of the development of these plans was coordinated with the responsible PAS/ISSA agency and class members. Guardians were also invited to participate in the process. Within six months, all Modified TSPs were completed for all class members who had moved. As a result of this experience DDD will, in the future, involve the PAS/ISSA agency earlier in the process of a ICF/DD voluntary downsizing or closure plan to ensure that true options of services are presented. Once the options are presented, the class member and/or guardian will have the full opportunity to examine these options in order to make an informed decision.

In the past year, the Monitor, in conjunction with DDD staff have also met with several PAS/ISSA agencies who are in the process of facilitating transition plans for class members who are involved in an ICF/DD voluntary downsizing or closure initiative. The Monitor will continue to carefully review downsizing activities to ensure that service options are presented and individual choices are made in an orderly and appropriate sequence.

## **Additional Concerns Regarding Transition Planning**

Paragraphs 13 and 14 of the Decree state:

The process for transition planning will include the class member's personal vision, preferences, strengths, and needs in home, community and work and shall reflect the value of supporting relationships, productive work, participation in community life and personal decision making.<sup>16</sup>

and:

Services and supports will be integrated into the community and consistent with choices of class members and guardians. Transition plans shall not be limited by the current availability of services but be within the confines of the waiver and State Plan.<sup>17</sup>

This is an update of, as well as a repeated concern, expressed in the Monitor's Second Annual Report.

In order for implementation of this requirement to occur, the transition planning process must include a broad menu of real choices for each class member. This includes the size of community residential setting and employment.

Updated FY2014 Data provided by the defendants reveal that, among all class members who transitioned to Community Integrated Living Arrangement (CILA) settings in the first three years of implementation, 63% transitioned to settings of seven or eight residents. For those who transitioned from ICF/DD facilities, 71% moved to settings of seven or eight individuals. Only 13% of those class member who transitioned from an ICF/DD facilities to CILA settings, moved to settings of four persons or fewer. These data strongly suggest to the Monitor that the option of movement to smaller settings is, for many class members, not one that is sufficiently presented or sufficiently explored. Anecdotally, many families have

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<sup>16</sup> ¶13 June 15, 2011 Consent Decree at Page 9 & 10.

<sup>17</sup> ¶14 June 15, 2011 Consent Decree at Page 10.

reported to the Monitor that their clear preference was a smaller setting, but were told that this is not an option because of “availability” or “cost effectiveness.”

Services in smaller settings is consistent with current best practices. In fact, the Federal Center for Medicare and Medicaid Services (CMS) has enacted financial incentives for states that transition individuals from ICF/DD facilities to settings of four persons or fewer through the Money-Follows-the-Person (MFP) program. Class members and their families should be given that choice. If they choose a smaller setting, efforts should be made to identify options consistent with the requirements in the Decree.

Another area in which adequate real choice is not afforded is that of employment. While the specific data are not available, it is quite clear that an overwhelming number of class members are transitioning into daytime activities that do not include real employment, or even provide for a path to employment. Again, many families, class members and guardians, anecdotally, have reported to the Monitor that the option of competitive employment was not even considered during the transition planning process or was dismissed as “unrealistic” or simply not presently available. This must change. For adults with developmental disabilities, employment should be the default daytime activity and should be the first option presented.

Last year, the Governor signed into law the *Illinois Employment First Act* which establishes a definition of competitive employment, and incorporates specific requirements for state agencies to implement activities to promote employment and establish measurable goals and objectives toward employment activities.<sup>18</sup> Enactment of this legislation provided the impetus for the parties to work together to implement strategies that ensure viable employment options for *Ligas* class members.

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<sup>18</sup> HB2591 Enrolled, Illinois Employment First Act

In July of 2014, the President signed new legislation passed by Congress known as the Workforce Innovation and Opportunity Act. This legislation significantly limits placements at sheltered workshops and other environment where people with disabilities make less than minimum wage. Under this statute, individuals with disabilities 24 years old and under will no longer be able to work for less than the minimum wage unless they first receive pre-employment transition services and try vocational services.

The provision of employment services is now a standing agenda item for all parties' meetings. Over the next year, the Monitor will continue to work with the parties to ensure that all options, including the option of smaller home settings and real employment, are provided to class members throughout the transition planning process.

**Recommendation #3** – The defendants, with input from the Monitor and the parties, will develop an evaluation of class members who were selected for funding pursuant to the *Ligas* process, and did not choose or obtain the services for which they were selected. This evaluation should include inquiring into why services were not selected, and determining which options were presented to the class member, based on those services identified in the TSP.

## **Transition for Class Members in ICFs/DD**

The Decree requires all class members in ICFs/DD to transition to community services or community-based settings consistent with their transition plans if, at the time of transition, the class members request placement in a Community-Based Setting as confirmed and documented in accordance with the Decree.<sup>19</sup>

- One third of class members in this category will transition by 12/15/2013. The number of class members to transition during this period will be determined by June 15, 2013.
- Two thirds of class members in this category will transition by 12/15/2015. The number of class members to transition during this period will be determined by June 15, 2015.
- All class members in this category will transition by 6/15/2017. The total number of class members to transition from ICFs/DD will be determined by June 15, 2017.

The Implementation Plan calls for the identification and referral of these class members to PAS/ISC agencies for assistance in transition to community-based settings. The number of people identified for transition from ICFs/DD is expected to change, pursuant to the results of the outreach process described below.

PAS/ISC agencies will monitor the adjustment and resolve issues as they are identified.<sup>20</sup>

1138 class members in this category were identified on September 1, 2014. Of the number of class members to be identified on June 15, 2015, two-thirds are required to be served by December 15, 2015. As September 1, 2014, 792 class members in this category have received funding for community-based services or services in a community-based setting. Of the 792 who have received funding, at

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<sup>19</sup> ¶17 June 15, 2011 Consent Decree at Page 10.

<sup>20</sup> Ligas Implementation Plan, 12/15/11, Section V, Page 14 -15

least 741 of these class members have actually started community-based services and billing for these services has been verified. These data indicate that the defendants are well on the way to meet the compliance requirement that two-thirds of ICF/DD class members move prior to December 15, 2015. DDD sends requests to PAS agencies for monthly updates for all ICF/DD class members to determine the status of choice and selection of community services providers and projected transition dates.

Recently, DDD enacted a policy change to help streamline the process for transitioning class members to the community-based settings. This new (August 26, 2014) policy reduces the requirement for a full Level II screening and expands the time requirements for valid psychological evaluations and physical examinations.<sup>21</sup> This practice is commonly known as “presumptive eligibility” as people who live in ICF/DD settings have already been determined to require an ICF/DD level of need.

The overwhelming majority (99%) of class members who have transitioned have requested and received funding for Community Integrating Living Arrangements, (CILA) and the remainder of the class members (1%) have requested and received funding for home-based services (HBS) and have returned to their family home.

It should be noted that, to date, at least 120 individuals living in ICFs/DD who were contacted to receive transition supports to community services have since changed their minds and chosen to stay living in the ICF/DD. In each of these instances the individual’s choices were respected, and they were removed from the class member list.

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<sup>21</sup> Information Bulletin, DD.14.039, Pre-Admission Screening Manual Revisions – Required Assessments

A large number of class members who were living in ICFs/DD who have moved services in a community-based setting did so as a result of a voluntary downsizing or closure agreement. There are expected to be even more individuals who will be identified over the next year who are living in ICFs/DD now and will need to move due to voluntary downsizing or closure agreements. It will be imperative for the defendants to ensure that these individuals are provided with the opportunity to review an array of options so they can make an informed decision about where and how they want to receive services and supports. The Monitor has discussed this with the parties and DDD staff, and will be working closely with the defendants in tracking how choices are being facilitated for individuals who are affected by implementation of voluntary downsizing and closure plans.

## **Crisis Services**

The Decree requires the defendants to serve Class members who meet the crisis criteria described in ¶21 (a) of the Decree and who request community services or placement in a community-based setting expeditiously.<sup>22</sup> Services and/or placement will be provided in a manner consistent with the transition plan.

The Implementation Plan calls for the PAS/ISC agencies to continue to submit requests for services from individuals in crisis situations. DDD will ensure that class members are served expeditiously.<sup>23</sup> The Monitor established the standard, with the agreement of the parties, that the timeframe to receive services for class members in crisis will be 24-72 hours, although this timeframe may vary, depending on individual circumstances, or if temporary services are in place to address the immediate crisis.<sup>24</sup>

On May 1, 2012, the Monitor notified the defendants and class counsel of non-compliance. Crisis services were not being provided expeditiously as called for in paragraph 21(c) of the Decree. After a sampling review of the crisis services for class members from June 2011 to April 2012, the Monitor found a large percentage of class members who were not served for weeks, and in some instances months, but who needed services immediately. The Monitor recommended that the defendants develop a plan to address these issues. The defendants acknowledged the problem and immediately developed a draft corrective action plan, and reviewed the plan with the Monitor. This draft plan was then presented to the parties and discussed at the June 21, 2012 parties' meeting. Following the meeting, class counsel provided written comments to the defendants on June 28, 2012 on the corrective action for crisis services. The defendants, in conjunction with the Monitor have since modified this plan, and have moved forward with many of the action steps. The DDD Deputy Director for

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<sup>22</sup> ¶21.(C) June 15, 2011 Consent Decree at Page 12.

<sup>23</sup> Ligas Implementation Plan, 3/25/14, Section VIII, at Page 24-25

<sup>24</sup> Compliance Evaluation Standards, July 17, 2012 at Page 14

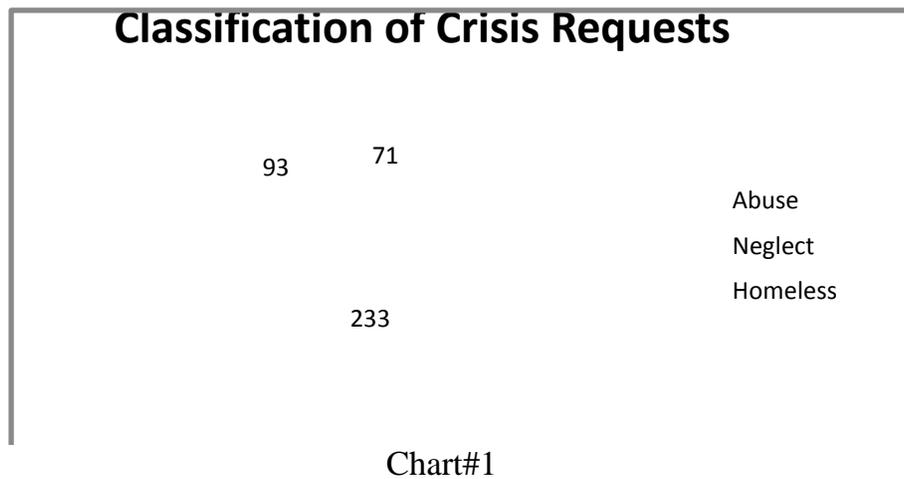
Community Services has been assigned the lead responsibility for overseeing implementation of the crisis corrective action plan.

Some of the key action steps in the Crisis Service Request Action Plan include the following:

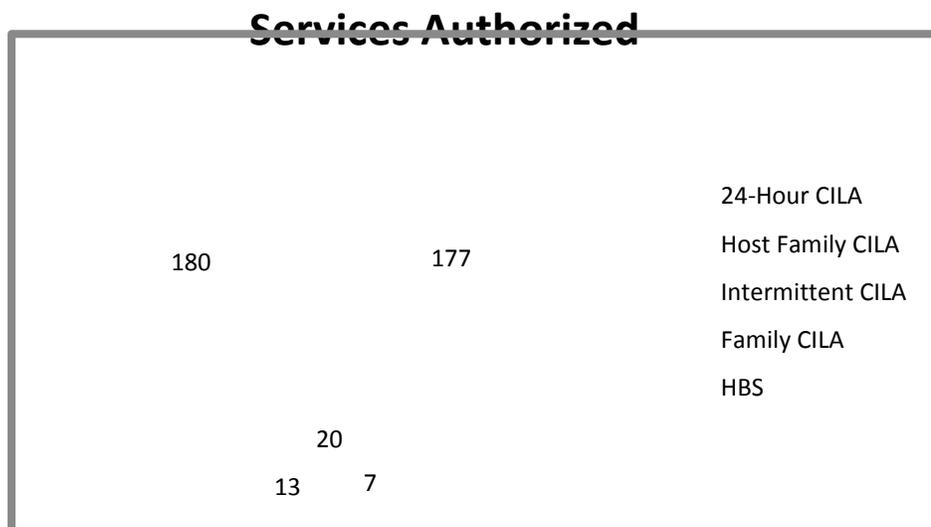
- DDD has developed an internal quality assurance process and checklist for management staff and Network Coordinators to individually evaluate each crisis request packet to ensure timeliness and completion.
- The internal database has been modified to ensure accuracy of entries.
- Network staff have been provided additional training in the areas of crisis data entry and processing crisis requests.
- Network Coordinators have now been assigned authorization to issue Pre-Award Letters in order to expedite processing of these letters.
- Training was held in October 2012 for DDD Network staff and PAS agencies about submitting complete and accurate crisis funding requests, and being fully prepared when presenting requests to the Review Committee.
- The frequency for internal DDD informal review committee meetings has been increased to reduce the lag time in approval.
- Rate setting unit staff have been instructed to give high priority to crisis requests which will be specifically labeled as high priority. Distribution of award letters will also be streamlined and conveyed electronically.
- A management report was designed for improved overall internal monitoring of crisis requests.

During the past year, the Monitor hired a Program Analyst, Ms. Melanie Reeves Miller, to assist with the review of Crisis services. DDD provided a class member-specific Crisis Management Report of all Crisis activities in FY14, from July 1, 2013 to June 30, 2014. There were a total of 397 confirmed crisis requests during FY2014.

According to data provided by the defendants, 71 crisis requests were classified as abuse, 233 were classified as neglect, and 93 were due to the individual being homeless. (See Chart #1)



Services provided to class members in crisis included four types of CILA (Community Integrated Living Arrangement) options: 24-Hour CILA, Host Family CILA, Intermittent CILA, and Family CILA, in addition to Home-Based Support Services (HBS). Of the 397 crisis requests, 177 were approved to receive 24-Hour CILA, 7 were approved to receive Host Family CILA, 20 were approved to receive Intermittent CILA, and 13 were approved to receive Family CILA. Home-Based Support Services were approved for 180 class members.



After nearly two years of implementation, this corrective action plan has continued to show significant improvement in the results. The Monitor reviewed crisis class member information and data from all 397 crisis requests during FY 2014. The results showed that 95% (377) of the class members who were found to be in crisis, received some services within a 24-72 hour period after their crisis status was confirmed. These findings demonstrate that the defendants' efforts have continued to be successful. The Monitor will continue to work with the defendants, including joint reviews of the crisis management reports, to improve crisis responsiveness.

It should be noted that there were a number of instances that were identified by the Monitor where the processing of the crisis applications and request information packets development moved slowly prior to the crisis review process by DDD. The Monitor will work with the DDD management staff to establish a mechanism to track and improve that part of the process,

The defendants' data reports indicate that, in FY 2012, 288 class members who requested service pursuant to the crisis criteria were served. FY 2013, 269 class members in crisis were served, a slight upturn from the previous year. In FY 2014 the number of class members who required crisis services, surprisingly, jumped to 397, a 47% increase over the previous year. It is not clear why this sharp increase in crisis requests occurred.

As mentioned in the Transition Service Plan section above, the defendants have developed and are now implementing the *Crisis Transition Plan and Funding Request* form. Utilization of this form as prescribed appears to have resulted in a more effective and uniform manner in processing crisis requests.

**Recommendation #4** – The defendants, in conjunction with the Monitor and input from class counsel, should conduct an analysis of Crisis data to determine the relationship between Crisis applicants and the PUNS list, too so that the necessity for community outreach activities can be determined.

## Transition for Class Members on Waiting List

The Decree requires that Class members described in ¶2.b of the Decree will transition to community-based services. These class members are referred to in the Decree as "Waiting List Class Members."<sup>25</sup> Class members described in ¶2.b and ¶22 (a) and ¶22 (b) will transition in accordance with the following schedule:

- Community-based services or placement in a community-based setting for 1,000 Waiting List class members will begin by June 15, 2013.
- Community-based services or placement in a community-based setting for an additional 500 Waiting List class members will begin by June 15, 2014.
- Community-based services or placement in a community-based setting for an additional 500 Waiting List class members will begin by June 15, 2015.
- Community-based services or placement in a community-based setting for an additional 500 Waiting List class members will begin by June 15, 2016.
- Community-based services or placement in a community-based setting for an additional 500 Waiting List class members will begin by June 15, 2017.
- Following June 15, 2017, Waiting List class members will receive community-based services or placement in a community-based setting at a reasonable pace.<sup>26</sup>

The Implementation Plan incorporates the criteria for prioritization for selection of class members who are on the waiting list to receive funding for community-based services or services in a community-based setting. Within each category, selections will be made based on the length of time on the waiting list database.<sup>27</sup>

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<sup>25</sup> ¶22.(c) June 15, 2011 Consent Decree at Page 13.

<sup>26</sup> ¶23.(c) June 15, 2011 Consent Decree at Page 13.

<sup>27</sup> Ligas Implementation Plan, 3/25/14, Section VII, Page 23-24

As reported in the Class Member List section above, the PUNS list shows 15,190 individuals who qualify as Waiting List class members. In order to implement a systematic process for selections of class members to effectuate services for the initial 1,000 individuals by June 15, 2013, the defendants engaged in several selection events. (Commonly referred to as “PUNS pulls”) The first selection event identified 800 individuals believed to be class members and occurred in February 2012. After an initial screening process, 65 individuals were removed from this list and 735 letters were sent to the class members and/or guardians, and their respective PAS agencies, indicating that funding for community-based services or services in a community-based setting would be available upon application. The second selection event occurred in June 2012, which identified an additional 626 individuals, and after initial screening 22 individuals were removed from the list, resulting in 604 application letters being sent to the class members and respective PAS agencies. A third selection event occurred in October 2012 and 1,500 individuals believed to be class members were selected. A fourth selection event occurred in September 2013 with 500 individuals selected and 27 names were removed for various reasons, resulting in 473 letters being sent to class members and respective PAS agencies. The last and most recent selection event was for 700 class members in March of 2014. In summary, 4,306 letters have been sent to *Ligas* waiting list class members over the past three years. Each of the selection events have chosen people in accordance with the criteria for prioritization as listed in the *Ligas Implementation Plan*. The breakdown of the recent selection event is available on the DDD website:

<http://www.dhs.state.il.us/page.aspx?item=67339>

As of September 1, 2014, the status of provision of services for those individual found eligible as waiting list class members is as follows:

- As of September 1, 2014, services have been initiated for 1,969 class members.
- An additional 89 class members have received funding awards, and services are about to begin soon.
- Packets for another 24 individuals have been completed, and sent to DHS for funding approval.
- 499 individuals are in the process of receiving or have completed Level II screening by PAS agencies, and requests are being processed.
- Initial contact has been made with an additional 146 individuals who have confirmed that they have requested services.

In summary, the defendants' hard work in this area has continued to result in outcomes that have far exceeded the requirements of the Decree. The defendants are also well on the way to meeting or exceeding the requirements for the provision of services to waiting list class members of an additional 500 individuals by July 30, 2015.

The Monitors' First Annual Report expressed grave concern about the likelihood that the defendants would achieve full compliance with this provision of the Decree. These concerns were followed by numerous recommended steps designed to better manage the PUNS data, and infuse new resources into the process. These concerns and recommendations were heeded and resulted in deliberate actions that resulted in a changed climate of movement and productivity. The defendants are to be congratulated once again for their hard work in this area and for applying the necessary resources and assistance where they were needed.

There remain, however, some concerns with regard to the outcomes of these activities. The *Ligas* Implementation Plan called for selection for funding to identify 50% of those selected to be served through the CILA out-of-home supports, and 50% to be selected to receive home-based support services. Data provided by DDD for the first two years of service provision show that less than 15% of those selected are now being served through CILA supports, and more than 85% are being served through the home-based supports program. This outcome is statistically significant enough to warrant close and careful examination. It is not clear what has led to this irregularity with regard to expectations and results. Absent a detailed review, any reasons given for this would be speculative.

Implementation of Recommendation #3 (See page 28) should provide the parties with a meaningful analysis of why so many class members are not accepting the CILA services that are offered to them.

## Outreach

The Decree requires the defendants to maintain a fair and accessible process by which individuals or their guardians can affirmatively request services and maintain records of those requests.<sup>28</sup>

The Implementation Plan outlines numerous activities designed to identify individuals throughout the state who are or will be in need of home and community-based services, and services in a community based setting. These activities include training and information sessions, as well as the development and distribution of written materials to broad based audiences.

For potential class members living in ICFs/DD, the Plan provides a detailed description and requirements for the development of a contract to secure the services of an outside contractor(s) who will contact all potential class members and determine and document an informed decision on whether they are requesting services in a community-based setting.<sup>29</sup>

The defendants engaged in numerous activities to comply with the Outreach requirements of the Decree, and activities described in the *Ligas Implementation Plan*. At the initial parties' meeting, it was agreed by the parties and memorialized by the Monitor that for those individuals who live in ICF/DD settings, they are considered a class member if they have completed a PASS Form 1238 or its predecessor, DHMDD Form1243, or DD PAS 10 form, or the Request form disseminated through plaintiffs' counsel, and checked the box that they choose Home and Community Based Services.

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<sup>28</sup> ¶25 June 15, 2011 Consent Decree at Page 14

<sup>29</sup> Ligas Implementation Plan, 2014 Revisions, March 25, 2014, at page 11

The Defendants, and in many instances in conjunction with the Monitor, engaged in activities to inform stakeholders as well as the community at large about the requirements of the Decree and how services can be sought and received by qualified class members. Some of these activities include the following:

- DDD and the Monitor have continued conducting training activities for each of the 18 PAS agencies on the requirements of the Decree and Implementation Plan and, in particular, their role in facilitating choice for class members.
- DDD has developed and maintained a *Ligas* website that includes a full and downloadable description of the requirements of the Decree, updates on documents and activities related to the Decree, and contact information for parties interested in more information. This website is updated on a regular basis. See: <http://www.dhs.state.il.us/page.aspx?item=40989>
- DDD maintains a consumer-friendly PAS agency locator function on the DDD website whereby families can locate their PAS agency by simply entering their county or zip code.
- DDD has also structured the 1-888-DDPLANS toll free number so that families can be directed to the *Ligas* inquiry staff support.
- DDD has established, widely publicized and maintained a *Ligas* complaint contact within the Division who is responsible to receive and memorialize inquiries, complaints and requests for information from class members, families, and other interested parties. This staff person also maintains a log of complaints and related follow-up activities.

With regard to outreach to persons living in ICFs/DD, the defendants, with input from representatives of class counsel, intervenors counsel and the Monitor, developed a *Ligas* Outreach Request for Proposals (RFP). This RFP was released to the public for solicitation on September 13, 2012 and proposals were due to DHS no later than October 9, 2012.

There were no responsive bids to this RFP. As a result, DHS identified a qualified contractor, the Council on Quality and Leadership, (CQL) to serve as the Outreach Contractor. The Monitor's Second Annual Report outlined the initial and preparatory steps for outreach implementation. At this juncture, outreach

activities are at the full stages of implementation. CQL provides DDD with monthly updates of progress on activities.

As of September 1, 2014, CQL continues to conduct outreach activities in the following PAS/ISSA areas: Developmental Disabilities Services Metro East (DDSME); Suburban Access, Inc.; Service, Inc.; Central Illinois Service Access; Champaign Co Regional Planning Commission; Great Rivers Service Coordination; and Prairieland Service Coordination; Access Services of Northern Illinois (Access NI); CSO of Rock Island and Mercer (CSO/RIM); and Day One Network. DDD provided a list for another group of Potential Class Members identified as being in the West Central part of Illinois with outreach starting in late September.

As of September 1, 2014, CQL has attempted initial outreach with 1,018 potential class members, and has completed or closed initial outreach to 767 potential class members. Of these 767 potential class members, 487 have chosen to remain in their current ICF/DD, 143 have arranged a meeting with CQL and 137 did not want any outreach activity conducted. CQL has completed 102 outreach meetings with class members and/or guardians. Of these 102 meetings, 62 individuals chose to remain at their current ICF/DD, 37 are exploring a move to a community-based setting, 2 individuals chose to move to a different ICF/DD and 1 has not decided. Outreach efforts have not been successful for 116 individuals, mostly due to the inability to make contact.

It is expected that outreach activities for potential class members living in ICFs/DD will take place over the next two years. It will be important for CQL and DDD to provide ongoing communications with the Monitor, parties and intervenors regarding progress, outcomes and barriers to implementation.

## Implementation Plan

The Decree requires that the defendants finalize the Implementation Plan, with input from the parties and intervenors.<sup>30</sup> The Implementation Plan must be filed with the Court by December 15, 2011. The Implementation Plan shall be updated and amended at least annually.<sup>31</sup>

The original *Ligas Implementation Plan* was negotiated by the parties and intervenors and filed with the Court by the defendants on December 15, 2011.

There was joint agreement by all parties, the Intervenors and the Monitor on the initial Implementation Plan. This Plan was approved by the Court and ordered as a supplement to the Decree on February 15, 2012. Subsequently, DDD provided updates and proposed revisions to the Implementation Plan and provided a draft to the parties and intervenors. These revisions were negotiated and submitted to the Court without objection on February 22, 2013. The second revision of the Implementation Plan was negotiated by the parties and filed with the Court on March 25, 2014.

The defendants have utilized the *Ligas Implementation Plan* as their blueprint for activities designed to comply with the Decree. At each scheduled parties' meeting, the defendants provide a verbal update of Plan activities, and respond to questions from class counsel and counsel for the intervenors. There have also been significant inquiries from key stakeholders and members of the public at large about implementation activities.

The Monitor recommends that the defendants resubmit a proposed amended *Ligas Implementation Plan* with necessary revisions prior to the scheduled parties' meeting in January 2015 for review and input. Following the input from the parties, intervenors and the Monitor, the defendants should file the updated plan with the Court, as required in the Decree.

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<sup>30</sup> ¶27 June 15, 2011 Consent Decree at Page 15.

<sup>31</sup> ¶28 June 15, 2011 Consent Decree at Page 15

## **Data Reports**

The Decree requires the defendants to provide the Monitor, Plaintiffs, Class counsel, Intervenors and Intervenors' Counsel, and make publicly available, a detailed report containing data and information sufficient to evaluate Defendants' compliance with the Decree and Defendants' progress towards achieving compliance.<sup>32</sup> Not less than every six months, defendants shall provide data reports to the Monitor, class counsel and intervenors.

**Implementation Plan Activities** – The Implementation Plan calls for the semi-annual submission of data reports. The defendants have provided Data Reports to the parties, intervenors and Monitor on August 20, 2012, February 15, 2013, August 15, 2013, February 15, 2014 and August 15, 2015. The Data Reports include class member data regarding the class member list(s), services to class members in ICFs/DD, services to class members from the Waiting List, ICF/DD resident outreach, transition service plans, crisis services, voluntary ICF/DD closure and downsizing agreements, eligibility appeals and the *Ligas* budget. The Monitor finds the form and format for class member data to be useful and acceptable. It will be increasingly important, however, to ensure that data regarding budget expenditures and shortfalls, if any, are updated on a regular basis.

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<sup>32</sup> ¶ 33 of June 15, 2011 Consent Decree at page 18.

## **Services for Named Plaintiffs**

The Decree requires the defendants within sixty days to offer each of the Named Plaintiffs the opportunity to receive appropriate community-based services or services in a community-based setting.<sup>33</sup>

The defendants have complied with this requirement of the Decree. All five named plaintiffs were offered services in community based settings and have successfully transitioned to their new homes or received home-based services funded through the Illinois home and community-based waiver. The Monitor maintains occasional contact with the named plaintiffs and their families.

## ***Ligas* Class Member/Family Advisory Committee**

The Implementation Plan calls for the establishment of the *Ligas* Class Member/Family Advisory Committee.<sup>34</sup> This Committee is now fully operational and meets at two locations that are connected by video conferencing. These meetings are also attended by DDD staff, class counsel, the Monitor and family advocates. A chairperson and vice-chairperson have been elected. During the past six months, this committee developed a report to the defendants and the Monitor to offer observations and suggestion on implementation issues identified from their personal experiences, as well as information received from other class members and families.

The Monitor will review the reports and suggestions by this Committee with the defendants and respond accordingly.

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<sup>33</sup> ¶37 June 15, 2011 Consent Decree at Page 21

<sup>34</sup> *Ligas* Implementation Plan, Revised 2013, at Page 12

## Dispute Resolution

The Decree clarifies the rights of class members to appeal or seek administrative or judicial review pursuant to governing law through the existing fair hearing process. Class members may also avail themselves of any informal appeal process that currently exists.<sup>35</sup>

The Monitor reviewed the appeal data with the defendants in April 2012 and identified a number of problems with the appeal process. Scheduling of appeals hearings and obtaining written hearing determinations were taking an inordinately long time, in some instances as much as six months to a year. The appeals application process was often confusing to individuals and families, and some families reported that they were not aware of their appeal rights.

As a result of these problems, the defendants, with input from class counsel, developed and have implemented an appeals corrective action plan that includes the following activities and tasks:

- HFS has hired an additional three new Administrative Law Judges as hearing officers and one additional attorney to support the hearing process.
- The newly hired ALJ's, at the request of HFS, conducted site visits to several CILA settings to better understand community-based services for people with developmental disabilities.
- The application process was streamlined so that appeals come directly to DDD rather than the additional pass through with HFS.
- A draft to include modifications of the appeals rights' form is being finalized.
- Appeals unit staff have been instructed in writing to give top priority to crisis appeals.

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<sup>35</sup> ¶24 June 15, 2011 Consent Decree at Page 14

- Appeals unit staff are being trained to expedite informal appeals.
- An internal checklist has been drafted to provide effective and ongoing tracking of appeals.
- PAS agencies are being re-trained on preparing complete appeal requests.
- Weekly internal management reports will be generated to ensure internal reviews are scheduled on a timely basis.
- Management reports will be incorporated into the *Ligas* data reports.

From a review of the 2014 appeals data, it is clear that the appeal process has improved substantially, particularly in conducting hearings within a reasonable timeframe.

Based on conversations with stakeholders, families and class members, there appears to be a lack of awareness about the availability of the appeals process and individual rights in the Medicaid program. Although there is written information about rights and the appeal process, the information does not seem to reach the intended users. This lack of awareness was also identified by the *Ligas* TSP consultant, and mentioned by members of the *Ligas* Class Member and Family Advisory Committee.

Over the next six months, the Monitor will work with the defendants to develop an enhanced information sharing strategy to ensure that information about hearing rights and appeals is effectively conveyed to class members and families.

## **Section 5 – Overall Comments**

After three years of implementation, the defendants' strong efforts have continued to result in positive real-life outcomes for class members. Sometimes there is too much emphasis on what is going wrong, with little attention on what is going right. The Monitor hopes that this report conveys an appropriate balance of success and challenges. Since June 15, 2011, services have been provided for more than 3,100 class members, including ICF/DD class members, waiting list class members and those in crisis. Through the diligent work of the defendants, with full cooperation from class counsel and the intervenors, much has been accomplished.

This fourth year of implementation presents some seemingly formidable challenges ahead – serious budget shortfalls, statistically unacceptable lack of employment options and limited options for small community settings. The Monitor will continue to work with the parties to address these challenges and communicate with class members and their families.