IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

JEROME DUVALL, *et al.,*	*	
Plaintiffs,	*	
v.	*	Civil Action No. ELH-94-2541
LAWRENCE HOGAN, *et al.,*	*	
Defendants.	*	

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PLAINTIFFS' MOTION FOR ENFORCEMENT AND FURTHER RELIEF

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In light of Defendants' chronic and substantial noncompliance with numerous provisions of the Settlement Agreement (ECF 541-2), Plaintiffs respectfully move this Court for an order granting the following relief:

1. That Defendants shall submit within 30 days a detailed plan, including timelines, for achieving compliance with each Provision of the Settlement Agreement for which they concede non-compliance in the Commissioner's Semi-Annual Compliance Report, dated February 28, 2020.

2. Following the submission of Defendants' plan, that the Court schedule an evidentiary hearing to receive evidence, including but not limited to testimony from the independent medical and mental health monitors, regarding the causes of Defendants' failure to make progress in achieving compliance with numerous provisions of the Settlement Agreement.

3. That the Court extend the term of the Settlement Agreement for an additional two years – to June 22, 2024.

This motion is supported by the Memorandum in Support of Plaintiffs' Motion for Enforcement and Further Relief filed herewith.

Dated: July 17, 2020

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PLAINTIFFS' MEMORANDUM IN SUPPORT OF MOTION FOR ENFORCEMENT AND FURTHER RELIEF

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INTRODUCTION

The Settlement Agreement approved by the Court on June 28, 2016 is now past its original contemplated dismissal date, the point at which it had been the expectation of the parties that Defendants would have achieved compliance with all the provisions of the Settlement Agreement. *See* ECF 575 (approving Settlement Agreement). Unfortunately, as Defendants themselves document in their Compliance Report of February 28, 2020, they remain in non-compliance with the great majority of the Settlement Agreement provisions. *See* Commissioner's Semi-Annual Compliance Report, February 28, 2020 ("Commissioner's Report") (Alexander decl. Exh. 1 at 13-14). The degree of non-compliance is so extreme that even the previous two-year extension of the life of the Settlement Agreement is not enough to ensure that Defendants will be anywhere near full compliance on the date that the Settlement Agreement is currently expected to terminate. *See* ECF 642 (extending term of Settlement Agreement to June 22, 2022). Moreover, absent some significant change in the rate in which they actually satisfy the specific requirements of the decree, Defendants will not only fail to achieve compliance during the original four-year life of the Settlement but they will not achieve that goal within six years.

Defendants should not be allowed to avoid their commitments to reform by simply failing to take effective steps to achieve compliance and then running out the clock. Plaintiffs set forth below the continuing pervasive failure of Defendants to take meaningful steps to achieve compliance. Meanwhile, the thousands of persons who have been detained in the Baltimore City Booking and Intake Center ("BCBIC") have been denied the living conditions that the Settlement Agreement promised them. Indeed, during the past year, Defendants have apparently failed to make any obvious progress in their asserted goal of purchasing a usable Electronic Patient Health Record system ("EPHR").

In the absence of significant progress, Plaintiffs have no option but to again request that the Court establish new deadlines and benchmarks for Defendants' achievement of compliance with the Settlement Agreement requirements. Plaintiffs request that the Court now extend the Settlement Agreement for an additional two years since it seems highly unlikely that Defendants can achieve full compliance by June 2022, given that they still do not have a new EPHR and it is unclear when they will. As the Court may recall, Defendants have been promising a new system for years, but the State's current plan is not to release a new request for proposals until a subsequent reporting period. Commissioner's Report (Exh. 1 at 3). This failure is catastrophic in light of the serious outbreak of COVID-19.

Plaintiffs accordingly seek relief related to Defendants' prolonged failures to reach compliance with the critical medical and mental health requirements set forth in the Settlement Agreement.

ANALYSIS OF DEFENDANTS' ASSERTIONS REGARDING COMPLIANCE

Plaintiffs discuss below the submissions of Defendants regarding the state of compliance with the Settlement Agreement. The Commissioner's Compliance Report (Alexander decl. Exh.

1) as well as that of the medical contractor (Corizon Health) (Alexander decl. Exh. 2) and the mental health contractor (Centurion Managed Care) (Alexander decl. Exh. 3) identify multiple processes and conditions that contribute to the failure of the system to satisfy specific provisions. Of note, however, the Corizon Report in its narrative does not utilize the actual language of the Settlement Agreement in discussing the performance of Defendants. Rather, it substitutes its own criteria for compliance ("audit indicators"), a large number of which have little if anything to do with the Settlement Agreement's requirements.

After four years, Defendants admit that they have failed to achieve compliance with most of the requirements of the Settlement Agreement. *See* Commissioner's Report (Alexander decl. Exh. 1 at 13-14), which admits non-compliance with the following provisions of the Settlement Agreement, set forth at ECF 541-2 at 3-12:

SECTION 17 (Intake and initiation of medication)

17(a)	Initial screening to take place within four hours of arrival at intake.
17(c)	Detainees currently prescribed a psychotropic medication, absent a bridge order, or having an urgent mental health need, including a suicide risk, shall receive a mental health assessment within 24 hours of the intake screening, or sooner if clinically indicated.
17(d)	If a detainee has been prescribed medication that if interrupted would pose a risk of adversely affecting health, the detainee shall receive the needed medications within 24 hours of the intake screening or the initial report of the need, unless a clinician determines that the medication is unnecessary.
17(e)	The intake screening, any physical or mental health assessment, and any decision regarding to continue or not continue a medication shall be documented. If a reported medication is not continued, the reason for discontinuation shall be documented in the detainee's medical record.

SECTION 18 (Medical Plan of Care)

18(a)	Defining the term "Plan of Care" for purposes of care requirements as a summary of listing of major medical problems and a plan for treatment.
18(b)	Defining the term "ongoing condition" for purposes of care requirements as one requiring ongoing care that will not be resolved within 30 days or constitutes a serious acute injury or illness that will require repeated follow-up or has lasting significance for the detainee's future health care treatments. The plan of care shall

be developed by a clinician.

18(c) The Commissioner shall promulgate and implement policy and procedure to ensure that initial diagnosis and identification of ongoing conditions, along with elements of the plan that do not require development at a chronic care clinic or through specialist referral, shall be shall be conducted and entered into the EPHR within seven days of the admission, or sooner if clinically indicated.

18(d) The Commissioner shall promulgate and implement policy and procedure to ensure that during the initial diagnosis and identification process, a clinician orders enrollment in any needed chronic clinics and recommends specialist care clinically indicated. Any elements of the plan of care developed as a result of clinic enrollment or specialist referral shall be entered in the EPHR.

18(e) If an ongoing condition is diagnosed and identified after the initial diagnosis and identification process, the plan of care shall be promptly updated or created to reflect the new diagnosis and identification.

18(f) The plan of care shall be accessible to any medical or mental health professional who is providing treatment, including diagnostic services, to a detainee, unless the need for treatment precludes such access at the detainee's location.

SECTION 19 (Medication Management and Testing)

19(a) The Commissioner shall promulgate and implement policy and procedure to ensure that unless clinically contra-indicated medications intended for short-term use only shall be renewed without interruption. A detainee prescribed such medication shall be seen by a clinician in sufficient time before renewal to determine whether to renew the medication.

19(b) Medication Administration Records ("MARS") shall be completed by RNs or LPNs. If medication is not administered on a particular occasion, the MARS shall document whether the patient refused or whether some other specified cause prevented administration. Documentation shall follow policies for legibly signing entries and including license.

19(c) The Commissioner shall promulgate and implement policy and procedure to ensure that when a clinician orders documentation of vital signs or blood sugar results, the documentation occurs as ordered and the results are reviewed by a clinician.

19(d) The Commissioner may require detainees who are prescribed medication that they are permitted to keep on their persons to initiate the process for refill of a prescription medication without having to first see a medical professional; provided, however, that DPDS shall have a process for expedited refill of keep-on-person medications that are prescribed for potentially urgent needs, such as rescue inhalers.

19(e) The Commissioner shall promulgate and implement policy and procedure requiring a clinician to respond to and document in a detainee's medical record the results of ordered tests. Such policy requires (1) document review of critical or seriously abnormal values and any actions taken as a result of that review, within 24 hours and (2) document review of all other ordered testing results within a reasonable timeframe.

19(f) The Commissioner shall promulgate and implement policy and procedure to ensure

that orders for laboratory testing, including but not limited to cultures of potential MRSA infections, are executed within timeframes consistent with the test's urgency and the capacity of appropriately functioning laboratories to complete such tests.

19(g) The Commissioner shall promulgate and implement policy and procedure that defines those blood sugar and vital sign readings that are sufficiently abnormal to require notification of the detainee's clinician; ensure that such policy is implemented in practice; and ensure that medical professionals notified of such readings take appropriate medical measures in response.

SECTION 21 (Accommodations for plaintiffs with disabilities)

21(a) The Commissioner shall promulgate and implement policy and procedure ensuring the timely delivery of necessary medical supplies to detainees with disabilities. The Commissioner shall promulgate and implement policy and procedure to ensure that detainees with disabilities that require special accommodations are housed in locations that provide those accommodations, including, as applicable, toilets that can be used without staff assistance, accessible showers, and areas providing appropriate privacy and sanitation for bowel disimpaction.

SECTION 22 (Specialty Care/Consultation)

22(a) The Commissioner shall promulgate and implement policy and procedure to ensure timely review of requests for routine, urgent, and emergency specialty care.

22(b) Such policy shall provide that detainees are referred to specialists as medically necessary and that the process for review and approval of specialty consultations does not take more than 48 hours for urgent care and five business days for routine care.

22(c) The Commissioner shall promulgate and implement policy and procedure to maintain a log documenting the date a clinician requests approval of a specialist referral; the date utilization management takes action on the request; and whether the referral is to a specialist for treatment or for evaluation only. Clinicians shall be given training regarding the documentation necessary to support a specialty request.

22(d) The Commissioner shall promulgate and implement policy and procedure to ensure that, if applicable, each detainee's medical record contains documentation of requests for outside medical care, including the date of the request, the date of any consultation, the date any consultation is scheduled, and appropriate information, if any, regarding follow-up care.

22(e) Referrals for mental health services that are provided at the facility do not constitute specialist referrals.

SECTION 23 (Sick Call)

23(b) Requests for health care shall be triaged by RNs within 24 hours of receipt, with receipt measured from the time the requests arrive at the site of triage following

daily collection of sick call slips.

23(c) Detainees whose requests include reports of clinical symptoms shall have a face-to-face (in person or video conference, if clinically appropriate) encounter with a medical professional (not including an LPN)

23(d) Care at sick call and at subsequent follow-up appointments shall be as determined by appropriate medical professionals and/or mental health professionals, in the exercise of appropriate clinical judgment.

SECTION 24 (Medical Records)

24(a) The Commissioner shall promulgate and implement policy and procedure to ensure that the medical records of detainees are available at sick call and other encounters with medical professionals and mental health professionals. An on-site medical professional or mental health professional who is providing treatment, including diagnostic services, to a detainee shall have access to both the EPHR and any non-electric portion of the medical record, unless the need for emergency treatment precludes access because of the detainee's location.

SECTION 25 (Mental Health Care)

25(a) The Commissioner shall promulgate and implement policy and procedure to ensure that appropriate mental health professionals are provided to ensure timely and appropriate evaluations for medications and suicide risks.

25(b) When a request for a bridge order for psychotropic medications is made for a detainee, and the bridge order is approved, the detainee shall be seen within 14 days, or sooner if clinically indicated, for an in-person evaluation by a licensed psychiatrist or psychiatric registered nurse practitioner. In the event that a bridge order is denied, the detainee shall be seen for an in-person evaluation by a licensed psychiatrist or psychiatric registered nurse practitioner within 24 hours of denial of medication.

25(c) The Commissioner shall promulgate and implement policy and procedure to ensure that detainees are evaluated by an appropriate mental health practitioner within 24 hours of an urgent referral.

25(d) Detainees who are prescribed psychotropic medications shall be seen face-to-face by a licensed psychiatrist or psychiatric registered nurse practitioner at least every 90 days, or more frequently if clinically indicated.

25(e) Detainees who are suicidal, self-injurious, or otherwise in need of close monitoring or treatment shall be seen by appropriate mental health practitioners as often as clinically indicated, for evaluation and recommendations for the management of such behavior. Nothing in this Settlement Agreement is intended to restrict the ability of RNs, consistent with the scope of their training and licensure, to participate in and assist with the treatment, evaluation, and management of such behavior.

25(f) These provisions deal comprehensively with the requirements for a mental health plan of care. The plan is to include a summary listing of major mental health problems. Specific requirements are listed below.

25(f.i.)	The Commissioner shall promulgate and implement policy and procedure to ensure that all detainees who are currently diagnosed in the BCBIC medical record with mental health problems are enrolled in chronic care clinics. The plan shall also include a summary listing of major mental health problems and a plan for treatment of such problems, including as applicable medications, testing, and records of past periodic chronic care appointments and access to orders for future chronic care appointments. The plan shall be documented in the EPHR. In the current EPHR, it shall be documented in the Chart Summary Template.
25(f.ii.)	The Commissioner shall promulgate and implement policy and procedure to ensure that all detainees who are currently diagnosed in the BCBIC medical record with mental health problems are enrolled in chronic care clinics. If clinically indicated, treatment plans shall be documented in the EPHR within 14 days of the detainee's admission. If a mental health condition requiring treatment is identified after intake, treatment plans shall be documented in the EPHR within 14 days of the identification of the condition.
25(f.iii)	The mental health plan of care for a detainee with a major mental health problem, or one who is prescribed medication for a mental illness, shall include scheduled follow-up with an appropriate mental health practitioner as clinically indicated but no less frequently than every 90 days and shall be updated at each clinical encounter.
25(f.iv.)	The mental health plan of care shall be accessible to any medical professional or mental health professional who is providing treatment, including diagnostic services, to a detainee, unless the need for emergency treatment precludes access at the detainee's location.
25(g)	When a detainee under treatment for mental health problems returns to BCBIC after confinement at an outside institution for two or more weeks, the detainee will receive a new medical/mental health screening by an RN and a new suicide risk assessment from a mental health practitioner.
25(h)	Nothing in this Settlement Agreement is intended to restrict the ability of any mental health professional to place a detainee on suicide restrictions pending review of that status by an appropriate mental health practitioner.

This is obviously a disastrously bad record, particularly in light of the fact that the Settlement Agreement requirements have been in place for more than four years. But for the extension previously granted by the Court, this Settlement Agreement would have automatically terminated on June 28 of this year, with the result that not a single class member would have obtained the benefits that the Settlement Agreement promised. Nor is there any reason to think that the record will be much improved two years from now. Absent effective relief from the Court, the Settlement Agreement will still leave class members unsafe and extremely vulnerable

medically. As but one example of the consequences of that vulnerability, *see* Alexander decl. Sealed Exh. 5 at 1 (detainee death in which multiple errors occurred, including failure to order baseline labs upon intake, failure to continue the patient on prior medication, and delay in starting medication).

At the current rate, it will take about *two decades* before full compliance is achieved. This is, in essence, a substantial denial of current relief for members of the class. Moreover, in light of the presence of a large number of COVID-19 cases in the facility, the obstacles to compliance as well as the need for compliance are even greater. Plaintiffs accordingly seek relief related to Defendants' prolonged failures to meet critical medical and mental health requirements set forth in the Settlement Agreement. In order to begin to address these deficiencies, Plaintiffs request that the Court order Defendants to submit, within 30 days, a plan for achieving compliance in the areas where they concede current non-compliance. Plaintiffs further request that the Court order an additional two-year extension of the Settlement Agreement, since it is obvious in light of the EPHR fiasco that another extension will be needed.

Dr. Michael Puisis, who serves as the independent medical monitor, also found that the majority of the provisions he rated had failed to achieve substantial compliance with the Settlement Agreement. While he used a personal rating system that differs from the system mandated by the Settlement Agreement by including a category of "partial compliance" that is irrelevant to determining the state of compliance under the Settlement Agreement, he nonetheless found that the clear majority of all provisions of the Settlement Agreement that he rated have failed to achieve substantial compliance. Puisis Report (Alexander decl. Exh. 4), *passim.*

NONCOMPLIANCE WITH SPECIFIC PROVISIONS

Because a description of the nature of Defendants' failures to meet the terms of the

Settlement Agreement is relevant to understanding what remains to be done, Plaintiffs provide more detail on the specifics of the state of compliance with each substantive provision of the Settlement Agreement.

SECTION 17 (Provisions 17(a)-17(e)) (Intake and initiation of medication)

As set forth above, Defendants concede failure to reach compliance with Provisions 17(a), 17(c), 17(d), and 17(e). *Supra* at 3. Although the Commissioner's Report claims compliance with Provisions 17(b) (Alexander decl. Exh. 1 at 13), the report of Defendants' medical contractor, Corizon Health, appears to concede non-compliance with this provision, or at least significant unaddressed deficiencies. (Alexander decl. Exh. 2 at 4) ("While significantly improved since the previous reporting period, the inability to accurately reconcile system reporting outputs and manual logs further contribute to the inability to obtain documented compliance with this provision."). The Centurion Report (Alexander decl. Exh. 3) fails to address this provision at all.

The Corizon Report found that the overall level of compliance with Provision 17(c), which addresses urgent mental health needs, was only 72 percent, and is thus non-compliant. Alexander decl. Exh. 2 at 5. That report discusses Provisions 17(d) and 17(e) together, and finds that the overall compliance rate of those two Provisions is barely better, at 74 percent overall. *Id.*

Because the provisions of Section 17 are designed to be the first step in developing and executing an appropriate plan of treatment for each such detainee, this non-compliance is particularly destructive in failing at the task of gathering the necessary medical and mental health histories. Indeed, the Corizon Report notes that for only 75 percent of the intake records sampled was the Intake Medical and Mental Health Screening ("IMMS") completed timely. *Id*. The findings regarding another provision of Section 17(a) are even worse: only 68 percent of initially rejected class members who returned to the facility had a completed IMMS included in their

medical record. *Id.*

SECTION 18 (Medical Plan of Care)

Section 18 follows up on the initial gathering of data in Section 17 by specifying the steps to complete assembly of the medical and mental health history, and using the information including data obtained in the intake process to develop a plan for treatment of each class member. Sections 17 and 18, taken together, are intended to provide the blueprint for the delivery of organized and comprehensive treatment needed for an individual class member, including ongoing identification of significant health care problems and an organized plan for their continued surveillance and care over the period of the class member's stay in the facility. Unfortunately, Defendants have failed so far to implement this requirement. The Commissioner's Report admits non-compliance with *all* of the provisions of Section 18. Alexander decl. Exh. 1 at 13.

Provision 18(a) sets forth the basic requirements of a plan of care. These include a summary listing of the major medical problems and the plan of treatment for those problems, consisting of the following elements: medication, testing, records of past chronic care appointments, access to orders for future such appointments, and access to specialist referrals. ECF 541-2 at 4. Out of the nine audit indicators identified in the Corizon Report for this provision, only three attained a score of 90 percent or better. Alexander decl. Exh. 2 at 7.

Indeed, the Corizon Report further demonstrates pervasive shortcomings of the current system. The findings of the audit include that staff handling of prescription orders for class members were consistent with the Settlement Agreement requirements only 82 percent of the time. Compliance with chronic medications and ordered special diets was even worse at 66 percent. Just 82 percent of the files included in the audit contained evidence that the chart summary and the hard copy medical record had been reviewed by the provider in connection with the appointment,

so that the care provider was familiar with the basics of the patient's known medical history. Newly identified chronic care conditions resulted in updating the plans of care in only 72 percent of the records. External specialty care and hospital or infirmary care summaries were documented as reviewed in only 59 percent of the cases. *Id*. In short, the failures of Defendants to fix the problems related to the implementation of plans of care – a core component of medical care – are still pervasive.

Moreover, the Corizon Report helpfully identifies a list of fifteen process and operational gaps related to this requirement. The "Opportunities for Improvement" discussion of these provisions acknowledges multiple problems, including inconsistencies in the documentation of disease activity and control as well as other inconsistencies that decreased the utility of the record and its "meaningful use." Significantly, the Report concludes by stating that the EPHR requires updating to facilitate high quality documentation. Alexander decl. Exh. 2 at 8. This statement highlights the cost of the State's various decisions to delay the bidding process for an improved EPHR and provokes concern about the extent to which officials above the Department level are in effect delaying critical improvements to the system, thus preventing the system from making meaningful progress in achieving compliance with this core requirement of the Settlement Agreement.

Provision 18(c) requires the promulgation and implementation of policy and procedure related to the initial diagnosis and identification of ongoing conditions and requires that elements of the plan of care that do not require development at chronic care clinics, or through specialist referral, are to be entered into the plan of care within seven days of the class member's admission to the jail or sooner if clinically indicated. ECF 541-2 at 5. The Corizon Report completely fails to supply information as to the extent that this requirement of the Settlement Agreement was met

during the relevant time period. Alexander decl. Exh. 2 at 7.

Provision 18(d) requires that a clinician order chronic care clinic enrollments for any class member in need of this care. ECF 541-2 at 5. The only apparent reference to the degree of compliance that Corizon claims for this provision indicates 86 percent compliance with the requirement for appropriate chronic care clinic enrollment. Alexander decl. Exh. 2 at 7. Accordingly, Defendants correctly did not claim compliance with this Provision. *See* Alexander decl. Exh. 1 at 13.

Provision 18(e) requires that if an ongoing condition is diagnosed and identified after the initial diagnostic and identification process, the plan of care will be promptly updated or created, as applicable, to reflect the new information. ECF 541-2 at 5. In this case, the Corizon Report does provide a relevant statistic: the plan of care was updated according to policy in only 72 percent of the files audited during the relevant time period. Alexander decl. Exh. 2 at 7. Not surprisingly, the Commissioner's Report admits non-compliance. Alexander decl. Exh. 1 at 13.

Finally, Section 18(f) requires that the plan of care for a class member must be available to any medical or mental health professional who is providing treatment, including diagnostic services, to a class member, unless the need for emergency treatment precludes access to the class member's location. ECF 541-2 at 5. The Corizon Report comes closest to addressing this provision by including an audit indicator that tests whether there is evidence that the provider reviewed the chart summary and the hard copy of a patient's medical record in connection with an encounter. Alexander decl. Exh. 2 at 7. The percentage of compliance over the six months was 82 percent, *id.*, so Defendants have again failed to demonstrate compliance.

SECTION 19 (Medication Management and Testing)

Provision 19(a) of the Settlement Agreement requires the renewal of chronic medications

without interruption. ECF 541-2 at 5. Again, the Corizon Report acknowledges that "[i]mprovement is needed to establish a consistent process for patients identified and seen for the initial chronic care appointment." Alexander decl. Exh. 2 at 9. The process for provider encounters is inefficient, resulting in more provider visits than necessary. Providers fail to follow policy to order medications for 120 days, with some ordering for 30, 60, or 90 days. Only a little more than half of the medications are ordered for the correct length of time. Consistent lengths of time would help avoid medication interruptions, which as discussed below are commonplace in the facility. *Id.*

Indeed, communications with the independent medical monitor, Dr. Puisis, regarding the state of delivery of medications have expressed substantial concern about the consistency with which medications are delivered to class members. Corizon's own audit indicator found that, over the audit period, only 63 percent of class members with ongoing medication orders received those medications without interruption. Alexander decl. Exh. 2 at 9. For that problem, Corizon blames its providers. *See id.* This finding points to a very serious failure with regard to the provision of chronic medications, and Defendants do not contest their non-compliance. Commissioner's Rep. (Alexander decl. Exh. 1 at 13).

Further, medication delivery was properly documented in only 29 percent of the audited cases – a shocking result in light of the obviously critical need for reliable delivery of ordered medications to the correct class member. Corizon Rep. (Alexander decl. Exh. 2 at 9). The MARs (medication administration records) were properly documented in only 68 percent of the cases and the failures of staff to enter required documentation were exacerbated by the failure to explain the causes of those failures. *Id.* In short, MARs documentation remains pervasively non-compliant with stated institutional policy.

The Corizon Report further notes that ordering of vital signs and blood sugar readings "remains inconsistent" in both the location where the resulting data are recorded and in the proper completion of the tests as ordered by the provider. Alexander decl. Exh. 2 at 10. This comment in the Report is a triumph of understatement; it documents that only *eight percent* of the vital signs ordered were completed and documented according to the directions of the provider. *Id.* Nor does it appear that there are any plans to address this failure. Again, given the critical nature of this task, this is simply not acceptable. Compounding the problem, the Treatment Administration Records ("TARs") are inconsistent with Clinical Services policies. *Id.*

Provision 19(b) of the Settlement Agreement requires proper completion of the MARs by RNs or LPNs. ECF 541-2 at 6. In addition, it requires that, if an ordered medication is not delivered to the correct class member, the completed MARs must allow a determination whether the class member refused the medication or there was some other cause for the failure to deliver the medication to the class member. *Id*. Unfortunately, Defendants' records demonstrate that such failures are commonplace. *See* Corizon Rep. (Alexander decl. Exh. 2 at 9). Obviously, continuing failures to deliver medications are likely to have serious consequences for the health of class members.

The staff member delivering the medication was appropriately documented in only 29 percent of the cases audited (a finding that is important because this failure deprives supervising staff of critical information for identifying staff who need retraining and additional supervision). *Id*. As the Corizon Report notes:

> Increased accountability of health care staff to address all medications to be administered during medication pass is essential to ensuring compliance with this provision, with regular and consistent monitoring by leadership and/or supervisory nurses in a timely manner[.]

Id. at 10.

Provision 19(c), which requires that class members with orders for vital signs or blood sugar testing have the results documented and reviewed by a clinician, has also not been successfully implemented. The percentages of success for these critical care components are dangerously low. For the six-month period covered in this Report, as noted above, only eight percent of ordered vital signs were completed and documented as ordered. The corresponding percentage for blood sugar testing was only 24 percent. Strikingly, the Corizon Report characterizes these findings as merely showing "inconsistency." *Id.* Indeed, for the four audit indicators Corizon employs, the overall average level of compliance was 23 percent, with the range for specific issues from eight to 66 percent. *Id*. These practices put class members at risk of serious harm and must be urgently addressed with remedial efforts equal to the severity of the need.

Provision 19(d) of the Settlement Agreement allows Defendants to require class members to initiate the process for refilling keep-on-person medications, provided that Defendants also develop a process for expedited refills for such prescriptions. ECF 541-2 at 6. The Corizon Report indicates that that staff documented that patients received their prescribed keep-on-person medications, on average over the six-month period, at the abysmal rate of 20 percent. Just under half of the patients with keep-on-person prescriptions received those medications without an interruption. Alexander decl. Exh. 2 at 11. This continuing failure to provide reliable medication delivery to what is now a much smaller population than in previous years is inexplicable. Given that the types of medications routinely provided as keep-on-person medications include a large number of inhalers for persons with severe asthma, and presumably include drugs such as nitroglycerin to address angina in persons with cardiac problems, as well as other medications that need to be used on an unpredictable basis, this failure constitutes a dangerous deficiency.

Reforming the medication delivery system needs to be a top priority for compliance efforts.

Provisions 19(e) and 19(f) set requirements for laboratory testing performance. ECF 541-2 at 6-7. Defendants identified eight audit indicators for these two requirements. Unfortunately, the results of the most recent audits show that these critical functions of the health care system are seriously non-compliant. For the entire six months, not a single audited laboratory request was documented as handled in compliance with Defendants' established audit indicators. Alexander decl. Exh. 2 at 12. A second indicator of these provisions requires that "stat" laboratory reports be received by a nurse or higher-ranking staff member within four hours of the testing. Unfortunately, not a single such laboratory order was found by the audit over the relevant time period. *Id.* (showing eight audit indicators ranging from a low of zero compliance to a high of 57 percent). The Corizon Report also indicates that "the greatest barrier" to assessing compliance with this provision of the Settlement Agreement is the interface between the EPHR and the laboratory vendor's records; the Report states that until technological improvements are made to the available data systems, there will not be a fully functional system for review of ordered tests and revision of the plan of care when needed. *Id.*

A means of receipt and review of laboratory tests still needs to be established, and increased provider accountability for test results and the resulting need for modification of the plans of care. *Id.* The reference to the problem with the data systems regarding laboratory testing interfacing with the EPHR underlines the consequences of Defendants' failure to do more to expedite the EPHR's badly needed upgrade.

Provision 19(g) of the Settlement Agreement requires Defendants to promulgate and implement policy defining those abnormal blood sugar and vital signs readings requiring notification of the class member's physician, ensuring that this notification is implemented in

practice, and ensuring that medical professionals notified of such readings take appropriate medical measures in response. ECF 541-2 at 7. Corizon's audit indicators show, over the relevant period, an overall rate of compliance of 29 percent. Alexander decl. Exh. 2 at 13. The results of the individual audit indicators are particularly unnerving. For the requirement that the EPHR contain documentation that ordered testing was ever performed, the level of compliance was 18 percent. For only 30 percent of the abnormal test results were those results documented in the EPHR with notification of the class member's physician, ensuring that this notification is implemented in practice, and ensuring that medical professionals notified of such readings take appropriate medical measures in response. *Id.*

Documentation of provider review was even worse. In only 17 percent of the cases was clinician review of abnormal findings as a result of a nursing referral documented in the record. In just over half the instances of blood sugar testing (A1c testing) were results documented as reviewed in the EPHR. *Id.* The overall percentage of compliance with the requirements of this Provision matched the abysmal performance on blood sugar testing, at 52 percent. *Id.*

The critical nature of these findings is underlined by the Report's comments in the "Opportunities for Improvement" section. Those comments emphasize that the clinician must specify the parameters the testing is to cover, including the parameters for provider notification of abnormal findings. Nurses performing the tests must notify the provider when the tests are significantly abnormal if the physician failed to establish any specific parameters for reporting results. *See id.* at 13.

SECTION 20 (Interaction between Medical and Custody)

Settlement Agreement Provision 20(a) requires the Commissioner to promulgate and implement policy and procedure for coordination between custody and medical staff to ensure that

custody staff transport class members to all types of medical and mental health appointments, including staff members who are employed by Corizon Health and Centurion. ECF 541-2 at 7. The Corizon Report acknowledges that the deficiencies in compliance with this Provision continue. Its comments note that procedures need to be established to allow the schedulers to communicate with providers when an appointment has not been kept, including notifications of patient refusals and appointments canceled for other reasons. Alexander decl. Exh. 2 at 14. Neither the Commissioner's Report nor the Centurion Report address Provision 20(a) or 20(b), but Corizon's discussion of "Opportunities for Improvement" is quite illuminating:

> Improvement can be achieved with establishing a procedure for schedulers to communicate with providers when a scheduled appointment has been cancelled or not kept, to include notification of patient refusals and custody barriers on the same date that the appointment is scheduled. ... *Of concern, shortages in custody personnel to complete scheduled appointments was consistently noted throughout the reporting period; instances such as these must be escalated through the medical and custody chain of command.*

Id. (emphasis added).

In addition, in the Corizon Report audit indicators for this Provision, the overall percentage of compliance was 48 percent. *Id.* Given the lack of any assertions of compliance, let alone data supporting such an assertion, there is no basis for finding that Defendants have achieved compliance with this Provision. As for Provision 20(b), regarding medical disabilities, Corizon's audit indicators determined that the overall percentage of compliance with the requirements for medical accommodations was only 74 percent, *id.*, so Defendants have also failed to show compliance with this Provision.

SECTION 21 (Accommodations for plaintiffs with disabilities)

Section 21 of the Settlement Agreement contains a large number of critical provisions. Provision 21(a) is particularly broad in its mandate to protect class members with disabilities. This

provision requires that class members be provided housing that accommodates their disabilities, and that they must be provided with necessary supplies. ECF 541-2 at 8. The Corizon Report appropriately acknowledges that the facility needs to improve its identification of disability needs by improving the IMMS screening and sallyport assessment. Alexander decl. Exh. 2 at 16. Only 74 percent of class members identified as having disabilities are appropriately housed and almost half of such class members do not consistently receive the supplies they need to handle their disabilities. *Id*. The repeated failure to address the needs of class members with disabilities puts class members at obvious risks of suffering serious harm, and renders them more vulnerable to injury and abuse while confined.

While the Corizon Report does not specifically address whether the facility is in compliance with the requirements of Provision 21(b), it does note that staff rounds to assess the status of class members with disabilities are not consistently conducted and recommends that action be taken to address this deficiency. *Id*. at 17. Corizon's Report regarding Provision 21(c) also makes clear that the facility is not in compliance with this provision, documenting an average level of compliance with its own audit indicators of 57 percent. *Id*.

SECTION 22 (Specialty Care/Consultation)

The narrative portion of the Commissioner's Report simply omits Section 22, which involves specialty care and consultations. *See* ECF 541-2 at 9 and Commissioner's Report (Alexander decl. Exh. 1 at 9-12) (omitting entirely Provision 22 in its narrative discussion). Specialty care is obviously one of the critical components of health care for class members, and Defendants' failure to address this Provision other than to admit non-compliance is concerning. The Commissioner's Report again simply notes non-compliance with all the Provisions of this Section. Alexander decl. Exh. 1 at 14. The Corizon Report finds an overall level of compliance

with this Section of 64 percent. Alexander decl. Exh. 2 at 18.

SECTION 23 (Sick Call)

The Commissioner's Report discusses only Provision 23(a) of Section 23, for which it claims compliance. Alexander decl. Exh. 1 at 12. It fails to discuss in the narrative portion of the Report the three other sick call provisions, although it concedes non-compliance with all three. *Id.* at 14. This is deeply concerning because sick call is the single most important access route to health care that class members have. The Corizon Report found that the audit indicators for these provisions ranged from a low of 41 percent to a high of 85 percent. Alexander decl. Exh. 2 at 20.

Provision 23(b) requires that RNs triage sick call requests within 24 hours and that nursing staff make daily rounds to collect sick call requests. ECF 541-2 at 10. Nothing Plaintiffs' counsel found in Defendants' compliance reports addressed compliance other than the concession in the Commissioner's Report that Provision 23(b) was not in compliance. Alexander decl. Exh. 1 at 14. Provision 23(c) mandates that sick call requests that report clinical symptoms have an in-person or video face-to-face encounter, if clinically indicated, with a medical professional (not including an LPN) within 48 hours (72 hours on a weekend) of receipt of the request. Corizon's audit found that only 74 percent of sick call encounters occurred timely. Alexander decl. Exh. 2 at 20. Accordingly, Defendants cannot claim compliance with this Provision either.

Provision 23(d) requires that care at sick call and subsequent appointments be determined by appropriate medical or mental health professionals, in the exercise of appropriate clinical judgment. ECF 541-2 at 10. The nearest that the Corizon Report comes to addressing compliance with this provision is an audit indicator regarding documentation in the record of a physical assessment and a plan for addressing the sick call complaint. The Corizon Report rated this indicator at 68 percent. Alexander decl. Exh. 2 at 20. In short, all four provisions of Section 23

are clearly not in compliance with the Settlement Agreement.

SECTION 24 (Medical Records)

Under this Provision, the electronic medical record and the paper portion of the medical record must be available at sick call and other encounters with medical and mental health professionals. ECF 541-2 at 10. An on-site provider who is providing treatment, including diagnostic services, to a class member is to have access to both the EPHR and the paper section of the medical record, except when the need for emergency treatment of a class member precludes access. The Commissioner's Report admits non-compliance with the sole provision of this requirement. Alexander decl. Exh. 1 at 14.

SECTION 25 (Mental Health Care)

Provision 25(a) of the Settlement Agreement requires the implementation of policy and procedure to ensure that appropriate mental health professionals are provided to ensure timely and appropriate evaluations for medications and suicide risks. The Centurion Report (Alexander decl. Exh. 3) fails to address whether it claims compliance with this Provision, despite the fact that this section of the Settlement Agreement is almost entirely the responsibility of its staff. The Commissioner's Report concedes that all Defendants have failed to comply with any of the Provisions in this section. Commissioner's Report (Alexander decl. Exh. 1 at 14.)[1] This disastrously bad performance urgently calls out for the Court to take corrective action to ensure that the constitutional rights of the class members are finally recognized and enforced.

ARGUMENT

This Court has plenary power to enforce the Settlement Agreement. "Federal courts are not reduced to approving consent decrees and hoping for compliance. Once entered, a consent decree

[1] The provisions of Section 25 are set forth at ECF 541-2 at 10-12, and summarized at 6-7, *supra.*

may be enforced." *Frew ex rel. Frew v. Hawkins*, 540 U.S. 431, 440 (2004); *accord*, *Thompson v. U.S. Dep't Of Hous. & Urban Dev.*, 404 F.3d 821, 833 (4th Cir. 2005) ("[E]ven if the district court had declined to modify the retention-of-jurisdiction clause, the court's inherent authority over its own judgment would have provided it with the continuing authority to enforce the Consent Decree against HUD"). *See also Brown v. Plata*, 563 U.S. 493, 531-32 (2011) ("[A]ll prisoners in California are at risk so long as the State continues to provide inadequate care… in no sense are they remote bystanders in California's medical care system. They are that system's next potential victims"). Defendants' persistent and substantial noncompliance with numerous terms of the Settlement Agreement amply justifies an order extending the term of that Agreement under the standard set forth in Fed. R. Civ. P. 60(b)(5) and *Rufo v. Inmates of Suffolk County,* 502 U.S. 367 (1992). *See Thompson*, 404 F.3d at 834 (affirming order granting three-year extension in term of consent decree in light of defendants' noncompliance).

CONCLUSION

Given the passage of four years, Defendants' position is untenable. In fact, Defendants' performance is so substandard that Plaintiffs' counsel doubt that Defendants will ever achieve compliance with the requirements of the Settlement Agreement in the absence of a complete change in their behavior. In the midst of a pandemic in which jails and prisons are among the most dangerous places in the nation, Defendants are not even handling routine and expected medical challenges successfully. As a result, the class members have no option but to bear the risks of confinement in a facility in which more than one hundred COVID-19 infections are known to have occurred.

Plaintiffs accordingly request that the Court order the following relief. *First*, that Defendants submit within 30 days a detailed plan, including timelines, for achieving compliance

with each Provision of the Settlement Agreement for which they concede current non-compliance. *Second*, following the submission of Defendants' plan, that the Court schedule an evidentiary hearing to receive evidence, including but not limited to testimony from the independent medical and mental health monitors, regarding the causes of Defendants' failure to make progress in achieving compliance with numerous Provisions of the Settlement Agreement. *Third*, that the Court extend the term of the Settlement Agreement for an additional two years – to June 22, 2024 – to increase the chance that *current* class members will receive some benefit from the Settlement Agreement.

Respectfully submitted this 17th day of July 2020.

/s/Elizabeth Alexander
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

JEROME DUVALL, *et al.,*	*	
Plaintiffs,	*	
v.	*	Civil Action No. ELH-94-2541
LAWRENCE HOGAN, *et al.,*	*	
Defendants.	*	

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DECLARATION OF ELIZABETH ALEXANDER

****

I, Elizabeth Alexander, declare:

1. I am one of the counsel for the Plaintiff class in this case. I make this declaration in support of Plaintiffs' Motion for Enforcement and Further Relief.

2. Attached hereto are true and correct copies of the following materials, identified as numbered exhibits:

a. **Exhibit 1:** DPSCS Commissioner Michael Resnick's Semi-Annual Compliance Report, July to December 2019 (February 28, 2020).

b. **Exhibit 2:** Corizon's Semi-Annual Compliance Report: July 1 – December 31, 2019.

c. **Exhibit 3:** Centurion's Semi-Annual Compliance Report: July – December 2019 **[Redacted]**.

d. **Exhibit 4:** Dr. Michael Puisis' Semi-Annual Compliance Report (March 2, 2020).

e. **Exhibit 5:** Patient's Medical Record and Death Report (March 2, 2020) **[Filed Under Seal]**.

Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 17, 2020.

/s/Elizabeth Alexander
Elizabeth Alexander

EXHIBIT 1

State of Maryland

Department of Public Safety and Correctional Services

Michael R. Resnick, Esq., Commissioner

Division of Pretrial Detention and Services

DUVALL v. HOGAN SETTLEMENT AGREEMENT

Semi-Annual Compliance Report, July to December 2019

February 28, 2020

Pursuant to General Provision 34 of the Duvall v. Hogan Settlement Agreement (or "*Duvall*"), the Commissioner of Division of Pretrial Detention and Services (DPDS) hereby submits this semi-annual compliance report to the monitors for medical and mental health provisions with a copy to Plaintiffs' counsel for the reporting period July to December 2019 ("Reporting Period"). As required by this general provision, this report describes the status of compliance during the reporting period and further steps anticipated in the subsequent reporting period.

The Commissioner claims substantial compliance in the following medical and mental health care provisions of *Duvall:* **17 b; 20 c; 20 e, f, and g; 21 b, c, and d; and 23 a** (claims of substantial compliance for the Reporting Period are bolded). Additionally, there continues to be improvement on provisions 17, 18, 20, and 23. In the Reporting Period, there was significant work and progress towards achieving *Duvall* compliance and addressing the court-appointed medical and mental health monitors' observations; the work and progress are detailed in this submission.

I. General Updates & Progress

Staffing

Corizon Health, the medical health vendor, continues to ensure adequate staffing including key leadership positions at Baltimore Central Booking and Intake Center (BCBIC). As noted in the prior submission, staffing of BCBIC operational leadership and Baltimore-specific operational point-person have been instrumental in facilitating efficient communications between the Commissioner and medical staff with respect to *Duvall* compliance.

Regular Monitoring

As also noted in the prior submission, the Deputy Commissioner, appointed by the Commissioner as Compliance Coordinator (provision 27), chairs weekly meetings with the medical and mental health vendor's clinical management and audit team to review status of compliance, including corrective actions, with all provisions of *Duvall*. During the Reporting Period, Corizon's BCBIC operational and clinical staff personnel continued the weekly reviews of medication administration charts and quality reviews of completed initial intake screenings (IMMS) as recommended by the medical monitor. Additionally, the same personnel reviewed audit indicators for provisions 18, 20, 21, and

23 on a weekly basis. These weekly reviews have been instrumental in establishing a frequent feedback loop that presents near real-time data (versus the less frequent monthly Duvall compliance team audits) to the Commissioner and, therefore, allows for a more agile and timely monitoring and remediation framework.

Furthermore, on a weekly basis, both Corizon and Centurion's BCBIC facility-specific clinical team members meet to discuss clinic operational areas that impact care delivery and *Duvall* compliance. In these meetings, held at BCBIC, standing agenda items include intake, sick call, continuity of medication, and lab process. These meetings are instrumental in identifying and addressing any custody-related barriers to care delivery and communicating upcoming facility-related actions such as maintenance work or lockdowns that may affect patient flow in the facility.

On a monthly basis, the Chief Health Strategy and Operations Officer (CHSO) receives activity reports from the healthcare vendors that summarizes the prior month's healthcare delivery at BCBIC from intake to discharge. On a bimonthly basis, the Deputy Commissioner chairs Medical Advisory Council meetings with all healthcare vendors to review two months of healthcare data for opportunities for improvement, including identifying custody barriers to care.

External Subject Matter Experts

The Commissioner's office and Corizon have continued working closely with Rick Blackwell (a third-party subject matter expert whose credentials and terms of engagement with the Department were discussed in prior submissions) and Dr. Michael Gibbons (a third-party subject matter expert and physician) to remediate non-compliant areas of *Duvall*. During the Reporting Period, both provided guidance on developing more efficient processes and documentation concerning the medical health care provisions. Additionally, Dr. Gibbons worked closely with Dr. Puisis, Corizon physicians, and the independent CQI Team to develop systems and processes to facilitate independent provider chart reviews (see below).

DPDS CQI Team

The DPDS CQI Team, which was discussed in prior reports, has continued to review patient charts, identify areas for improvement, and recommend corrective actions. During the Reporting Period, the CQI Team reviewed a total of 19 patient charts. One corrective action, a provider in-service training, was recommended and conducted. DPDS expects the volume of monthly chart reviews to increase in subsequent reporting periods, along with additional opportunities to identify areas for improvement. The chart review methodology is available upon request. Briefly, the auditing physician utilizes sample selection techniques as recommended by Dr. Puisis and review the charts against a list of error codes. More recently, these error codes were further refined to account for errors originating from nursing staff versus providers. This refinement facilitates a targeted approach to addressing and monitoring opportunities for improvement in patient care.

Intake Screening

The Commissioner's Chief of Compliance, Integrity, and Accountability (CCIA) continues daily reviews of IMMS completion times, including working with Corizon's

operational leadership and personnel to investigate each instance of IMMS completion times exceeding the 4-hour threshold (1% of all intakes).

ADA Compliance

DPDS reports no changes with respect to the ADA Coordinator and specialized vans. Throughout the Reporting Period, collaborative activity between custody and healthcare staff to monitor patients with special needs continued. The ADA Coordinator, a BCBIC staff member and correctional officer reporting to the facility warden, continued *weekly* joint rounds with the ADA nurse, who is a Corizon employee. Additionally, the Department continued utilization of specially equipped and adapted vans to safely transport patients with mobility-related disabilities.

Electronic Patient Health Record (EPHR)

In the Reporting Period, the Department ceased efforts on reviewing responses to the RFP, which was issued in 2018, for a new electronic medical record, and began drafting a revised RFP. The new RFP is expected to be issued in the subsequent reporting period. However, in the interim, ITCD engaged with NextGen to discuss upgrades that will address some urgent issues. The Department convened meetings comprised of NextGen, DPDS, Clinical Services, healthcare vendors, and ITCD to solicit input for the updates an discuss implementation. As of this report submission, ITCD has communicated a November 2020 implementation date for the upgrades.

As a result of the progress and compliance actions implemented in this and prior reporting periods, discussed in detail below, the Commissioner claims substantial compliance on the following *Duvall* provisions 17 b; 20 c; 20 e, f, and g; 21 b, c, and d; and 23 a. We are hopeful about opportunities in the next reporting period to continue to collaborate with the medical and mental health vendor partners towards high quality healthcare delivery and *Duvall* compliance.

The remainder of this report discusses the claims of substantial compliance on the aforementioned provisions, including a list of source documents, which are available upon request, to support the claims of compliance. Provisions 17; 20 c, e, f, and g; 21 a, b, c, and d; and 23 a are discussed in detail below to substantiate claims of compliance. As required in provision 34, the report concludes with a chart outlining the status of compliance of all provisions, including any changes in the status during the Reporting Period, and steps anticipated in the subsequent reporting period to achieve compliance with *Duvall*. Detailed analysis on medical health care activity during this reporting is shared in an attached report produced by Corizon. Detailed analysis on mental health activity during this reporting is shared in an attached report produced by Centurion.

II. Discussion of Compliance Progress & Updates on Select Provisions

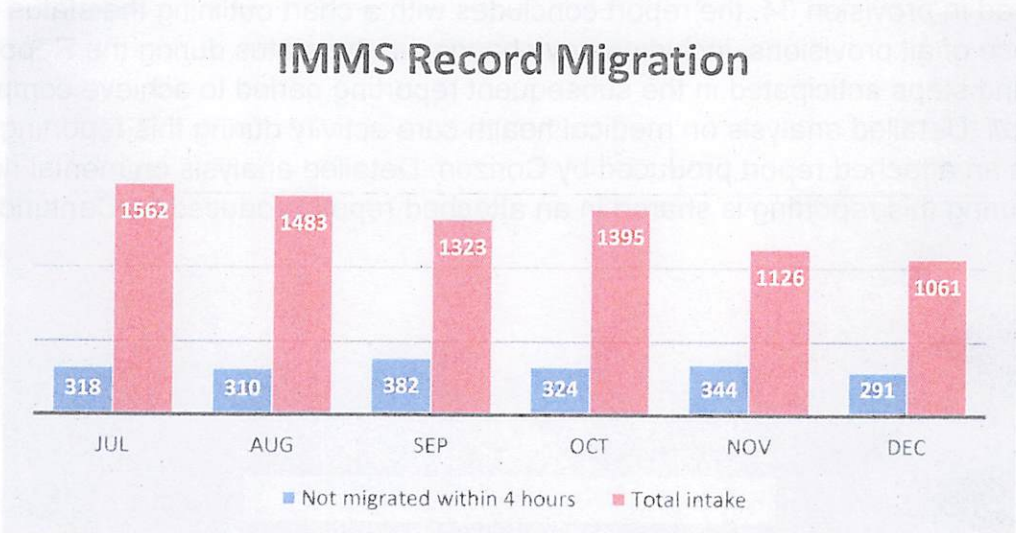
17. Intake and initiation of medication

a. The Commissioner shall promulgate and implement policy and procedure to provide adequate medical and mental health intake screening to all plaintiffs accepted for admission at BCBIC. Such policy shall provide that initial medical and mental health screening, including rejection or acceptance for admission of the plaintiff, is performed by a RN within four hours of arrival at BCBIC, provided the plaintiff is present for all four of those hours. If the plaintiff is rejected for admission and later returns to BCBIC, a new four-hour period within which the initial medical and mental health screening must be performed shall commence.

During the July 2019 to December 2019 reporting period, guidelines and internal monitoring strategies previously developed to gather and objectively analyze data in order to effectively remedy compliance issues under this provision were continued.

The CCIA monitors daily IMMS completion times in the Offender Case Management System (OCMS) as well as the transfer time elapsed of IMMS data from OCMS to the EPHR (Appendix A). The intake process involves multiple steps, one clinical, two operational, and three technological that are integral to the successful transfer of the IMMS record to EPHR. The CCIA worked with the Department's Information Technology and Communications Division (ITCD) to develop a threshold monitoring report which delineates timestamps for each step in the process: Arrival (or re-arrival if initially rejected) at BCBIC, Booking Interview, Fingerprinting, SID Match, IMMS Sent, and IMMS Received in EPHR.

Analysis of threshold monitoring reports show 9% of detainees exceed the 4-hour mark during the fingerprinting process, with 75% of IMMS records currently migrating to EPHR within 4 hours of arrival (or re-arrival if rejected). This is consistent with the IMMS record migration rate reported in the prior reporting period. Because the fingerprint process is the trigger point for migration of the IMMS record into EPHR, the CCIA will continue to focus efforts on measures to mitigate the amount of time spent on this step.



Lastly, during the Reporting Period, the CCIA's analysis revealed once again that 99% of detainees received their IMMS within the 4-hour timeframe mandated in this Settlement Agreement provision. As a secondary measure to address the 1% of detainees who did not meet the 4-hour requirement, all instances in which detainees did not complete their IMMS within 4 hours of arrival (or re-arrival) at BCBIC were investigated by the CCIA (Appendix B), with assistance from the Assistant Warden and Corizon's Assistant Director of Nursing. These monitoring and investigative measures have resulted in re-education of staff on booking floor scanning procedures, and the enforcement of accountability mechanisms such as Matters of Record regarding incidents that inhibited efficient detainee intake processing and data collection.

Source documents: DPDS Commissioner's IMMS Tracking Log, July-December 2019
Corizon Semi-Annual Data, July-December 2019
Appendix A- IMMS migration to EPHR raw data
Appendix B- IMMS not completed within four hours of arrival

b. The Commissioner shall ensure that any plaintiff who reports during intake screening that he or she is currently prescribed medication for a medical condition, or who presents with an urgent medical need, shall receive a physical assessment by a Clinician within 24 hours of the intake screening, or sooner if clinically indicated.

Provisions 17 b through e are indicators of quality for the adequacy of intake screening stated in 17 a (emphasis added):

> The Commissioner shall promulgate and implement policy and procedure to provide *adequate* medical and mental health intake screening to all plaintiffs accepted for admission at BCBIC...

An "adequate" medical and mental health intake screening of patients will result in the identification of prescribed somatic medication and assessment of urgent medical needs in $\leq$ 24 hours of IMMS (17 b), prescribed psychotropic medication and evaluation of urgent mental health needs in $\leq$ 24 hours of IMMS (17 c), administration of first dose of identified medication (17 d), and, finally, documentation of the first dose of identified medication (or its discontinuation) (17 e). In other words, 17 b through e are downstream quality indicators of the adequacy of intake assessment; an adequate, high-quality intake will address all areas stated in 17 b through e. Many opportunities exist for arriving to a high-quality intake. However, one of the downstream indicators has shown consistent progress over the Reporting Period. Audit data for 17 b communicate compliance consistently month-over-month (see chart below).

Audit Indicator	Jul	Aug	Sept	Oct	Nov	Dec	*Totals*
There is documentation on the IMMS of an urgent medical and/or mental health referral	92%	85%	91%	95%	93%	89%	*91%*
There is documentation of same arrestee's name as an urgent referral on the IMMS Referral Log, same date as IMMS	100%	100%	100%	100%	100%	95%	*91%*
Medical Provider encounter for urgent referral completed within 24 hours of intake screening, or sooner if clinically indicated	90%	92%	91%	98%	96%	96%	*94%*
Score Summary for SA 17B:	*94%*	*92%*	*94%*	*98%*	*96%*	*93%*	*95%*

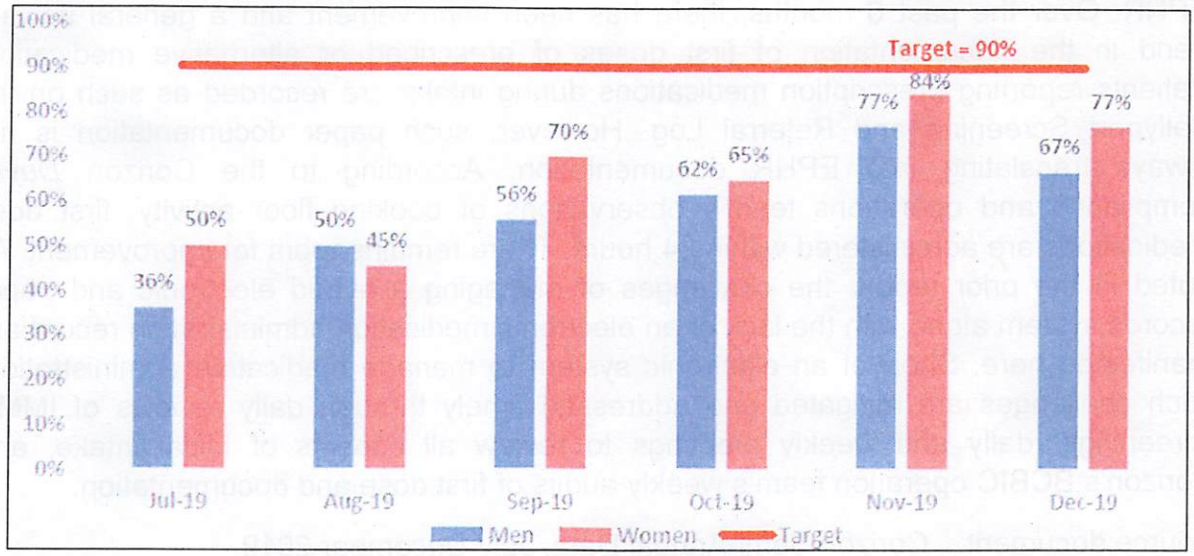
Source document: Corizon Semi-Annual Data, July-December 2019

c. The Commissioner shall ensure that any plaintiff who is identified during intake screening as currently prescribed psychotropic medication (unless he or she receives a bridge order as provided in paragraph 25.b.) or as having an urgent mental health need, including a suicide risk, shall receive a mental health evaluation by a Mental Health Practitioner within 24 hours of the intake screening, or sooner if clinically indicated.

During the intake screening, urgent mental health referrals are documented. According to Corizon analysis for this reporting period, such referrals are documented on the IMMS, names of the urgent referral patients appear on the mental health referral log marked with an 'urgent' disposition, and these patients are seen by the medical provider (per DPSCS policy) and referred to the mental health provider.

Audit Indicator	Jul	Aug	Sept	Oct	Nov	Dec	*Totals*
There is documentation on the IMMS of an urgent or emergent referral to mental health	97%	78%	66%	79%	70%	58%	*75%*
There is documentation of same arrestees name on the urgent mental health referral log, same date as the IMMS	64%	64%	52%	36%	41%	23%	*47%*
There is a medical provider encounter for the urgent or emergent mental health need completed within 24 hours of the intake screening or sooner, if clinically indicated	81%	81%	79%	96%	98%	100 %	*89%*
There is documentation in EPHR from the medical provider referring the individual to the mental health provider	87%	68%	78%	90%	83%	96%	*84%*
There is documentation of a mental health provider encounter for urgent mental health referral completed within 24 hours of medical provider referral, or sooner if clinically indicated	96%	93%	67%	57%	40%	38%	*65%*
Score Summary for SA 17C:	*85%*	*77%*	*68%*	*71%*	*66%*	*63%*	*72%*

Centurion data for this reporting period shows noncompliance but upward trends for this provision.



Source documents: Corizon Semi-Annual Data, July-December 2019
Centurion Semi-Annual Data, July-December 2019

d. To address the needs of plaintiffs who, prior to being taken into custody, were prescribed medication that, if interrupted, would pose a risk of adversely affecting health, the Commissioner shall promulgate and implement policy and procedure to ensure that such plaintiffs receive such medications within 24 hours of the intake screening or subsequent encounter at which the plaintiff first reports such medications to a Medical Professional or Mental Health Professional, or sooner if clinically indicated, unless: (i) a Clinician determines that such continuation is not medically appropriate, including without limitation a determination that continuation is not medically appropriate pending verification of the reported prescription, provided that appropriate verification efforts shall be promptly undertaken; or (ii) despite reasonable efforts consistent with the gravity of the need for the medication, DPDS is unable to timely obtain the medication. The Commissioner shall promulgate and implement policy and procedure requiring reasonable efforts, consistent with the gravity of the need for the medication, to ensure that such plaintiffs are timely provided with the medication or a pharmaceutical equivalent.

Please see below (e).

e. The intake screening, any physical or mental health assessment, and any decision regarding the continuation or non-continuation of reported prescription medication shall be documented in the plaintiff's medical record. If a medication is not continued, the clinical justification for that decision shall be documented in the plaintiff's medical record.

According to the Corizon analysis for this reporting period, nearly all patients (96% average, from 88% in July to 95%-100% in all subsequent months) identified during intake as being on chronic or acute medications had documentation evidencing that medication was ordered. Nearly all patients for whom alternative medications were ordered or whose medications were not continued are documented as such on the

EPHR. Over the past 6 months, there has been improvement and a general upward trend in the documentation of first doses of prescribed or alternative medication. Patients reporting prescription medications during intake are recorded as such on the Sallyport Screening and Referral Log. However, such paper documentation is not always translating into EPHR documentation. According to the Corizon *Duvall* compliance and operations team's observations of booking floor activity, first dose medications are administered within 24 hours. There remains room for improvement. As noted in the prior report, the challenges of managing a hybrid electronic and paper records system along with the lack of an electronic medication administration record are manifested here. Short of an electronic system to manage medication administration, such challenges are mitigated and addressed timely through daily reviews of IMMS screenings, daily and weekly meetings to review all aspects of initial intake, and Corizon's BCBIC operation team's weekly audits of first dose and documentation.

Source document: Corizon Semi-Annual Data, July-December 2019

20. Interaction Between Medical and Custody

c. The Commissioner shall ensure that Medical Professionals and Mental Health Professionals have access to current plaintiff location information for all plaintiffs on at least a daily basis.

Since the last reporting period, Corizon and Centurion has worked with their BCBIC clinical staff to provide access to OCMS for use in accessing current patient location information. OCMS provides the most accurate patient location information. To date, over 90% of the facility clinical staff have received access to the OCMS, the system of record for patient location. The aim is to achieve 100% OCMS access rate, DPDS is working with the vendor staff to monitor and provide OCMS access and adequate training. In the meanwhile, custody continues to transmit patient location rosters daily which are posted in key locations for any and all health professionals to use to determine a patient's location information.

Source document: Corizon OCMS Access Tracking Log

e. The Commissioner shall promulgate and implement policy and procedure to ensure that plaintiffs classified as H1 are housed in temperature-controlled housing, to the extent sufficient temperature-controlled housing is available, from May 1 through September 30. Temperature-controlled housing includes those housing units of BCBIC, WDC, JI Dorms 600 and 700, and such other facilities as the parties agree constitute temperature-controlled housing because such units reliably control temperature to less than 88° Fahrenheit.

BCBIC is an air-conditioned facility.

f. In the event that the temperature control system of a housing unit used for H1 plaintiffs fails to maintain the temperature below 88° Fahrenheit, the Commissioner shall, to the extent possible and safe, transfer such H1 plaintiffs to other H1 housing. If insufficient H1 housing is available, appropriate Clinicians shall determine which H1 plaintiffs are priorities for transfer to the available H1

housing. Respite in air-conditioned areas shall be provided for such plaintiffs, as well as other plaintiffs as required pursuant to Maryland Division of Pretrial Services, Directive 185.008 (2009).

BCBIC is an air-conditioned facility.

g. In the event that any housing unit designated as temperature-controlled fails to reliably control temperature to less than 88° Fahrenheit while plaintiffs designated as H1 are housed there, such housing unit shall no longer be considered temperature-controlled housing for purposes of this Settlement Agreement until the Commissioner provides evidence that such housing can now be expected to reliably control temperature to less than 88° Fahrenheit under comparable conditions in the future.

BCBIC is an air-conditioned facility.

21. Accommodations for plaintiffs with disabilities

a. The Commissioner shall promulgate and implement policy and procedure ensuring the timely delivery of necessary medical supplies to plaintiffs with disabilities. The Commissioner shall promulgate and implement policy and procedure to ensure that plaintiffs with disabilities that require special accommodations are housed in locations that provide those accommodations, including, as applicable, toilets that can be used without staff assistance, accessible showers, and areas providing appropriate privacy and sanitation for bowel disimpaction.

During the July 2019 to December 2019 reporting period the Department with the help of its medical partners have continued its efforts towards implementing policy and procedures to provide housing options with conditions of confinement appropriate to meet the protection, programming, and treatment needs of detainees with disabilities. Furthermore, the medical vendor has worked in tandem with the facility custody staff to improve upon the timely delivery of necessary medical supplies to detainees with disabilities.

Once a detainee has been identified during IMMS or direct intake as presenting with physical or mental disabilities requiring special attention and identification of services under ADA, an immediate referral is to be made to the appropriate clinician or special care provider. The evaluating clinician determines the level of medically permissible activity and medically necessary housing requirements, and should document accordingly all detainees with disabilities in the medical record (written and electronic) for admission to the ADA housing units.

The facility has undergone a significant number of upgrades in the years since designating 3 Center (males), 4 South (males), 4 Center (females), and 5 South (females) housing areas as ADA-designated housing units ("ADA housing"). DPDS implemented these upgrades, which amounted to over $1 million, with the objective of ensuring adequate accommodations for patients with special needs. A shower on every housing unit was upgraded to include the installment of ADA-approved benches,

handrails, and shower heads; while dormitory housing units were upgraded and equipped with ADA-approved showers and toilets. Additionally, all ADA-designated, wheelchair accessible cells located in the North and Center towers were upgraded to be compliant and included the installation of handrails (Appendix C).

In order to ensure that detainees with disabilities are housed in locations that provide ADA accommodations, several tracking mechanisms requiring considerable efforts of the interdisciplinary and cross-departmental team have been implemented, and are monitored on a daily, weekly, and monthly basis. A Transfer of Housing Form is initiated for each detainee requiring special housing. Additionally, weekly ADA Detainee Logs (or "ADA Logs") are maintained by the designated ADA Nurse; and weekly ADA Audit Reports are conducted by the ADA Coordinator (custody officer) and ADA Nurse to monitor detainees' disposition, and access to accommodations and medical supplies/equipment. Data from these mechanisms are reviewed and cross-referenced by the CCIA weekly and monthly to verify housing accommodation.

During the Reporting Period, the CCIA's audit of all detainees listed on the ADA log revealed that 73% of them were housed in ADA housing in accordance with their noted disabilities (Appendix D). The remaining 27% of detainees listed on the ADA Log were also housed in locations that provided special accommodations (Appendix C), including toilets that can be used without staff assistance, accessible showers, and areas providing appropriate privacy and sanitation for bowel disimpaction.

As regards ensuring the delivery of necessary medical supplies/equipment to detainees with disabilities, several tracking mechanisms are maintained by the medical vendor staff. Upon distribution of Durable Medical Equipment (DME) or supplies, the issuing nurse completes a Receipt of Accountable Items Form for detainees' signature during time of delivery. The signed forms are kept in a binder in the dispensary and, at the end of each month, a copy is sent to Corizon's Duvall audit team and to Corizon's Medical Records unit. Additionally, a monthly Medical Supplies and Receipt Log is kept by the wound care nurse.

The CCIA has developed a system to review and cross-reference data from these mechanisms with the DME, Bottom Bunk, and Medications Query extracts from EPHR on a monthly basis to verify the delivery of equipment and supplies ordered for and received by each detainee (Appendix E1-E4; summary ADA Monitoring Analysis in Appendix F).

During the Reporting Period, the CCIA's analysis revealed that 76% of all detainees listed on the ADA Logs and requiring special accommodations had an order in EPHR for a specific medical supply. An additional 9% of detainees listed on the ADA Logs had a notation of the necessary medical supplies/equipment in their individual Assessment Plans in EPHR. However, there was no order attached. The analysis further revealed that 74% of all detainees listed on the ADA Logs and requiring special accommodations had a Bottom Bunk order in EPHR, with an additional 7% of the same population having a Bottom Bunk notation in their individual Assessment Plans in EPHR as well (Appendix F).

In conclusion, while technological limitations remain at the center of the interdisciplinary and cross-departmental team's ability to achieve compliance, the lack of standard operating procedures, memorialized processes, and accountability further impede the team's ability to maximize existing functionality of OCMS and EPHR. Moreover, proper documentation and follow through are the keys to gaining compliance.

Source documents: ADA Detainee Log
Weekly ADA Audit Reports
Various EPHR Reports & Derivative Analysis (Appendices E1-E4, Appendix F)

b. A staff member with appropriate training shall be designated to address concerns of plaintiffs with disabilities regarding accommodations for their disabilities and to assist in the resolution of any security issues that may threaten provision of necessary accommodations.

Consistent with compliance actions documented in prior reports, a custody officer continues to be dedicated to BCBIC, and reporting to that facility's warden. The officer, who is the same individual identified in all prior reports as the ADA Coordinator and who was interviewed by the medical monitor during his last site visit, continues to be the Commissioner's designee for addressing and resolving housing concerns of patients with disabilities. The Commissioner monitors the ADA Coordinator's activities with respect to this provision through reviews of the weekly reports compiled by the ADA Coordinator and the ADA Nurse summarizing observations, issues, and issue resolutions of their weekly ADA rounds. These rounds are completed with both team members present, and include rounds on each designated ADA housing unit, as well as each housing unit throughout the facility to ensure that there are no additional ADA accommodation requests, regardless of housing unit. During these weekly rounds, the joint ADA monitoring team engages the custody officers on post of the housing unit to inquire about patients with any challenges with mobility, bed assignments or other need that may indicate further investigation or assessment in whether an accommodation may be needed. During these rounds there is dialogue directly with the patients to determine whether there are any unmet medical needs or any security concerns that may directly or indirectly interfere with the necessary accommodations.

Source document: Weekly ADA Audit Reports

c. Plaintiffs with disabilities shall be provided with access to specialized medical services, such as dentists, mental health treatment, and off-site medical specialist treatment, on the same basis as plaintiffs without disabilities.

The Department and its medical and mental health vendor partners have continued to implement several mechanisms to collect, quantify, and cross-reference specialized medical services appointments for patients with disabilities.

Appointment logs are maintained by the medical vendor as well. A medical appointment list and emails containing the daily mental health clinic appointments are shared with the custody liaison. Additionally, a designated officer acts as the liaison between

medical/mental health and custody staff to ensure that detainees are escorted to their appointments.

The Deputy Commissioner and CHSO review all appointments and services for the facility, including each missed encounter to identify causes and opportunities for improvement, and to ensure that the patients have been rescheduled and seen.

Lastly, towards ensuring parity of care and service provision, and in response to the medical monitor's January 2019 site visit observations, two ADA-compliant electronic exam tables were procured and installed in BCBIC- one each for females and males.

Source documents: BCBIC Custody Appointments Tracking Log, July-December 2019
BCBIC Sick Call collection protocol
Corizon MAC Reports
Centurion MAC Reports

d. The Commissioner shall promulgate and implement policy and procedure to use a vehicle with adaptations to make it suitable for the safe transportation of persons with mobility-related disabilities to transport plaintiffs with such disabilities, unless such vehicle is not available in an emergency situation.

DPDS has continued the utilization of 2 specially equipped and adapted vehicles designated for the safe transport of patients with mobility-related disabilities to and from court, and hospital/off-site medical appointments.

Source document: DPSCS Inmate Transport Security, Executive Directive OPS.110.0003

23. Sick Call

a. Plaintiffs shall daily have the opportunity to request health care. Nursing staff shall make daily rounds to collect sick call requests from plaintiffs who have no access to a sick call box.

A sick call box is located inside each housing unit. Nursing staff retrieve health sick call slips daily from each box. There is confirmation with the housing unit officer to validate that the healthcare staff has retrieved the form from the box as well as the number of forms received. This confirmation between the healthcare and custody staff is documented in the Sick Call Pick-Up Tracking Form which is reviewed and signed by both custody and nurse during the pickup. All housing areas have a sick call box and therefore all plaintiffs have access to a sick call box.

Source document: Sick Call Pick-Up Tracking Form

III. Status of Compliance on All Provisions, Changes in Status, and Steps Anticipated in Subsequent Reporting Period to Achieve Compliance

Provision	Status of Compliance, including Change in Status	Steps Anticipated in Subsequent Reporting Period
17	Noncompliant in all aspects of this provision, except the following change in status: • Compliance on 17 b- detailed discussion above	• Continued monitoring and audits by the site operations team, ramp up of the DPDS CQI Team's intake quality reviews
18	Noncompliant in all aspects of this provision. Updates this Reporting Period: • CQI system was setup with recurring meetings • 19 charts were reviewed by the independent physician auditor • Results of independent audits were shared with Dr. Puisis • Corrective actions were recommended by the independent physician auditor • Hypertension in-service training, a recommended corrective action, was completed by providers	• Continued chart reviews by the independent physician auditor • Increased chart review volume • Additional anticipated corrective actions to address findings • Monitoring steps to be implemented to ensure correct actions are effective
19	Noncompliant in all aspects of this provision. Updates this Reporting Period: • Lab interface issues were resolved by ITCD- audit pending to ensure all labs orders are being sent and results received	• Improve supervisory review and coaching of MAR documentation process • Explore oversight for monitoring and reviewing MAR completion • Incorporate follow-up to abnormal results in the independent chart reviews
20	Continued compliance on 20 c, e, f, and g. Detailed discussion above. Discussion required with Dr. Puisis to review 20 a, b, and d for compliance.	• Continued monitoring and identifying/mitigating custody and other barriers to care delivery
21	• Continued compliance on 21 b and d. • 21 a continues to be non-compliant • Change in status: Compliance on 21 c- detailed discussion above.	• Ongoing monitoring by CCIA • Ongoing weekly joint custody-medical ADA rounds

22	Noncompliant in all aspects of this provision.	• Ongoing provider reviews of documentation with continued monitoring to ensure patients obtain necessary specialty care and follow-ups
23	Noncompliant in all aspects of this provision, except the following change: • 23 a- detailed discussion above	• Increased supervision and monitoring to avoid stamping and credential documentation errors • Corizon recommends increased supervision and review of EPHR by healthcare staff to avoid overlapping appointments
24	Noncompliant in all aspects of this provision.	• Issuance of new RFP: As discussed above, Department is drafting a revised RFP • Implement upgrades to the current system as a stopgap measure: As discussed above, ITCD has communicated a November 2020 implementation date for the upgrades • Corizon recommends increased supervision and accountability to ensure availability and review of paper charts during patient encounters
25	Noncompliant in all aspects of this provision.	• Provision of treatment on IMHU which has started this Reporting Period • Ongoing implementation of a Step-Down Unit which was initiated in this Reporting Period • Ongoing collaboration with court and state hospital workers to ensure continuity of care • Implementation of the Columbia Suicide screening scale- this was implemented in the Reporting Period