

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

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Civ. No. 99 - 1435 (GAG/MEL)
)	
THE COMMONWEALTH OF PUERTO RICO,)	
<i>et al.</i> ,)	
)	
Defendants.)	
_____)	

REMEDIAL ORDER TO ENSURE TIMELY PROSPECTIVE PAYMENTS TO PROVIDERS SERVING PEOPLE WITH DEVELOPMENTAL DISABILITIES

I. BACKGROUND

This Court has repeatedly raised its concerns regarding the Commonwealth’s delayed payments to community providers serving people with developmental disabilities (“DD”),¹ in light of multiple orders in this case requiring the Commonwealth to provide these people with supports and services sufficient to meet their needs. In the face of these delays, *see* Joint Compliance Coordinator (“JCC”) Resp. to Commonw.’s Informative Mot., Apr. 22, 2016, ECF No. 1824 and United States’ Resp. to Defs.’ Informative Mot., Apr. 22, 2016, ECF No. 1823, the Court put the Commonwealth on notice that the Court was prepared, if necessary, to issue a garnishment order to escrow funds from the Commonwealth to ensure future timely payments to

¹ The Court stated that it would issue “any and all corresponding orders to ensure that the participants are not left without essential services.” Order, Apr. 9, 2016, ECF No. 1802. The Court also stressed that “[u]nder no circumstances can the services to the participants be curtailed, and institutionalization is not an alternative.” Order, Apr. 8, 2016, ECF No. 1799. The Court emphasized that it “will issue any appropriate relief warranted to ensure the participants’ welfare.” Order, Apr. 11, 2016, ECF No. 1815.

community providers serving people with DD in the Commonwealth's system. Order, Apr. 22, 2016, ECF No. 1825. The Court stressed that late payments to DD providers have a direct negative impact on individuals served in the community and that the effect on them can be "devastating and beyond repair." *Id.* In furtherance of its Order, the Court scheduled an emergency hearing and conference for the parties to address the causes of the late payments to DD providers. Orders, Apr. 22, 2016, ECF Nos. 1825, 1827.

On April 26, 2016, the parties met in the Court's chambers. On behalf of the JCC, the Hon. Federico Hernandez-Denton chaired the meeting. In addition to counsel for the parties, participants included the Attorney General of Puerto Rico, the Hon. Cesar Miranda; the Commonwealth Secretary of the Treasury, the Hon. Juan Zaragoza; the Commonwealth Secretary of Health, the Hon. Ana Rius, M.D.; and the Director of the Puerto Rico Office of Management and Budget, Mr. Luis Cruz. Following their meeting, the parties reported to the Court in a brief hearing that they had agreed on measures to ensure payment to DD providers in a timely manner to minimize the prospect of providers closing community homes due to late payment of invoices.

The Court was informed of the particular aspects of the agreement, as well as the firm commitment of the foregoing senior Commonwealth officials to ensure payment to DD providers in a timely manner. In particular, these officials all agreed that services for individuals with DD are essential under the Constitution of the Commonwealth of Puerto Rico, that failure to make timely payments for these services would place the health, safety, and welfare of people with DD in jeopardy, and that invoices for these essential services will be given priority status for payment and shall be paid in a timely manner, regardless of the current fiscal crisis.

After underscoring its previously stated concerns about delayed payments to DD providers and the potential harm to people served by those providers, this Court preliminarily endorsed the proposed agreement of the parties and directed the parties to promptly submit a joint proposed order memorializing the agreement for the Court to enter as an order. Mins. of Proceedings, Apr. 26, 2016, ECF No. 1832.

The Commonwealth then filed a motion for additional time within which to reach agreement with the United States on outstanding provider payment issues. Mot. Req'g Extension of Time, May 3, 2016, ECF No. 1833. The next day, the Court granted the motion, setting a final deadline of May 10, 2016. Order, May 4, 2016, ECF No. 1834.

On May 10, 2016, the United States filed a joint proposed order on behalf of the parties. As set forth below, the parties' joint proposal is consistent with the oral agreement presented to the Court at the April hearing, but it differs in two respects: 1) the timeframe within which to effect payments to providers has been reduced from 45 days to 35 days; and 2) the Commonwealth will not make electronic deposits in the short term, but commits to develop and implement a centralized accounting system to enable direct electronic deposits going forward.

The Court has reviewed the parties' joint proposal and, for good cause shown, now orders as follows:

II. REMEDIAL ORDER TO ENSURE TIMELY PROSPECTIVE PAYMENTS TO PROVIDERS TO PROTECT THE HEALTH, SAFETY, AND WELFARE OF PEOPLE WITH DD SERVED BY THOSE PROVIDERS

- A. Protections, services, and supports to meet the individualized needs of people with DD are “essential services” per existing Court orders in this case. Invoices for these essential services shall be given priority status for payment and must be paid in a timely manner consistent with the terms set forth below regardless of any fiscal crisis or liquidity problems.**

- B. Individuals with DD currently living in integrated community settings shall not be placed in institutional settings as a response to fiscal constraints; instead, the Commonwealth shall ensure that there are sufficient protections, services, and supports to meet their needs in integrated community settings.
- C. Pursuant to the Joint Compliance Action Plan (“JCAP”), the Commonwealth is obligated to pay DD providers on time each month for legitimate invoices. JCAP, Oct. 19, 2011, ECF No. 1185-1, at 6. To comply with this requirement, the Commonwealth shall ensure that within 35 calendar days of receipt of a provider invoice by the Commonwealth’s Intellectual Disabilities Program (“IDP”), each DD provider receives payment of the full base amount for all individuals with DD served that month by the provider. The base amount is that fixed, recurring monthly amount set forth in the provider contract for each individual with DD, exclusive of other variable expenses that may arise in any given month for medications, health care co-payments, hospital costs, and other miscellaneous costs; the base amount is often the only amount included in a monthly provider invoice. The Commonwealth shall ensure that each DD provider receives payment of this full base amount for all individuals with DD served that month by the provider within the 35-day period. The guaranteed, automatic receipt of these base amounts on or before the 35-day deadline will help ensure that DD providers will not be forced to close a community home due to late payment of invoices.
- D. If the Commonwealth fails to provide full base payments to any DD provider within the 35-day period, the Commonwealth shall provide written notice to the JCC and the United States, within three business days of the missed deadline, specifying the name of each provider not paid in a timely manner, along with the 35-day payment due date associated with each invoice, and the amount that has not been paid within the 35-day period.
- E. The Commonwealth shall take all necessary steps to review, process, approve, and pay any variable non-base expenses within 35 days of receipt of the DD provider invoice. As is current practice, DD providers shall only be required to submit one monthly invoice that contains line items for both the base amounts and variable expenses, if any.
- F. In order to shorten and streamline the DD provider invoice/payment process, the Commonwealth shall take the following steps:
 - 1. The Commonwealth shall accept receipt of DD provider invoices via electronic transmission, such as by email or photographic image sent by a smart phone. Submission by these or other equivalent means shall constitute proper “receipt” of a provider invoice by the IDP. For those providers that do not currently have the technological capability to submit invoices via electronic transmission, the Commonwealth shall take effective steps to facilitate prompt receipt of invoices by other means.

2. The Commonwealth shall ensure that review, processing, and approval of each DD provider invoice by the IDP and the Finance Office of the Commonwealth's Department of Health collectively will be finalized within 15 days of receipt of the provider invoice by the IDP.
 3. As soon as it is feasible, the Commonwealth commits to developing and implementing an effective system to enable prompt electronic direct deposit of payment to DD providers on provider invoices. Upon implementing such a system, the Commonwealth shall take all necessary steps to obtain provider approval, as well as financial institution routing numbers and other pertinent details, so as to ensure safe, secure, and prompt payment to DD providers via direct deposit.
- G. The Commonwealth and its Office of Management and Budget confirms that it has released the "reserves" attached to budgetary funding for the IDP, including the approximately five million dollars designated for reserve in the current fiscal year. Consistent with prior orders of this Court, the parties recognize that any reduction to or other constraint on the budget of the IDP could cause the interruption of critical services that would violate a host of Court orders in this case and would imperil the health, safety, and welfare of vulnerable people with disabilities. *See* Order, Apr. 30, 2013, ECF No. 1368 ("[a]ny reduction in the [IDP] budget could cause the interruption of critical services that would imperil the health, safety, and welfare of vulnerable persons with disabilities"). Per the Court's directive at the emergency hearing on April 26, 2016, the parties will develop and file with the Court a joint plan to prevent future reductions to or constraints on the budget of the IDP.
- H. This order, as well as all prior Court orders in this case, shall have ongoing effect and shall apply not only to the current Commonwealth administration, but to all subsequent Commonwealth administrations. The Court has repeatedly stressed in its many transition orders over the years the need for continuity across administrations in complying with its orders. *See, e.g.*, Second Supp. Transition Order, Mar. 22, 2016, ECF No. 1795.

SO ORDERED.

In San Juan, Puerto Rico, on this 11th day of May, 2016.

s/ Gustavo A. Gelpi
GUSTAVO A. GELPI
United States District Judge