

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

UNITED STATES OF AMERICA,)
)
 Plaintiff,) Civil Action No. 1:09-cv-00490-SS
)
 v.)
)
 STATE OF TEXAS, et al.,)
)
 Defendants.)

**JOINT MOTION FOR POSTPONEMENT IN, AND
CHANGES IN TIMING OF, MONITORING VISITS**

TO THE HONORABLE SAM SPARKS:

Plaintiff, United States, and Defendants, State of Texas *et al.*, (“State,” and collectively “the parties”), respectfully request a four-month postponement in the monitors’ scheduled site visits in connection with the Settlement Agreement in the above-captioned matter. The parties further request that the subsequent round of monitoring visits be conducted over the course of nine, rather than six, months. This postponement and extension of the timing of visits will allow the parties to significantly restructure the Settlement Agreement monitoring process to increase efficiency and focus on outcomes.

As the parties noted in their June 25, 2014 joint filing (“June 25 filing”) (Dkt. #21), the parties and monitors are working in earnest to implement a comprehensive restructuring of the monitoring process to place greater focus on outcomes for the individuals whose rights the Settlement Agreement is designed to protect. Simultaneously, the parties are in discussions regarding steps the State will take to speed compliance, and to strengthen services for persons moving from the SSLCs to live in community settings, consistent with the Americans with Disabilities Act of 1990, 42 U.S.C. § 12131, *et seq.* and the Supreme Court’s decision in

Olmstead v. L.C., 527 U.S. 581 (1999). The parties anticipate that the resulting restructuring will facilitate the goals of strengthening the supports and services provided to individuals transitioning to the community; more clearly delineate the State's obligations and compliance expectations under the Settlement Agreement; establish more concrete methods for evaluating compliance; accelerating the pace of the State's compliance; and provide a clearer path toward the State's successful exit from the Settlement Agreement. The State's existing, substantive obligations under the Settlement Agreement will remain unchanged.

In light of the laborious and time-intensive nature of this significant restructuring effort, the parties anticipate continuing their negotiations over the next several months. Once negotiations are complete, the parties intend to explain in more detail, and seek the Court's approval over, any resulting proposed amendment to the Settlement Agreement, subject also to approval by the Texas Legislature that may be required by State law.

Because developing and implementing the complex, restructured monitoring process and completing all the associated preparatory tasks will require significant time on the part of the monitors, the parties seek the Court's approval for a four-month postponement in the upcoming monitoring visits. During this postponement, the monitors, working extensively both independently and collaboratively with the parties, will undertake a comprehensive effort to develop compliance measures for at least most of the provisions of the Settlement Agreement that will move the monitoring toward an outcome-based, approach. Simultaneously, the parties and monitors plan to restructure the current monitoring process to best support this new approach.

In particular, under the current monitoring structure, three teams of monitors, each led by a lead monitor, evaluate compliance at each facility at least every six months.

Settlement Agreement §§ III.E, F, H. Each team is assigned to visit the same four or five facilities for each tour. During their visits, the teams perform comprehensive, week-long facility reviews that are heavily focused on process, based on the current Settlement Agreement monitoring requirements. Each review requires significant pre-visit preparation on the part of both the monitors and the facilities, exhaustive on-site participation, and intensive post-tour work. Each visit culminates in a voluminous report, often longer than 500 pages, on the facility's progress. Combined, the three monitoring teams issue 26 reports per year.

In an effort to streamline and focus the monitoring process, and in light of the upcoming retirement of one of the lead monitors, the parties intend to move to an outcome-based monitoring system in which two, rather than three, teams of monitors will evaluate the facilities' compliance with the Settlement Agreement. The two newly reconstituted teams of subject area monitors will monitor at least most of the sections of the existing agreement from an outcome-based perspective.¹ The monitors will perform Quality Service Reviews ("QSRs"), taking an in-depth look at the services provided to a subset of individuals at the facilities, to determine whether specified outcomes have been met.

Currently, the parties are in the process of finalizing a list of outcomes and data points as a roadmap for determining whether these outcomes have been achieved. The monitors will

¹ A small number of remaining sections are, by nature, more process-based and may continue to be monitored through process measures, although the monitors and parties are exploring some forms of outcome-based measures for these remaining provisions, also.

begin work on designing the QSRs in earnest in September 2014, after they complete the current round of monitoring visits at the end of August 2014.

The parties expect to complete negotiation of the community provisions and to finalize the elements of the restructuring of the monitoring process by the end of 2014. Further, the monitors plan to conduct pilot visits under the new, developing structure in November and December 2014. The parties anticipate that full monitoring under the new, finalized structure will begin in January 2015.

Further, because of the extensive changes to the monitoring structure and move from three teams to two, the parties propose that the next round of compliance visits occur over nine months, rather than six, as is the current practice under section III.H of the Settlement Agreement. The parties anticipate memorializing this proposed change as part of their negotiations of the comprehensive amended Settlement Agreement.

The parties intend to seek legislative approval, if such approval is required by State law, of the amended Settlement Agreement during the next legislative session, which is scheduled to begin in January 2015. In the meantime, once negotiations are complete, the parties anticipate operating under the amendment as an interim measure, with the understanding the amendment is expressly conditioned upon obtaining legislative approval, if required, and court approval.

Wherefore, for the foregoing reasons, the parties request that the Court grant their Joint Motion for Postponement in, and Changes in Timing of, Monitoring Visits.

Respectfully submitted,

FOR THE UNITED STATES:

Dated: August 26, 2014

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CERTIFICATE OF SERVICE

I hereby certify that I have electronically submitted for filing, a true and correct copy of the above and foregoing Joint Motion for Postponement in, and Changes in Timing of, Monitoring Visits in accordance with the Electronic Case Files System of the Western District of Texas on this 26th day of August, 2014, which will send notification to the following:

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ORDER

On this date, the Court considered the Parties' Joint Motion for Postponement in, and Changes in Timing of, Monitoring Visits. It appearing to the Court that the motion is meritorious and well taken, it is accordingly ORDERED that:

1. The regularly scheduled six-month monitoring visits shall be suspended from September 2014 to December 2014, to resume in January 2015. Pilot visits may occur in November and December 2014, as determined by the monitors and parties.
2. The next round of monitoring visits, to commence in January 2015, will occur over a nine-month period, through August 2014.

Signed this ____ day of _____, 2014

HON. SAM SPARKS
UNITED STATES DISTRICT JUDGE