EXHIBIT 1

PLAINTIFFS' AND UNITED STATES' PROPOSED REMEDIAL ORDER

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

ERIC STEWARD, *et al.*, *Plaintiffs*,	§	
v.	§	
CECILE YOUNG, in her official capacity as the Executive Commissioner of Texas' Health and Human Services Commission, *et al.*, *Defendants.*	§	
	§	Case No. 5:10-CV-1025-OLG
THE UNITED STATES OF AMERICA, *Plaintiff-Intervenor*,	§	
v.	§	
THE STATE OF TEXAS, *Defendant*.	§	

ORDER OF INJUNCTION

Plaintiffs, individuals with intellectual and developmental disabilities (IDD), and two organizational plaintiffs, brought suit against the Commissioner of the Texas Health and Human Services Commission on December 20, 2010. Docket no. 1. On October 10, 2018, Plaintiffs filed the operative Third Amended and Supplemental Complaint. Docket no. 560. The United States filed its complaint in intervention on September 20, 2012. Docket no. 137. A twenty-day, non-jury trial was held in October and November 2018. On June 17, 2025, this Court issued post-trial Findings of Fact and Conclusions of Law. Docket no. 717.

As set forth in the Court's Findings of Fact and Conclusions of Law concerning the Plaintiff Class, as defined in its Order granting Plaintiffs' Second Amended Motion for Class Certification

(Docket no. 287)[1], the Court reviewed the admissible evidence adduced at trial, including the testimony of several of the named plaintiffs, their families and support staff, lay witnesses, service providers, HHSC officials, and numerous experts; designated deposition testimony; reports of qualified experts; and post-trial submissions. In developing this remedial Order, the Court also reviewed the parties' Advisories submitted on November 11, 2022, concerning post-trial developments regarding Texas' service system for people with intellectual and developmental disabilities (IDD).[2] In order to remedy the identified violations of the Americans with Disabilities Act (ADA), Section 504 of the Rehabilitation Act (Section 504), and the Nursing Home Reform Amendments of 1987 (NHRA), the Court hereby enters this Order of Injunction requiring the Defendants to take the following actions.

It is therefore **ORDERED** as follows.

I. KNOWING, INFORMED, AND MEANINGFUL CHOICE REQUIREMENTS

1. As required by HHSC's revised CLO process and its IDD-PASRR Handbook and revised rules, HHSC shall ensure that all class members make a knowing, informed, and meaningful choice whether to enter or remain in a nursing facility by providing all of them, on a regular basis and at least semi-annually:

[1] The Class is defined as:

> All Medicaid-eligible persons over twenty-one years of age with intellectual or developmental disabilities or a related condition in Texas who currently or will in the future reside in nursing facilities, or who are being, will be, or should be screened for admission to nursing facilities pursuant to 42 U.S.C. § 1396r(e)(7) and 42 C.F.R. §483.112 *et seq.*

[2] On October 11, 2022, the Court requested the parties to submit information concerning "any material changes" with respect to the policies, procedures, services, and programs for people with intellectual and developmental disabilities (IDD) in Texas' long-term service system. Text Order, October 11, 2022. The Court has accounted for information from the Defendants' Advisory in this Order.

(1) Person-centered planning and transition assistance that identifies all appropriate transition goals, individual preferences, and a detailed description of an appropriate community setting and needed community services, without regard to whether the individual has requested a transition;

(2) Individualized and concrete information and education about community options in an understandable format that is tailored to the individual, and regular meetings with peers and families who have successfully transitioned to the community from nursing facilities;

(3) Regular and ongoing opportunities to visit community programs, meet with providers of community services, and experience community living;

(4) Regular and ongoing opportunities to participate in community activities and engage in community opportunities, including the provision of all needed specialized services that under HHSC rules are provided in the community;

(5) All needed accommodations, including supported decision-making, to ensure effective communication and to address class members' cognitive disabilities, their decision-making capacity and experience, and the impact of their institutionalization on decision-making; and

(6) The timely and accurate identification of, and continuous efforts to address, barriers, challenges, and fears about transition, including prior experiences in the community.

II. DIVERSION AND TRANSITION REQUIREMENTS TO PREVENT UNNECESSARY INSTITUTIONALIZATION

2. HHSC shall ensure the timely and effective diversion and transition of all class members who can be appropriately served in the community and who have not made a

knowing, informed, and meaningful choice to enter or remain in a nursing facility, including by making reasonable modifications to effectively address systemic barriers to diversion and transition, to provide adequate and sufficient community residential and other services to meet identified class members' needs and preferences, and to increase provider capacity necessary to serve class members.

3. HHSC shall make available an increased number of HSC diversion and transition waiver slots annually, in an amount sufficient to support all class members who could be diverted or transitioned from a nursing facility and who have not made a knowing, informed, and meaningful choice to enter or remain in a nursing facility. Based upon the actual increase and utilization of waiver slots in the FY16-17 and FY18-19 bienniums, HHSC shall make available an additional 650 HCS slots for nursing facility transition during each of the FY26-27 and FY28-29 bienniums (1,300 total for transition) and an additional 450 HCS slots for nursing facility diversion during each of the FY26-27 and FY28-29 bienniums (900 total for diversion), and use them for class members. However, based upon a reliable and conclusive assessment, the parties may agree or the Court may determine that a lower number of transition or diversion slots is sufficient to serve all class members who can be appropriately served in the community and who have not made a knowing, informed, and meaningful choice to enter or remain in a nursing facility.
4. HHSC shall provide timely, effective, and appropriate training of diversion and transition staff, and oversight and monitoring of its diversion and transition process to ensure timely, effective, and appropriate diversions and transitions.

III. THE PASRR PROCESS AND SERVICE REQUIREMENTS

5. HHSC shall ensure that Level I screens accurately and completely assess all individuals referred for admission to a nursing facility prior to admission, unless the admission is properly determined to be categorically exempt or expedited under the federal Pre-Admission Screening and Resident Review (PASRR) regulations, 42 C.F.R. §483.100 *et seq.* and the Centers for Medicare and Medicaid Services (CMS), in which case the screen shall be conducted within the time period required by the PASRR regulations.

6. In implementing its IDD-PASRR Handbook and revised PASRR rules, HHSC shall ensure that its PASRR Level II forms and evaluations accurately and completely evaluate all individuals suspected as having IDD pursuant to a Level I screen, consistent with the requirements of the PASRR regulations, and accurately determine if they could be served in the community and if they need specialized services.

7. HHSC shall ensure that Local Intellectual and Developmental Disability Authorities (LIDDAs) provide information and training to referring entities, and coordinate with referring entities on the referral of class members to nursing facilities. HHSC shall ensure that referral entities provide notice to LIDDAs when referring class members to nursing facilities, in order to divert class members from unnecessary admission to nursing facilities.

8. HHSC will only authorize admission of class members to nursing facilities where there is evidence that admission to the nursing facility is necessary, that alternative community services are not appropriate, and that the nursing facility, together with the relevant LIDDA, can meet all of the class member's needs, including the provision of specialized services.

9. HHSC shall ensure that all class members in nursing facilities receive a complete and accurate comprehensive functional assessment, using an IDD-specific assessment instrument that evaluates all relevant habilitative need areas and that is integrated into the habilitation coordinator's habilitation assessment.
10. In implementing its IDD-PASRR Handbook and revised PASRR rules, HHSC shall ensure that for all class member, the new PASRR Comprehensive Service Plan is based upon a complete and accurate IDD-specific comprehensive functional assessment and habilitation assessment; contains appropriate, measurable goals and timelines for all habilitative services and specialized services necessary to meet the individual's needs as determined by these assessments; identifies community options and services that reflect the class member's preferences and are appropriate to meet their needs; and lists the responsible professionals to implement the plan. HHSC shall ensure that LIDDA habilitation coordinators participate in, monitor, and ensure that all services specified in the plan are provided in the requisite frequency, intensity, and duration.
11. HHSC shall ensure that class members in nursing facilities receive all needed specialized services, as identified in a complete and accurate IDD-specific comprehensive functional assessment, provided in the frequency, intensity, and duration that is required to constitute a program of active treatment, as defined by federal regulation, 42 C.F.R. § 483.440.
12. HHSC shall ensure that nursing facility staff responsible for admission and discharge planning, resident assessments, and treatment planning for class members receive competency-based training on PASRR, habilitation needs, specialized services, informed choice, and community options.

13. HHSC shall provide ongoing and effective oversight of nursing facilities to ensure compliance with federal and state requirements, as discussed in paragraphs 48-49a of Docket no. 717.

IV. DATA COLLECTION, REPORTING, AND EVALUATION

14. HHSC shall collect and share with the Court, and counsel for Plaintiffs and the United States, quarterly data, documents and other information sufficient to determine compliance with each of the above provisions of this Order, including QSR data and all underlying information from the QSR process described in paragraph 15 below. Class Counsel, Counsel for the United States, and their authorized agents shall be granted access to class members and their clinical records sufficient to determine compliance with this Order.[3]

15. HHSC will annually conduct the Quality Service Review (QSR), using the same sampling methodology,[4] scoring system,[5] process, procedures, instrument,[6] and Outcomes,[7] Outcome Measures,[8] and Indicators[9] that were used by HHSC in its 2016 QSR,[10] as more fully described on pp. 54-71 of the Court's Findings of Fact and

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[3] Under federal law affording protection and advocacy agencies authority to access facilities, class counsel Disability Rights Texas and its authorized agents have the right to access nursing facilities (or any facility, program, or service provider) where persons with IDD are receiving services or care, including the right to interview clients and staff and review relevant records related to investigations or monitoring activity. 42 U.S.C. § 15043(a). Disability Rights Texas is specifically authorized to monitor compliance with respect to the rights and safety of persons with IDD. 45 C.F.R. § 1326.27(c)(2)(ii).

[4] *See* Docket no. 717, ¶¶ 172-174.

[5] *See* Docket no. 717, ¶¶ 180-182.

[6] *See* Docket no. 717, ¶¶ 128, 132.

[7] *See* Docket no. 717, ¶¶ 133-134.

[8] *See* Docket no. 717, ¶¶ 135-136.

[9] *See* Docket no. 717, ¶ 137; *see generally* ¶¶ 144-167.

[10] The 2016 QSR is the most recent, agreed-to version of HHSC's QSR process. Docket no. 717, ¶¶ 125-131.

Conclusions of Law, Docket No. 717. The Plaintiffs and the United States may validate the results of the QSR and its sampling methodology, scoring, process, procedures, instrument, and results for all Outcomes and Outcome Measures.

V. DISPUTE RESOLUTION AND ENFORCEMENT

16. At least thirty days prior to filing any motion with the Court alleging non-compliance with this Order, the moving party shall inform the other parties of the allegations supporting the motion, and meet and confer within fifteen days in an attempt to resolve the matter without the necessity for judicial action.

17. If the dispute resolution does not adequately address the allegations of noncompliance, and after notice to the other parties of its intention to file a motion within fifteen days, any party may file its motion with the Court.

18. The Defendants may seek a finding of compliance with any provision of this Order at any time, based upon current evidence. The Defendants may demonstrate compliance with any provision of this Order, other than ¶¶ 3, 13, 14, and 15, by achieving the 85% standard for the Outcome Measures associated with that provision as set forth in Attachment A. As an alternative, Defendants may choose to present other evidence that they believe demonstrates compliance with each provision of this Order.

19. The Court retains jurisdiction to enforce, interpret, modify, or terminate this Order. The Court expects this Order will terminate in four years (after the FY28-29 biennium) assuming the Defendants demonstrate they have achieved durable compliance with all provisions of the Order. However, the Court may incrementally disengage any provision of this Order based upon a finding of compliance as set forth in ¶18. The

Court shall terminate this Order and dismiss this case earlier if the Defendants demonstrate durable compliance with this Order before the end of four years.

IT IS SO ORDERED.

SIGNED this _____ day of _____, 2025.

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ORLANDO L. GARCIA
UNITED STATES DISTRICT JUDGE