

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

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

**JOINT RESPONSE BY PLAINTIFFS, THE UNITED STATES, AND STATE
DEFENDANTS TO THE COURT’S JUNE 17, 2025 ORDER**

Plaintiffs, the United States, and Defendants (collectively “the Parties”) submit this Joint Response to the Court’s June 17, 2025 Findings of Fact and Conclusions of Law, Docket No. 717 ¶ 1631, requiring the Parties to meet and confer on a proposed remedial order. Since the Court’s Order, the Plaintiffs and the United States drafted and shared with Defendants a proposed remedial order on July 17, 2025. The Parties have met on two occasions (July 22, 2025, and July 29, 2025) to discuss the proposed remedial order, as well as standards to measure compliance with all of the provisions of the order. During the meet-and-confer process described above, the Parties discussed the provisions of the proposed order, the use of the previously agreed Quality Service Review (QSR) process for assessing compliance, and the importance of ongoing discussions to determine

if the QSR needs to be modified or updated. While the Parties have not agreed on a proposed remedial order, they have had constructive discussions and agree to continue to collaborate in the future on matters related to the Court's Orders. Given the lack of agreement, the Parties set forth their respective positions below, in response to the Court's June 17, 2025 Order.

I. Plaintiffs' and United States' Position

In light of the above, Plaintiffs and the United States inform the Court that:

1. The Plaintiffs and United States developed their Proposed Order, which is attached as Exhibit 1, after a careful review and consideration of the updated information provided by Defendants in their November 2022 Advisory to the Court. Docket no. 701. The Proposed Order accounts for several of the systemic improvements discussed in the Advisory. As a result, the Proposed Order seeks to avoid additional discovery, expert reviews and disclosures, and a new trial on this evidence, but provides an immediate pathway for Defendants to demonstrate compliance with any or all provisions based upon current evidence.
2. The Proposed Order sets forth provisions to remedy the violations identified in the Court's June 17, 2025 Findings of Fact and Conclusions of Law. Docket no. 717. As described below, the Proposed Order is firmly rooted in the evidence admitted in the 2018 trial as well as Defendants' post-trial activities. It satisfies the requirements of Federal Rule of Civil Procedure 65(d) and it is appropriately tailored to comply with the requirements for class-wide injunctive relief. *See Daniels Health Scis., L.L.C. v. Vascular Health Scis., L.L.C.*, 710 F.3d 579, 586 (5th Cir. 2013) (quoting elements of Fed. R. Civ. P. 65(d) that require specificity of terms and required conduct described in "reasonable detail"); *see also M.D. by Stukenberg v. Abbott*, 907 F.3d 237, 271-72 (5th

Cir. 2018) (discussion of proper scope of class-wide injunction to meet requirement that relief be “narrowly tailored”). It is “no more burdensome to the defendant[s] than necessary to provide complete relief to the plaintiffs.” *Lion Health Servs., Inc. v. Sebelius*, 635 F.3d 693, 703 (5th Cir. 2011) (quoting *Califano v. Yamasaki*, 442 U.S. 682, 702 (1979)).

3. The Proposed Order addresses the Court’s Findings and Conclusions related to Plaintiffs’ and the United States’ claims under the Title II of the Americans with Disabilities Act (ADA), 42 U.S.C. § 12132 *et seq.* and Section 504 of the Rehabilitation Act, 29 U.S.C. § 794, and related regulations, including but not limited to the integration mandate; and Plaintiffs’ claims under the Nursing Home Reform Amendments of 1987 (NHRA), 42 U.S.C. 1396r *et seq.* and their implementing regulations, 42 C.F.R. Part 483.¹
4. The Proposed Order requires Defendants to: 1) ensure that all class members make a knowing, informed, and meaningful choice whether to enter or remain in a nursing facility by providing appropriate information, opportunities, supports, and accommodations; 2) arrange for the timely and effective diversion and transition of all class members who can be appropriately served in the community by taking steps to ensure sufficient community capacity, including Home and Community-based Services Waiver (HCS Waiver) slots; 3) comply with Pre-Admission Screening and Resident Review (PASRR) requirements for Level I screenings, Level II evaluations, and

¹ In light of the recent decision in *Medina v. Planned Parenthood S. Atl.*, 145 S. Ct. 2219 (2025), the Proposed Order does not rely on the Medicaid claims under 42 U.S.C. § 1396a(a)(8) (reasonable promptness) and 42 U.S.C. § 1396n(c)(2)(C) (“freedom of choice”), which are not necessary to afford full relief to the Plaintiff Class.

- provision of specialized services and active treatment; and 4) provide oversight, evaluation, and reporting sufficient to determine compliance with the Order, including conducting and reporting on the Texas Health and Human Services Commission's (HHSC's) own QSR.
5. The Proposed Order contemplates a four-year period to achieve compliance based upon the State's biennium funding for transition services, during which time the Court will retain jurisdiction to oversee compliance and resolve any disputes. The Proposed Order allows Defendants to immediately demonstrate compliance with any provision based on current evidence and to have its obligations under that provision terminated, provided Defendants can demonstrate that a durable remedy is in place.
 6. Plaintiffs and the United States respectfully request that the Court enter the Proposed Order as its remedial order.

II. Defendants' Position

As an initial matter, Defendants do not believe the evidence supports issuing any remedial order against Defendants. However, in the event the Court intends to issue a remedial order, Defendants do not believe that can happen until issues with the Court's June 17, 2025 order are resolved. Defendants have more fully set out these matters in objections being filed contemporaneously with this Joint Response, but they fall into three general categories. First, in relying on evidence that is no more recent than September 2017, the Court cannot find an ongoing violation of federal law that is necessary to order an injunction. Even if the Court had relied on the evidence provided by Defendants in November 2022, it would still be nearly three years old and not capable of establishing a current ongoing violation of federal law.

Second, many findings in the June 17 order are contradicted by evidence in the record. Finally, there are claims asserted by the private plaintiffs that are no longer viable as a result of recent Supreme Court authority.

DATED: August 1, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on this, the 1st day of August 2025, a true and correct copy of the foregoing Joint Response to the Court's June 17, 2025 Order was served using the court's CM/ECF filing system, thus providing service to all participants.

/s/ Garth A. Corbett

GARTH A. CORBETT

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 Indicators⁹ 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

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.

ORLANDO L. GARCIA
UNITED STATES DISTRICT JUDGE

ATTACHMENT A

Remedial Order Provision	PASRR Individual Review Outcome Measure
¶1.1 (Informed Choice – service planning and assistance)	1.9, 1.10, 1.11 3.1, 3.4, 3.5, 3.6, 3.8, 3.11, 3.12 4.1 5.1-5.8 6.1, 6.2, 6.3
¶1.2 (Informed Choice – information and meetings)	1.8, 1.10 2.5, 2.6, 2.7 3.4, 3.8, 3.14 5.5, 5.6, 5.7
¶1.3 (Informed Choice – visits)	2.5, 2.6, 2.7 3.8 5.5, 5.6, 5.7
¶1.4 (Informed Choice – community opportunities)	2.5, 2.6, 2.7 3.1, 3.8, 3.11 4.16 5.7
¶1.5 (Informed Choice – Accommodations)	1.8, 2.3, 2.7 3.6 4.2 5.7
¶1.6 (Informed Choice – barriers)	2.6, 2.7, 2.9 3.12, 3.13 5.6, 5.7 6.10
¶2 (Timely diversion and transition, system modifications)	1.6, 1.8, 1.9, 1.10, 1.11 2.5, 2.7, 2.9 3.1, 3.4, 3.5, 3.6, 3.8, 3.9, 3.11, 3.12, 3.13 4.1, 4.2, 4.3, 4.4, 4.5, 4.7, 4.8, 4.9, 4.10, 4.11, 4.12, 4.15, 4.16, 4.17, 4.18 5.1-5.9 6.1-6.8, 6.10
¶4 (Diversion and transition staff)	1.5, 1.7 2.2, 2.6, 2.7, 2.9, 2.10 3.5, 3.10, 3.11, 3.13 4.3, 4.5, 4.8, 4.9, 4.10, 4.11, 4.12, 4.15, 4.17, 4.18 5.5, 5.8, 5.10 6.3
¶5 (PASRR Level I screens)	1.1, 1.6
¶6 (PASRR Level II evaluations)	1.2, 1.3, 1.10 3.3
¶7	1.5, 1.6, 1.7, 1.8, 1.9, 1.10

(referring entities)	4.11
¶8 (Nursing facility admission)	1.3, 1.9 2.13 3.3
¶9 (Functional assessments)	1.10, 1.19 2.4, 2.9 3.5, 3.7 4.3 5.2, 5.3, 5.8 6.3
¶10 (Comprehensive service plans)	1.10, 1.11, 1.13 2.1, 2.2, 2.3, 2.4, 2.5, 2.8 3.5, 3.6, 3.8, 3.11 4.4 5.1, 5.2, 5.3, 5.4, 5.8 6.1-6.5
¶11 (Specialized services)	1.13 2.1, 2.5, 2.8 3.3, 3.8, 3.10 5.2, 5.3, 5.8 6.5, 6.6
¶12 (Nursing facility staff)	2.2, 2.4, 2.7, 2.8, 2.9 3.7, 3.10, 3.11 5.3 6.4, 6.5, 6.6