

**Plan to Address Issues in the Show Cause Order
Monitor's Memo
October 20, 2021**

Context

In 2020 the Monitor completed a comprehensive review of the status of the Consent Decree. More than 600 individuals, family members, staff and administrators responded to surveys or participated in focus groups. Reports from a variety of sources (the NECSCO Report, the Legislative Commission on Project Sustainability, the Sherlock Survey of Employment and Day Activities, Advocates in Action and others) as well as data from state agencies were reviewed. Collectively these sources identified the need to address three structural issues in order to achieve the vision and goals of the Consent Decree:

- Resolve the fiscal and administrative barriers that impeded efficient access to the services and supports defined in the Consent Decree,
- Address the funding structure of the RI Developmental Disabilities system,
- Engage in systemic restructuring of how RI provides services and supports to individuals who have intellectual and developmental disabilities.

The administrative barriers were addressed in the Court's July 31, 2020 Order and by five administrative workgroups that developed recommendations and implementation plans filed with the Court on June 30, 2021 as ECF Nos. 141 and 141. The systemic restructuring of how RI provides services and supports to individuals who have intellectual and developmental disabilities will be addressed in a Monitor's Report in November, 2021.

This action of the Court focuses specifically on the funding structure of the Rhode Island Developmental Disabilities system of services and supports. Focused discussion of the funding structure began in December, 2020. The January 6, 2021 Court Order was the foundation for these fiscal discussions. Specifically, this order states that "...the State shall develop a three year budget strategy that will address the budget assumptions and issues detailed in the Court Monitor's fiscal analysis; including, but not limited to

- Providing increases for Direct Support Professional wages to reach \$20 by FY2024,
- Providing proportional increases for other support staff,
- Providing increased funding for comprehensive plan development aligned with individual budgets,
- Providing increased funding for technology,
- Providing a per capita amount for the acquisition of technology,
- Providing funding to address the cost of transitioning Developmental Disabilities supports to an individualized community-based model."

Subsequent Court Orders issued three on March 16, 2021 and April 28, 2021 and the Show Cause Order issued on July 12, 2021 were based on and further clarified the January 6, 2021 Order. The "Action Plan" being discussed today is based on those orders.

Impact

The Action Plan focuses on three areas of change.

System Overhaul and Longitudinal Stability

Individuals, families, advocates and service providers have called for systems reform for multiple years. The NECSCO Report and the Legislative Commission on Project Sustainability provide recommendations for systems overhaul and for longitudinal stability. The Action Plan addresses these issues through four primary strategies:

- Guarantees that a comprehensive rate review will begin on November 1, 2021 and will be completed by December 1, 2022 or earlier, if possible. Preliminary recommendations from the rate review process will be reflected in the Governor's recommended budget for FY23 and final recommendations will be reflected in the Governor's FY24 budget. This rate review, requested by advocates and others for several years, will now be complete and will be a major instrument for system overhaul.
- For the first time, the population of individuals with Intellectual and Developmental Disabilities will be included in the semi-annual Caseload Estimating Conferences.
- In subsequent years the rates in the new structure will be indexed to ensure continued stability.
- As cited earlier, since the early days of the Consent Decree, individuals and providers have identified several administrative procedures that impede efficient access to the services and supports defined in the Consent Decree. The Action Plan commits to completing these tasks by March 31, 2022. The changes include the following. (a) Annual authorizations have replaced quarterly authorizations. (b) Ratios and 15-minute billing units will be replaced by two billing categories. (c) All day activities will be funded at a community rate. (d) 30 minutes of indirect service time will be billed for every 3.5 hours of service. (e) Flexibility to move funding between categories will now be permitted. It is anticipated that collectively all of these will increase utilization rates and facilitate access to services and supports.

Wages and Stability of the Workforce

Issues of workforce stability and capacity were the primary stimuli for the Show Cause Order. Rate increases for staff have for several years been the target of advocacy efforts. The Action Plan addresses these issues in two ways,

- The Action Plan Commits the State to increase funding for the State Developmental Disability system. As ordered by the Court on January 6, 2021, in a two-year time frame, the rates that support wages for direct support staff will increase from \$13.18/hour in FY21 to \$20.00 in FY24.¹ Additionally, supervisors and overnight staff will receive proportional increases in each of the years covering this Action Plan..

¹ In FY21, rates were increased to support an average wage of \$15.75/hour for DSPs, with proportional increases for Supervisors and overnight staff. In FY22, rates will be increased to support a wage of \$18/hour for DSPs, with proportional increases for Supervisors and overnight staff. In FY24, rates will be increased to support a wage of \$20/hour for DSPs, with proportional increases for Supervisors and overnight staff.

- Expert testimony developed in preparation for the Court emphasized the need for statewide recruitment and retention efforts. National data that documents that the populations from which staff are typically recruited are decreasing; thus, supporting the need for significantly different recruitment strategies. The expert testimony further documents that retention is connected not only to wages, but also to professionalizing the workforce through targeted training that is responsive to the increasing responsibilities of staff and credentialing. The Monitor will include recommendations from these experts in his November report. With this Action Plan, work will begin to develop a statewide initiative to expand the workforce and focus on recruitment strategies, create pipelines and credential direct support staff. This initiative will include a contract to a non-state organization to coordinate statewide recruitment efforts.

Transformation Costs

The Consent Decree is rooted in transitioning from center-based and/or group models of support to individualized community-based models. There is an underlying assumption that individuals will have more choice and more control. To achieve these goals there is need (1) to broaden and strengthen the supports available to individuals who self-direct, (2) to redefine and stabilize supports for individuals who rely on agencies, (3) to develop other innovative options that rely on a broader array of supports as well as paid staff, (4) to recognize the importance of technology as an individual support strategy, (5) to increase transportation options and other strategies. The Action Plan addresses these needs in several ways.

- For the first time the Action Plan commits Transformation funding to develop and implement those new models. This fund will be independently reviewed in March, 2022 to determine adequacy of transformation funding.
- There is specific funding allocated to individuals who Self-Direct to create a service advisement model and provide a pool of temporary or back-up staffing. This fund will provide access to employment specialists and other supports for those who self-direct.
- For the first time, the Action Plan creates a Technology Fund, which is intended to increase individuals' access to technology that efficiently supports life functions.
- Similarly, this Action Plan increases transportation funding with the intent of increasing options for individuals to access integrated employment and community activities.

Monitoring

It is important that the impact of this plan be independently assessed by the monitor and other independent consultants and data sources. Monitoring will focus on four sets of indicators:

- Changes to the workforce which will be assessed through semi-annual data collection using a modified version of the Staff Stability Survey or similar measure,
- Increases in the combined time spent in integrated employment and community activity – measured through semi-annual data collection using the Sherlock Employment and Day Activities Survey,
- Increases in the life outcomes directly experienced by individuals – the Monitor will draw random samples of class members each quarter and assess life changes through interviews and an individual outcome measure, and
- An independent audit of the actual cost of innovative service models and transformation.

The Action Plan has a definitive set of dates and actions to be taken if the defined actions have not been achieved.

Conclusions

The terms specified in the Action Plan address the issues specified in the January 6, 2021 Court Order. There is no such thing as a perfect plan that meets every need. The Monitor acknowledges that the provider community reports continuing to be in crisis and will continue to advocate for additional resources beyond what are provided in this Action Plan. The Monitor also acknowledges that many families have not yet experienced real change in the daily lives of their family members. Real change in individual lives **MUST** be the primary focus for the remaining years of the Consent Decree. With this plan in place, the Monitor will now focus more intently on assessing the impact of the Consent Decree and this Action Plan on the daily lives of individuals who have intellectual and/or developmental disabilities. This Action Plan is not the whole solution, but it represents a very significant step towards the outcomes defined by the Consent Decree.