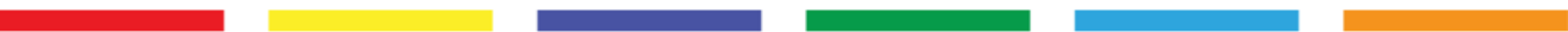


Developmental Disabilities Litigation Update

LFC Hearing July 28, 2016

Overview of High Profile Cases – Foley

- In 2010, state defendants and plaintiffs reached a settlement agreement in the federal case, JM v DOH et al (“Foley”) related to the care of approximately 1500 individuals discharged from the Los Lunas Hospital and Training School and Fort Stanton in the years 1970 through 1987.
- The terms of the agreement required DOH to locate all discharged individuals, contact the named individuals, pay for decisional capacity/ needs assessments, assist the individuals with identified needs and visit the individuals at least quarterly.
- The agreement did not establish a class like Jackson. While the terms of the settlement apply to all discharged individuals, those same individuals can still file suit. To date, Plaintiffs have filed two such cases, AM and JL. AM settled. JL, which includes 6 individuals, and is in active litigation status.



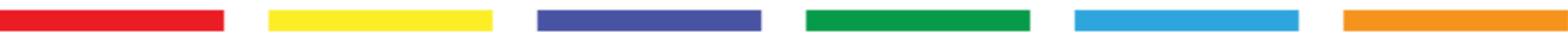
Foley – Current Status

- In 2014 Plaintiffs filed their 6th Arbitration alleging violations of the Settlement Agreement.
- On February 10, 2016 Arbitrator Gross responded by issuing a Decision and Order finding that there were no substantial breaches of the terms of the Settlement Agreement and that there were no terms in the Settlement Agreement that would permit him to find an ongoing breach.
- The Arbitrator did state that the (6) requests for arbitration and the subsequent hearings did motivate the Defendants to more carefully comply with the terms of the Agreement, and directed Plaintiffs' submit a request for fees and costs.
- Plaintiffs have requested \$376,800.70.
- In June 2016 Defendants filed their objection to the proposed fees based on the agreed upon terms of the arbitration rules, which do not permit attorney fees except when an Order of the Arbitrator is breached.



Overview of High Profile Cases - Jackson

- Based on the status of the state's I/DD community service system, the fact that all constitutional violations in the Jackson case have been remedied and the fact that continued oversight by the federal court infringes on the state's autonomy a motion to terminate the court's oversight was filed in August 2015. In June 2016 that motion was denied by Federal District Judge James Parker. The state is looking at next steps including an appeal to the Federal 10th Circuit.
- Programmatic work to disengage activities from historical and recent court orders continues under the oversight of the Jackson Compliance Administrator (see chart on next page).



Court Ordered Obligation

Jackson Disengagement Status and Next Steps

1997 - Joint Stipulation on Disengagement

>81% disengaged

The State continues to address the requirements. The CPR (Jackson Community Practice Review) Measures progress and the Community Monitor produces Continuous Improvement scores for specific areas of obligation. Most Continuous Improvement requirements have been disengaged.

An additional Continuous Improvement obligation was disengaged in November 2015, another was filed in 2016 but denied by the court on 4/27/16.

At the urging of the Court, DOH worked with the Community Monitor to develop an internal replacement for the Community Practice Review (CPR) called the Individual Quality Review (IQR). The parties are in conversation with the Court about next steps.

1997 - Plan Of Action (POA) and 1998 Audit Recs.

>80% Disengaged

The remaining obligations from the POA, Appendix A and the JCA Remedial Plan are addressed in a stipulated agreement filed with the Court on May 15, 2015. This Final Disengagement Plan (51 pages) covers

- The Disengagement Outcomes based on completion of specified criteria (Evaluative Components/ “ECs”) in the Goal areas of Supported Employment, Health and Safety
- Contains separate processes to address POA: 1998 Audit, ISP and Assistive Technology

2006 – Appendix A 107 separate actions. Several of which required lengthy plans with over numerous additional activities.

>33 Disengaged – no process in place since 2011

Status on Final Disengagement Plan

- December 2015 - The 1998 Audit Recommendations disengaged
- February 2016 - One Final Disengagement Plan Outcome (Safety 1.1.1) was disengaged (based on completion of all related ECs).
- Five additional ECs have been submitted and rejected by the JCA. These will be resubmitted this summer.

2014 - Jackson Compliance Administrator (JCA) Plan

See next column

Concurrent with this work a motion to terminate the court’s oversight of the state in this matter “60(b)(5)” was filed in August 2015. That motion was denied in June 2015 by Federal District Judge James Parker. The state filed an appeal to the 10th Circuit on July 7, 2016.

EC Project Overall Update

| Status | May 2015 | August 2015 | November 2015 | January 2016 | April 2016 |
|-----------------|----------|-------------|---------------|--------------|------------|
| Complete | 17 | 36 | 53 | 57 | 48 |
| In Progress | 4* | 99 | 93 | 91 | 104 |
| Not Yet Started | 172* | 64 | 53 | 51 | 47 |

* There are 199 separate Evaluative Components.
Not all partial progress was captured at 5/8/2015

Jackson Services Contract Costs:

- *FY16 - \$3,431,823.93*
- *FY17 - \$3,501,581.93*

Jackson Consultants & Legal Fees:

- *FY16 - \$2,783,168.00*
- *FY17 - \$2,801,000.00*

Grand Total FY16 - \$6,214,991.93

Grand Total FY17 - \$6,302,581.93





Planned Uses of the Special Appropriation in Jackson Disengagement in FY17

- DOH received a Special Appropriation for litigation related work FY16/FY17. We plan to use the funds in FY17 for:
 - \$289,800 in FY17 for a portion of the Jackson Compliance Administrator fees.
 - \$297,198.72 for FTE at DDSD and \$417,492 for FTE at DHI.
 - \$95,000 for dedicated IT support (contract or FTE).
 - \$1,418,000 in FY17 contracts to complete disengagement work, such as: multidisciplinary evaluations, the implementation of the Jackson Health Field Survey Tool, and a Traveling Therapy Team.



Overview of High Profile Cases - Waldrop

- Per the settlement agreement, an Outside Review contractor (OR) must complete an independent clinical review of DDW adult ISPs and budgets . The OR approves or denies the service plan/budget based on this review.
- The Outside Review (OR) at UNM began operation on November 1, 2015.
- The Court's oversight of the Waldrop case ends two years following the receipt of the first DDW ISP/Budget by the OR.(projected November 2017)



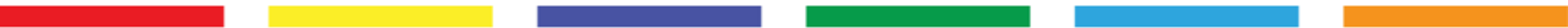
Waldrop Settlement – Status

- April 2015 - Settlement Agreement reached
- May-June 2015 Terms of Settlement Met:
 - All required communications (Joint letter, Director's Release, 200+ Letter and Catch-All Letters) sent and restoration of services occurred for those who requested it.
 - Pre-SIS Letter development and distribution completed.
 - DDW Planning Packets revised and distributed.
 - Notice of Right to Appeal updated and distributed.
 - Automatic Continuation of Benefits implemented.
 - Outside Review Third Party Assessor contractor secured.
- June-July 2015 DDW Clinical Service Criteria developed and implemented.
- October 2015 - Outside Review - clinical review system start-up.
- November 2015 – Outside Review for all annual DDW Plans/Budgets begins.
- November 2015- June 2016 – Plans/Budgets routed for review by ISP date.



UNM - Outside Review Contractor

- 1865 ISP/Budgets received and reviewed between November 1, 2015 through June 30, 2016.

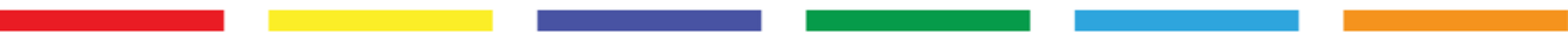






Waldrop Settlement - Fiscal Impact

- DOH received a Special Appropriation for FY16/17. Of this:
 - \$950,100 in FY16 and \$1,488,500 in FY17 will be used to fund the Outside Review (OR) contract with UNM Continuum of Care.
 - \$248,311 for FTE in FY17 to manage OR contract, staff and coordinate Agency Conferences/Fair Hearings, conduct provider oversight and support planning teams.
 - \$128,203 for contracts for SIS infrastructure, outreach and training to the field.
- *\$2.5 M in DDW fund balance was applied to the Waldrop direct service costs in FY16.*
- Funding for ongoing operation of the OR and related DDSD staffing is included in the FY18 funding requests.



Developmental Disabilities Support Division

Presentation to LFC
Part Two



I/DD Waiver Programs Funding Projections

The I/DD programs are: Traditional DD Waiver, Mi Via (DD and MF) and Medically Fragile Waiver

Based on HSD projection Model on July 19, 2016

- FY17 Projected Shortfall (\$1,009,158)
- *FY16 Projected Fund Balance \$901,124
- FY17 Projection: (\$108,034) after fund balance applied

*Subject to change based on final FY16 invoices



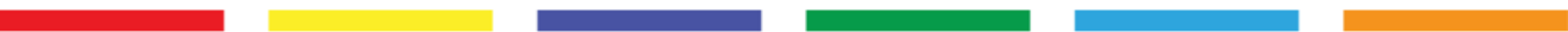
Support Intensity Scale - Status

- The state continues to use the SIS to help identify service needs for waiver participants.
- The SIS contract is with UNM, Center for Development and Disability.
- Waiver participants may use the SIS results as clinical justification for services when submitting their service plan and budget to the OR.
- In December 2016, the DD Waiver will move from the current 3 year assessment cycle to a five year assessment cycle.
- IN FY18 DOH plans to make the SIS available to a limited number of DDW applicants who are next in line for allocation. This will speed up entry into services when funds to allocate are available.



Employment Overview (detailed presentation to follow at future meeting)

- DDSD operates State only funded and DD Waiver Supported Employment programs.
 - DDW Supported Employment program serves approximately: 941 in supported employment.
 - In FY16 a state funded pilot for School to Work transition services was developed. This program will continue in FY17 to provide support to individuals on the waiting list and possibly prevent or delay the need for more comprehensive supports.
 - Under the terms of the Jackson Disengagement Plan DOH and DVR jointly fund the Partners for Employment program at UNM.
 - Through Partners in Employment DDSD provides training for providers, funds “discovery” for Jackson Class Members, participates in Project SEARCH (a national job training and placement program) and collaborates with the Anderson School of Business on innovative approaches to employment for people with disabilities.



DDW Central Registry Update

- 6,521 people were on the waiting list as of July 1, 2016.
- The Central Registry Unit conducted 7 allocation fairs statewide in April 2016 to provide information about the allocation process and the DD and Mi Via waivers.
- In April, DDS sent letters of interest to 103 waiting list registrants.
- DDS approved 42 expedited allocations in FY16.



DDW Central Registry Update

- Beginning in FY17, DDSO will conduct outreach efforts to update the information on the central registry and to collect information about registrants such as what services they current have and what services are needed.
- On May 1, 2016, the Intake and Eligibility Bureau Chief retired.
- A new bureau chief will officially start on July 18, 2016.

