

L.J. v. Massinga Independent Verification Agent

Certification Report for Defendants' 72nd Compliance Report

Appendix 2

IVA Response to Defendants' Report on Additional Commitments

(Defendants' 72nd Report, pp. 29 – 42)

(January 1 - June 30, 2024)

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1. Preservation and Permanency

There are seven Additional Commitments in the Preservation and Permanency section.

1. *Based on an analysis of the needs of the children and families that come to the attention of BCDSS, BDCSS will determine biennially the level of need and the amount of funds needed to fund in-home family preservation services, separate and apart from the regular program of protective services and safety case management services, to provide each family of a child at risk of removal with in-home family preservation services in a duration and intensity reasonably calculated to enable the child to remain with the family without removal. The DHR Secretary (“the Secretary”) shall include in the DHR budget proposal funds that are sufficient, in the Secretary’s judgment, to ensure that in-home family preservation services are available in the size and scope determined by the assessment and, if included in the Governor’s budget, shall advocate for the appropriation of such funds by the General Assembly.*

Defs.’ Report: In compliance. (Defs.’ 72nd Rep., p. 30-31)

IVA response: Cannot determine certification due to lack of documentation to support assertions.

Defendants fail to provide any specific data or documentation to support their assertions. They do not provide information as to how many families requested services, the problems presented by those families, what services were provided, the impact of those services or whether those services were provided “in a duration and intensity reasonably calculated to enable the child to remain with the family without removal.” They do not document the number or percentage of children removed or the relationship in time between services and removal.

As urged in prior reports, the parties should determine what data and documentation must be included in an analysis to meet the requirements of this Additional Commitment.

2. *The Secretary shall include funds in the DHR budget proposal that are sufficient, in the Secretary's judgment, to ensure that services and assistance are available for all children (and their families) who come to BCDSS's attention as being at risk of placement into OHP or who are in OHP and have permanency plans of reunification with their families, and, if included in the Governor's budget, shall advocate for the appropriation of such funds by the General Assembly.*

Defs.' Report: In compliance. (Defs.' 72nd Rep., p. 31)

IVA response: Cannot determine certification due to lack of documentation to support assertions.

For this Additional Commitment, Defendants provide no justification or documentation to explain why the \$4 million in super flex funds is sufficient to meet the requirements of this Additional Commitment. The amount allocated by DHS to BCDSS for flex funds has remained at "over \$4 million" since they began reporting on this Additional Commitment for the 63rd reporting period (2019) through the 72nd reporting period (June 2024) without providing documentation of the basis for this amount being sufficient or how it could remain sufficient given the substantial amount of inflation in costs between 2019 and 2024 and Defendants' focus on practices and services to reduce family separation.

This Additional Commitment is closely tied to the first Additional Commitment in this section. Again, as urged in prior reports, the parties should discuss what process or documentation can be provided to demonstrate compliance with this requirement of the MCD.

3. *DHR shall contract for a formal evaluation of the efficacy of its family-centered practice initiatives. This evaluation shall be completed within two years of the signing of this Consent Decree. This contract is subject to any required approvals by the Department of Budget and Management and the Board of Public Works. In addition, DHR/BCDSS shall routinely collect*

data on the efficacy and safety of its practices in utilizing family-centered practice and team decision-making to avoid the removal of children.

Defs.' Report: "Working to achieve compliance." (Defs.' 72nd Report, p. 31)

IVA response: Partial compliance.

The Defendants' response in this reporting period does not claim compliance as it did in the 71st report. The "Evaluation of the Integrated Practice Model in Maryland" provided with Defendants' report 71st report did not, in fact, "evaluate the efficacy of the family-centered initiatives" for Maryland at least in part because Maryland's largest jurisdiction and the subject of the MCD - Baltimore City - failed to submit any data for two of the three data sources used by the authors for that evaluation. Baltimore City failed to submit Facilitator surveys (p. 13) or any self-reports (p. 51).

Furthermore, this Additional Commitment requires collection of data on *"the efficacy and safety of [DHR/BCDSS] practices in utilizing family-centered practice and team decision-making to avoid the removal of children."* The self-reports are the critical component for determining the efficacy and safety of the practices since CJAMS does not currently collect sufficient information to correlate the FTDMs with outcomes. One of the necessary, but relatively simple steps that Defendant DHS needs to take to collect the required data is to add in the meetings section of the CJAMS application a field to require input of the outcomes of Family Team Decision-Making Meetings (FTDMs).

Defendants state that an Exit Standard of the MCD tracks the data for Family Teaming and references a discussion on p. 21 of their 72nd Report. However, p. 21 of this report discusses the Wellness Program, and it is unclear to the IVA what the Defendants are referencing in their plans to come into compliance with this Additional Commitment.

Given the time frame initially placed on this requirement and the passage of time since the signing of the MCD, we once again urge the parties to discuss what documentation would demonstrate compliance with this requirement in the future.

4. *BCDSS shall continue to provide opportunities for youth in OHP to meet with one another and with the BCDSS Director, other high-level officials, and providers of youth services to talk about problems and needs for children in OHP and to develop effective ways to provide opportunities to express concerns and report problems. With the assistance of youth, DHR shall develop a handbook for youth exiting OHP that provides information on available community resources.*

Defs.' Report: In compliance. (Defs.' 72nd Rep., pp. 31-34)

IVA response: Partial compliance.

Defendants provide a list of Ready by 21 programs and information about the Health Youth Alliance Program. The IVA understands that the Defendants provide appropriate and necessary programming to youth in the Ready by 21 program. However, Defendants provide no information to support a finding that they provide opportunities for all youth, not just those old enough to participate in Ready by 21 programming, to meet with the BCDSS Director or providers of youth services to talk about problems and needs for children in OHP. They also do not address how they provide opportunities to express concerns and report problems.

5. *BCDSS shall create an intensive case management plan for youth ages fourteen through twenty who frequently are missing from placement or are experiencing multiple disruptions in placements. These youth shall receive an intensive array of supportive services.*

Defs.' Report: Not in compliance and do not intend to come into compliance. (Defs.' 72nd Report, p. 34)

IVA response: Not in compliance.

Defendants state that the unit was disbanded due to “extreme workforce conditions” and that BCDSS does not plan to “reconstruct ICM as a unit.” Instead, Defendants plan to “strengthen placement stability and reduce disruptions utilizing the therapeutic component through the BCDSS Wellness Program.” However, as discussed in the Mental Health section of the IVA’s response to the Defendants’ report the Wellness Program is also experiencing hiring and retention problems, is far from being fully staffed, and youth that are unstable often do not engage with the Wellness Program. Additionally, Wellness Program providers have terminated their participation for reasons not presented in the Defendants in their report.

6. *By September 30, 2009, DHR/BCDSS, in partnership with outside experts and advocates for children, including Plaintiffs’ counsel, shall create and, thereafter, DHR/BCDSS shall implement and maintain a plan to provide comprehensive services to children in OHP to meet the goals of the children being ready by age twenty-one for successful transition to adulthood.*

Defs.’ Report: In compliance. (Defs.’ 72nd Rep., pp. 34-36)

IVA Response: Progress towards compliance.

Defendants do not provide any new information in this report about how the activities and services they provide are effective in meeting “the goals of youth being “ready by 21” for successful transition to adulthood.” They still do not discuss the impact of those strategies and what has been put in place to maintain successful implementation of the plan. They do not discuss what is being done to address areas where implementation has been unsuccessful such as the low percentage of transition plan meetings taking place. Without transition meetings being held and Youth Transition Plans (YTP) being completed, Defendants cannot plan for youth to get the individualized services needed for successful transition to adulthood. During the 72nd reporting

period, only 34% of youth had had a YTP completed within the prior 6 months, and only 8.75% of those plans were completed timely (within 21 days of when the 6-month case plan was due).¹ Although they do not mention it in their report, Defendants have made tremendous progress in completing YTPs. As of June 10, 2025, 95% of youth had had a YTP completed within the prior 6 months, although the percentage of those YTPs which were completed timely is still very low at 18%.² The data for Youth Transition Plan Meetings (L.J. Exit Standard 20D) still is not available.

7. *By December 2009, DHR shall develop and implement a program pursuant to which each child whose caregiver seeks and receives custody and guardianship from the juvenile court and meets the legal requirements for a guardianship subsidy receives such a subsidy in an amount that conforms to the requirements of federal law. Such subsidy shall continue until the child is eighteen years of age or, if disabled or attending school or training, until the youth is 21 years of age.*

Defs.' Report: In compliance. (Defs.' 72 Rep., p. 36)

IVA response: In compliance.

While this requirement is in technical compliance, it is important to note that the foster care rate to which the guardianship subsidy rate is tied, is not in compliance with the MCD (see discussion below) and that inflation is a very serious concern. This rate has remained the same for many years and, given the current high levels of inflation, could not possibly go as far as needed to meet the financial needs and costs of those taking custody and guardianship of children from the foster care system.

¹ Foster Care Milestone End of the Month Report, June 28, 2024, and Measure 29a, January - June 2024 reporting period. Both of these reports were downloaded on June 16, 2025.

² Foster Care Milestone End of the Month Report, April 30, 2025, and Measure 29a, January - June 2025 reporting period. Both of these reports were downloaded on June 16, 2025.

2. Out-of-Home Placement

There are ten Additional Commitments in the Out-of-Home Placement section.

1. *By December 31, 2009, DHR/BCDSS shall complete its assessment of the range of placements and placement supports required to meet the needs of children in OHP by determining the placement resource needs of children in OHP, the availability of current placements to meet those needs, and the array of placement resources and services that DHR/BCDSS needs to develop to meet those needs in the least restrictive most appropriate setting, including sufficient family placements for each child who does not have a clinical need for a non-family placement, family placements available for emergency placement needs, placements appropriate to meet the needs of children with serious mental health problems and children with developmental disabilities, and appropriate facilities and programs for semi-independent and supportive independent living. The assessment shall be conducted biennially.*

Defs.' Report: 2022 report was in compliance. New statewide assessment conducted by Chapin Hall includes Baltimore City and is compliant with the MCD. (Defs.' 72nd Rep., p. 37)

IVA response: Not in compliance as of 72nd reporting period.

The IVA has explained in detail in correspondence with Defendants and in prior reports why the 2022 University of Maryland report did not meet the requirements of this Additional Commitment.

The IVA has not evaluated whether or not the January 2025 Chapin Hall Report ("Maryland Social Services Administration Placement Needs Assessment Final Report, Att. A to Defs.' 72nd Report) meets the requirement of this Additional Commitment. The report was not available until the 74th reporting period, and the IVA has not had the opportunity to make that determination. However, as discussed in the IVA's Response to Defendants' 72nd Report, the

Chapin Hall Report contains much important, useful information about both placement issues and about the lack of documentation in children's records in CJAMS and is cited where applicable.

2. *The DHR Secretary shall include in the DHR budget proposal funds that are sufficient, in the Secretary's judgment, to secure and maintain the array of placement resources and supports needed for children and youth served by BCDSS (including those needed to support the stability of placements and the ability of caregivers to meet the needs of children in OHP and to avoid placement of children in congregate care) and, if included in the Governor's budget, shall advocate for the appropriation of such funds by the General Assembly.*

Defs.' Report: In compliance. (Defs.' 72nd Rep., p. 37)

IVA response: Not in compliance.

Defendants rely solely on an assertion that DHS/BCDSS is below the national average for children placed in congregate care, and above the national average for children placed with kin to support its claim of compliance despite the lack of clear connection with the requirements of this commitment. That assertion is insufficient to meet this commitment. The Defendants have not provided any budget tools or documents that would support the position that they are in compliance. Furthermore, they have not yet been able to report valid, accurate and reliable data on placement stability.

3. *BCDSS shall provide stipends to emergency shelter care homes even in months in which children are not provided care to assure that such homes remain available for emergency placements. The Secretary shall include funds annually in the DHR budget proposal that are sufficient, in the Secretary's judgment, to meet these requirements and, if included in the Governor's budget, shall advocate for the appropriation of such funds by the General Assembly.*

Defs.’ Report: Defendants will not comply with this requirement stating “retainer for emergency foster homes is outdated.” (Defs. 72nd Report, p. 37)

IVA response: Not in compliance. Defendants filed a motion to eliminate this commitment, but the court dismissed their motion (without prejudice) in July 2024. Regarding whether or not there is such a need, the Chapin Hall Report found as one of the themes of its case reviews, “Placements are also hard to identify on a short-term emergency basis, adding to the occurrence of hospital overstays, office stays, and hotel stays.” The report in turn recommended that Defendants “[i]dentify more placement options for children who need short-term or emergency housing.”³

4. *Within ninety days of this Consent Decree, DHR/BCDSS shall issue an RFP and shall provide funding sufficient to operate a kinship caregiver support center(s) which includes: provision of resource information and support services to caregivers; the development and maintenance of a website; transportation assistance to referrals, activities and appointments related to the care of children; staff training; training for caregivers; and the development and support of a statewide network of support groups for kinship caregivers. This contract is subject to any required approvals by the Department of Budget and Management and the Board of Public Works.*

Defs.’ Report: In compliance. (Defs.’ 72nd Rep., pp. 3-39)

IVA response: In compliance.

5. *DHR shall set the Semi-Independent Living Arrangement rate at no less than 95 percent of the foster care payment rate for teens by July 1, 2009 and shall make adjustments annually thereafter to match increases in the foster care rate as included in the budget. To satisfy this requirement, the Secretary shall include funds annually in the DHR budget proposal that are*

³ Chapin Hall Report, p. 140.

sufficient, in the Secretary's judgment, to meet these requirements and, if included in the Governor's budget, shall advocate for the appropriation of such funds by the General Assembly.

Defs.' Report: In compliance. (Defs.' 72nd Rep., p. 39)

IVA response: In compliance.

Defendants apparently are in compliance with this requirement. As Defendants have acknowledged, however, the governing regulations (.07.02.10.15.B(3)) and policy releases for resource home payment increases do not reflect this requirement and need to be updated to guarantee raises in the SILA rate when resource home rates are increased. Defendants have provided no information about when they intend to promulgate the new regulations.

While this requirement is in technical compliance, the foster care rate to which the SILA rate is tied is not in compliance with the MCD (see discussion, below). Given increases in the cost of living, it is unlikely that the stipend could go as far as would be required to meet the financial needs of foster youth in the SILA program. The IVA has shared this concern repeatedly in reports, but the Defendants have provided no new information in their report about plans to increase the foster care and SILA rates.

6. *DHR shall set the foster care payment rate at no less than the Foster Care Minimum Adequate Rates for Children ("MARC") [1]⁴ standard. Until the MARC standard, as adjusted for cost of living, meets the foster care payment rate currently in effect for FY 2009, DHR shall not lower the foster care payment rate below current levels. To satisfy this requirement, the Secretary shall include funds annually in the DHR budget proposal that are sufficient, in the Secretary's judgment, to meet these requirements, and, if included in the Governor's budget, shall advocate*

⁴ See University of Maryland School of Social Work, "Hitting the M.A.R.C.: Establishing Foster Care Minimum Adequate Rates for Children" (October 2007) (attached as Exhibit 2 to the MCD). [This is the original footnote from the MCD.]

for the appropriation of such funds by the General Assembly. The Secretary shall include funds annually in the DHR budget that are sufficient, in the Secretary's judgment, to modify the foster care payment rate to reflect a COLA adjustment and, if included in the Governor's budget, shall advocate for the appropriation of such funds by the General Assembly.

Defs.' Report: Not in compliance. (Defs.' 72nd Rep., p. 39)

IVA response: Not in compliance.

Defendants do not address the concerns raised in prior IVA responses. In order to meet the MARC and maintain it, Maryland should be providing an annual increase matching the increase in the cost of living. The cumulative rate of inflation has been 25.1% between 2019 to 2025 (usinflationcalculator.com, accessed 4/29/25), yet there has not been an increase in the public foster care board rate since FY2019 when there was a 1% rate increase. In their 66th Report, Defendants stated that an increase in the foster care board rate was planned for January - June 2022. However, no such increase has occurred. Defendants do not even attempt to justify their violation of this requirement. They simply state, "The foster care payment rate did not change during this reporting period." (p. 39).

7. *By September 2009, DHR/BCDSS, with the assistance of individuals knowledgeable about the issues, shall study and develop a plan to address the particularized needs of unlicensed kinship care providers for children in OHP, including remediation of problems discouraging or prohibiting licensure.*

Defs.' Report: In compliance. (Defs.' 72nd Rep., p. 40)

IVA response: Certified based upon activities conducted throughout 2024. Efforts to license kin have continued into 2025. New law, regulations and policy at the state level removed many of the barriers to kin providers becoming licensed.

8. *To meet the requirements of Outcome 4 (as defined) of this Section to provide funding for child care, DHR/BCDSS shall continue without interruption to provide funding for child care to caregivers to at least the extent required by DHR Policy SSA 08-17 (attached as Exhibit 1). Defendants agree to extend the provision of child care to include before- and after-school care, vacation and holiday care, and sick day care, as needed, for all children ages twelve and under, but only to the extent funds are available from savings generated through the documented reduction in the use of congregate care. To satisfy this requirement, the Secretary shall include funds annually in the DHR budget proposal that are sufficient, in the Secretary's judgment, to meet these requirements and, if included in the Governor's budget, shall advocate for the appropriation of such funds by the General Assembly.*

Defs.' Report: In compliance. (Defs.' 72nd Rep., p. 40)

IVA response: In compliance.

The IVA has no information that caregivers needing childcare have been denied access to the necessary funding. Defendants issued SSA/CW Policy #23-03, Child Care Services for Children in Out-of-Home Care - 1 (eff. 9/25/23).⁵ The policy appears to provide for at least the same services as the old policy, which was found to be compliant.

9. *By September 30, 2009, DHR/BCDSS shall provide documentation of policies and implementation of policies for ensuring that children in OHP who are expecting a child or who are parents receive services and assistance appropriate and sufficient to assist the child to acquire parenting skills.*

Defs.' Report: In compliance. (Defs.' 72nd Rep., p. 40).

⁵ SSA/CW Policy #23-03, Child Care Services for Children in Out-of-Home Care, DHS' child welfare policies can be found on its website at <https://dhs.maryland.gov/business-center/documents/child-policy-directives> (accessed June 16, 2025).

IVA response: Not in compliance.

For the same reasons stated in the IVA's previous responses to this Additional Commitment, the IVA is unable to determine compliance. Defendants do not provide information about or documentation of any actual policies that outline and ensure the services.

10. By September 30, 2009, DHR/BCDSS shall provide documentation of policies and implementation of policies for ensuring that the input of children and caseworkers was considered in the reassessment, recertification and relicensing of a placement.

Defs.' Report: In compliance. (Defs.' 72nd Rep., p. 40)

IVA response: Not in compliance.

Defendants reference COMAR 07.02.25.15 in their brief discussion of compliance with this requirement. While these regulations do require an interview with children's caseworkers ("Conduct a review of the resource home record and interview the caseworker for each child placed in the home in preparation for the reconsideration" 07.02.25.15.A(6)), there is no requirement to obtain the input of children, only their case workers, in the relicensing of a placement in this particular regulation.

Defendants provide no documentation of policies or implementation of policies for ensuring such input. Defendants state that resource home caseworkers communicate with children's caseworkers to solicit feedback about care provided as part of every reconsideration of foster homes. Defendants' past reports referenced a "template for reconsiderations" which they stated included "obtaining a child's input" but this template is not mentioned in the Defs 72nd report and was never provided to the IVA.

3. Health Care

There are four Additional Commitments in the Health Care section.

1. *By June 2009, BCDSS will implement the BCDSS Health Care Initiative for all children newly entering OHP and all children in OHP with complex medical needs. Defendants shall provide Plaintiffs copies of the standards developed by the Medical Director as required in Definition C (2) of this Section.*

Defs.' Report: In compliance. (Defs.' 72nd Rep., p. 41)

IVA response: In compliance.

2. *By March 2009, BCDSS shall establish and thereafter maintain a Health Care Advisory Council, including medical experts and advocates for children from outside BCDSS, DHR, and the Department of Health and Mental Hygiene, to provide guidance on implementation of the requirements of the BCDSS Health Care Initiative.*

Defs.' Report: In compliance. (Defs.' 72nd Rep., p. 41)

IVA Response: In compliance.

During the reporting period, the Health Care Advisory Council continued to meet quarterly. The Council now has representation from the dental community and two youth on the Council. Parents and caregivers still are not represented on the Council.

3. *By August 2009 and annually thereafter, BCDSS/DHR, in consultation with the medical director and the Health Care Advisory Council, shall develop a plan, a timetable, and a funding strategy for inclusion in the FY 2011 and subsequent budget requests funding sufficient in the Secretary's judgment to accomplish full implementation of the requirements of the BCDSS Health Care Initiative for all children in OHP.*

Defs.' Report: In compliance. (Defs.' 72nd Rep., pp. 41-42)

IVA response: Substantial compliance due to an outstanding issue.

On July 1, 2020, a new five-year contract with HCAM for the MATCH program was implemented. This contract included an expanded scope of work and a significant increase in funding. With these additional resources the IVA had hoped to see an increase in compliance rates for the health care measures and improved health outcomes for children in foster care. At the time of the writing of this report, the contract for the MATCH program is being prepared for renewal which will occur on July 1, 2025. The IVA has not been provided any information regarding the scope and deliverables of the new contract and how it will address the lack of compliance with the MCD Health Care measures.

The Defendants have not provided any documentation to support their claim of compliance related to “consultation with the medical director and the Health Care Advisory Council.” As members of the Health Care Advisory Council, the IVA and Plaintiffs’ counsel have not been a part of consultation on a plan, timetable or funding strategy to accomplish full implementation of the requirements of the Health Care section of the MCD.

The IVA encourages the parties to discuss this Additional Commitment and how the requirements can be met. The Council members are not selected for the purpose of developing budget requests and may not have the expertise needed for health care management. However, data has shown that some of the health needs of children in foster care continue to go unmet, and it is vital for the parties to determine if this is an issue of insufficient funding, flawed deployment of resources, or some other cause.

4. *By December 31, 2010, DHR/BCDSS shall operationalize a system to meet the mental health needs of children in OHP. The system will include access to mental health screening and assessment as well as a continuum of treatment services designed to secure ongoing treatment that*

meets the needs of children in OHP. DHR/BCDSS will seek the advice and input from the Health Care Advisory Group in the development and implementation of this system.

Defs.' Report: In compliance. (Defs.' 72nd Rep., p. 42)

IVA response: Not in full compliance.

Lack of quality mental health care services and continuity of services for children, particularly for those who experience placement instability, has been a long-standing and continuing problem. See section on Mental Health in IVA's Certification Report for discussion of this issue.

4. Education

1. By September 2009, Defendants will develop an implementation plan reasonably calculated to produce compliance with the education requirements of the federal "Fostering Connections to Success and Increasing Adoptions Act."

Defs.' Report: In compliance. (Defs.' 72nd Rep., p. 42)

IVA response: Insufficient information and documentation to determine compliance.

Defendants updated their Education Stability Policy effective December 15, 2023.⁶ Defendants reference an updated Memorandum of Agreement with Baltimore City executed on January 21, 2024, but did not provide a copy with their report. Defendants reference their Office of Education, but Defendants do not present any documentation of how they work with the other school systems to ensure educational stability and timely enrollment and present no information about progress towards completing MOUs with other school districts.

⁶ SSA/CW # 23-04, Education Stability. Defendants' Child Welfare Policies can be found on the DHS public website at <https://dhs.maryland.gov/business-center/documents/child-policy-directives> (accessed June 16, 2025).