



**FOURTH SEMI-ANNUAL REPORT OF THE  
INDEPENDENT MONITOR OF THE MEMORANDUM  
OF AGREEMENT BETWEEN THE UNITED STATES  
DEPARTMENT OF JUSTICE AND THE STATE OF  
DELAWARE REGARDING THE DELORES J. BAYLOR  
WOMEN'S CORRECTIONAL INSTITUTION, THE  
JAMES T. VAUGHN CORRECTIONAL CENTER, THE  
HOWARD R. YOUNG CORRECTIONAL INSTITUTION  
AND THE SUSSEX CORRECTIONAL INSTITUTION**

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\* On January 14, 2009, then Governor-elect Jack Markell appointed Joshua W. Martin III to serve as chair the Delaware Economic and Financial Advisory Council, the state's revenue forecasting committee. DEFAC is responsible for estimating the state's revenues and setting the limit the legislature must use to draft the next fiscal year's budget. The parties to the MOA are aware of and do not object to Mr. Martin's appointment.

## **EXECUTIVE SUMMARY**

This is the Fourth Report submitted pursuant to the MOA<sup>1</sup> and the Monitoring Agreement,<sup>2</sup> covering the period from July 1, 2008 through December 31, 2008. During this monitoring period, the Monitoring Team<sup>3</sup> has visited each of the Facilities<sup>4</sup> on multiple occasions in order to provide technical assistance and conduct monitoring. In order to monitor the State's compliance with the provisions of the MOA, the Monitoring Team conducted interviews of leadership and staff of Delaware Department of Correction ("DOC") and Correctional Medical Services ("CMS"),<sup>5</sup> and inmates housed in the Facilities.<sup>6</sup> In addition, the Monitoring Team has reviewed numerous medical records at each facility. All of these materials, in connection with the observations that the Monitoring Team made while on site at the Facilities, form the basis of the compliance assessments<sup>7</sup> contained in this Report.

The compliance assessments made in this report regarding the State's compliance with the provisions of the MOA are made by consensus of the Monitoring Team, which means that the Monitoring Team reviews the evidence and determines whether the evidence shows substantial, partial or noncompliance with a provision of the MOA. Furthermore, prior to the

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<sup>1</sup> The "MOA" refers to the Memorandum of Agreement between the United States Department of Justice ("DOJ") and the State of Delaware (the "State") regarding the Delores J. Baylor Women's Correctional Institution, the Delaware Correctional Center, the Howard R. Young Correctional Institution, and the Sussex Correctional Institution, which was entered into on December 29, 2006. The MOA is available at [http://www.deprisonmonitor.org/pdf/delaware\\_prisons\\_moa\\_12-29-06.pdf](http://www.deprisonmonitor.org/pdf/delaware_prisons_moa_12-29-06.pdf).

<sup>2</sup> The "Monitor Agreement" refers to the Agreement between Joshua W. Martin III (the "Monitor") Individually and on Behalf of Potter Anderson & Corroon LLP and the State of Delaware, which was entered into on May 14, 2007 (the "Monitor Agreement").

<sup>3</sup> The Monitor has retained a team of medical and mental health experts. The Monitor, together with the medical and mental health experts and other attorneys, are hereinafter referred to as the "Monitoring Team." Biographies of the members of the Monitoring Team are attached hereto as Appendix I.

<sup>4</sup> The term "Facilities" refers to the Delores J. Baylor Women's Correctional Institution ("Baylor"), the James T. Vaughn Correctional Center ("JTVCC") (formerly the Delaware Correctional Center or DCC), the Howard R. Young Correctional Institution ("HRYCI"), and the Sussex Correctional Institution ("SCI").

<sup>5</sup> CMS is a private contractor that has been providing medical and mental health care services at the Facilities since it took over the prior vendor's contract on July 1, 2005. The CMS website is available at <http://www.cmsstl.com>.

<sup>6</sup> The Monitoring Team also has received unsolicited information from inmates, their families, advocates, community groups and other external sources.

<sup>7</sup> For those provisions of the MOA for which the Monitoring Team made an assessment, there are three different compliance assessments possible: substantial compliance, partial compliance, and non-compliance. These compliance assessments will be explained at greater length in the introduction to the report.

Monitoring Team's visit to a site, it serves upon the DOC document requests, describing documents that it anticipates reviewing during its visit. The DOC then takes steps to have these documents ready for review upon the Monitoring Team's arrival, if not prior to that date.

### *Summary of Findings*

As highlighted in previous reports, the Monitoring Team continues to be concerned over the lack of stable and effective leadership at the vendor-level. As the Monitoring Team emphasized in previous reports, without stable and effective leadership, the State will be significantly hampered in its attempts to become compliant with the MOA. Specifically, stable and effective leaders will improve the State's performance by taking responsibility for ensuring that those staff members that they supervise are performing adequately. Also, stable and effective leadership will ensure institutional knowledge of appropriate practices according to the State's policies and procedures.

The Monitoring Team is also very concerned about the lack of progress the State has made with respect to its Continuous Quality Improvement ("CQI") program required by the MOA. Paragraph 54 of the MOA requires the State to create a comprehensive CQI program that, among other things, tracks various data and services performed at the Facilities. A comprehensive CQI program would assist the State with coming into compliance with other provisions of this MOA because, by highlighting specific problems the State is having and pointing out why the problems exist, the State can take action to remedy those problems promptly and without supervision. The CQI program in place at the present time is not operating consistently or with predictable results. While the State has performed various CQI studies, the Monitoring Team finds that the methodology used to select and audit records needs improvement. Specifically, the methodology is flawed at times because the sample is not targeted for the specific indicator being examined in a particular study. For example, a study might be commissioned to examine medication noncompliance issues and the State will pull 50 charts of inmates at random to examine this issue, but only five of the charts are relevant to the study. Instead of selecting charts at random, the State should target the specific issue being examined in the particular study. The Monitoring Team has discussed with the State its concerns with the sample size and methodology during both its visits to the Facilities, and during previous reports.<sup>8</sup>

The State has continued to attempt to maintain areas of improvement that were highlighted in the Third Report. Specifically, the overall timeliness of certain screening processes is fairly good, although the State has had some difficulty in maintaining the performance highlighted in the Third Report at all of the Facilities. In addition, sanitation efforts have improved, although some problem areas remain with respect to that issue. Finally, the State has continued to take action to remedy some of the issues surrounding the availability and use of space needed for the provision of health-related services.

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<sup>8</sup> See Third Report at pg. 215-221.

### *Summary of State's Compliance*

The MOA contains fifty-five provisions which apply to Baylor, and fifty-four provisions which apply to each of the other three Facilities. The Monitoring Team's assessments of the Facilities are as follows:

- The Monitoring Team found that Baylor is in substantial compliance with 10 of the provisions; in partial compliance with 43 of the provisions; and in non-compliance with 2 provisions.
- The Monitoring Team found that JTVCC is in substantial compliance with 10 of the provisions; in partial compliance with 37 of the provisions; and in non-compliance with 7 provisions.
- The Monitoring Team found that HRYCI is in substantial compliance with 7 of the provisions; in partial compliance with 43 of the provisions; and in non-compliance with 3 provisions. The Monitoring Team deferred making an assessment with respect to one provision, as there was nothing to monitor.
- The Monitoring Team found that SCI is in substantial compliance with 11 of provisions; in partial compliance with 40 of the provisions; and in non-compliance with 3 provisions.

As compared to the Third Report, overall, the number of provisions which the State is in substantial compliance with has increased slightly from 37 to 38. More importantly, the number of provisions which the State is not in compliance with has decreased from 22 to 15. With respect to the majority of provisions with which the State has been assessed as being in partial compliance, as is discussed in the Introduction, a partial compliance rating covers a wide range of performance. It should be noted that, although the State may have received partial compliance ratings in consecutive reports, that does not indicate that the State has failed to make any progress. To the contrary, in many situations, the State has made progress, but still has some work to do before achieving a substantial compliance rating. In order to gain a complete understanding of the progress made by the State, the reader must look past the assessment itself and review the findings made for each provision by the Monitoring Team.