

Attorneys for the *Jackson* class members have prepared the following summary of the recent Settlement Agreement in the *Jackson* lawsuit. This is not a substitute for the Agreement, which is a legal document that speaks for itself. The Settlement Agreement itself is published on the website for Disability Rights New Mexico.

The Purpose of the Settlement Agreement

On April 17, 2019, the parties to the *Jackson* lawsuit signed a Settlement Agreement. The goal of the Agreement is to put in place a plan that will end the *Jackson* lawsuit *and* provide a way to make sure that *Jackson* class members will continue to receive the services that they need. This Agreement by both sides did *not* end the *Jackson* lawsuit. Instead, both sides agreed to a list of tasks that the defendants must accomplish before the *Jackson* lawsuit can end.

A Brief History of the Jackson Lawsuit

In *Jackson v. LLCPDD*, No. 87-0839 JP/KBM (“*Jackson*”), several persons who had been institutionalized in the State’s training schools (“plaintiffs”) brought a lawsuit asking the federal court (“District Court”) to order the State of New Mexico to provide sufficient support to allow them to live in the community, rather than remaining in the training schools. These same people, together with other similar individuals later identified by the District Court, are called “*Jackson* class members,” “the plaintiff class,” “class members,” or “JCM’s.” All these names refer to the same people.

In August 2015, the *Jackson* defendants filed a motion against the plaintiffs, arguing that things in New Mexico have changed so much that the District Court should end the *Jackson* lawsuit. After hearing evidence for both sides, the District Court denied the defendants’ motion. Defendants appealed. The appellate court reversed the decision, and sent the case back to the District Court to conduct a new hearing, possibly to include additional evidence.

Because neither side could be certain of winning at the new hearing, the parties spent several days last spring trying to see if there was a way everyone could agree on a solution to the dispute between the plaintiffs and the defendants. We reached an agreement.

The Settlement Agreement lists all the tasks the defendants must complete before the *Jackson* lawsuit is ended.

We have now started the “compliance” stage of settlement, meaning that the DOH is attempting to complete the list of tasks, and the attorneys for the plaintiffs are “monitoring” DOH’s efforts. “Monitoring” means observing whether DOH is succeeding in completing the list of tasks. As part of this work, we are going into the various communities in New Mexico to visit plaintiffs themselves, plaintiffs’ guardians, and plaintiffs’ provider agencies.

Tasks to End the Lawsuit

It's important to keep in mind that the defendants have both completed these tasks and set up a system that will make sure the changes are going to continue without the court's supervision.

First, the parties agree that the Jackson Compliance Administrator (“JCA”) JCA will stop her work on the *Jackson* lawsuit. Sue Gant was the JCA. The District Court appointed her to monitor the defendants’ compliance with prior agreements and orders affecting class members.

Second, the defendants will timely investigate reports to the Incident Management Bureau (“IMB”), as required by current DHI policies and procedures. IMB investigates the abuse, neglect, or exploitation of *Jackson* class members.

Third, the defendants will eliminate the current backlog of IMB investigations.

Fourth, the defendants will timely investigate the deaths of any *Jackson* class members. These investigations are known as “mortality reviews.” DOH investigates deaths, in general, to determine whether there was neglect or abuse and, even if there wasn’t neglect or abuse, whether there are improvements to New Mexico’s DD Waiver program that would help to prevent any deaths in the future.

Fifth, the defendants will eliminate the backlog in mortality reviews by December 31, 2019.

Sixth, the defendants will complete several tasks related to medical and behavioral health, including:

1. The defendants will complete particular tasks related to the care of individuals with high needs. Some class members have “high acuity” needs with regard to medical care, and some class members are “at risk,” due to high behavioral needs. The defendants have agreed to review the cases of both high acuity individuals and at risk individuals, to determine if they need more support. No one will be moved to a lower level of support.
2. In addition, the defendants will hire state-employed experts, in the areas of nursing and behavior, to monitor both high acuity individuals and at risk individuals, including performing at least one unannounced visit to the individual per month, in order to review documents and plans, and interview personnel. If the state-employed experts find a violation of DD Waiver standards, the provider will be referred for “contract management,” meaning that the provider may receive penalties for the failure to follow the DD Waiver standards. In addition, if the individual is in danger of serious harm, the state-employed expert will take immediate action.
3. Finally, the Defendants will similarly use state-employed case manager coordinators to perform similar unannounced quarterly visits to case managers, with similar referrals and penalties for violations of DD Waiver standards.

Seventh, the defendants will provide health services as required by the DD Waiver standards, including standards that will address healthcare coordination, the roles and responsibilities of various agencies and persons to care for the medical and behavioral needs of individuals receiving services pursuant to the DD Waiver, the use of nursing services, and keeping proper provider records.

Eighth, the defendants will implement the “qualified provider agreement.” Here’s what this means. Community providers qualify to provide services by applying for and being awarded an agreement with the State, via DDS, called a “provider agreement.” The “Qualified Provider Agreement Initiative” means the DDS process for reviewing the provider’s applications, and ensuring compliance with the terms of the of the provider agreement.

Ninth, the defendants will make sure that *Jackson* class members receive individual assessments to see whether there is supported employment available to them in their community.

Tenth, the Agreement sets up a timeline to transfer the Individual Quality Review process to DHI.

What Defendants Must do to Show They’ve Completed their Tasks

Basically, the defendants must complete all their tasks, and prove that they’ve completed their tasks and have made a permanent change to the system that will make sure they can continue their success. There’s a complex process in place to review and decide whether the Defendants are correct that they’ve done what they need to do.

Here’s a “nutshell” of how this process will work.

The defendants must complete all their tasks by Mid-December 2020 or sooner.

When the defendants believe they have completed any of their list of tasks, they can tell the plaintiffs why they think they have completed that task. The plaintiffs can then contest what the defendants say and the District Court will decide after a hearing. If the court agrees with defendants, it will suspend its oversight of just that particular item unless something changes. However, the *Jackson* case cannot be completely ended until DOH has completed *all* the tasks at once and has shown that it has a program in place to make sure that it will continue to comply with all the tasks.

What Happens Once the Defendants Think They’ve Completed all their Tasks

The District Court continues to have authority over DOH’s implementation of this Agreement, until DOH has completed every task. Once DOH is ready, the defendants can file a motion asking the court to find that they have completed all their tasks. If the court agrees with the defendants after a hearing, the case will be “dismissed,” meaning that the case is ended, subject to a possible appeal by either side.