



# COMMONWEALTH of VIRGINIA

NELSON SMITH  
COMMISSIONER

DEPARTMENT OF  
BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES

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January 1, 2023

To: The Honorable L. Louise Lucas, Chairman, Senate Finance and Appropriations  
Committee  
The Honorable Luke E. Torian, Chairman, House Appropriations Committee

From: Nelson Smith, Commissioner, Department of Behavioral Health and Developmental  
Services

RE: Item 310 D.2, 2023 Appropriations Act

Item 310 D.2 of the 2023 Appropriation Act requires the Department of Behavioral Health and Developmental Services (DBHDS) to report on the status of compliance with the DOJ settlement agreement. The language reads:

*D.2. The Department of Behavioral Health and Developmental Services shall report on the status of compliance with the provisions of the settlement agreement with the United States Department of Justice pursuant to civil action no: 3:12cv059-JAG and shall: (i) list each noncompliant provision; (ii) the status of meeting the provision; (iii) the department's planned actions to achieve compliance; and (iv) the date the department expects to achieve compliance with the provision. The department shall report such information to the Director, Department of Planning and Budget and the Chairs of the*

*House Appropriations and Senate Finance and Appropriations Committees quarterly,  
with each report due 30 days after the end of each quarter.*

Please find enclosed the report in accordance with Item 310 D.2. DBHDS Staff are available should you wish to discuss this request

cc: The Honorable Janet V. Kelly, Secretary, Health and Human Resources |

[A1]

## Introduction

DBHDS has been the agency lead for the Commonwealth's Department of Justice Settlement [A2] Agreement since it was finalized in August of 2012. The Settlement Agreement has 120 active provisions. The Commonwealth has successfully exited Section IV and VI.D which comprise 33 provisions of the agreement. As of the Independent reviewer's 21<sup>st</sup> report, the Commonwealth is in sustained compliance (met the provision for two consecutive review periods) with an additional 45 provisions and in compliance (met the provision for one review period) with two more provisions. The Commonwealth is in compliance with 80 provisions of 120 of the Agreement.

In January 2020, the Commonwealth of Virginia and the United States agreed upon a set of compliance indicators that address all provisions of the Settlement Agreement for which the Commonwealth was not yet found in compliance at the time of this joint filing. As outlined below, the Commonwealth is currently in 60 percent or more compliance with an additional 22 provisions based on the number of compliance indicators for that provision that are in compliance. Of the 22 provisions that are 60 percent or more compliant, four are in 100 percent compliance pending verification of data reliability and validity. DBHDS has implemented a project management strategy to address the remaining provisions and indicators to bring them into compliance.

DBHDS is ensuring that all processes to come into compliance, with a focus first and foremost on a continuous quality improvement culture, are developed and operational within the agency. DBHDS will spend the next 12 months utilizing quality tools to enhance compliance with the data metrics established as part of the provisions and associated compliance indicators.

Settlement Agreement Reference	Provision	Status	Plan for Compliance	Anticipated Completion Date
III	Serving Individuals with Developmental Disabilities in the Most Integrated Setting	53 provisions  35 in Sustained Compliance  1 in Compliance  17 in Non-Compliance[A3]	The 17 provisions in non-compliance	
III.C.2.a.-i.	The Commonwealth shall create an Individual and Family Support Program (IFSP) for individuals with ID/DD whom the Commonwealth determines to be the most at risk of institutionalization. In the State Fiscal Year 2021, a minimum of 1,000 individuals will be supported.	3 of 12 Compliance Indicators in Compliance	DBHDS has developed emergency regulations that are currently being finalized, a guidance document was posted for public comment with only one comment of positive feedback and the IFSP portal was developed in WaMS and funding is set to launch on 1/23.	December 2023
III.C.5.b.	For the purpose of this agreement, case management shall mean:	NOT Monitored as Provision (Intro)		

Settlement Agreement Reference	Provision	Status	Plan for Compliance	Anticipated Completion Date
III.C.5.b.i.	Assembling professionals and nonprofessionals who provide individualized supports, as well as the individual being served and other persons important to the individual being served, who, through their combined expertise and involvement, develop Individual Support Plans (“ISP”) that are individualized, person-centered, and meet the individual’s needs.	4 of 20 Compliance Indicators in Compliance	<ol style="list-style-type: none"> <li>1. Continue the Support Coordinator Quality Review process.</li> <li>2. Memorialize technical assistance provided for every review cycle.</li> <li>3. Report the SCQR percentages annually</li> </ol>	<i>December 2023</i>
III.C.5.b.ii.	Assisting the individual to gain access to needed medical, social, education, transportation, housing, nutritional, therapeutic, behavioral, psychiatric, nursing, personal care, respite, and other services identified in the ISP.		<i>When Virginia achieves the Indicators for III.C.5.b.i., it also achieves compliance for this Provision.</i>	<i>December 2023</i>
III.C.5.b.iii.	Monitoring the ISP to make timely additional referrals, service changes, and amendments to the plans as needed.		<i>When Virginia achieves the Indicators for III.C.5.b.i., it also achieves compliance for this Provision.</i>	<i>December 2023</i>

Settlement Agreement Reference	Provision	Status	Plan for Compliance	Anticipated Completion Date
III.C.6.a.i.-iii.	<p>The Commonwealth shall develop a statewide crisis system for individuals with intellectual and developmental disabilities. The crisis system shall:</p> <ul style="list-style-type: none"> <li>i. Provide timely and accessible support.</li> <li>ii. Provide services focused on crisis prevention and proactive planning.</li> <li>iii. Provide in-home and community-based crisis services that are directed at resolving crises and preventing the removal of the individual from his or her current placement whenever practicable.</li> </ul>	18 of 23 indicators in compliance	<ol style="list-style-type: none"> <li>1. Create statewide call center in alignment with the 988 and transition all crisis calls to 988.</li> <li>2. Implement the Crisis Risk Assessment Tool.</li> <li>3. Report Data.</li> <li>4. Conduct gap analysis around therapeutic consultation.</li> <li>5. Report on Customized Rate applications.</li> <li>6. Train case managers and behaviorists.</li> <li>7. Respite Workgroup</li> <li>8. Implement BSPARI and quality improvement process.</li> <li>9. New Authorization process for TC</li> <li>10. Look behind process for in-home and personal care.</li> <li>11. Rate rebase</li> </ol>	<i>December 2023</i>

Settlement Agreement Reference	Provision	Status	Plan for Compliance	Anticipated Completion Date
III.C.6.b.ii.A.	Mobile crisis team members adequately trained to address the crisis shall respond to individuals at their homes and in other community settings and offer timely assessment, services, support, and treatment to de-escalate crises without removing individuals from their current placement whenever possible.	7* of 7 compliance indicators are in compliance	DBHDS has implemented all processes necessary to come into compliance with the remaining indicators.	December 2023
III.C.6.b.ii.B.	Mobile crisis teams shall assist with crisis planning and identifying strategies for preventing future crises and may also provide enhanced short-term capacity within an individual's home or other community setting.		<i>The Parties agreed that the Indicators for III.C.6.a.i.-iii. and III.C.6.b.ii.A. cover this provision.</i>	December 2023
III.C.6.b.iii.B.	Crisis stabilization programs shall be used as a last resort. The State shall ensure that, prior to transferring an individual to a crisis stabilization program, the mobile crisis team, in collaboration with the provider, has first attempted to resolve the crisis to avoid an out-of-home placement and, if that is not possible, has then attempted to locate another community-based placement that could serve as a short-term placement.	3 of 4 indicators are met	DBHDS has implemented all processes necessary to come into compliance with the remaining indicators.	December 2023

Settlement Agreement Reference	Provision	Status	Plan for Compliance	Anticipated Completion Date
III.C.6.b.iii.D.	Crisis stabilization programs shall have no more than six beds and lengths of stay shall not exceed 30 days.	0 of 1 indicator met	DBHDS has implemented all processes necessary to come into compliance with the remaining indicators.	December 2023
III.C.6.b.iii.E.	With the exception of the Pathways Program at SWVTC crisis stabilization programs shall not be located on the grounds of the Training Centers or hospitals with inpatient psychiatric beds. By July 1, 2015, the Pathways Program at SWVTC will cease providing crisis stabilization services and shall be replaced by off-site crisis stabilization programs with sufficient capacity to meet the needs of the target population in that Region.		<i>The Parties agreed that the Indicators for III.C.6.b.iii.G. cover this Provision.</i>	December 2023
III.C.6.b.iii.G	By June 30, 2013, the Commonwealth shall develop an additional crisis stabilization program in each Region as determined necessary by the Commonwealth to meet the needs of the target population in that Region.	2 of 3 indicators met	DBHDS has implemented all processes necessary to come into compliance with the remaining indicators.	December 2023



Settlement Agreement Reference	Provision	Status	Plan for Compliance	Anticipated Completion Date
III.C.7.a.	To the greatest extent practicable, the Commonwealth shall provide individuals in the target population receiving services under this Agreement with integrated day opportunities, including supported employment.	1 of 10 compliance indicators are met	DBHDS has reconstituted the Community Engagement Advisory Group to improve community inclusion outcomes and continues to work with the Employment First Advisory Group to address employment outcomes.	December 2023

<p><b>III.C.7.b.</b></p>	<p>The Commonwealth shall maintain its membership in the State Employment Leadership Network (“SELN”) established by the National Association of State Developmental Disabilities Directors. The Commonwealth shall establish a state policy on Employment First for the target population and include a term in the CSB Performance Contract requiring application of this policy. The Employment First policy shall, at a minimum, be based on the following principles: (1) individual supported employment in integrated work settings is the first and priority service option for individuals with intellectual or developmental disabilities receiving day program or employment services from or funded by the Commonwealth; (2) the goal of employment services is to support individuals in integrated work settings where they are paid minimum or competitive wages; and (3) employment services and goals must be developed and discussed at least annually through a person-centered planning process and included in the ISP. The Commonwealth shall have at least one employment service coordinator to monitor implementation of Employment First practices for individuals in the target population.</p>		<p>The indicators for III.C.7.a. serve to measure III.C.7.b.</p>	<p>December 2023</p>
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Settlement Agreement Reference	Provision	Status	Plan for Compliance	Anticipated Completion Date
III.C.8.a.	The Commonwealth shall provide transportation to individuals receiving HCBS waiver services in the target population in accordance with the Commonwealth's HCBS Waivers.	7 of 8 compliance indicators are met	DMAS implemented new data collection strategy for on time trip reporting.	December 2023
III.D.1.	The Commonwealth shall serve individuals in the target population in the most integrated setting consistent with their informed choice and needs.	17* of 23 compliance indicators are met	<ol style="list-style-type: none"> <li>1. <i>Report Data</i></li> <li>2. <i>Review services for modifications to allowable activities</i></li> <li>3. <i>Potential Rate Rebase for nursing</i></li> <li>4. <i>Look Behind for why hours not delivered</i></li> <li>5. <i>Review covering travel as part of nursing.</i></li> <li>6. <i>Research Every Child Texas</i></li> <li>7. <i>Make Recommendation to improve children services</i></li> </ol>	December 2023

Settlement Agreement Reference	Provision	Status	Plan for Compliance	Anticipated Completion Date
III.D.5.	Individuals in the target population shall not be served in a sponsored home or any congregate setting, unless such placement is consistent with the individual's choice after receiving options for community placements, services, and supports consistent with the terms of Section IV.B.9 below.	1 of 3 compliance indicators are met	DBHDS has updated information related to the Virginia Informed Choice Form.	December 2023
III.D.6.	No individual in the target population shall be placed in a nursing facility or congregate setting with five or more individuals unless such placement is consistent with the individual's needs and informed choice and has been reviewed by the Region's Community Resource Consultant (CRC) and, under circumstances described in Section III.E below, the Regional Support Team (RST).	9* of 13 compliance indicators are met	<ol style="list-style-type: none"> <li>1. Implement RST Process in WaMS.</li> <li>2. Complete review of Reason B</li> <li>3. Implement strategies</li> <li>4. Report %</li> </ol>	December 2023
IV.	Discharge Planning and Transition from Training Centers	32 Provisions in sustained compliance	The Commonwealth exited this section of the Agreement on March 11, 2021	

Settlement Agreement Reference	Provision	Status	Plan for Compliance	Anticipated Completion Date
V.	Quality and Risk Management System	33 Provisions 10 Sustained Compliance 1 Compliance 22 Non Compliance		
V.B.	The Commonwealth's Quality Management System shall: identify and address risks of harm; ensure the sufficiency, accessibility, and quality of services to meet individuals' needs in integrated settings; and collect and evaluate data to identify and respond to trends to ensure continuous quality improvement.	11* of 33 indicators in compliance	1. Utilize QSR process to assess DSP/DSP Supervisor competencies	December 2023
V.C.1.	The Commonwealth shall require that all Training Centers, CSBs, and other community providers of residential and day services implement risk management processes, including establishment of uniform risk triggers and thresholds, that enable them to adequately address harms and risks of harm.	7* of 11 indicators in compliance	<ol style="list-style-type: none"> <li>1. Update Assuring Health and Safety for Individuals with DD.</li> <li>2. Update risk triggers and thresholds.</li> <li>3. Report data on providers following reporting requirements for risk triggers and thresholds.</li> <li>4. Develop a tool that providers may use to identify and track serious incidents.</li> </ol>	December 2023

Settlement Agreement Reference	Provision	Status	Plan for Compliance	Anticipated Completion Date
V.C.4.	The Commonwealth shall offer guidance and training to providers on proactively identifying and addressing risks of harm, conducting root cause analysis, and developing and monitoring corrective actions.	7 of 9 indicators in compliance	<i>DBHDS has updated the Assuring Health and Safety for Individuals with Developmental Disabilities with a Comprehensive Risk Management Plan and have offered training to providers regarding conducting root cause analysis and developing quality improvement plans.</i>	December 2023
V.C.5.	The Commonwealth shall conduct monthly mortality reviews for unexplained or unexpected deaths reported through its incident reporting system. The mortality review team shall have at least one member with the clinical experience to conduct mortality re who is otherwise independent of the State. Within ninety days of a death, the mortality review team shall: (a) review, or document the unavailability of: (i) medical records, including physician case notes and nurse’s notes, and all incident reports, for the three months preceding the individual’s death; ... (b) interview, as warranted, any persons having information regarding the individual’s care; and (c) prepare and deliver to the DBHDS Commissioner a report of deliberations, findings, and recommendations, if	19 of 21 indicators in compliance	<ol style="list-style-type: none"> <li>1. Use updated definition of potentially preventable death</li> <li>2. Implement tiered prevention strategies</li> </ol>	December 2023

Settlement Agreement Reference	Provision	Status	Plan for Compliance	Anticipated Completion Date
	any. The team also shall collect and analyze mortality data to identify trends, patterns, and problems ... and implement quality improvement initiatives to reduce mortality rates to the fullest extent practicable.			
V.C.6.	If the Training Center, CSBs, or other community provider fails to report harms and implement corrective actions, the Commonwealth shall take appropriate action with the provider.	8* of 8 indicators in compliance	DBHDS has developed expectations and processes around this.	December 2023

Settlement Agreement Reference	Provision	Status	Plan for Compliance	Anticipated Completion Date
V.D.1.	<p>The Commonwealth's HCBS waivers shall operate in accordance with the Commonwealth's CMS-approved waiver quality improvement plan to ensure the needs of individuals enrolled in a waiver are met, that individuals have choice in all aspects of their selection of goals and supports, and that there are effective processes in place to monitor participant health and safety. The plan shall include evaluation of level of care; development and monitoring of individual service plans; assurance of qualified providers. Review of data shall occur at the local and State levels by the CSBs and DMAS/DBHDS, respectively.</p>	5 of 8* indicators in compliance	<p>DBHDS has developed a new application to help gather the data related to the implementation of the performance measures as part of the waivers.</p> <p>DBHDS continues to implement the Quality Service Reviews.</p> <p>DMAS conducts the quality review team and gathers data through this as well.</p> <p>DBHDS/DMAS annually report on the findings related to the implementation of the waivers.</p> <p>DBHDS ad DMAS are implementing HCBS reviews.</p>	December 2023
V.D.2.a.-d.	<p>The Commonwealth shall collect and analyze consistent, reliable data to improve the availability and accessibility of services for individuals in the target population and the quality of services offered to individuals receiving services under this Agreement.</p>	5 of 8* indicators in compliance	<ol style="list-style-type: none"> <li>1. Data reliability and process as written will be implemented.</li> <li>2. Develop process documents for all data collected.</li> <li>3. Create data verification process</li> <li>4. Data analyst review process and data for reliability and validity.</li> </ol>	December 2023



Settlement Agreement Reference	Provision	Status	Plan for Compliance	Anticipated Completion Date
V.D.3.	The Commonwealth shall begin collecting and analyzing reliable data about individuals receiving services under this Agreement selected from the following areas in State Fiscal Year 2012 and will ensure reliable data are collected and analyzed from each of these areas by June 30, 2014. Multiple types of sources (e.g., providers, case managers, licensing, risk management, Quality Service Reviews) can provide data in each area, though any individual type of source need not provide data in every area (as specified):	23 of 24* indicator in compliance	<i>DBHDS implements a data quality monitoring plan and has implemented an additional process around actionable recommendation to provide areas that both business owners and IT experts can implement to increase data reliability and validity.</i>	December 2023
V.D.4.	The Commonwealth shall collect and analyze data from available sources, including the risk management system described in V.C. above, those sources described in Sections V.E-G and I below (e.g. providers, case managers, Quality Service Reviews, and licensing), Quality Service Reviews, the crisis system, service and discharge plans from the Training Centers, service plans for individuals receiving waiver services, Regional Support Teams, and CIMs.	0 of 1 indicators in compliance	<i>DBHDS implements a data quality monitoring plan and has implemented an additional process around actionable recommendation to provide areas that both business owners and IT experts can implement to increase data reliability and validity.</i>	December 2023

Settlement Agreement Reference	Provision	Status	Plan for Compliance	Anticipated Completion Date
V.D.5.	The Commonwealth shall implement Regional Quality Councils (RQCs) that shall be responsible for assessing relevant data, identifying trends, and recommending responsive actions in their respective Regions of the Commonwealth.	5 of 5* indicators in compliance	DBHDS has process to assert data reliability and validity.	December 2023
V.D.5.b.	1. Each Council shall meet on a quarterly basis to share regional data, trends, and monitoring efforts and plan and recommend regional quality improvement initiatives. The work of the Regional Quality Councils shall be directed by a DBHDS quality improvement committee.	7 of 7* indicators in compliance	DBHDS has process to assert data reliability and validity.	December 2023
V.D.6.	At least annually, the Commonwealth shall report publicly, through new or existing mechanisms, on the availability ... and quality of supports and services in the community and gaps in services, and shall make recommendations for improvement.	4 of 5* indicators in compliance	<i>DBHDS produces many reports that provide data as required under this agreement. The Department also created an all reports spreadsheet that tracks all reports, frequency, and related data.</i>	December 2023

Settlement Agreement Reference	Provision	Status	Plan for Compliance	Anticipated Completion Date
V.E.1.	The Commonwealth shall require all providers (including Training Centers, CSBs, and other community providers) to develop and implement a quality improvement (“QI”) program including root cause analysis that is sufficient to identify and address significant issues.	3 of 5 indicators in compliance	<ol style="list-style-type: none"> <li>1. DBHDS will collect data on three calculations utilizing the 3<sup>rd</sup> as demonstration of compliance; the other two will be used as part of quality improvement.</li> <li>2. DBHDS will continue to conduct training.</li> <li>3. DBHDS will ensure reviews look at monitoring of the plan as well as documentation of each element outlined in regulation.</li> <li>4. Pilot training program.</li> </ol>	December 2023
V.E.2.	Within 12 months of the effective date of this Agreement, the Commonwealth shall develop measures that CSBs and other community providers are required to report to DBHDS on a regular basis, either through their risk management/critical incident reporting requirements or through their QI program.	0 of 4 indicators in compliance	<ol style="list-style-type: none"> <li>1. Gather data for provider reporting measures from the QSR.</li> <li>2. QSR vendor present data.</li> <li>3. Incorporate results into QIP.</li> <li>4. DBHDS tracks statewide results.</li> <li>5. Develop tools for providers to report data.</li> <li>6. DBHDS will collect data from Safety, Well Being, Crises, and Community Inclusion domains.</li> </ol>	December 2023

Settlement Agreement Reference	Provision	Status	Plan for Compliance	Anticipated Completion Date
V.E.3.	The Commonwealth shall use Quality Service Reviews and other mechanisms to assess the adequacy of providers' quality improvement strategies and shall provide technical assistance and other oversight to providers whose quality improvement strategies the Commonwealth determines to be inadequate.	1 of 2* indicators in compliance	1. DBHDS implements the Quality Service Review process annually including a process to make improvements based on lessons learned and feedback gathered from various stakeholders.	December 2023
V.F.2.	At these face-to-face meetings, the case manager shall: observe the individual and the individual's environment to assess for previously unidentified risks, injuries, needs, or other changes in status; assess the status of previously identified risks, injuries, needs, or other change in status; assess whether the individual's support plan is being implemented appropriately and remains appropriate for the individual; and ascertain whether supports and services are being implemented consistent with the individual's strengths and preferences and in the most integrated setting appropriate to the individual's needs.		<i>When Virginia achieves the Indicators for III.C.5.b.i., it also achieve compliance for this Provision.</i>	December 2023

Settlement Agreement Reference	Provision	Status	Plan for Compliance	Anticipated Completion Date
V.F.4.	Within 12 months from the effective date of this Agreement, the Commonwealth shall establish a mechanism to collect reliable data from the case managers on the number, type, and frequency of case manager contacts with the individual.	0 of 2 indicators in compliance	This data is collected monthly from the CSBs.	<i>December 2023</i>
V.F.5.	Within 24 months from the date of this Agreement, key indicators from the case manager's face-to-face visits with the individual, and the case manager's observation and assessments, shall be reported to the Commonwealth for its review and assessment of data. Reported key indicators shall capture information regarding both positive and negative outcomes for both health and safety and community integration and will be selected from the relevant domains listed in V.D.3.	0 of 1 indicator in compliance	<i>This information is collected and reported as part of the Case Management Steering Committee.</i>	<i>December 2023</i>

Settlement Agreement Reference	Provision	Status	Plan for Compliance	Anticipated Completion Date
V.H.1.	The Commonwealth shall have a statewide core competency-based training curriculum for all staff who provide services under this Agreement. The training shall include person-centered practices, community integration and self-determination awareness, and required elements of service training.	9 of 13 indicators in compliance	<ol style="list-style-type: none"> <li>1. Utilize QSR to assess DSP Supervisor competencies.</li> <li>2. Focus QSR observation on implementation of competencies.</li> <li>3. QSR reviewer will notify DBHDS when someone is not competent.</li> <li>4. DBHDS will assess the data related to findings and report on them.</li> </ol>	December 2023
V.I.1.a.-b.	The Commonwealth shall use Quality Service Reviews (“QSRs”) to evaluate the quality of services at an individual, provider, and system-wide level and the extent to which services are provided in the most integrated setting appropriate to individuals’ needs and choice.	1 of 5 indicator in compliance	DBHDS implements the Quality Service Review process annually including a process to make improvements based on lessons learned and feedback gathered from various stakeholders.	5. December 2023

Settlement Agreement Reference	Provision	Status	Plan for Compliance	Anticipated Completion Date
V.I.2.	QSRs shall evaluate whether individuals' needs are being identified and met through person-centered planning and thinking (including building on individuals' strengths, preferences, and goals), whether services are being provided in the most integrated setting.	4 of 6 indicators in compliance	DBHDS implements the Quality Service Review process annually including a process to make improvements based on lessons learned and feedback gathered from various stakeholders.	December 2023
V.I.3.	The Commonwealth shall ensure those conducting QSRs are adequately trained and a reasonable sample of look-behind QSRs are completed to validate the reliability of the QSR process.	2 of 4 indicators in compliance	DBHDS implements the Quality Service Review process annually including a process to make improvements based on lessons learned and feedback gathered from various stakeholders.	December 2023
VI.	Independent Reviewer	1 Provision in sustained compliance	The Commonwealth exited this section of the Agreement on March 11, 2021.	
IX.	Implementation of the Agreement	1 Provision		

Settlement Agreement Reference	Provision	Status	Plan for Compliance	Anticipated Completion Date
IX.C.	The Commonwealth shall maintain sufficient records to document that the requirements of this Agreement are being properly implemented.	0 of 4 indicators in Compliance	DBHDS has implemented a new program that underlies the Settlement Agreement Library which will make updating and maintaining the library.	December 2023

*\*Note: DBHDS has not yet determined that the sources of its data provide reliable and valid information available for compliance reporting, “\*met” determinations are not yet final, but rather for illustrative purposes only. [A4]*