

Katherine Douglas

Public Comment -

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From: Clk-RecHelpDesk
Sent: Tuesday, November 21, 2023 10:22 AM
To: sbcob
Subject: FW: LWVSB/CLUE to Board of Supervisors re Mental Health in the jail
Attachments: Letter to Board of Supervisors.Wellpath,11.20.2023.pdf; Avocet Staffing Analysis.Public (May 2023).pdf; Hernandez v. Monterey County-Wellpath, ORDER Granting Pls Motion to Enforce, 09-26-23.pdf; 2023-09-05 FINAL Venters.Third Round Medical Care Report.pdf

Hello,

I don't see Clerk of the Board included as a recipient on this e-mail. Forwarding it to you, since this is unrelated to Clerk-Recorder.

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Subject: LWVSB/CLUE to Board of Supervisors re Mental Health in the jail

Caution: This email originated from a source outside of the County of Santa Barbara. Do not click links or open attachments unless you verify the sender and know the content is safe.

Chair Williams and Board of Supervisors,

Please find attached a letter to the Board regarding mental health in the Santa Barbara County Jails from the League of Women Voters of Santa Barbara, Clergy and Laity for Economic Justice (CLUE-SB), and the League of Women Voters of Santa Maria. We hope you will study this letter and our recommendations now although the subjects discussed may not appear on your agenda until November 28 or December 5. We ask that the County Clerk also attach the letter to your agenda when the agenda includes discussion of oversight of the Wellpath contract and your response to the Grand Jury recommendations.

For your convenience, we are attaching several documents referenced in our letter. Other referenced documents are hyperlinked.

We are thankful this week for your service to our community.

LWV Santa Barbara, LWV Santa Maria, CLUE Santa Barbara



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Clergy and Laity United for Economic Justice
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November 15, 2023

Dear Chair Williams and Members of the Board of Supervisors:

CLUE-SB (Clergy and Laity United for Economic Justice - Santa Barbara) and the League of Women Voters of Santa Barbara (LWVSB) study and advocate to support our County's ongoing efforts for criminal justice reform. League of Women Voters' of Santa Maria Valley, serving all of North County, supports and endorses the research and recommendations in this letter. Our current focus is on improving jail conditions for those who live or work in the jails. We share serious concerns with many in our community that, following a 2021 Stipulated Judgment in Murray v. County of Santa Barbara and Santa Barbara County Sheriff's Office, our Sheriff and Santa Barbara County have failed to meet required objectives for humane living conditions and responsive medical and mental health care for jail residents.

The purpose of this letter is to share the results of our research and recommend the Board direct the Public Health Department and Behavioral Wellness to provide oversight of the County's Wellpath contract for medical and mental health services in our jails, as required by the Federal Court Order. The Board directed the County Staff to investigate this option. We also studied this option and are sharing our results here.

Wellpath's Missing Performance Report & Lack of Oversight. We are aware that Wellpath, the current contractor providing medical and mental health services in our County jails, has failed to timely file an Annual Report and that there is little, if any, transparency concerning its performance under the contract. The Sheriff's Office is charged with primary oversight of Wellpath's contract but has failed to require Wellpath's timely compliance and has likewise filed no report. It is our understanding that the Board requested Wellpath's report for its October meeting. That report was not

forthcoming, requiring the matter to be rescheduled on your agenda for late November or December.

Neglect by the Sheriff's Office to establish meaningful oversight and monitoring of Wellpath, and continuing deaths and mental health crises for incarcerated jail residents, compel us to express our serious concerns. Specifically, we request that you **direct our Public Health Department and Behavioral Wellness to provide robust oversight of Wellpath's medical and mental health care that is given to County jail residents.**

Federal Court has identified failed performance and requires action. On August 14, 2023, the Federal District Court in Murray found the County and Sheriff's Office failed to comply with standing orders first issued in 2021, requiring corrections to existing inhumane and substandard jail conditions. Given the lack of progress, the Court issued a new order with terms agreed to by the parties.¹ That order continues to require compliance with the Remedial Plan, but extends into 2029 deadlines for completion of physical renovations and additions to the jails. Delays in jail renovations and additions to the North Branch Jail do not excuse non-compliance on all other measures in the Remedial Plan.

CLUE-SB, LWV-SB and LWV-SM urge you to comply with the required Remedial Plan in Murray by doing what the Court expressly requires:²

1. ***The County shall appoint*** a County employee or consultant with adequate expertise to provide ongoing monitoring and oversight of the private Jail health care provider contract.
2. The County's Departments of Public Health and Behavioral Wellness ***shall actively monitor*** the Jail health care contract with any private health care services provider [emphasis added].

Oversight of Wellpath's medical and mental health care for jail residents is woefully insufficient. In Santa Barbara County, the Sheriff has primary responsibility to oversee the Wellpath contract but has failed to do so. Overwhelming evidence supports the need for the County to monitor and assert oversight independent of the Sheriff's Office. Highlighting our concerns are the following facts:

1 [104] Order on Joint Status Report & Stipulation re Implementation of Remedial Plan, 08-14-23.pdf (disabilityrightsca.org).

2 See Remedial Plan II.A at pp. 3,4. [<https://www.disabilityrightsca.org/system/files/file-attachments/Murray%20v.%20Cty%20of%20Santa%20Barbara%20-%20Remedial%20Plan%2007-17-2020.pdf>]

1. The Sheriff has assigned oversight of the Wellpath contract to a custody deputy who, though well-meaning, does not have sufficient medical, mental health or health administration training or experience to oversee medical and mental health responsibilities in the jails. The reality is custodial and health care expertise are not the same. We are informally told that a number of Wellpath staff have left its Santa Barbara's Jail health care team because the Sheriff's oversight appointee is unable to effectively respond to Wellpath's staff needs.

2. The following four reports document continued harm to jail residents and failed compliance with Murray lawsuit agreements:

- **Staffing hours for crisis intervention are inadequate.** A 2023 Santa Barbara Grand Jury Report, A Death in Custody - Lessons Learned,³ found that crisis intervention techniques could have avoided the use of force on the night of jail resident JT's death. Wellpath has no such staff from 11 p.m. - 7 a.m., the time frame in which JT's death occurred. Professional mental health services need to be available onsite 24/7 as recommended by the Grand Jury.⁴
- **In February 2023, the report Sheriff's Office Jail Health Staffing Review, prepared by Avocet in response to the Murray provisions,⁵ found insufficient staff available in the jails to meet required levels of service and that key performance indicators were not monitored.** Required oversight of medical/mental health care in the jails is absent, inefficient, and/or ineffective to meet Court-ordered compliance with required staffing and service levels.
- **Needed oversight of jail health care policies and quality assurance by County Public Health and Behavioral Wellness is missing.** Dr. Homer Venters, another expert appointed by the Murray Court, filed his third report on September 5, 2023.⁶ Dr. Venters found that the County has failed to carry out its oversight role regarding medical/mental health in the Jails. He wrote (at p. 3):

³ Death In Custody - Lessons Learned.pdf (sbcgj.org)

⁴ [https://sbcgj.org/general-information/final-reports-responses-2022/p. 25.](https://sbcgj.org/general-information/final-reports-responses-2022/p.25)

⁵ Avocet Enterprises, Santa Barbara County Sheriff's Office Jail Health Services Staffing Review (Feb. 2023). (See attached.)

⁶ Third Monitoring Report of Dr. Homer Venters in Murray et al. v. County of Santa Barbara et al. (Case No. 2:17-cv-08805-GW-JPR).

This is the third monitoring report regarding medical care in this case and there is one consistent and concerning theme throughout these reviews: Santa Barbara County lacks meaningful and organized clinical oversight of the vendor providing health services in the jails. There are some areas of cooperation and review of jail health services with the Department of Public Health and Behavioral Health, but there is no clear County jail health authority or correctional health office that ensures the policies are adequate, that analyzes quality assurance data independently, or that reviews clinical data regarding deaths and formulates independent findings. Many of these tasks that should be conducted by the County are left to the vendor, Wellpath. In many cases, Wellpath provides adequate care, but this does not remove the County from a responsibility that is clearly identified in the Stipulated Judgment and Remedial Plan, and which it currently does not meet.

- **There is an 87% failure to substantially comply with Murray remedial mental health provisions.** In October, 2023, a Remedial Plan Status Report prepared by Mental Health Expert Timothy Belavich, Ph. D.,⁷ focused on mental health care. Dr. Belavich rated 84 separate provisions and found jail conditions failed to “substantially comply” with 87% of agreed-upon provisions, including only partial compliance with 59 and non-compliance with 14. Two areas related to suicide prevention declined from Substantial to only Partial Compliance.

A critical area concerns remedial requirements for Continuous Quality Improvement. See Section III.J.4, at p. 60, “The county shall conduct periodic quality improvement reviews of the intake process to ensure that staff are accurately recording intake information and making appropriate referrals.” Dr. Belavich found “Partial Compliance” whereas the County argued these criteria had been “Completed” because “Public Health and Behavioral Wellness complete these audits quarterly....” The Expert’s Report, however, found:

...[T]his audit...does not include all important aspects of the intake process as it applies to the County. The audit... focuses on the frequency of whether or not an event occurred. It does not address quality aspects of the intake process. Also, when poor compliance was found there was no corrective action or next steps proposed in the documentation provided to the Mental Health Expert.

⁷ [Murray Final Report October 2023- Mental Health - Belavich FINAL PDF \(1\).pdf \(disabilityrightsca.org\)](#)

...The County needs to work through Wellpath in the development of a meaningful audit for the County's intake process, with oversight from County health agencies. This should include a process for corrective actions and follow-up when low compliance is found. The County also needs to provide the Behavioral Wellness monitoring documentation that reflects the quality review of the intake process....

Collectively, the Grand Jury and expert reports show a disturbing lack of oversight and express concerns that jail residents' health and mental health suffers from continuing non-compliance.

County inaction will perpetuate poor health care for jail residents, and potentially expose our County to serious financial consequences. Like Santa Barbara County, Monterey County is also under a Federal Court order to remediate inhumane conditions in their county's jails. In that case, Hernandez v. County of Monterey,⁸ Wellpath - the private health service provider - was a named defendant. On Sept 26, 2023 that court determined that Wellpath had not complied with 43 of the requirements of the court ordered settlement agreement and imposed fines of \$25,000 for each of the unmet requirements. The fines will go into effect unless Wellpath comes into compliance within 6 months. Fines could total over \$1 million at each review until Wellpath complies. Fines decline with compliance. Santa Barbara County and/or the Sheriff could face similar Court imposed fines for non-compliance.

The County can help assure fiscal responsibility by assigning Public Health to oversee jail healthcare. The administrative framework for making this change is established given that **our County Public Health Department already provides oversight for the provision of health services for juveniles in custody.**

Starting in 2024, CalAIM will begin reimbursing counties for the costs of providing Medi-Cal medical services to jail residents. An additional strong reason why Public Health should be assigned responsibility to oversee Wellpath's contract and performance is that, to obtain CalAIM reimbursements, counties must demonstrate that the entity overseeing Wellpath's provision of services has experience and expertise in

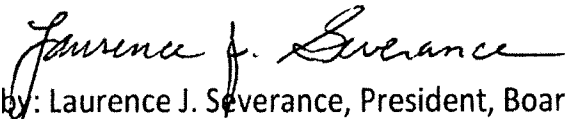
⁸ Hernandez v. County of Monterey, Case No. 13-cv-02354-BLF ORDER GRANTING PLAINTIFFS' MOTION TO ENFORCE SETTLEMENT AGREEMENT AND WELLPATH IMPLEMENTATION PLAN [Re: ECF 825] (See attached).

medical billing. While County Public Health has such experience, the Sheriff's Office does not.

Conclusion. There is ongoing harm to jail residents suffering from inadequate medical and mental health care, and documented failures of the Sheriff to ensure compliance with required remediation. We strongly support and urge the Board of Supervisors to appoint the Public Health Department and Behavioral Health to oversee and monitor the Wellpath jail contract as specifically directed in the reports. This will demonstrate efforts to bring the County into compliance with the stipulated agreement and required remedial plans in the Murray case.

Respectfully submitted,

CLUE-Santa Barbara



by: Laurence J. Severance, President, Board of Directors



by: Maureen Earls, Co-Chair Criminal Justice Workgroup

League of Women Voters, Santa Barbara



by: Vicki Allen, VP Communications, Leadership Team



by: Gail Osherenko, Chair, Criminal Justice Reform Task Force

League of Women Voters, Santa Maria Valley

Virginia P. Souza

by: Virginia P. Souza, President

cc: Santa Barbara County Probation Department

Santa Barbara County Sheriff's Department

Santa Barbara County District Attorney

Santa Barbara County Public Defender

Santa Barbara County CEO's office

Santa Barbara County Public Health Director

Santa Barbara County Behavioral Wellness Director



SANTA BARBARA COUNTY SHERIFF'S OFFICE JAIL HEALTH SERVICES STAFFING REVIEW

CHARGE AND METHODS

Avocet Enterprises, LLC, has been contracted to provide a comprehensive staffing analysis of the health services delivery within the jail facilities of the Santa Barbara County Sheriff's Office. This staffing analysis supports compliance with the Remedial Plan of *Murray v. Santa Barbara*.

Avocet consultants visited the Santa Barbara Sheriff's Office Main Jail (MJ) and Northern Branch Jail (NBJ) in February 2023. Our avenues of information gathering were a multi-day site visit, interviews with staff and inmates, document review, data review, and medical record review.

This analysis focuses solely on the staffing related to compliance with the Remedial Plan. It separates staffing of medical, dental, and substance use treatment services from staffing of mental health services.

STAFFING OF HEALTH SERVICES

Analysis

Our analysis finds a need for more efficient staffing or, more often, addressing inefficient use of staff, to enable the required level of service. We attribute this to the following root causes:

- 1) Staffing for inmate movement and inmate movement operations are neither streamlined nor optimized to support provision of health services. This is primarily a factor at MJ, based on its physical plant.
- 2) Health care positions are unfilled leading to inadequate coverage of health care staff absences, resulting in swapping of staff between the two jails and in senior staff's covering front line care services. In addition, second shift positions are almost all filled by temporary (i.e., *per diem*) staff, which is not ideal given consideration of cost, quality, and possibly contract compliance.
- 3) Provider productivity is low, and physicians and nurse practitioners spend significant time performing tasks best assigned to other health services staff.
- 4) Key Performance Indicators (KPIs) of disease burden in the population, access to care, and productivity are not monitored or efficiently acted upon.

Further, each factor interacts with the others in real time, and factors at one jail affect factors at the other jail. In combination, these factors create a circumstance in which it is not possible currently to precisely state the optimal staffing plan. Each factor should be addressed considering the others. While not required by the Remedial Plan, we recommend the use of a dashboard of the factors documented over a period of 12-18 months to optimize conditions that stabilize staffing, and monitor access to care and patient outcomes.

Staffing Considerations

Inmate Movement and Operations

A primary consideration is the need for more efficient custody staffing to meet the demands of the physical plant in the MJ. There is a baseline of unfilled custody staff which aggravates underlying inefficiencies in custody staffing for health services. Under current operations, patients are escorted one at a time for each medical visit. The MJ is an older building and has various housing arrangements including groups of several cells around a small common area housing 10 -20 men each, multi-tier pods, and dormitory settings. This results in an enormously time-consuming process.

Complicating matters are multiple competing clinical work streams (e.g, medical, dental, nursing mental health, etc.) all relying on a limited pool of Medical Escort Team (MET) members. More than 10 simultaneous clinical work streams are competing for METs each day. The result is significant curtailment of clinical capacity, leaving all clinical staff seeing a very limited number of patients per day. In addition, there is no identifiable method to determine which patients may not require one-on-one escort.

For the period reviewed, custody officer vacancies—both unfilled positions (hard vacancies) and occupied positions with a long-term absence (soft vacancies)—across both jails increased. SBSO recognizes the need to fill these positions. However, custody vacancies are very challenging to fill across California and across the county, particularly since the COVID-19 pandemic. Addressing other inefficiencies that stretch the custody staff and create duplicative movement is essential. To that end, we recommend:

- At MJ, vacant space near health care clinic rooms could be repurposed as waiting areas, where one officer can supervise numerous patients waiting to be seen and waiting to be escorted back to housing.
- At both jails, the process for requesting movement could be revised so that:
 - Patients needing several moves in a day can be triaged and consolidated into fewer trips wherever possible.
 - Where movement requests exceed movement capacity, patients are triaged by the site clinical leadership and custody.
 - Data are collected every day illustrating movement requests versus movement provided.

Triage should be coordinated by health care and custody. This calls for new collaboration between custody and the proposed Deputy Health Services Administrator (described below) at each site. This team should be charged with continuously modifying and improving movement operations to ensure maximum efficiency.

- Custody leadership should research and explore options to tailor movement to the patient's security level. This may include, among other options:
 - Developing an alternative level of custody staff for movement of lower security patients.
 - Designing movement that can accommodate several patients in a single movement.
 - Allowing low security patients to move themselves where appropriate.

Health Care Vacancies

The SBSO should enforce its contract with the vendor to require that:

- Health care staff vacancies are given the most urgent attention. Currently mental health supervisor and multiple nursing positions are vacant, causing inefficiencies across both jails.
- The vendor has recently added on-call psychiatric and emergency service coverage and is reportedly working on *per diem* staffing pools for some services across counties. This is good news. However, SBSO should require that the vendor create *per diem* or float pools to provide coverage for every daily absence of RNs, LVNs, MAs, mental health clinicians, and providers. This should alleviate the use of *per diem* staff, which should be a priority.
- The health services contract should ensure meaningful financial penalties for unfilled positions for uncovered soft vacancies.

Provider Productivity

Provider productivity is an extremely important indicator that should be carefully tracked and addressed. Productivity as measured by the average number of patients seen in an 8-hour day over a month is very low for all providers at both jails. This is a proxy measure as it does not identify absences or address patients expected but not seen.

Moving forward, the health services vendor and SBSO should monitor daily provider clinical activity at each jail frequently (e.g., weekly). Productivity should rise as patient movement increases, positions are filled, exchanging staff between jails stops, and other efficiencies recommended in this report are implemented. When full productivity is reached, other measures of access to care could be further assessed to focus on optimal provider staffing levels by discipline and jail.

Key Performance Indicators Dashboard

Neither the health services vendor nor SBSO collect and integrate KPIs in a manner that informs staffing or clinical practice. Although not required by the Remedial Plan, to optimize clinical care the following indicators could be collected and tracked in a monthly dashboard for each jail:

- Demand for care
- Access to care
- Disease burden of the population
- Quality of general primary care services
- Quality of specialty care services
- Custody vacancies, hard and soft
- Health care vacancies, hard and soft
- Inmate movement requests – from all streams - versus provided; daily converted to weekly average.

Specific Staff Considerations

On a very positive note, the current electronic health record and related systems are very efficient for managing clinical tasks, access and wait list data, medication administration, and other uses. Using multiple compatible systems, staff has access to a rich health data ecosystem and should put the system to work within a modern, population health context.

Health Services Administrator

This is a key leadership position and requires a high degree of administrative skills. Identifying, tracking, and responding to metrics that indicate high-quality care and communicating these with health care and

custody staff are required. Especially important is the ability to professionally support the physicians and other providers. A highly effective HSA is like a general manager or head coach of an athletic team responsible for leveraging a bench of talent as well a staff of support personnel. One dedicated FTE is sufficient for this position.

Deputy Health Service Administrator

We have a specific recommendation regarding the immediate leadership under the HSA: creation of two deputy HSA positions, one at each jail. In a jail the size of Santa Barbara, this position could readily double as a senior nurse leader or Director of Nursing (DoN) . Two very important considerations: DoN duties to the DHSA will accomplish this goal assuming the DHSA is a trained nurse. Secondly, the DoN must not be pulled for routine clinical work, which is a current practice at the Santa Barbara jails.

Both jails need daily on-site clinical and administrative leadership. We recommend a Deputy HSA, who is an experienced registered nurse, be permanently assigned to each jail. This person should not be called upon to fill daily nursing vacancies. It is a Monday through Friday position. Duties should include:

- Managing the daily/weekly schedule to ensure coverage for all positions and shifts, documenting all shift vacancies.
- Meeting with custody daily to triage movement needs, consolidate multiple movements, and movement wait lists.
- Reviewing intakes from night shift to prioritize clinical needs.

Provide clinical case management for high-risk/unstable patients.

This includes:

- Receiving patients from the ED and inpatient medical or psychiatric hospitals and ensuring that the hospital treatment plan is documented and executed.
- Overseeing patients transported to ED or hospital.
- Managing patients who are clinically unstable.
- Ensuring that unusual patient needs are assigned and managed during the night shift.
- Producing the staffing and access to care performance dashboard every week. Analyzing it and reviewing it with the HSA weekly and recommending changes to staffing to increase or decrease hours in response to better patient movement and productivity.

This position will allow the other nursing services – intake, sick call, treatments, meds – to go on uninterrupted. It is essential to smooth daily operations.

Physicians, Nurse Practitioners, and Other Providers

Physicians, Nurse Practitioners, and Physician Assistants form the backbone of the clinical team. These three professional groups should be compensated for clinical decision making and should perform at a reasonable pace needed to meet the clinical objectives of the jail. These include, broadly, receiving screening, non-emergent acute clinical care (sick call), chronic care, and emergency care.

Based on general norms in jail health care, the current staffing level of providers – physician and nurse practitioners across both jails at 2.2 FTEs is more than enough to cover 1,000 inmates. As noted, there are physical plant and patient transport challenges that impede providers from seeing patients, and provider productivity at both jails is very low. Under current conditions, and with the data at hand, we cannot state the necessary number of provider hours to meet patient demands for primary, preventive, chronic, and urgent care.

The recommendations to improve patient encounters, collect essential data, and cover all vacancies by shift should be undertaken to reach that calculation. In addition, we recommend:

- The 24 hours of weekly physician time at MJ should not be spread over two 12- hour shifts. This arrangement leads to extremely low productivity after about 4:00 p.m. and is not acceptable. There should be coverage on site at least three days per week.
- Providers should be paired with Medical Assistants who prepare the clinic and patient for visits, to include being present to collect vital signs and draw blood during the visit. More on this is described below. This step will increase provider productivity and is aligned with the modern practice of medicine.
- Consistent with the successful model used in community health, the primary care physician (PCP) should be charged with management of psychotropic medications for patients who are stable. Psychiatry can provide back-up expertise as needed. This will more fully utilize the PCP and provide relief to the psychiatrist. The clinical team will need to develop a model for identifying patients appropriate for PCP management.

Nursing Staff

Nursing staff is essential to smooth and safe operation of a health system. The Registered Nurse (RN) is a senior nursing staff member and serves as a key leader as well as clinician for patient care delivery. The RN serves to triage patients, perform nursing assessments, oversee medication delivery, act as a first responder in the case of an emergency and as a supervisor for other staff to include Licensed Vocational Nurses, (LVNs), Medical Assistants (MAs), and Administrative Assistants (AAs).

In Santa Barbara, the duties assigned to the RN include working at booking and intake, sick call, and supporting health assessments and chronic care. The LVN augments and extends nursing staff. Their specific duties may include administering medication, taking vital signs, obtaining patient history, phlebotomy, and support for Activities of Daily Living.

One important note, night shift nursing (NOC) is done entirely by agency staff. Ideally, and to avoid premium charges, these positions would be staffed by the primary vendor.

Medical Assistants (MAs)

Medical Assistants perform more limited duties like an LVN and are an important part of the medical team. The Administrative Assistant is a non-clinical position who focuses on maintaining medical records, collecting and analyzing data, maintaining organization in the clinic and related areas, and performing general administrative duties related to health care. One area that may also be explored is the use of Emergency Medical Technicians to perform many clinical functions at the jails to include first responder duties and patient escort. See elsewhere in this report.

MAs should be more fully utilized at both jails. Their current duties include COVID testing and blood drawing/specimen collection. Additional duties should include:

- Evening shift review of MD and NP visits scheduled for the next day, to:
 - Collapse other sick call and chronic care visits scheduled in next 5 days.
 - Reschedule visit if labs or other tests ordered have not been completed.
 - Note prescriptions about to expire for re-ordering during the visit.
 - Note if chronic care visits are scheduled appropriately.
- Prep patients in exam rooms with vital signs, review of reason for visit, new complaints.

- Draw blood and collect other specimens *during the visit*.
- Check medication room and medication carts to ensure that stock is on hand and that medications past their expiration dates are removed.
- Pull weekly report from EHR to identify all prescriptions for which the order is expiring; bring to providers attention.

None of the functions identified as new duties are currently assigned or carried out. Adding these functions will greatly enhance the efficiency of each jail's health care operations.

Emergency Medical Technicians (EMTs)

Neither jail currently employs EMTs. Both should consider EMTs, who can perform all MA duties noted above, and can also:

- Pass medications in the med line.
- Conduct intake assessments.
- Assist in patient emergencies, medical and psychiatric.

In particular, the jails should consider using an EMT for the night shift to cover emergencies and to provide back-up nursing staff on intake assessments.

Administrative Assistants (AA)

One AA currently covers both jails in management of off-site specialty referrals. The AA uses a separate EHR. The system works extremely well and provides excellent tracking of referrals, visits, and wait lists. It makes sense to continue this function under the AA position, who has other clerical and data management duties as well.

Medication Assisted Treatment & Substance Use Disorder (SUD) Treatment Staff

Currently, a full-time medication assisted treatment (MAT) Coordinator covers both jails, and a full time SUD counselor covers both jails. This leaves both jails strained for MAT assessments and creates gaps in access to MAT services and SUD counselling at both jails. We recommend that the position descriptions be re-written so that each person works at one jail, full time. Each is responsible for:

- Screening patients coming off buprenorphine tapers for MAT continuation and referring to providers accordingly.
- Conducting screenings for MAT induction in response to MAT sick call requests.
- Providing evidence-based group and individual SUD counselling.
- Participating in the jails' multi-disciplinary treatment planning for patients with co-occurring SUD and mental illness.
- Confering regularly to further develop SUD counselling, including expanding to treatment of alcohol and methamphetamine use disorders.
- Developing treatment plans and growing the MAT programs.

This will provide more continuous MAT services and SUD counselling at both jails, reduce wait times and gaps in MAT, and more fully integrate MAT SUD treatment into medical and mental health care.

Clinical Leadership Principals

One area that will be very important for the jail to develop is unified and strong but decentralized clinical leadership. The Main Jail and the Northern Branch Jail are two distinct facilities. While they share

staff and resources, they have separate locations, different command staff, and two distinct cultures. Similarly, many of the clinical administrative and population health functions, such as data gathering and analysis, patient scheduling, CQI, etc. have site-specific distinctions.

Establishing a separate but coordinated leadership team will facilitate thoughtful use of each facility to include a deeper understanding of the strengths and weaknesses of each site as they pertain to health services and to staffing. For example, a deeper understanding of the differences in community medical support, the physical infrastructure of the NBJ and MJ, the clinical capabilities of each site (staffing and space design and utilization), etc. will allow for more thoughtful assignment of inmates and a higher level of clinical quality.

Mental Health Services

Current State

SBSO currently provides psychiatry and other mental health services at both jails. Psychiatry (specialized physician services) focuses on diagnosis and psychotropic medication management, and other mental health clinicians focus on assessment of persons referred from intake, emergency placements into safety cells, and mental health observation; responses to mental health sick call requests from patients and custody officers; and cell checks on persons in restricted housing. They monitor patients in mental health housing as time permits. They are scheduled 7 days per week at 11 hours per day. The supervisory position is currently unfilled, and treatment positions filled with *per diem* staff coverage are not at the scheduled hours per day. One clinician also works one day per week assessing persons with serious mental illness who are not in special mental health housing (identified in reviewed documentation as “Special Needs”).

Clinicians strongly prefer providing services in treatment rooms for privacy, more productive encounters, and faster documentation. However, at SBSO mental health clinicians provide cell-side care at present to ensure patients receive services rather than be subject to the current patient movement limitations. This is a reasonable work around and, importantly, they have higher levels of productivity than other disciplines.

Current mental health staffing in GP and MH housing covers intake and crisis management. Staff state that the current staffing levels, if filled, are sufficient for this level of service. There are no dashboards to validate this vis-a-vis responsiveness to sick calls, wait lists, grievances, etc.

No group or individual counselling is currently provided by clinicians and there is no current interdisciplinary treatment planning for these patients. The SBSO recently hired a cohort of officers who will be providing evidence-based programming—such as Seeking Safety and others—in GP and MH housing.

Main Jail operates the Jail Based Competency Treatment unit, which services 10 patients in a highly successful program with an average length of stay of 57 days and the second-best rate of successful restoration in the state. There is a wait list of 20 people.

Main Jail also operates, through a relationship between the health services vendor (currently Wellpath) and the California Department of State Hospitals (DSH), the Early Access Stabilization Services (EASS). The program provides weekly psychiatric appointments, daily nursing services, weekly counseling, and psychological assessments. EASS serves 13 patients who are located throughout the facility, and it has a wait list of 20 patients.

Santa Barbara is the only county in California in which law enforcement officers cannot authorize or issue 5150 involuntary holds on individuals they deem pose imminent risk to themselves or others. Only members in the County's mobile crisis team – which covers the entire County – can authorize 5150s. In February, the County started a 3-month pilot project allowing law enforcement officers to issue 5150 involuntary holds, but this has not extended to officers in the jails. The County operates a Psychiatric Health Facility (PHF) that has just 16 inpatient beds for the entire community and therefore access for all patients to include incarcerated patients has always been challenging. Cottage Hospital in Santa Barbara has a 20-bed inpatient unit for psychiatry and substance use treatment but often does not provide immediate access for jail detainees. Marian Hospital in Santa Maria does not offer acute inpatient psychiatry services.

Remedial Plan Requirements

The Remedial Plan – Mental Health Services, Housing, and Access to Care – calls for these specific services:

For patients in specialized mental health housing

- At least 6 hours per week of Structured Out-of-Cell Time for therapeutic group and/or individual programming.
- At least 12 hours per week of Unstructured Out-of-Cell time including dayroom, outdoor/recreation time, and other self-directed activities.
- In cell-structured programming equivalent to that provided in GP (electronic tablets) at least 4 hours per day on at least 3 separate days per week.
- For persons who cannot tolerate these levels of treatment, a Modified Individualized Treatment Plan approved by multidisciplinary treatment team and reviewed and modified monthly.
- Regular multidisciplinary team meeting to coordinate individual health, mental health, classification, and discharge needs.

For patients with mental health treatment needs who are stable:

At least 4 hours per week of Structured Out-of-Cell Time for therapeutic group and/or individual programming, subject to the Modified Individual Treatment Plan provisions described above.

For Persons with Intellectual or Developmental Disability (IDD)

An appropriate assessment individualized treatment plan which should be implemented, monitored, and updated for each detainee identified with an intellectual or developmental disability.

For persons with SMI or IDD who may face disciplinary sanction:

A Qualified Mental Health Professional shall complete a Mental Health/Disciplinary Recommendation Form and provide written findings as to whether the reported behavior was related to mental illness, adaptive functioning deficits, or other disability and other mitigating factors regarding the inmate's behavior, disability, and/or circumstances that should be considered, and whether certain sanctions should be avoided in light of the inmate's mental health or intellectual disability, treatment plan, or adaptive support needs.

Cross-Agency Coordination of Mental Health Treatment and Service Need

The Remedial Plan calls for coordination with community behavioral health providers and other agencies. These requirements are like the requirements under California's Medi-Cal waiver (CalAIM) and its Justice Initiative. New Medi-Cal benefits and requirements for pre-release and post-release Enhanced

Care Management and Behavioral Health Linkages can begin in summer of 2023 and include reimbursement of in-jail and community providers for these services. Aligning SBSO's response to the remediation with the CalAIM JI program will be beneficial to patients, SBSO, and local agencies.

Analysis

Intake and Crisis Management

The current staffing at both jails is not optimized to provide the level of mental health service required in the Remedial Plan. The same root causes we attribute to medical/dental/MAT/SUD staffing apply to current mental health staffing of psychiatry and crisis management:

- Current staffing for inmate movement is not sufficient and inmate movement operations are not streamlined or optimized, primarily at Main Jail.
- Health care positions are unfilled.
- Inadequate coverage of health care staff absences, resulting in exchanging staff between the two jails.
- Psychiatry productivity is extremely low.
- Key indicators of disease burden in the population, access to care, and productivity are not adequately monitored or acted on.

As with medical services, each factor should be addressed simultaneously, and while not required by the Remedial Plan, we recommend the use of a dashboard of the factors that is analyzed by SBSO monthly over a period of 12-18 months until conditions are optimized, staffing is stabilized, and access to care and patient outcomes are acceptable.

Remedial Plan Requirements for New Services

Programming is not developed or staffed to comply with the Remedial Plan requirements regarding mental health services. This includes out-of-cell structured and unstructured treatment requirements, interdisciplinary team care planning, and individualized treatment plans, and input into disciplinary measures.

We recommend that initial staffing levels for these services, which are proposed below, be implemented over a 6–9-month pilot period in which SBSO monitors outcomes, staff input, and metrics to refine the ultimate staffing needs.

Services for Persons with IDD

Assessment and treatment planning for persons with IDD in the justice system should be conducted by a psychologist with specialized training and credentialing. The low and intermittent volume of demand for this specialization in the Santa Barbara jails precludes staffing a position and instead calls for SBSO to contract with an individual who can be brought in on a case-by-case basis to provide this service.

Competency Restoration Services

The JBCT and EASS programs are high-quality, effective services and both SBSO and Wellpath should be congratulated on them. They are only meeting 50% and 65%, respectively, of current demand. We recommend that SBSO make every effort to secure additional resources from DSH to expand both programs as much as possible. However, this is not part of the proposed staffing plan, which presumes that the current staffing for both remains unchanged.

Emergency and Acute Psychiatric Care Capacity

The County lacks sufficient emergency and acute care capacity for its burden of SMI, which creates difficulties for persons with acute psychiatric needs who are arrested. This situation has prevailed for a very long time. A few jails in the state have built internal acute psychiatric care capacity, but this would pose great challenges for Santa Barbara County.

We recommend that the County initiate discussions involving leadership from County agencies, the hospitals, and others to address the capacity for 5150 evaluation, acute inpatient psychiatric capacity for all county residents including those incarcerated, new resources coming from CalAIM, and new requirements for behavioral health services coming from the state. Discussions should be facilitated and focused on solutions that break the cycle of incarceration of persons with SMI.

Staffing Clinical Positions

Psychiatrist and Psych NP

We cannot propose the actual number of hours necessary to meet psychiatric demand at this time and recommend monthly analysis of the dashboard indicators as described above. In addition, we recommend additional hours to cover the new interdisciplinary team care planning requirements and propose to add 4 hours per week of Psych NP time as a starting point, with modifications over time.

MH Clinicians

In addition to the staffing levels detailed below for the new programming, we recommend adding 4 hours per week of MH clinician time at each jail to provide input into disciplinary plans, with modifications over time as the demand is clarified.

Psychology technicians

We strongly recommend that that Psychiatric Technicians (psych techs) be added to both jails. They are an effective and efficient addition to the interdisciplinary team. Their duties should include:

- Daily presence on the MH housing units during daytimes and evening hours to:
 - Interact, assess, and document patient status.
 - Conduct structured group clinical activities under appropriate supervision.
- Accompanying custody officers on transports to mental health appointments to reduce patient refusals and appropriately document patient refusals.
- Participate in interdisciplinary team treatment planning.
- Psych tech can also administer medications in California, and this should be given consideration for the mental health housing units.

Staffing for New Programming

We presume that staffing for the new MH housing program requirements will occur incrementally as the programs are designed, implemented in pilot stages, and fully built. Staffing will need to address all existing and new services at both jails over 7 days per week and 12-hour days. It will spread new duties over some existing staff and some new positions, to be added incrementally. Improvements and efficiencies will certainly be incorporated over time. This will require considerable collaboration across custody and MH staff, and regular data on access, wait lists, and program performance. For the *new* programming specified in the Remedial Plan, we recommend the following staffing framework.

The table below shows the MH housing at Main Jail and the treatment requirements specified in the Remedial Plan.

MH Housing Populations and Program Requirements						
Housing Unit	Census	Acuity	Interaction Levels	Weekly Out of Cell Pgm		Weekly In Cell Pgm
				Structured	Unstructured	
A	16	Intermediate	All out together	6 hours	12 hours	4 per day x 3 days
C	10	High	Single cells, maximum 2 out together	6 hours	12 hours	4 per day x 3 days
D	10	High	Single cells, maximum 4 out together	6 hours	12 hours	4 per day x 3 days
East 8 Tank	24 in 4 units	Low	All out together	4	NA	4 per day x 3 days
West 10	24*	Low	All out together	4	NA	4 per day x 3 days
West 8	24*	Low	All out together	4	NA	4 per day x 3 days

We recommend that structured out of cell time include one hour per week of individual counselling for each person in high and intermediate acuity MH housing and one hour every other week for persons in low acuity MH housing.

We recommend three types of group counselling: provided by MH clinicians, provided by psych techs under the supervision of a MH clinician, and groups provided by custody officers. The configuration is tailored to the acuity of the patients.

The following tables show the patient characteristics and group counselling requirements and associated staffing recommendations for each of the MH housing units.

A UNIT			
16 patients who can co-mingle freely. Divide into 3 groups for effectiveness			
Required: 6 hours per week of structured out of cell services			
1 hour individual counselling per person per week			
5 hours group time per week	MH Clinician	Psych Tech	Custody Pgm
	2	2	1
Groups per week@ 3 groups across A Unit	6	6	3

C UNIT			
10 patients, max 2 out together; 5 groups			
Required: 6 hours per week of structured out of cell services			
1 hour individual counselling per person per week			
5 hours group time per week	MH Clinician	Psych Tech	Custody Pgm
	2	2	1
Groups per week@ 5 groups	10	10	5

D UNIT			
10 patients, max 4 out together; 3 groups			
Required: 6 hours per week of structured out of cell services			
1 hour individual counselling per person per week			
5 hours group time per week	MH Clinician	Psych Tech	Custody Pgm
	2	2	1
Groups per week@ 3 groups	6	6	3

WEST 10			
24 residents; not all MH 3 groups			
Required: 4 hours per week of structured out of cell services			
.5 hour individual counselling per person per week			
3.5 hours group time per week	MH Clinician	Psych Tech	Custody Pgm
	1	1	1.5
Groups per week@ 3 groups	3	3	4.5

WEST 8			
24 residents; not all MH 3 groups			
Required: 4 hours per week of structured out of cell services			
.5 hours individual counselling per person per week			
3.5 hours group time per week	MH Clinician	Psych Tech	Custody Pgm
	1	1	1.5
Groups per week@ 3 groups	3	3	4.5

EAST 8 TANK			
24 patients in 4 units; 4 groups			
Required: 4 hours per week of structured out of cell services			
.5 hours individual counselling per person per week			
3.5 hours group time per week	MH Clinician	Psych Tech	Custody Pgm
	1	1	1.5
Groups per week@ 4 groups	4	4	6

Staffing for MH Services in GP

As noted, intake and mental health crisis management needs of persons in GP are being met at the current staffing levels. MH clinician and psych tech time should be added at each jail to provide additional individual counselling so that persons who begin to decompensate may be stabilized and persons returning to GP from MH housing can be supported during the transition. Manualized group sessions related to mental health should be provided by the custody program staff.

Calculating Staff Positions for New Services

Group operations must include preparation time, scheduling, documentation, and communication across custody and clinicians. Individual counselling also requires preparation, documentation, and follow-up. Wellpath will have experience with the number of hours needed to design and to operate groups and provide individual counselling.

We provide the following framework for estimating the total hours by staffing level needed at each jail, converted to FTEs. Each jail will need to identify the optimal hourly/daily/weekly assignments for each position.

In summary, adjusting the staffing as per our recommendations, developing a system for KPIs, and engaging active monitoring will greatly move the SBSO jail to the forefront of correctional health care quality and support meeting the requirements of the Remedial Plan.

ESTIMATING STAFF FOR MH SERVICES (each jail)					
Service	Staff Hours Per Week				
	Psychiatrist	Psych NP	MH Clinician	Psych Tech	Custody Program
EXISTING SERVICES					
Intake assessment					
Medication assessment					
Medication maintenance					
Initial assessment					
Follow up visits					
Suicide assessments					
AIMS assessments					
Safety cell assessments					
MH Observation assessments					
Special Needs visits					
JBCT					
EASS					
Segregation cell checks					
NEW SERVICES					
GP Individual counselling					
GP groups					
MH Housing individual counselling					
MH Housing group counselling					
Multidisciplinary team care planning					
Disciplinary action input					
Cross-agency coordination					
TOTAL HOURS					
FTE					

CONCLUSIONS

The Santa Barbara County Sheriff's Department is forward-thinking and well positioned to make substantive enhancements to its correctional health care services. Meeting current identified staffing levels for both custody and clinical staff (which will ideally improve with easing pressure from secular employment trends); ensuring health care staff are working the expected level of productivity, clinical quality and at the top of their license; and making a few modest adjustments or additions to the staffing pattern will also help.

Perhaps even more important than this is the development and measurement of Key Performance Indicators or Clinical Performance Measures. KPIs/CPMs must be tailored to the correctional environment and specific to Santa Barbara while also having broader applicability to health services in the community including, for example, to outside agencies, authorities, or experts. Further, consolidating and presenting measures and indicators in a dashboard format will ease the management oversight burden as well as support standardization and continuity over time and any changes in staffing.

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

JESSE HERNANDEZ, et al.,
Plaintiffs,
v.
COUNTY OF MONTEREY, et al.,
Defendants.

Case No. 13-cv-02354-BLF
**ORDER GRANTING PLAINTIFFS’
MOTION TO ENFORCE
SETTLEMENT AGREEMENT AND
WELLPATH IMPLEMENTATION
PLAN**
[Re: ECF 825]

United States District Court
Northern District of California

This class action was filed in 2013 by several inmates (“Plaintiffs”) seeking relief from constitutionally deficient conditions at the Monterey County Jail (“Jail”). The Jail is operated by Defendant County of Monterey (“County”), which contracts with Defendant Wellpath, LLC (“Wellpath”)¹ to provide medical, mental health, and dental services at the Jail. The parties entered into a Settlement Agreement that was approved by the Court in 2015 and Defendants developed Implementation Plans that were approved by the Court in 2016. Plaintiffs assert that since then, Wellpath has failed to provide minimally adequate medical, mental health, and dental care required under the Settlement Agreement and the Wellpath Implementation Plan. Plaintiffs have filed an enforcement motion, asking the Court to find that Wellpath is out of compliance with forty-four requirements of the Settlement Agreement and Wellpath Implementation Plan, and to impose civil contempt fines if Wellpath fails to come into compliance within six months.

Plaintiffs’ motion is GRANTED as to forty-three of the forty-four requirements at issue.

¹ Wellpath formerly was known California Forensic Medical Group, Inc.

1 **I. BACKGROUND**

2 *Settlement of the Action*

3 Plaintiffs filed this class action in May 2013 on behalf of themselves and all other similarly
4 situated Jail inmates. *See* Compl., ECF 1. After more than two years of litigation regarding Jail
5 conditions, the parties entered into a Settlement Agreement that was approved by the Court in a
6 written order dated August 18, 2015 (“Final Approval Order”). *See* Final Approval Order, ECF
7 494. The Settlement Agreement requires Defendants to make changes with respect to numerous
8 aspects of the Jail’s operations, including – as relevant here – in the areas of medical, mental
9 health, and dental care. *See id.* Ex. A (Settlement Agreement). The terms of the Settlement
10 Agreement are incorporated into the Court’s Final Approval Order, which provides that the
11 Settlement Agreement “has the full force and effect of an order of this Court.” Final Approval
12 Order at 3. Defendants were required to develop Implementation Plans describing how they
13 would meet their obligations under the Settlement Agreement, and those Implementation Plans are
14 “enforceable by the Court as part of the Settlement Agreement.” *Id.* The Settlement Agreement
15 gives the Court jurisdiction to enforce the terms of the Settlement Agreement and Implementation
16 Plans for a period of five years, which period may be extended. *See* Settlement Agreement ¶ 46.

17 *Mechanism for Enforcement*

18 In the event Plaintiffs believe that Defendants are out of compliance with the Settlement
19 Agreement and/or Implementation Plans, they must give Defendants written notice of their belief
20 and the facts supporting their belief. *See* Settlement Agreement ¶ 48. Defendants must investigate
21 and respond to the notice within 30 days. *See id.* The parties must attempt informal resolution,
22 first through negotiation and then through mediation. *See id.* If the parties cannot resolve the
23 issues, either party “may move the Court for any relief permitted by law or equity.” *Id.*

24 If the Court finds that Defendants are not in substantial compliance with the Settlement
25 Agreement and/or Implementation Plans, the Court shall require Defendants to submit a plan to
26 remedy the deficiencies for Court approval. *See* Final Approval Order at 3. If the Court thereafter
27 determines that Defendants’ plan did not remedy the deficiencies, the Court may enforce
28 compliance “through all remedies provided by law[.]” *Id.*

1 *Development of Implementation Plans and Appointment of Neutral Monitors*

2 The County developed an Implementation Plan addressing intake screening, cell
3 monitoring, staffing, and similar issues, while Wellpath developed an Implementation Plan
4 focused on medical, mental health, and dental care. *See* County Implementation Plan, ECF 514;
5 Wellpath Implementation Plan, ECF 532. The Court approved both plans in May 2016 with some
6 modifications. *See* Order, ECF 549. In August 2016, the Court appointed neutral monitors to
7 monitor Defendants' compliance with the Settlement Agreement and Implementation Plans in five
8 distinct areas: medical care, mental health care, dental care, Americans with Disabilities Act
9 compliance, and corrections/safety. *See* Order, ECF 563. The Court authorized each monitor to
10 conduct two site visits per year. *See id.* at 3. Twice a year, each monitor must prepare a written
11 report regarding Defendants' compliance. *See id.* at 4.

12 *Plaintiffs' February 2020 Notice to Defendants Re Lack of Substantial Compliance*

13 In February 2020, Plaintiffs gave Defendants written notice of Plaintiffs' belief that
14 Defendants were not in substantial compliance with the Settlement Agreement and
15 Implementation Plans. *See* 2020 Joint Status Report and Order, ECF 671. The parties met and
16 conferred several times and participated in a two-day "summit" that included all parties and all
17 five monitors. *See id.* at 2. The parties thereafter entered into a stipulation requiring Defendants
18 to develop corrective action plans addressing all areas in which the neutral monitors had found
19 lack of substantial compliance. *See id.* The stipulation included a one-year extension (through
20 August 2022) of the five-year period for Jail monitoring and the Court's retention of jurisdiction.
21 *See id.* at 2-3. The Court approved the parties' stipulation and incorporated its terms in an order
22 dated May 29, 2020. *See id.* at 4-5.

23 *Plaintiffs' January 2022 Notice to Defendants Re Lack of Substantial Compliance*

24 In January 2022, Plaintiffs gave Defendants a second written notice of Plaintiffs' belief
25 that Defendants were not in substantial compliance with the Settlement Agreement and
26 Implementation Plans. *See* 2022 Joint Status Report and Order, ECF 751. The parties thereafter
27 met and conferred several times, and ultimately entered into another stipulation. *See id.* The
28 parties agreed that Defendants would be released from neutral monitoring of certain requirements,

1 and that the neutral monitors could provide enhanced monitoring and mentoring with respect to
2 other requirements. *See id.* at 3. The stipulation included a two-year extension (through August
3 2024) of monitoring with respect to safety, security, and ADA-architectural issues, and a three-
4 year extension (through August 2025) of monitoring with respect to medical, mental health,
5 dental, and ADA-programmatic issues. *See id.* at 2-3. The Court’s jurisdiction to enforce the
6 Settlement Agreement and Implementation Plans was extended for corresponding periods of time.
7 *See id.* The Court approved the stipulation and incorporated its terms in an order dated June 3,
8 2022. *See id.* at 6-7.

9 *Plaintiffs’ December 2022 Notice to Defendants Re Lack of Substantial Compliance*

10 In December 2022, Plaintiffs gave Defendants a third written notice of Plaintiffs’ belief
11 that Defendants were not in substantial compliance with the Settlement Agreement and
12 Implementation Plans. *See* Swearingen Decl. ¶ 5 & Ex. 1 (Dec. 16, 2022 Letter), ECF 825-8.
13 Counsel for Plaintiffs, the County, and Wellpath met and conferred but were not able to resolve
14 the issues raised by Plaintiffs. *See id.* ¶ 6. The parties then attempted to mediate with the aid of
15 Magistrate Judge Nathanael Cousins. *See id.* Judge Cousins conducted two mediation sessions
16 with the parties, on February 17, 2023 and April 7, 2023. *See* Minute Entries, ECF 765, 771.
17 Plaintiffs and the County resolved their issues, but Plaintiffs and Wellpath were not able to reach
18 resolution. *See* Minute Entry, ECF 771.

19 *Present Enforcement Motion*

20 Plaintiffs filed the present enforcement motion against Wellpath on May 11, 2023,
21 asserting that Wellpath is not in substantial compliance with forty-four requirements of the
22 Settlement Agreement and Wellpath Implementation Plan. *See* Mot., ECF 825.² They seek to
23 enforce Wellpath’s substantial compliance under threat of civil contempt fines. Wellpath filed
24 opposition to the enforcement motion and the Court held a lengthy motion hearing. Neither party
25 requested an evidentiary hearing.

26 _____
27 ² Plaintiffs’ motion filed on May 11, 2023 included numerous redactions due to Defendants’ claim
28 that the neutral monitor reports should be sealed. *See* Redacted Mot., ECF 788. Plaintiff later re-
filed their motion without redactions after the Court declined to seal the neutral monitor reports.
See Mot., ECF 825. The Court cites to the unredacted version of the motion in this order.

1 **II. LEGAL STANDARD**

2 Civil contempt sanctions may be imposed “when the district court finds by clear and
3 convincing evidence that a party violated a specific and definite order of the court.” *Parsons v.*
4 *Ryan*, 949 F.3d 443, 454 (9th Cir. 2020) (internal quotation marks and citation omitted). The
5 moving party has the burden of showing such violation by clear and convincing evidence. *See*
6 *Stone v. City & Cnty. of San Francisco*, 968 F.2d 850, 856 n.9 (9th Cir. 1992). “The burden then
7 shifts to the contemnors to demonstrate why they were unable to comply.” *Id.* (citation omitted).
8 “They must show they took every reasonable step to comply.” *Id.* (citation omitted).

9 “A court may wield its civil contempt powers for two separate and independent purposes:
10 (1) to coerce the defendant into compliance with the court’s order; and (2) to compensate the
11 complainant for losses sustained.” *Shell Offshore Inc. v. Greenpeace, Inc.*, 815 F.3d 623, 629 (9th
12 Cir. 2016) (internal quotation marks and citation omitted). “Coercive sanctions may only be
13 imposed after a reasoned consideration of the character and magnitude of the harm threatened by
14 the continued contumacy, and the probable effectiveness of any suggested sanction in bringing
15 about the result desired.” *Id.* (internal quotation marks and citation omitted). The contemnor must
16 have the ability to comply with the court’s order and thus “purge” the contempt. *Id.* at 629-30.
17 “[T]he ability to purge is perhaps the most definitive characteristic of coercive civil contempt.”
18 *Id.* at 629. For that reason, “coercive civil sanctions . . . generally take the form of conditional
19 fines.” *Id.*

20 **III. DISCUSSION**

21 Plaintiffs ask the Court to use its civil contempt power to coerce Wellpath to comply with
22 the Settlement Agreement and Wellpath Implementation Plan. Plaintiffs present overwhelming
23 evidence that Wellpath is not in substantial compliance with forty-three of the forty-four specific
24 requirements of the Settlement Agreement and Wellpath Implementation Plan raised in Plaintiff’s
25 motion. As to the forty-fourth requirement, listed below as “14. Hospital Transfers,” the Court
26 finds that Plaintiffs have presented clear and convincing evidence of a historical lack of substantial
27 compliance, but not of a current lack of substantial compliance as required to issue coercive civil
28 contempt sanctions.

1 Plaintiff's evidence includes the most recent neutral monitor reports from Dr. Bruce
2 Barnett, the neutral monitor for medical care; from Dr. James Vess, the neutral monitor for mental
3 health care; and from Dr. Viviane Winthrop, the neutral monitor for dental care. *See generally*
4 Trapani Decl. & Exhibits, ECF 825-1. Plaintiffs also submit dozens of neutral monitor reports
5 dating back to the commencement of monitoring in 2017, as well as mentoring reports prepared by
6 the neutral monitors after they were given permission for enhanced access to and interaction with
7 Jail staff in the 2022 Joint Status Report and Order issued on June 3, 2023. *See id.*

8 Wellpath offers no substantive challenge to Plaintiffs' evidence of lack of substantial
9 compliance with the Settlement Agreement and Wellpath Implementation Plan, and as a result
10 Plaintiffs' evidence stands uncontroverted. Wellpath nonetheless urges the Court to disregard
11 Plaintiffs' evidence, arguing that the neutral monitor reports and mentoring reports submitted by
12 Plaintiffs are so outdated as to be "antiquated." Wellpath's Opp. at 1, ECF 790. Touting its recent
13 hiring of "a new team of well qualified supervisory staff," and recent increase in its staffing,
14 Wellpath suggests that it is well on the way to sustained, substantial compliance with the
15 Settlement Agreement and Wellpath Implementation Plan. On that basis, Wellpath requests that
16 the Court deny Plaintiffs' enforcement motion in its entirety as premature.

17 The Court finds Wellpath's request to be not only frivolous, but also offensive. The
18 neutral monitors consistently have found Wellpath to be not in substantial compliance with
19 multiple requirements of the Settlement Agreement and Implementation Plans since monitoring
20 began in 2017. *See* Trapani Decl. Exs. 1-13 (neutral monitor reports re medical care), Exs. 18, 20,
21 22, 24, 26, 28, 30, 32, 34 (neutral monitor reports re mental health care); Exs. 38-45 (neutral
22 monitor reports re dental care). Plaintiffs have repeatedly tried to address these issues through the
23 mechanism for enforcement outlined in the Settlement Agreement: Plaintiffs gave Defendants
24 notice that they were not in substantial compliance with the Settlement Agreement and
25 Implementation Plans on three separate occasions in February 2020, January 2022, and December
26 2022; Plaintiffs met and conferred with Defendants on each occasion; Plaintiffs thought they had
27 resolved the issues on the first two occasions after entering into stipulations that were approved by
28 the Court; and little has changed. Dr. Barnett, the neutral monitor for medical care, found that

1 Wellpath’s overall compliance *decreased* from 48.1% in March 2017 to 42.6% in October 2022.
2 *See* Trapani Decl. Ex. 1 at 5 (Barnett March 2017 report). Following the parties’ Settlement
3 Agreement, the Jail’s annual death rate is more than twice the national average, and its annual
4 suicide rate is more than three times the average for jails in California. *See* Swearingen Decl. ¶ 4.

5 On this record, the Court finds Plaintiffs’ motion for enforcement to be timely and well-
6 taken. Below, the Court addresses Plaintiffs’ compliance with the procedural requirements of the
7 Settlement Agreement before bringing the present motion, and then addresses Plaintiffs’ showing
8 on the requirements for a finding of civil contempt against Wellpath.

9 **A. Settlement Agreement’s Procedural Requirements for Enforcement**

10 Paragraph 48 of the Settlement Agreement sets forth certain procedural requirements for its
11 enforcement. *See* Settlement Agreement ¶ 48. If Plaintiffs believe that Defendants are not in
12 substantial compliance with the Settlement Agreement and/or Implementation Plans, they must
13 give Defendants written notice of their belief and the facts supporting their belief. *See id.*
14 Defendants must investigate and respond to the notice within 30 days. *See id.* The parties must
15 attempt informal resolution, first through negotiation and then through mediation. *See id.* If the
16 parties cannot resolve the issues, either party “may move the Court for any relief permitted by law
17 or equity.” *Id.*

18 If the Court finds that Defendants are not in substantial compliance with the Settlement
19 Agreement and/or Implementation Plans, the Court shall require Defendants to submit a plan to
20 remedy the deficiencies for Court approval. *See* Final Approval Order at 3. If the Court thereafter
21 determines that Defendants’ plan did not remedy the deficiencies, the Court may enforce
22 compliance “through all remedies provided by law[.]” *Id.*

23 As discussed above, Plaintiffs went through this entire process twice before giving
24 Wellpath the third notice of lack of substantial compliance that led to this motion. In 2020, the
25 process resulted in the Court ordering Wellpath to develop corrective action plans addressing all
26 areas in which the neutral monitors had found lack of substantial compliance. *See* 2020 Joint
27 Status Report and Order. Those corrective action plans were finalized in September 2021. *See*
28 Trapani Decl. ¶ 24 & Ex. 16 (Medical Care corrected action plan); ¶ 67 & Ex. 36 (Mental Health

1 Care corrective action plan). In 2022, Plaintiffs initiated and completed the procedural
2 enforcement process contemplated by Settlement Agreement yet again. That round resulted in the
3 Court approving the parties' stipulated plan for enhanced monitoring and mentoring of Jail Staff in
4 an effort to remedy the deficiencies in Defendants' compliance with the Settlement Agreement
5 and Implementation Plans. *See* 2022 Joint Status Report and Order. As discussed in detail below,
6 the neutral monitors have determined that these plans did not remedy the deficiencies in
7 Wellpath's performance under the Settlement Agreement and Wellpath Implementation Plan.
8 Consequently, the Court now may enforce Wellpath's compliance "through all remedies provided
9 by law[.]" Final Approval Order at 3.

10 **B. Requirements for Finding of Civil Contempt**

11 Civil contempt is one of the remedies provided by law for enforcement of a settlement
12 agreement in the custody context. *See Parsons*, 949 F.3d at 454. As the moving parties, Plaintiffs
13 have the burden to show by clear and convincing evidence that Wellpath violated a specific and
14 definite order of the court. *See Stone*, 968 F.2d at 856 n.9. If Plaintiffs meet this burden, the
15 burden shifts to Wellpath to demonstrate why they were unable to comply, and that they took
16 every reasonable step to comply. *See id.*

17 **1. Plaintiffs' Burden to Show Lack of Substantial Compliance**

18 Plaintiffs have submitted clear and convincing evidence, discussed below, that Wellpath is
19 not in substantial compliance with forty-three of the forty-four specific requirements of the
20 Settlement Agreement and Wellpath Implementation Plan raised in Plaintiff's motion. As to the
21 forty-fourth requirement, listed below as "14. Hospital Transfers," the Court finds that Plaintiffs
22 have presented clear and convincing evidence of a historical lack of substantial compliance, but
23 not of a current lack of substantial compliance. The most recent monitoring report indicates that
24 more information is needed before a compliance determination may be made. That evidence is
25 insufficient to meet the clear and convincing standard to show that Wellpath currently is not in
26 substantial compliance with requirement 14.

27 As discussed above, the parties' Settlement Agreement was expressly incorporated into the
28 Court's Final Approval Order such that it has the "full force and effect of an order of this Court."

1 Final Approval Order at 3. The Implementation Plans are “enforceable by the Court as part of the
2 Settlement Agreement.” *Id.* Accordingly, Wellpath’s failures to comply with forty-three
3 requirements of the Settlement Agreement and the Wellpath Implementation Plan constitute
4 violations of the Court’s orders.

5 Plaintiffs’ evidence of noncompliance is organized by and appended to the declaration of
6 Cara E. Trapani, counsel for Plaintiffs. *See generally* Trapani Decl., ECF 825-1. Below, the
7 Court lists each of the forty-four requirements raised by Plaintiffs in its enforcement motion and
8 identifies where in the Settlement Agreement and/or Wellpath Implementation Plan the
9 requirement can be found.³ Next, the Court provides the paragraph of the Trapani declaration
10 summarizing the attached documents demonstrating by clear and convincing evidence that
11 Wellpath is not in substantial compliance with requirements 1-13 and 15-44, and identifies what in
12 the Court’s view is the most probative of those documents. With respect to requirement 14, the
13 Court notes that the most recent report declines to find a lack of substantial compliance at this
14 time. The Court adopts this approach because, although the Court has considered and relied on all
15 of the documents attached to the Trapani declaration and cited therein, the documents are too
16 numerous to summarize here.

17 Clinical Staffing

18 1. *Medical, Mental Health, and Dental Staffing (Noncompliance Established)*

19 The Settlement Agreement requires Wellpath to maintain “adequate staffing to provide all
20 necessary medical and mental health care[.]” Settlement Agreement at 16. Wellpath’s
21 Implementation Plan requires Wellpath to maintain “sufficient staff to ensure compliance” with
22 the other mandates of the Plan. Wellpath Implementation Plan at 116. Many of Dr. Barnett’s
23 reports, including his most recent monitoring report, found that Wellpath’s staffing is not
24 substantially compliant with the Wellpath Implementation Plan. Trapani Decl. ¶ 27 & Ex. 13
25

26
27 ³ The Settlement Agreement is appended to the Court’s Final Approval Order, docketed at ECF
28 494. When citing to the Settlement Agreement, the Court refers to the page numbers in the ECF
header of docket entry 494. The Wellpath Implementation Plan is appended to Wellpath’s motion
for approval of the plan, docketed at ECF 532. When citing to the Wellpath Implementation Plan,
the Court refers to the page numbers in the ECF header of docket entry 532.

1 (13th Medical Report) at 8-9.

2 Medical Requirements

3 2. *Medical Intake Screening (Noncompliance Established)*

4 The Settlement Agreement provides that Defendants will “ensure that arriving prisoners
5 are promptly screened for urgent medical . . . needs, with prompt follow-up. . . .” Settlement
6 Agreement at 13. Wellpath’s Implementation Plan requires that “[a]ll arrestees . . . will be
7 screened by a Registered Nurse (RN) at the time of intake . . . [i]n a manner to ensure the inmate’s
8 privacy.” Wellpath Implementation Plan at 11. The intake screening must meet other specified
9 requirements as well. *Id.* Almost all of Dr. Barnett’s reports, including his most recent
10 monitoring report, found that Wellpath is not substantially compliant with these intake screening
11 requirements. Trapani Decl. ¶ 29 & Ex. 13 (13th Medical Report) at 5.

12 3. *Sick Call (Noncompliance Established)*

13 The Settlement Agreement provides that “Defendants shall ensure timely access to
14 necessary treatment by Qualified Medical Professionals for prisoners with medical issues.”
15 Settlement Agreement at 16. Wellpath’s Implementation Plan provides that “[h]ealth . . .
16 complaints of inmates shall be collected, processed and documented on a daily basis,” and patients
17 must be scheduled for the next sick call if the slip was received prior to 2300 hours. Wellpath
18 Implementation Plan at 25-26. Dr. Barnett’s most recent report concludes that Wellpath is not
19 substantially compliant with these and other sick call requirements. Trapani Decl. ¶ 31 & Ex. 13
20 (13th Medical Report) at 5. Among other things, that report finds that access to primary care
21 services falls short of demand by 100 visits per month. *Id.*

22 4. *Chronic Care (Noncompliance Established)*

23 Wellpath’s Implementation Plan requires that “[i]nmates with chronic medical conditions
24 will be referred to and seen by a medical provider within five to seven days of arrival.” Wellpath
25 Implementation Plan at 14. The plan contains other specific requirements for care of inmates with
26 chronic conditions, providing that inmates with certain conditions must be seen by a medical
27 provider every 90 days. *Id.* at 28-31. In his most recent report, Dr. Barnett found that Wellpath is
28 not substantially compliant with these requirements, and found specifically that chronic care visits

1 are frequently delayed and major medical problems are not consistently documented. Trapani
2 Decl. ¶ 33 & Ex. 13 (13th Medical Report) at 6.

3 5. *Health Care Maintenance (Noncompliance Established)*

4 Wellpath's Implementation Plan requires that all patients receive both a 14-day health
5 inventory and communicable disease screening, and a six-month complete physical examination.
6 Wellpath Implementation Plan at 30, 37. Both the 14-day and six-month examinations must meet
7 specific requirements. *Id.* at 35, 37. Dr. Barnett has found Wellpath to be not substantially
8 compliant with these requirements in multiple reports, including his most recent report. Trapani
9 Decl. ¶ 35 & Ex. 13 (13th Medical Report) at 6.

10 6. *Continuity of Care (Noncompliance Established)*

11 Wellpath's Implementation Plan requires that "[p]atients will receive continuity of care
12 from admission to discharge while in this facility, including referral to community care when
13 indicated." Wellpath Implementation Plan 38. "Inmates released to the community will be
14 provided with written instructions for the continuity of essential care, including, but not limited to,
15 name and contact information of community providers for follow up appointments, prescriptions
16 and/or adequate supply of medication for psychiatric patients." *Id.* at 38-39. Dr. Barnett has
17 found Wellpath to be noncompliant with these requirements in multiple reports, including his most
18 recent monitoring report. Trapani Decl. ¶ 37 & Ex. 13 (13th Medical Report) at 6.

19 7. *Outside Care Referrals (Noncompliance Established)*

20 Wellpath's Implementation Plan provides that "[i]nmates will have access to outside health
21 care providers." Wellpath Implementation Plan at 39. The Settlement Agreement provides that all
22 "records, results, and orders received from [such] off-site consultations and treatment" be
23 maintained in the patient's medical record. Settlement Agreement at 17. Dr. Barnett's most
24 recent monitoring report found Wellpath to be not in substantial compliance with the outside care
25 referral requirements. Trapani Decl. ¶ 39 & Ex. 13 (13th Medical Report) at 8.

26 8. *Treatment of Intoxicated Patients (Noncompliance Established)*

27 The Settlement Agreement requires that "[m]edical providers shall be timely involved in
28 assessing and treating inmates potentially undergoing withdrawal, and non-provider medical staff

1 shall timely refer to providers those inmate undergoing withdrawals when clinically indicated.”
2 Settlement Agreement at 14-15. Wellpath’s Implementation Plan enumerates numerous specific
3 requirements for the identification and treatment of patients in a state of alcohol or drug
4 intoxication, or withdrawal. Wellpath Implementation Plan at 18, 48-71. In his most recent
5 report, Dr. Barnett concluded that Wellpath is not in substantial compliance with these
6 requirements. Trapani Decl. ¶ 41 & Ex. 13 (13th Medical Report) at 7.

7 9. *Treatment of Communicable Diseases (Noncompliance Established)*

8 The Settlement Agreement states that Defendants “shall provide for appropriate infectious
9 disease screening and follow-up, including but not limited to screening for tuberculosis and
10 methicillin resistant staphylococcus aureus (MRSA).” Settlement Agreement at 13-14. The
11 Settlement Agreement contains further requirements relating to identification and treatment of
12 tuberculosis. *Id.* Wellpath’s Implementation Plan contains strict protocols for the identification,
13 control, and treatment of tuberculosis. Wellpath Implementation Plan at 78-87. Dr. Barnett has
14 found in all of his reports, including his most recent report, that Wellpath is not in substantial
15 compliance with these screening and treatment protocols. Trapani Decl. ¶ 43 & Ex. 13 (13th
16 Medical Report) at 7.

17 10. *Pharmaceutical Practices (Noncompliance Established)*

18 Wellpath’s Implementation Plan sets forth several requirements for the procurement,
19 storage, and distribution of pharmaceuticals for use in the Jail. Wellpath Implementation Plan at
20 94. Dr. Barnett’s most recent monitoring report concluded that Wellpath is not in substantial
21 compliance with these requirements for pharmaceutical practices, finding that there was “poor or
22 absent oversight of pharmacy services as manifested by my discovery in the medication room of
23 expired medications, improperly labelled multiple dose vials, and delinquent controlled substance
24 logs.” Trapani Decl. ¶ 45 & Ex. 13 (13th Medical Report) at 3, 22.

25 11. *Medical Quality Assurance (Noncompliance Established)*

26 Wellpath’s Implementation Plan requires it to conduct audits to identify any deficiencies in
27 care. Wellpath Implementation Plan at 9. The plan also requires the responsible physician to
28 provide appropriate supervision of the PA, NP, and RNs. *Id.* at 24. All suicides are to be subject

1 to medical and psychiatric review in accordance with specified procedures. *Id.* at 77. Dr. Barnett
2 found Wellpath to be not in substantial compliance with these requirements in multiple reports,
3 including his most recent report. Trapani Decl. ¶ 47 & Ex. 13 (13th Medical Report) at 9, 15-18,
4 23.

5 Mental Health Requirements

6 12. *Initial Mental Health Screening (Noncompliance Established)*

7 Wellpath's Implementation Plan requires that "[w]ithin 14 days of admission . . . all
8 inmates will have an initial mental health screening performed by a qualified mental health
9 professional." Wellpath Implementation Plan at 41. The screening must meet several
10 requirements regarding the structure of the interview, the patient's history, and status of
11 medication. *Id.* at 36. None of the neutral monitoring reports has found Wellpath to be
12 substantially compliant with these requirements, and Dr. Vess's most recent report found that
13 Wellpath improperly added mental health questions to the intake screening form in lieu of
14 conducting the required initial 14 day screening. Trapani Decl. ¶ 71 & Ex. 34 (9th Mental Health
15 Report) at 3-4.

16 13. *Nursing Rounds in Administrative Segregation (Noncompliance Established)*

17 Wellpath's Implementation Plan provides that "[n]ursing staff shall conduct mental health
18 rounds in Administrative Segregation daily, separate and apart from medication distribution."
19 Wellpath Implementation Plan at 43. All but the first mental health monitoring report has found
20 Wellpath to be out of compliance with this requirement, and in his most recent report Dr. Vess
21 found that nursing rounds were not documented daily across administrative segregation housing.
22 Trapani Decl. ¶ 73 & Ex. 34 (9th Mental Health Report) at 31.

23 14. *Hospital Transfers (Noncompliance Not Established)*

24 Wellpath's Implementation Plan provides that "[a]ny inmate who has been placed in a
25 safety cell for Suicide Precautions for 24 consecutive hours shall be transferred to either an
26 appropriate inpatient mental health facility or the Natividad Medical Center emergency room for
27 assessment." Wellpath Implementation Plan at 75. Patients also must be transferred to an
28 inpatient facility or Natividad Medical Center if they have been housed in a safety cell "for more

1 than 36 cumulative hours in any 3-day period.” *Id.* at 73. Inmates placed in a safety cell at intake
2 due to a positive mental health screening must be transferred to Natividad Medical Center for
3 further assessment if their “condition deteriorates,” or if “the nurse is unable to complete a hands-
4 on assessment including vital signs after six hours of placement.” *Id.* at 16. Several mental health
5 monitoring reports found Wellpath to be not substantially compliant with these requirements.
6 Trapani Decl. ¶ 75 & Ex. 32 (8th Mental Health Report) at 15, 37. However, Dr. Vess deferred
7 making findings on compliance in the most recent report. *Id.* Ex. 34 (9th Mental Health Report) at
8 37. Dr. Vess determined that “[a] more thorough understanding of the policies and procedures in
9 place to ensure compliance with these requirements is needed before reaching a finding about
10 compliance.” *Id.* at 37.

11 15. *Treatment Planning (Noncompliance Established)*

12 Wellpath’s Implementation Plan sets forth several requirements for treatment planning,
13 including that initial treatment planning must begin at the time of intake by the booking nurse, and
14 must “include [the] specific medical and/or psychiatric problem, nursing interventions, housing,
15 dietary, medication, observation and monitoring, and follow-up referral and/or evaluation as
16 appropriate.” Wellpath Implementation Plan at 27. An individualized treatment plan must be
17 documented in each patient’s medical record. *Id.* at 114. The mental health monitors have never
18 found Wellpath to be in compliance with these requirements, and in the most recent report Dr.
19 Vess stated that “[r]eview of recent treatment plans indicated that [the required] elements are
20 seldom adequately addressed.” Trapani Decl. ¶ 77 & Ex. 34 (9th Mental Health Report) at 27-28.

21 16. *Chronic Care (Noncompliance Established)*

22 Wellpath’s Implementation Plan regarding chronic care, addressed above, defines chronic
23 illness to include psychiatric disorders. Wellpath Implementation Plan at 28. In his most recent
24 report, Dr. Vess found that Wellpath is not in substantial compliance with the chronic care
25 requirements with respect to psychiatric patients. Trapani Decl. ¶ 79 & Ex. 34 (9th Mental Health
26 Report) at 8.

27 17. *Acute Care (Noncompliance Established)*

28 The Settlement Agreement provides that Defendants shall “ensure timely access to . . .

1 hospitalization and inpatient care.” Settlement Agreement at 17. Wellpath’s Implementation Plan
2 requires that “[i]nmates who require acute mental health services beyond those available on site
3 are transferred to an appropriate facility.” Wellpath Implementation Plan at 36. Dr. Hughes and
4 Dr. Vess have found access to Natividad Medical Center’s Mental Health Unit inadequate in every
5 report since March 2021, and in the latest report Dr. Vess found expressly that “[c]ases were
6 identified of patients who were in acute and severe mental health crises, with danger to self,
7 danger to others, and possible grave disability, who were not transferred to NMC for evaluation
8 and stabilization or to an appropriate facility.” Trapani Decl. ¶ 81 & Ex. 34 (9th Mental Health
9 Report) at 8-9.

10 18. *Outpatient Services (Noncompliance Established)*

11 Wellpath’s Implementation Plan states that “[o]utpatient mental health services to include
12 screening, evaluation, diagnosis, treatment and referral services shall be available to all inmates in
13 the Monterey County Jail.” Wellpath Implementation Plan at 41. The mental health monitors
14 have found Wellpath noncompliant with the requirement to provide adequate access to outpatient
15 mental health treatment in every report issued since March 2021, and most recently Dr. Vess
16 found “that current mental health staffing levels do not allow for sufficient outpatient services to
17 support a determination of substantial compliance.” Trapani Decl. ¶ 83 & Ex. 34 (9th Mental
18 Health Report) at 9.

19 19. *Psychiatric Follow-Up Visit Intervals (Noncompliance Established)*

20 Wellpath’s Implementation Plan requires that “patient[s] on psychiatric medications will
21 be seen by the psychiatrist every thirty days until determined stable and then at least every
22 sixty/ninety days. More frequent evaluations by a psychiatrist will be scheduled if necessitated by
23 the patient’s condition.” Wellpath Implementation Plan at 31. The mental health monitors have
24 made express findings of noncompliance with these requirements in every report since November
25 2019, and in the most recent report Dr. Vess found Wellpath noncompliant with the requirement
26 that patients on psychiatric medications be seen by the psychiatrist every thirty days. Trapani
27 Decl. ¶ 85 & Ex. 34 (9th Mental Health Report) at 4.

28

1 20. *Consideration of Mental Health in Discipline (Noncompliance Established)*

2 Wellpath’s Implementation Plan provides: “Mental illness will be considered in
3 administering any disciplinary measures against an inmate. Custody staff shall contact the
4 appropriate qualified mental health care staff when evaluating the level of discipline for an inmate
5 with mental illness.” Wellpath Implementation Plan at 47. The mental health monitors have
6 never found Wellpath substantially compliant with these requirements since monitoring began in
7 2017, and in the most recent report Dr. Vess found that Jail officers appeared to routinely
8 recommend charges regardless of mental illness. Trapani Decl. ¶ 87 & Ex. 34 (9th Mental Health
9 Report) at 28.

10 21. *Segregation Placement Screenings (Noncompliance Established)*

11 The Settlement Agreement provides: “The Mental Health Implementation Plan shall
12 require placement screening of all prisoners for mental illness and suicidality before or promptly
13 after they are housed in administrative segregation, and require procedures to mitigate the impact
14 of administrative segregation on persons with mental illness, including but not limited to
15 structured therapeutic activity outside the segregation cell and where feasible assignment of cell
16 mates.” Settlement Agreement at 17-18. The Wellpath Implementation Plan provides: “A suicide
17 risk assessment, including use of the Suicide Risk Assessment Tool, a copy of which is attached as
18 Exhibit G, will be performed by a qualified mental health provider . . . after placement in
19 Administrative Segregation. Any qualified mental health provider who performs a suicide risk
20 assessment will be trained in the use and interpretation of the Suicide Risk Assessment Tool.”
21 Wellpath Implementation Plan at 43. The mental health monitors have never found Wellpath to be
22 substantially compliant with these requirements, and most recently Dr. Vess found that
23 “[s]tructured suicide risk assessments are not routinely completed with inmates placed in
24 administrative segregation housing. The Mental Health Supervisor indicated that there is no
25 reliable and consistent way by which mental health staff are informed of all administrative
26 segregation placements, nor are there enough mental health clinicians on staff to respond
27 adequately to this requirement.” Trapani Decl. ¶ 89 & Ex. 34 (9th Mental Health Report) at 36.
28

1 22. *Mental Health Programming in Segregation (Noncompliance Established)*

2 The Settlement Agreement mandates that “[t]he Mental Health Implementation Plan shall
3 require . . . procedures to mitigate the impact of administrative segregation on persons with mental
4 illness, including but not limited to structured therapeutic activity outside the segregation cell.”
5 Settlement Agreement at 17-18. Wellpath’s Implementation Plan requires, in relevant part, that
6 “Mental Health services provided on-site will include . . . socialization programs, group therapy
7 . . . psychiatric evaluations and individual therapy.” Wellpath Implementation Plan at 42. In his
8 most recent report, Dr. Vess found Wellpath noncompliant with these requirements, finding that
9 “[r]outine group programming is still not being offered by mental health staff due to staffing
10 inadequacies.” Trapani Decl. ¶ 91 & Ex. 34 (9th Mental Health Report) at 40.

11 23. *Involuntary Medication (Noncompliance Established)*

12 Wellpath’s Implementation Plan provides that involuntary psychotropic medications will
13 be given only in the case of a psychiatric emergency, and the plan contains other restrictions on
14 the use of such medications. Wellpath Implementation Plan at 96. The mental health monitors
15 have found Wellpath noncompliant with these requirements in every report issued since March
16 2021, and in the most recent report Dr. Vess identified a patient who repeatedly received forced
17 medication administration without documentation of an on-site evaluation, and without transfer to
18 an appropriate community facility as required. Trapani Decl. ¶ 93 & Ex. 34 (9th Mental Health
19 Report) at 18-20.

20 24. *Suicide Risk Assessments and Safety Planning (Noncompliance Established)*

21 Under Wellpath’s Implementation Plan, suicide risk assessments may be performed only
22 by qualified mental health providers who are “trained in the use and interpretation of the Suicide
23 Risk Assessment Tool.” Wellpath Implementation Plan at 43. Such assessments must occur at
24 intake if suicidality is identified, prior to placement in segregation, within four hours after
25 placement in a safety cell, and before release from a safety cell. *Id.* The mental health monitors
26 have never found Wellpath substantially compliant with these suicide risk assessment
27 requirements, and in the most recent report Dr. Vess found that these requirements were not met
28 with respect to an inmate who then died by suicide. Trapani Decl. ¶ 95 & Ex. 34 (9th Mental

1 Health Report) at 35.

2 25. *Medical Records (Noncompliance Established)*

3 Wellpath's Implementation Plan requires that each patient's medical record contain a list
4 of enumerated items, including a completed Receiving Screening form, a Health
5 Inventory/Communicable Disease Screening forms, all findings diagnoses, treatments, and
6 dispositions, an individual treatment plan, and other data. Wellpath Implementation Plan at 114.
7 Multiple monitor reports, including Dr. Vess's latest report, have found Wellpath not in
8 substantial compliance with this requirements. Trapani Decl. ¶ 97 & Ex. 34 (9th Mental Health
9 Report) at 42.

10 26. *Corrective Action Plans (Noncompliance Established)*

11 Wellpath's Implementation Plan requires that Wellpath to engage in post-implementation
12 monitoring, and to develop corrective action plans for identified deficiencies. Wellpath
13 Implementation Plan at 9. The 2020 Joint Status Report and Order required Wellpath to "develop,
14 under the direction and guidance of the neutral monitors and with input from Plaintiffs' counsel,
15 corrective action plans to remedy all the areas for which the neutral monitors have found
16 Defendants to be not in substantial compliance." 2020 Joint Status Report and Order at 5. In his
17 most recent report, Dr. Vess found Wellpath noncompliant with the above requirements for
18 developing and implementing adequate corrective action plans. Trapani Decl. ¶ 99 & Ex. 34 (9th
19 Mental Health Report) at 43-44.

20 27. *Provider Visits to Holding and Isolation Cells (Noncompliance Established)*

21 Wellpath's Implementation Plan requires that "[i]nmates housed in holding and isolation
22 are visited by an MD or an RN every Monday, Wednesday and Friday." Wellpath Implementation
23 Plan at 26. Dr. Vess found Wellpath noncompliant with this requirement in his most recent report.
24 Trapani Decl. ¶ 101 & Ex. 34 (9th Mental Health Report) at 6.

25 28. *Mental Health Quality Assurance (Noncompliance Established)*

26 Wellpath must conduct quarterly Quality Management Committee meetings to assess their
27 compliance with Wellpath's Implementation Plan, and to develop and institute corrective actions
28 for identified deficiencies. Wellpath Implementation Plan at 9. "All cases involving the need for

1 involuntary psychiatric medication administration will be reviewed by the Quality Management
2 Committee to evaluate the appropriateness of treatment, the process and whether or not the criteria
3 for psychiatric emergency were met.” *Id.* at 98. In his latest report, Dr. Vess found that Wellpath
4 is not in substantial compliance with these and related requirements. Trapani Decl. ¶ 103 & Ex.
5 34 (9th Mental Health Report) at 37. Among other things, Dr. Vess found that there was no
6 evidence that the Quality Management or Peer Committees reviewed the completed suicide that
7 occurred during the review period, and “that cases involving involuntary medications are not
8 routinely reviewed in QM meetings, that there was no current committee structure to do this, and
9 that instances of involuntary medication administration are not routinely tracked in any way.” *Id.*

10 Dental Requirements

11 29. *Dental Intake Screening (Noncompliance Established)*

12 The Settlement Agreement requires Defendants to specify “standards and timelines to
13 ensure that arriving prisoners are promptly screened for urgent . . . dental needs, with prompt
14 follow-up.” Settlement Agreement at 13. Wellpath’s Implementation Plan requires that: “A
15 qualified health care professional who has been trained by the dentist shall obtain a dental history
16 regarding any current or recent dental problems, treatment including medications during the
17 Receiving Health Screening at intake with follow up to positive findings.” Wellpath
18 Implementation Plan at 99. Wellpath’s Implementation Plan further requires that: “If the medical
19 staff/licensed health care professional determines the dental issue to be urgent, the patient shall be
20 referred to and evaluated by the dentist at the next scheduled dental clinic.” *Id.* at 100. In all
21 monitoring reports, including her latest report,⁴ Dr. Winthrop has found Wellpath to be not
22 substantially compliant with these requirements. Trapani Decl. ¶ 117 & Ex. 45 (8th Dental
23 Report).

24 30. *Initial Health Inventory (Noncompliance Established)*

25 Wellpath’s Implementation Plan requires that “[a] complete gender specific health history
26

27 ⁴ The Court’s reference to Dr. Winthrop’s latest report is to the 8th Dental Report, which is Dr.
28 Winthrop’s latest finalized report. Plaintiffs have submitted Dr. Winthrop’s 9th Dental Report,
which is in draft, but because that report has not yet been finalized, the Court does not rely on it.
Trapani Decl. Ex. 47 (Draft 9th Dental Report).

1 inventory and communicable disease screening shall be completed on all inmates within 14 days
2 of arrival at the facility by a Registered Nurse who has completed appropriate training that is
3 approved or provided by the responsible physician.” Wellpath Implementation Plan at 33-34.
4 Wellpath’s Implementation Plan also provides specific requirements concerning the 14-day exam.
5 *Id.* at 99. Dr. Winthrop has never found Wellpath in compliance with these requirements, and in
6 her latest report she found that Wellpath had stopped conducting the required initial health
7 inventory in May 2022 because of staffing shortages, and that nurses conducting the initial health
8 inventory did not consistently look in the patient’s mouth. Trapani Decl. ¶ 119 & Ex. 45 (8th
9 Dental Report) at 10, 41.

10 31. *Dental Training for Intake Staff (Noncompliance Established)*

11 Wellpath’s Implementation Plan requires all staff to participate in classroom orientation
12 and training on all aspects of the plan. Wellpath Implementation Plan at 9. The plan also provides
13 that the registered nurse who performs the intake screening and the 14-day dental evaluation
14 during the initial health history must be trained by the dentist. *Id.* at 99. Dr. Winthrop has found
15 that Wellpath is not in substantial compliance with these requirement in all her reports, including
16 her most recent report. Trapani Decl. ¶ 121 & Ex. 45 (8th Dental Report) at 17.

17 32. *Treatment for Urgent and Emergent Conditions (Noncompliance Established)*

18 Wellpath’s Implementation Plan contains several specific procedures that must be followed
19 when an inmate has an urgent dental issue or a dental emergency. Wellpath Implementation Plan
20 at 99-103. If the dental issue is found “to be urgent, the patient shall be referred to and evaluated
21 by the dentist at the next scheduled dental clinic.” *Id.* at 100. Treatment must be provided within
22 one calendar day for patients “with a dental condition of sudden onset or severe pain, which
23 prevents them from carrying out essential activities of daily living.” *Id.* at 102. Dr. Winthrop has
24 found Wellpath to be not in substantial compliance with these requirements in multiple reports,
25 including her most recent final report. Trapani Decl. ¶ 123 & Ex. 45 (8th Dental Report) at 45.

26 33. *Dental Sick Call (Noncompliance Established)*

27 Wellpath’s Implementation Plan requires that: “All dental complaints are assessed,
28 provided treatment for obvious infection and pain relief at regularly scheduled medical sick call by

1 the MD, PA or RN to be seen within one day of the request. The complaint is prioritized and
2 referred to Dental Sick call as deemed necessary. Interim treatment for pain and infection is
3 provided until the patient is seen by the dentist.” Wellpath Implementation Plan at 102. Dr.
4 Winthrop has found Wellpath to be out of compliance with these requirements in all but her first
5 report, including in her most recent report. Trapani Decl. ¶ 125 & Ex. 45 (8th Dental Report) at
6 11.

7 34. *Chronic Care (Noncompliance Established)*

8 Wellpath’s Implementation Plan requires that “[i]nmates with chronic care conditions will
9 be managed pursuant to chronic care protocols and standardized procedures that are consistent
10 with national practice guidelines.” Wellpath Implementation Plan at 28. Wellpath created a
11 dental care corrective action plan, which was approved by Dr. Winthrop, that requires Wellpath to
12 “[p]erform and chart a full comprehensive dental examination for patients referred from chronic
13 care with the following issues: HIV, Seizures, Diabetes, Pregnancy, and Patients on over 4 psych
14 medications.” Trapani Decl. ¶ 126. Dr. Winthrop found Wellpath to be not in substantial
15 compliance with these requirements in multiple reports, and noted in her latest report that
16 “Patients with chronic care issues were not referred to, scheduled for, or seen in dental for
17 comprehensive dental examination.” Trapani Decl. ¶ 127 & Ex. 45 (8th Dental Report) at 10.

18 35. *Comprehensive Care (Noncompliance Established)*

19 The Settlement Agreement requires Wellpath “to ensure timely access to necessary
20 treatment for dental and oral health conditions, including . . . periodic dental care for long-term
21 prisoners.” Settlement Agreement at 18. Wellpath’s Implementation Plan requires among other
22 things that inmates incarcerated for 12 months or greater are eligible to receive a comprehensive
23 dental exam. Wellpath Implementation Plan at 104. Dr. Winthrop has found noncompliance with
24 these requirements in multiple monitoring reports, and in her seventh report found “zero
25 instance[s] of seeing patients for their comprehensive dental examination or comprehensive recall
26 examination within 30 days of their one year date of incarceration.” Trapani Decl. ¶ 129 & Ex. 44
27 (7th Dental Report) at 28.

1 36. *Restorative and Palliative Care (Noncompliance Established)*

2 Wellpath’s Implementation Plan requires that patients “with comprehensive examinations
3 and treatment plans” must be “eligible to receive permanent restorations in accordance with their
4 established treatment plan.” Wellpath Implementation Plan at 107. The plan further requires
5 dental staff to verify that patients have received the Dental Material Fact Sheet “[p]rior to
6 initiating any restorative procedure.” *Id.* at 108. Dr. Winthrop has found Wellpath to be out of
7 compliance with these requirements on in multiple reports. Trapani Decl. ¶ 131 & Ex. 46 (8th
8 Dental Audit Tool) at C.9.

9 37. *Extractions (Noncompliance Established)*

10 Wellpath’s Implementation Plan requires dental staff to “provide necessary oral surgery
11 services to all inmate-patients onsite or through a local community provider.” Wellpath
12 Implementation Plan at 101. The plan also requires Wellpath to provide “[e]xtraction of
13 unsalvageable teeth” as a treatment priority. *Id.* at 100-01. Dr. Winthrop found that Wellpath is
14 noncompliant with these requirements in multiple reports, observing in her latest report that the
15 dental team performing a surgical extraction without the use of a sterile irrigant, and that such
16 procedure risked infection. Trapani Decl. ¶ 133 & Ex. 45 (8th Dental Report) at 13.

17 38. *Specialty Care Referrals (Noncompliance Established)*

18 Wellpath’s Implementation Plan provides that complicated dental problems must be
19 “referred to an oral surgeon as deemed necessary,” and in accordance with the timelines and
20 treatment priorities required by the plan. Wellpath Implementation Plan at 101-02. Dr. Winthrop
21 has found Wellpath to be noncompliant with these requirements in multiple reports, including her
22 latest report. Trapani Decl. ¶ 135 & Ex. 45 (8th Dental Report) at 45.

23 39. *Endodontics (Noncompliance Established)*

24 Wellpath’s Implementation Plan requires that all patients at the Jail must be “eligible to
25 receive palliative endodontic therapy limited to upper and lower anterior teeth.” Wellpath
26 Implementation Plan at 109. Individuals incarcerated for 12 months or longer must also be
27 “eligible to receive root canal therapy limited to upper and lower anterior teeth.” *Id.* Both
28 palliative endodontic therapy and root canal treatments must be “performed in accordance with

1 established criteria and within the specific guidelines” of the Implementation Plan. *Id.* The
2 Implementation Plan imposes a series of requirements for when and how these procedures must be
3 performed. *Id.* at 109-10. Dr. Winthrop has found Wellpath noncompliant with the requirements
4 for endodontics in multiple reports. Trapani Decl. ¶ 137 & Ex. 44 (7th Dental Report) at 122.

5 40. *Periodontics (Noncompliance Established)*

6 Wellpath’s Implementation Plan requires the Jail to “maintain a periodontal disease
7 program for the diagnosis and treatment of periodontal disease.” Wellpath Implementation Plan at
8 104. “Periodontal screening shall be available to all patients, regardless of length of stay.
9 Treatment will be based on periodontal disease classification, Dental Priority code, and special
10 medical needs (i.e. pregnancy, diabetes, HIV/AIDS).” *Id.* Dr. Winthrop has found Wellpath to be
11 not in substantial compliance with these requirements in multiple reports, including her latest
12 report. Trapani Decl. ¶ 139 & Ex. 45 (8th Dental Report) at 10.

13 41. *Informed Consent (Noncompliance Established)*

14 Wellpath’s Implementation Plan contains numerous provisions concerning informed
15 consent related to dental procedures. Wellpath Implementation Plan at 21, 23, 108, 110, 112, 114.
16 Dr. Winthrop has found noncompliance with these requirements in every report in which she has
17 made specific compliance findings on this issue, including her latest report. Trapani Decl. ¶ 141
18 & Ex. 45 (8th Dental Report) at 9.

19 42. *Sanitary Treatment Space (Noncompliance Established)*

20 The Settlement Agreement requires “a safe and sanitary on or off-site facility for necessary
21 dental care.” Settlement Agreement at 18. Wellpath’s Implementation Plan similarly requires that
22 “[a]ll dental services will be provided in a safe and sanitary environment.” Wellpath
23 Implementation Plan at 99. Dr. Winthrop has found Wellpath noncompliant with these
24 requirements in every one of her reports, including her latest report. Trapani Decl. ¶ 143 & Ex. 45
25 (8th Dental Report) at 7.

26 43. *Electronic Medical Records (Noncompliance Established)*

27 The Settlement Agreement requires Defendants to ensure “that appropriate and complete
28 medical records are maintained to ensure adequate treatment of prisoners’ serious medical and

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1 mental health needs. Medical records shall include all records, results, and orders received from
2 off-site consultations and treatment conducted while the prisoner is in the Jail custody.”

3 Settlement Agreement at 17. Wellpath’s Implementation Plan contains additional requirements
4 and also provides for a “Dental Priority System” that determines when patients will be seen for
5 immediate treatment or treatment within 1, 30, 60, or 120 days, with scheduling for follow up
6 appointments. Wellpath Implementation Plan at 103, 113. Dr. Winthrop has found
7 noncompliance with these requirements in every monitoring report, including her latest final
8 report. Trapani Decl. ¶ 145 & Ex. 45 (8th Dental Report) at 16.

9 44. *Dental Quality Assurance (Noncompliance Established)*

10 Wellpath’s Implementation Plan requires “[a]ll monitoring and audit findings” to be
11 “reported to the Quality Management Committee at its quarterly meetings.” Wellpath
12 Implementation Plan at 9. The Dental corrective action plan contains further requirements
13 regarding transmission of daily, weekly and monthly data for discussion at the dental meetings.
14 Trapani Decl. ¶ 146. Dr. Winthrop has found Wellpath noncompliant with these requirements in
15 every report in which she has made compliance findings, and in her latest report she made several
16 recommendations for improving quality assurance. Trapani Decl. ¶ 147 & Ex. 45 (8th Dental
17 Report) at 45-46.

18 Conclusion

19 The Court finds that this evidence is sufficient to meet Plaintiffs’ burden to show by clear
20 and convincing evidence that Wellpath is not in substantial compliance with forty-three specific
21 requirements of the Settlement Agreement and the Wellpath Implementation Plan, that is,
22 requirements 1-13 and 15-44 above. While Plaintiffs have presented evidence of historical
23 noncompliance with requirement 14, the Court finds that Plaintiffs have not shown Wellpath’s
24 current noncompliance by clear and convincing evidence.

25 As discussed above, the Settlement Agreement and the Wellpath Implementation Plan
26 have been incorporated into the Final Approval Order and carry the force of a court order. The
27 burden therefore shifts to Wellpath to show why it could not comply with the forty-three
28 requirements as to which Plaintiffs have demonstrated substantial noncompliance.

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2. Wellpath’s Burden to Show Why it Could Not Comply

Perhaps recognizing that the task would be impossible, Wellpath makes no effort to show why it could not comply with the requirements at issue. Wellpath instead argues that Plaintiffs’ evidence of noncompliance is outdated and does not reflect the current state of Wellpath’s compliance. This argument is entirely unpersuasive. The neutral monitor reports submitted by Plaintiffs date from 2017 through 2022 and provide the most recent information available. The reports as a whole, and in particular the most recent reports from each neutral monitor, show a lack of substantial compliance with forty-three specific provisions of the Settlement Agreement and Wellpath Implementation Plan. And, most revealing, Wellpath offers absolutely no evidence of substantial compliance being achieved after any of the monitors’ reports were issued. Attorney say-so is simply inadequate. Consequently, the Court finds that Wellpath has failed to meet its burden.

3. Coercive Civil Contempt Sanctions are Appropriate

In light of the foregoing, the Court finds that the legal requirements for imposition of civil contempt sanctions are satisfied. The Court next must determine whether it should impose such sanctions here in an effort to coerce Wellpath’s compliance. “Coercive sanctions may only be imposed after a reasoned consideration of the character and magnitude of the harm threatened by the continued contumacy, and the probable effectiveness of any suggested sanction in bringing about the result desired.” *Shell*, 815 F.3d at 629 (internal quotation marks and citation omitted).

The character and magnitude of the threatened harm favor imposition of coercive sanctions. Wellpath’s continued failure to comply with its obligations under the Settlement Agreement and the Wellpath Implementation Plan creates a serious risk of harm to the health and well-being of the entire inmate population of the Jail. Plaintiffs and the Court have been unsuccessful at obtaining Wellpath’s compliance by less drastic measures, despite numerous efforts over a period of years. Plaintiffs argue persuasively that “Wellpath’s ongoing refusal to comply with this Court’s orders, coupled with the continued harms to incarcerated people, shows that only the threat of monetary sanctions will force private equity-owned Wellpath to take its obligations seriously.” Mot. at 3, ECF 825. The Court agrees that Wellpath has left it no viable

1 option but to impose coercive sanctions in the form of a conditional fine in the hope that a threat to
2 its bottom line may galvanize Wellpath's compliance where other measures have failed. Plaintiff
3 suggests imposition of a fine of \$25,000 for each requirement, those fines to be imposed only if
4 Wellpath fails to come into compliance within a six month period. The Court finds Plaintiffs'
5 suggestion to be reasonable.

6 Accordingly, Plaintiffs' motion to enforce the Settlement Agreement and Wellpath
7 Implementation Plan is GRANTED. The Court finds Wellpath to be in civil contempt, and
8 imposes a conditional fine of \$25,000 for each of the forty-three requirements listed above as to
9 which Wellpath is not in substantial compliance (requirements 1-13 and 15-44). The Court will
10 grant Wellpath six months to purge the contempt before any fines will attach.

11 **IV. ORDER**

- 12 (1) Plaintiffs' motion to enforce the Settlement Agreement and Wellpath
13 Implementation Plan is GRANTED.
- 14 (2) The Court finds Wellpath to be in civil contempt of each of the forty-three
15 requirements of the Settlement Agreement and Wellpath Implementation Plan
16 identified above as requirements 1-13 and 15-44, which are incorporated into the
17 Final Approval Order and carry the force of a court order.
- 18 (3) Wellpath is hereby enjoined to come into immediate and sustained compliance with
19 the requirements of the Settlement Agreement and Wellpath Implementation Plan
20 identified above as requirements 1-13 and 15-44.
- 21 (4) The Court imposes a conditional coercive civil contempt fine on Wellpath in the
22 amount of \$25,000 per each of the forty-three requirements of the Settlement
23 Agreement and Wellpath Implementation Plan identified above as requirements
24 1-13 and 15-44.
- 25 (5) Wellpath is granted six months, until March 25, 2024, to purge the contempt by
26 coming into substantial compliance with each and every one of requirements 1-13
27 and 15-44.
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- (6) The neutral monitors will provide reports regarding Wellpath’s compliance with requirements 1-13 and 15-44 at the end of the six-month purge period. If the neutral monitors find that Wellpath is not in substantial compliance with one or more of these requirements, Wellpath shall be required to show cause, in writing and within ten days after issuance of the reports of non-compliance, why Wellpath should not be required to pay civil contempt fines in the amount of \$25,000 per requirement. The Court will advise the parties if it requires a Show Cause Hearing.
- (7) The neutral monitors will continue to evaluate Wellpath’s compliance as part of their regular monitoring duties. The parties shall file the neutral monitor reports with the Court. After each round of monitoring reports is filed, if the neutral monitors determine that Wellpath is not in substantial compliance with one or more requirements of the Settlement Agreement and/or the Wellpath Implementation Plan, Plaintiffs may request that the Court issue an order to show cause why Wellpath should not be required to pay an additional \$25,000 fine for each such requirement.
- (8) Plaintiffs may request that the Court issue an order to show cause after each round of monitoring reports is filed until Wellpath achieves full compliance with this Order. Wellpath will deposit with the Clerk of Court payment for any fines imposed within one week of the fine’s issuance.
- (9) Pursuant to Paragraph 50 of the Settlement Agreement, and in light of the evidence of Wellpath’s recent noncompliance with Implementation Plan requirements related to the verification and continuation of mental health medications, neutral monitoring shall be reinstated for the two provisions of the Implementation Plan related to mental health medication verification and continuation for which Wellpath was released from monitoring on November 22, 2022. *See* Wellpath Implementation Plan at 19; November 2022 Joint Status Report and Order at 5-6, ECF 759.

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(10) The Court previously found that the Settlement Agreement entered in this matter was narrowly drawn, extended no further than necessary to correct the violation of Plaintiffs' federal rights, and was the least intrusive means necessary to correct that violation. Settlement Agreement at 4. Based on the evidence presented, the Court finds that this Order is necessary, narrowly tailored, and the least intrusive means of ensuring compliance with the Settlement Agreement. The Court finds that other remedies have not corrected Wellpath's noncompliance with the Settlement Agreement and Implementation Plans and that this Order is the only remedy likely to bring Wellpath into compliance. The Court therefore finds that this Order is narrowly tailored, extends no further than necessary to correct the violation of Plaintiffs' federal rights, and is the least intrusive means necessary to correct the violation. *See* 18 U.S.C. § 3626(a)(1)(A).

(11) A status hearing is HEREBY SET for March 28, 2024 at 11:00 a.m.

Dated: September 26, 2023



BETH LABSON FREEMAN
United States District Judge

Venters.3.Murray et al. v. County of Santa Barbara et al.

Third Monitoring Report of Dr. Homer Venters in

Murray et al. v. County of Santa Barbara et al. (Case No. 2:17-cv-08805-GW-JPR)

Submitted by Dr. Homer Venters

9/05/2023

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I. Introduction

The Stipulated Judgment and Remedial Plan in Murray et al. v. County of Santa Barbara et al. stems from a lawsuit regarding substandard health services for people held in the Santa Barbara County Jails, facilities of the Santa Barbara County Sheriff's Office. The facilities include the Main Jail and the recently opened Northern Branch Jail. The Stipulated Judgment and Remedial Plan agreement includes provisions for remedial plans to address deficiencies in several areas, including medical care, mental health care, disability access and accommodation, environmental health and safety and custody operations/segregation. The Stipulated Judgment and Remedial Plan details multiple specific provision that the County shall address within each of these broad categories and includes identification of independent monitors to oversee and report on progress in these areas to assess compliance. This report is focused on assessment of the medical care provided in the Santa Barbara County Jail, which involves performance by both the Sheriff's Office and the health services vendor, Wellpath inc. The parties in the original lawsuit have also submitted a Joint Status Report and Stipulation that relates to implementation of the Remedial

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Plan and bears on several areas of this report. Notably, the Defendants have agreed to implement several key elements regarding withdrawal monitoring, ADA compliance, food safety and nutrition, staffing of health care services and mental health care. The elements of withdrawal monitoring and health care staffing in the Stipulation are referenced below.

This is the third monitoring report regarding medical care in this case and there is one consistent and concerning theme throughout these reviews: Santa Barbara County lacks meaningful and organized clinical oversight of the vendor providing health services in the jails. There are some areas of cooperation and review of jail health services with the Department of Public Health and Behavioral Health, but there is no clear County jail health authority or correctional health office that ensures the policies are adequate, that analyzes quality assurance data independently, or that reviews clinical data regarding deaths and formulates independent findings. Many of these tasks that should be conducted by the County are left to the vendor, Wellpath. In many cases, Wellpath provides adequate care, but this does not remove the County from a responsibility that is clearly identified in the Stipulated Judgment and Remedial Plan, and which it currently does not meet. This lack of meaningful and organized oversight by the County stands in the way of compliance with the Stipulated Judgment and Remedial Plan. I recommend that the County stakeholders consider creating a unified correctional health authority or some organized office that includes physicians and nursing staff with correctional health expertise to address these deficiencies. This area of concern is consistently represented in my findings below and is also consistent with the reports I have reviewed from the other monitors. The County does report that their level of coordination and oversight is increasing this year, “the County has increased efforts to ensure cross-departmental coordination and oversight of the medical/mental health care provided at the

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jail facilities. The quarterly audits by Behavioral Wellness and Public Health will be incorporated in the MAC/CQI meetings.”

Summary of Santa Barbara County’s Compliance with *Murray* Remedial Plan – Medical Care

PROVISION	REQUIREMENT	CURRENT RATING	PRIOR RATING
II.A.1.	County Monitoring of Private Medical Contract Appointment of County employee/consultant for monitoring/oversight	PC	PC
II.A.2.	Department of Public Health and Behavioral Wellness Monitoring of Jail health care contract	PC	PC
II.B.1.	Policies and Procedures Policies specific to County’s Jail system, County ownership/control	PC	PC
II.C.1.	Health Care Records Integrated Health Records System, Ongoing IT Support	SC	SC
II.C.2.	Policies, Procedures for Adequate Documentation of Health Care Contacts and Treatment	SC	SC
II.C.3.	Policies, Procedures, for Ongoing Maintenance and Improvement of Electronic Health Record System	SC	SC
II.C.4.	Jail Health Care Forms the County owns	SC	PC
II.D.1.	Space for Health Care Service Delivery Clinical Treatment/Office Space, Adequate Privacy/Confidentiality	PC	PC
II.D.2.	Interim Measures to Provide Clinical Treatment/Office Space, Adequate Privacy/Confidentiality During Physical Remediation Period	PC	PC
II.E.1.	Screening on Intake Intake Screening Implementation Plan, Standards/Timelines	PC	PC
II.E.2.	Intake Screening Implementation Plan Components	PC	PC
II.E.3.	Registered Nurses to Conduct Screening, with Annual Training	SC	PC
II.F.1.	Access To Care Health Care Implementation Plan for Timely Treatment Appropriate to Acuity	PC	PC
II.F.2.	Timely Triage for Non-Emergent Health Care Requests	PC	PC
II.F.3.	Timelines and Procedures for Emergent, Urgent, and Routine Requests/Referrals	PC	PC
II.F.4.	RN/Provider Health Care Encounter Components	SC	SC
II.F.5.	Timely Access to Appropriate Medical Care Based on Community Standards	PC	PC
II.F.6.	Timely Access to Clinically Indicated Dental Care	PC	PC

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II.F.7.	Verbal Health Care Requests, Submission and Documentation	PC	PC
II.F.8.	No Prohibition on Reporting/Inquiring about Multiple Medical Needs During the Same Appointment	SC	PC
II.F.9.	Provision of Sufficient Custody Escorts for Timely Delivery of Health Care	Compliance Designation by Custody Operations Expert	
II.G.1.	Chronic Care Chronic Disease Management Program	PC	PC
II.G.2.	Written Individual Treatment Plans, Case Tracking, Adherence to Community Standards, and Appropriate Follow-ups	PC	PC
II.G.3.	Chronic Disease Management Protocols for Asthma, Hypertension, and Diabetes	SC	SC
II.G.4.	Timely Labs and Timely Communication of Results	PC	PC
II.H.1.	Continuity of Medication at Arrival and Throughout Detention	SC	PC
II.H.2.	Adequate Formulary Policies and Procedures	SC	SC
II.H.3.	Implementation of Keep-on-Person Medication Policies, Procedures	PC	PC
II.H.4.	Medication Administration Policies/Procedures, Initial Doses and Administration Record	PC	SC
II.H.5.	Therapeutically Appropriate Timing of Medication Distribution	PC	SC
II.H.6.	Sufficient Nursing and Custody Staffing to Ensure Timely Medication	PC	PC
II.I.1.	Transgender and Gender Nonconforming Health Care Individualized Care Consistent with Relevant Legal Requirements	PC	PC
II.J.1.	Drug/Alcohol Withdrawal Adequate Drug/Alcohol Withdrawal Policies, Procedures	PC	PC
II.K.1.	Utilization Management Implementation of Adequate UM system	PC	SC
II.K.2.	Providers and Patients are Promptly Informed about UM Decisions	PC	PC
II.K.3.	Process for Patients and Providers to Appeal Denial of Referral Request	SC	SC
II.L.1.	Review of Inmate Deaths Timely and Adequate Death Reviews, including Clinical Mortality Review and Psychological Autopsy (if Indicated), Multidisciplinary Administrative Review	PC	PC
II.L.2.	Death Review Process Inclusion of Root Cause Analysis and Correction Action Plans	PC	PC

II.M.1.	Discharge Planning Discharge/Reentry Program, Written Policy and Emphasis on Chronic Mental Health and Medical Conditions, Including Addiction	PC	PC
II.M.2.	Reentry Services Programs with Required Components	PC	PC
II.N.1.	Continuous Quality Improvement Quality Management Program to Regularly Assess and Take Necessary Measures to Ensure Quality and Efficiency of Care	PC	PC
II.N.2.	Continuous Quality Improvement (CQI) Unit, tracking mechanisms and monitoring of care, quarterly reviews, corrective action plans	PC	PC
II.N.3.	CQI Tracking of Completed, Delayed, and Cancelled Appointments	PC	PC
II.N.4.	CQI Tracking of Compliance with Chronic Disease Management Program	PC	PC
II.N.5.	Systematic Review of Prisoner Grievances Related to Health Care in Quality Management Program	Compliance Designation by Custody Operations Expert	
VII.1.	STAFFING FOR HEALTH CARE SERVICES Appropriate Medical and Custody Staffing Levels	Compliance Designations by Mental Health Care/ Suicide Prevention Expert	
VII.2.	Staffing Analysis		
VII.3.	Monitoring and adjusting staffing		

II. Methodology

The goal of this report is to review currently available information and provide a third report on compliance with the various provisions of the Stipulated Judgment and Remedial Plan that relate to medical care. Each of the specific provisions in the Stipulated Judgment and Remedial Plan are presented below, with a compliance rating and report on what data or information were utilized to achieve the rating. Compliance is divided into the categories of substantial compliance, partial compliance, non-compliance and unratable. Substantial compliance represents most or all of the elements of compliance being in place and working as designed. The parties have agreed upon the following compliance designation definitions for the Remedial Plan Experts to apply in their reports:

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- **Substantial Compliance:** Indicates compliance with all or most components of the relevant provision of the Remedial Plan, and no significant work remains to accomplish the goal of that provision.
- **Partial Compliance:** Indicates compliance with some components of the relevant provision of the Remedial Plan, and work remains to reach Substantial Compliance.
- **Non-Compliance:** Indicates non-compliance with most or all the components of the relevant provision of the Remedial Plan, and work remains to reach Partial Compliance.
- **Un-ratable:** Shall be used in cases where the Experts have not been provided data or other relevant material necessary to assess compliance or factual circumstances during the monitoring period making it impossible for a meaningful review to occur at the present time.

It is important to consider that a single rating of substantial compliance does not mean that an area will no longer be measured, or that such an area may not revert to lower levels of compliance. This is an important consideration whenever large-scale transitions occur with staffing, physical plant or emergency responses, all of which are currently relevant in the Santa Barbara County Jail.

Information utilized to assess compliance includes review of individual medical records, interviews with County and Wellpath staff and patients, and review of other information provided by the County and Wellpath. Medical records are reviewed remotely via secure access granted and maintained by Wellpath. Several lists of patient encounters were provided by Wellpath for this review. These lists represented consecutive encounters starting on a date selected by me for chronic care, sick call and other types of care.

The facility inspection was conducted on March 6th-8th, 2023. Aside from physical inspection of both facilities, interviews were conducted with security and clinical staff including the new MAT/MOUD coordinator. In addition, 12 currently detained people were interviewed regarding

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their care. Both defendants and plaintiffs were given draft versions of this report and offered the opportunity to provide comments and responses.

Among the 12 detained people interviewed, five reported regular use of opiates before their incarceration. Among these five people, one was being treated with suboxone and three others reported being on a wait list for treatment. One person reported that he was 21 days into his detention and was certain that he would go home before treatment was started. He reported that he has personally experienced overdose dozens of times and had been given Narcan in the week (before his incarceration) by friends when he overdosed. He and others expressed worries about dying from fatal overdose in the facility and when they left. Several of the people I spoke with had previously been detained in the jail and reported improvements in speed of the sick call response, and in their ability to see a dentist.

During the inspection, I was able to participate in a meeting between County jail leadership, Behavioral Wellness staff and the Wellpath team. This discussion demonstrated that the County Behavioral wellness team was very supportive of efforts to introduce Medications for Opiate Use Disorder (MOUD) in the jails and was providing technical support in this area.

III. Stipulated Judgment and Remedial Plan Monitoring

Each of the following categories is specifically outlined in the Stipulated Judgment and Remedial Plan. For each area of medical care, the elements of the Stipulated Judgment and Remedial Plan are presented with compliance reported for each of the individual subsections instead of one broad compliance assessment covering the various subsections. Each element of

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the Remedial Plan (A-N) is presented with ratings for each subsection. Data utilized to make these compliance ratings include the following:

- Medical records of patients (specified for each element).
- Reports from 12 patients interviewed during inspection.
- Reports from security and clinical staff interviewed during inspection.
- Administrative data requests from the County/Wellpath after the inspection.
- Fourth Remedial Plan Status Report from Santa Barbara County (2/1/23)

A. Private Medical Contract Monitoring by County

1. The County shall appoint a County employee or consultant with adequate expertise to provide ongoing monitoring and oversight of the private Jail health care provider contract.

Prior rating	Partial compliance
Self-Assessment from status report	Underway
Current rating	Partial compliance

Analysis: The County continues to report this area as “Underway”, and my assessment is that they are in partial compliance. While custodial leadership are well-positioned to work cooperatively with Wellpath, these relationships and workflows appear to focus on operational matters, not oversight.

Recommendations: The County should establish a group of correctional health experts who can provide meaningful oversight of the adequacy of all health services in the jails. The goal of this should be to independently assess compliance and not rely on Wellpath’s assessments of their

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own compliance. While taking a specific approach towards oversight is not outlined in the Remedial Plan, the County needs to expand their approach to oversight of care, and that this expansion will require nursing and medical professionals.

2. The County's Department of Public Health and Behavioral Wellness shall actively monitor the Jail health care contract with any private health care services provider.

Prior rating	Partial compliance
Self-Assessment from status report	Underway
Current rating	Partial compliance

Analysis: The current rating for A.2 is based on discussions with Behavioral Wellness staff as well as County Sherriff's staff and Wellpath leadership. The County Department of Public Health and Behavioral Wellness have been providing important support to the County as they implement some MOUD programs, including their audits of several areas of health services.

Recommendations: The County reports that integration of the Department of Public Health and Behavioral Wellness into their quality improvement structures at the jail is still ongoing. A more broad and unified oversight is needed to that County health experts are part of jail policy making, quality assurance, mortality reviews and other basic elements of oversight. One area that would benefit from immediate intervention is adoption of some of the naloxone protocols (with County partner support) similar to what is in place at LA County Jail for introduction into the Santa Barbara facilities to reduce overdose deaths. The County should make naloxone (Narcan)

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available in all housing areas without the need for incarcerated people to access it via a correctional officer. The County has requested that this recommendation be provided outside the Remedial Plan context, and that this is not required by the Remedial Plan, but my assessment of the recent overdose deaths and lack of fully implemented MOUD program in the County's facilities is that this is an essential recommendation to safeguard health and provide emergency care for clearly documented health problem. The County has reported on five overdose deaths-in-custody in the span of less than nine months (September 2022 to May 2023), a trend that calls for concerted and timely action.

B. Policies and Procedures

1. The County will develop and implement policies and procedures related to the delivery of medical care specific to the County's Jail system. The County will have ownership and control over the final policies that are created from this process.

Prior rating	Partial compliance
Self-assessment from status report	Completed
Current rating	Partial compliance

Analysis: The current rating for B.1 is based on review of the health care policy recently signed (May 2023) as well as discussions with County and Wellpath leadership and staff as well as review of documents utilized for delivery and improvement of clinical care. Review of the new County policy (5/23) and the Wellpath policies for provision of health services shows an ongoing gap in guidance that should be provided by the County but is instead left to Wellpath to both describe and perform quality assurance on. One example is the policy approach to Hepatitis C diagnosis and

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treatment. The County policy mentions Hepatitis C only once, “The County shall ensure that the contracted healthcare provider develops and implements a Chronic Disease Management Program for the management of chronic conditions, including but not limited to diabetes mellitus, asthma and other respiratory conditions, hypertension, HIV, and hepatitis C.” The Wellpath Hepatitis C policy is fairly comprehensive and is linked to an internal corporate Hepatitis C review panel that approves treatment. But there is no clear guideline from the County of Santa Barbara about who should be treated and there does not appear to be any review of the Wellpath Hepatitis C panel reviews and decisions by any County physician. The Wellpath eligibility criteria appear to link treatment to longer periods of incarceration and more advanced liver disease, but it is not clear why or whether the County of Santa Barbara has agreed to these criteria or why. In nearby Sacramento County, the County jail has its own Hepatitis C policy that details eligibility for treatment as well as other basic elements of treatment. Because this treatment is so effective at preventing future morbidity and mortality, and because the basic decisions about whether to treat or not are so linked to the cost of treatment, this is an area that the County should specially address in their health care policy, based on consultation with Department of Public Health experts, and not leave to a corporate vendor. The section on quality improvement contains a similar disconnect, with the language requiring a quality assurance program by the vendor but without clear definition of who in the County is responsible for ensuring that this occurs adequately.

Recommendations: The County reports that this area is completed, but having an effective health care policy will require addressing the related questions about County level oversight. In order to come into substantial compliance, the County will need to create a broad health policy (which exist at many other CA County Jails) and establish oversight roles for monitoring

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implementation of these policies. The County has reported that “he County Departments of Public Health and Behavioral Wellness will be reviewing the updated Wellpath policies once completed.” This process is welcome and may provide a path towards improved compliance.

C. Health Care Records

1. The County shall implement an integrated electronic health records system and provide ongoing IT support.

Prior rating	Substantial compliance
Self-assessment from status report	Completed
Current rating	Substantial compliance

Analysis: The electronic medical record (EMR) EMR continues to work as an acceptable platform for provision of health services. The rating for C.1 is based on review of the EMR utilized by Wellpath as well as discussions with Wellpath leadership and staff. One area of ongoing development involves the tracking of disability needs and accommodation. This is an essential area that the ADA expert in this case is actively monitoring and relates to the ability of the EMR to interface with other databases utilized by security staff in a manner that ensures disability needs are appropriately identified and accommodated.

Recommendations: None

2. The County shall implement policies and procedures to ensure that health care staff adequately document health care contacts and treatment intervention information, including:

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a) Patient housing location, type of health care service, and setting where the services were delivered;

b) Time of the health care encounter and time the note is generated in the system.

Prior rating	Substantial compliance
Self-Assessment from status report	Completed
Current rating	Substantial compliance

Analysis: The rating for C.2 is based on review of patient records, as well as interviews with patients and staff. The key identifiers outlined in a) and b) of this metric are consistently and clearly marked in patient records that I review. In addition, patients do not report any consistent or systemic issues in this area. There are several specific documentation issues outlined in the chronic care section, but those can be addressed via more robust quality assurance.

Recommendations: None.

3. *The County shall implement policies and procedures to ensure that the electronic health record system is modified, maintained, and improved as needed on an ongoing basis.*

Prior rating	Substantial compliance
Self-Assessment from status report	Completed
Current rating	Substantial compliance

Analysis: The current rating for C.3 is based on review of patient records and discussions with staff and leadership. Wellpath has provided adequate IT support to meet the clinical needs for

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care via the EMR posed by the new facility opening, implementing some MOUD and other new clinical workflows.

Recommendations: None

4. The County shall implement and utilize Jail health care forms that the County owns.

Prior rating	Partial compliance
Self-Assessment from status report	Completed
Current rating	Substantial compliance

Analysis: The forms utilized for patient care now appear to be subject to a single review and approval process, with all forms belonging to (and reviewed by) the County.

Recommendations: None

D. Space for Health Care Service Delivery

- 1. The County shall ensure sufficient and suitable clinical treatment and office space to support health care service delivery. Space for health care services shall provide a therapeutic setting with adequate patient privacy and confidentiality.***
- 2. The parties recognize that paragraph 1, above, will require a remodel, reconfiguration, or renovation of the South Branch Jail subject to the timeframe set forth in the Stipulated Judgment. The County and the Sheriff's Office agree that, during the period of***

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renovations at the South Branch Jail, they will, to the maximum extent possible given existing physical plant limitations, take reasonable steps to provide sufficient and suitable clinical treatment and office space to support health care service delivery with adequate privacy and confidentiality. (Metrics D1, D2 are rated together)

Prior rating	Partial compliance
Self-Assessment from status report	Underway
Current rating	Partial compliance

Analysis: Ongoing areas where the County does not provide adequate clinical space include the initial health screening areas of the Main Jail and the cells utilized for patients undergoing withdrawal, intoxication, or suicide precautions. Other settings where care is provided are consistent with this part of the Stipulated Judgment and Remedial Plan for adequacy and confidentiality of space.

Recommendations: The redesign of the Main Jail must allow for confidential encounters from the initial health assessment onwards and must also allow for more therapeutic setting for people undergoing withdrawal management (see below). This redesign must work to eliminate the practice of patients being improperly provided encounters with health staff at the door or open bars of a cell, where their clinical discussions can be heard by other detained people and security staff.

E. Intake screening

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1. The County shall develop and implement an Intake Screening Implementation Plan that specifies standards and timelines to ensure that arriving prisoners are promptly screened for urgent health care needs (within minutes of a prisoner's arrival when possible, and in all cases within two hours of arrival), with adequate confidentiality, timely follow-up, and disability accommodations. The standards and timelines shall include medical clearance on arrival at the Jail to determine whether the prisoner must be excluded from the Jail or housed in a special placement based on medical or mental health condition, initial health screening, and an initial health assessment within timeframes based on the individual's conditions and acuity.

Prior rating	Partial compliance
Self-Assessment from status report	Underway
Current rating	Partial compliance

Analysis: The County rates this area as underway and my current rating is again, partial compliance. I have reviewed 20 recent intake screenings and find that the forms are adequate and that the timing is also within the prescribed requirements. Interviews with patients and staff also reflect this. As before, I remain concerned with the use of locked cells in the intake area for management of people who have higher level medical or mental health needs during the intake process but who do not meet hospital admission criteria. These cells can leave people to deteriorate out of sight and sound of others, and the newly promulgated guidance from the DOJ makes specific mention of housing people experiencing withdrawal together (see review of Withdrawal Management section J, below). In addition, the intake process at the Main Jail also appears to provide barriers to confidentiality as security staff frequently stand inside the room

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where the encounter occurs. A recent Grand Jury report found deficiencies involving failure to communicate and coordinate care of a patient who later died, with emphasis on the need for more training and coordination among health staff in the overnight shifts and in response to mental health screening.

Recommendations: Develop an intake pathway that allows for increased clinical engagement without use of locked cells and ensures patient confidentiality. Review workflows for how mental health screening is conducted in the overnight shifts, and monitor/address gaps in communication between nursing and mental health staff.

2. The Intake Screening Implementation Plan shall include the following:

- a) Standards and procedures to ensure Medication Continuity, either through outside verification or on-site physician medication order;***
- b) Procedures to ensure adequate review of individual health care records maintained by the County or otherwise available as part of the intake process;***
- c) Infectious disease screening and follow-up;***
- d) Initial Health Assessment for all incoming prisoners with chronic illnesses;***
- e) Psychological Evaluation for persons with signs of development disability;***
- f) Psychological Evaluation for persons with signs and/or histories of mental illness;***
- g) Clinical evaluation of persons in need of detoxification with clinical determinations for any use of sobering, safety or isolation cells;***
- h) Use of a suicide risk assessment tool, with Psychological Evaluation for those with positive findings on the suicide assessment.***

Prior rating	Partial compliance
Self-Assessment from status report	Underway
Current rating	Partial compliance

Analysis: The County rates this area as underway and my current rating is again, partial compliance. While the bulk of the forms utilized for these encounters are adequate, remaining areas of work include ensuring access to County Behavioral Health and Wellness records for incoming patients, as well as implementing the intellectual disability screening workflow and ensuring adequate monitoring of people being treated for withdrawal or acute intoxication. I am also concerned about the delayed approach to tuberculosis screening in the County jails. The number of new cases of new TB cases has increased in both 2021 and 2022 in California.¹ Although Santa Barbara has not reported recent outbreaks, the County Health Department should review the current approach to waiting until day ten of incarceration (or later in many of the records I have reviewed) to check PPD status. One area in the initial receiving screening form that is often left blank is the infections disease symptom checklist. When this part of the receiving screening form is left blank (including the 'denies all' box), the result is that no affirmative questions about TB symptoms may be asked and documented until the second or third week of incarceration. The County reports recent training in this area and provided staff training documents and rosters.

¹ <https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/TBCB-TB-Snapshot-2022.pdf>

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The CDC recommends that all people be screened for symptoms of TB at jail intake and that a PPD be placed within 7 days of incarceration.² In NYC, we planted the PPD in the initial 48 hours of incarceration so that we could read the result by the day 4 or 5 court visit when many people went home. Ultimately, we moved to a blood test because even that approach left many people going home without a PPD either planted or read.³ The current approach by the County reflects the Wellpath corporate policy, but it results in a large percentage of people arriving and leaving the jail without their TB status being determined, and virtually none of those who are PPD positive but x-ray negative being initiated on treatment for latent TB infection. This approach places the County in jeopardy of missing a case of pulmonary TB, allowing spread inside the facility, putting large numbers of incarcerated people (and staff) at substantial risk, and being unable to conduct basic contact tracing for people who may be diagnosed outside the facility but passed through for less than two weeks. In addition, the lack of early identification and initiation of treatment for latent TB increases the overall burden of disease in the County and the State since 5-10% of people with untreated latent TB infection will ultimately develop active TB.⁴

Recommendations: Development of a standard quality assurance audit for intake timeliness and adequacy is required, especially to track access to outside County health records, intellectual disability screening and monitoring/care of people being treated for withdrawal and intoxication. The current approach to TB screening should be reviewed by the County Department of Public

² <https://www.cdc.gov/correctionalhealth/rec-guide.html#recommended-actions>

³ <https://www.liebertpub.com/doi/abs/10.1177/1078345818763868>

⁴

<https://www.cdc.gov/tb/publications/factsheets/general/ltbiandactivetb.htm#:~:text=Persons%20with%20latent%20TB%20infection%20are%20not%20infectious%20and%20cannot,some%20time%20in%20their%20lives.>

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Health. The County should establish oversight of the intake process, as with other areas of this Remedial Plan, so that they are able to independently assess compliance, not rely on Wellpath's assessments of compliance.

3. Registered nurses shall perform the intake health screening and shall receive annual training on intake policies and procedures.

Prior rating	Partial compliance
Self-Assessment from status report	Underway
Current rating	Substantial compliance

Analysis: Review of medical records shows that Wellpath is compliant with this metric.

Recommendations: None

F. Access to care

1. The County shall develop and implement a Health Care Implementation Plan to provide all necessary levels of care for prisoners with health care needs and to ensure that they receive timely treatment appropriate to the acuity of their conditions, consistent with established standards of care and clear timelines for routine, urgent and emergent cases.

Prior rating	Partial compliance
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Self-Assessment from status report	Underway
Current rating	Partial compliance

Analysis: The County reports being in the process of addressing this requirement. The newly shared health care policy does not include basic information about how level of control and acuity should drive how often people are seen by health staff, including physicians. Level of control refers to how well a chronic disease is being managed with current treatment, and whether exacerbations of that disease are occurring. For example, in hypertension and asthma, level of control documentation would include review since the last visit of recent blood pressure readings and review of asthma symptoms and rescue inhaler use respectively. The EMR and Wellpath policies do reflect the ability to document level of control and clinical status, as well as next appointment date, but the County’s own policy should have some of this basic guidance included, including a mandate that all incoming patients be screened and offered appropriate treatment for substance use disorders. The County has also indicated that “the County Department of Public Health will be reviewing all Wellpath policies once the outstanding policies are completed.”

Recommendations: Revision, finalization, and full implementation of Health Care Policy that addresses all relevant Remedial Plan requirements.

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2. All non-emergent health care requests or referrals shall be reviewed by the triage RN within 12 hours of receipt and assigned a triage level for a Provider appointment of urgent or routine.

3. For all health care requests or referrals, the following timelines and procedures shall apply:

a) Patients with emergent medical conditions shall be treated or sent out for emergency treatment immediately.

b) Patients with urgent medical conditions shall be seen by the Provider within 12 hours of review by the triage RN. For urgent referrals that occur on the weekend when a Provider is not on-site, medical staff shall complete a phone consultation with the Provider within 12 hours of review by the triage RN, with any clinically indicated treatment or other follow-up provided. The Provider will conduct a face-to-face appointment with the patient on the next business day.

c) Patients with routine medical concerns shall be seen by the Provider within five (5) days of review by the triage RN, or sooner if clinically indicated.

d) All health care requests or referrals that are received shall be seen by the RN or a Provider. The County affirms that it does not utilize a written response only process for medical care requests and referrals.

e) The County shall inform patients of the above timelines for urgent and routine care by including that information in the inmate orientation manual and on the medical request forms.

4. The RN or Provider shall:

a) conduct a brief face-to-face visit with the patient in a confidential, clinical setting;

b) take a full set of vital signs, if appropriate;

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- c) conduct a physical exam, if appropriate;*
- d) assign a triage level for a Provider appointment of emergent, urgent, or routine;*
- e) provide over-the-counter medications pursuant to protocols; and*
- f) consult with Providers regarding patient care pursuant to protocols, as appropriate.*

(F.2, F.3 and F.4 are reviewed together below)

Prior rating	Partial compliance (F.2, F.3) Substantial Compliance (F.4)
Self-Assessment from status report	Underway
Current rating	Partial compliance (F.2, F.3) Substantial Compliance (F.4)

Analysis: The County reports being in the process addressing these areas. The first two parts of the sick call elements refer to the timing of the initial review and the timing of the encounter itself. The third sick call element relates broadly to the adequacy of care. I have reviewed 20 sick call encounters, assessing each of these three areas, and not found any significant deficiencies in this sample. I have also reviewed the sick call audit tool that Wellpath and the County have developed, which is adequate. The County reported that they will begin tracking of these timeframes for review, as well as the adequacy of the encounters themselves and that they will report these findings into their quality committee meetings.

Recommendations: Once the County establishes tracking and reporting of the data referenced above and provided those data show compliance (as do my own reviews of medical records), I believe these three areas will be in substantial compliance, which will be an elevation for F.2 and

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F.3 and the same level for F.4. The County reports recently updating and improving this aspect of quality improvement.

5. The County shall ensure timely access to appropriate medical care based on the community standard, including with respect to medication practices, treatment, clinical and administrative treatment space, access to specialty care and hospitalization, emergency response, chronic care, infirmary or intermediate level of care, follow-up medical attention for prisoners discharged from the hospital, and supervision of medical staff.

Prior rating	Partial compliance
Self-Assessment from status report	Completed
Current rating	Partial compliance

Analysis: The County rates this area as in process. Some of the closures in the Main Jail have helped in that segregation cell areas that were difficult to access or required additional escort staff for patients have been closed. As detailed in the last report, there is no intermediate area for care, either as a dedicated infirmary or a housing area with some increased nursing resources and clinical surveillance. This gap is relevant to many patients who return from the hospital, and who have some increased health care needs that exceed what is possible in general population settings.

Recommendations: Create an intermediate level of medical monitoring for patients who require enhanced surveillance and care for a serious medical need but may not meet criteria for inpatient hospital admission. In addition, any utilization of the Northern Branch Infirmary area should

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follow a clear plan for the required staffing, frequency of clinical assessments and scope of services to be provided.

6. The County shall staff and schedule dental clinics to ensure timely access to clinically indicated dental care.

a) A qualified or appropriately trained clinician shall triage dental care requests to identify emergent or urgent dental issues that require treatment of infection or pain.

b) Patients with emergent dental conditions shall be treated or sent out for emergency treatment immediately.

c) Patients with urgent dental conditions shall be seen by a dentist within one (1) week, or sooner if clinically indicated.

d) Patients with routine dental concerns shall be seen by a dentist within two (2) weeks, or sooner if clinically indicated.

Prior rating	Partial compliance
Self-Assessment from status report	Underway
Current rating	Partial compliance

Analysis: The County rates this area as in process, noting that the Main Jail continues to be more challenging for meeting these requirements. Medical records I have reviewed show this area to be improved in the past year, but with persisting delays in the Main Jail. In addition, patient and staff interviews indicate that the time between initial referral or request and encounter is improved and generally within the 1-week timeframe for urgent concerns and 2 weeks for routine concerns. This area shows recent improvement in the weeks before this report, and if

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current levels are maintained, I anticipate this metric to be in substantial compliance when next reviewed.

Recommendations: Maintain additional hours of dental staff.

7. The County shall permit patients, including those who are illiterate, non-English speaking, or otherwise unable to submit written health care requests, to verbally request care. Such verbal requests shall immediately be documented by the staff member who receives the request on an appropriate form and transmitted to a qualified medical professional for response consistent with the above provisions.

Prior rating	Partial compliance
Self-Assessment from status report	Underway
Current rating	Partial compliance

Analysis: The County reports that they will come into compliance within six months regarding this metric. I have reviewed 20 medical records of people who are known to require language services, and almost all of their encounters appear to occur with this accommodation. What remains is for the County and Wellpath to establish a way to track this accommodation and report into their quality structures.

Recommendations: Track and ensure compliance with the need for adequate language accommodation in health care requests. The sic call form has recently been updated, which should help establish substantial compliance in this area over the coming review period.

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8. The County shall not prohibit patients from reporting or inquiring about multiple medical needs in the same appointment.

Prior rating	Partial compliance
Self-Assessment from status report	Completed
Current rating	Substantial compliance

Analysis: Interviews with detained people and review of medical records does not reveal this metric to be a significant concern. Multiple sick call and chronic care encounters have been reviewed where more than one problem was reported by a patient. Interviews with patients also confirm that patients can report more than one problem or concern at a time.

Recommendations: None

9. The County shall designate and provide sufficient custody escorts to facilitate timely delivery of health care.

This area of compliance has been assigned to Terri McDonald.

G. Chronic care

1. The County shall develop and implement a Chronic Disease Management Program for the management of chronic conditions, including but not limited to diabetes mellitus, asthma and other respiratory conditions, hypertension, HIV, and hepatitis C.

Prior rating	Partial compliance
Self-Assessment from status report	Underway

Current rating	Partial compliance
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Analysis: As stated above, several of these conditions and approaches to management are mentioned in the County health care policy but there still are large gaps in the County policy relating to chronic care. There are several elements that the County policy should mandate for chronic care encounters that include documenting review of prior encounters, including the level of control in the assessment/plan, and documenting the timeframe for the next encounter, with increasing frequency for poorly controlled chronic health problems. Wellpath does have its own policies relating to each of these conditions and their policies are generally in accordance with current NCCHC and other correctional health standards of care (see paragraph below). I have reviewed 20 chronic care encounters from March 2023. Each encounter was assessed for whether it was timely (based on the referral or prior encounter) and whether it was clinically adequate. Six of these encounters showed deficiencies in either the timing (three cases) or the adequacy (three cases) of the encounter. Wellpath responses to these cases indicate that a combination of wrong forms being utilized, and lack of escort staffing were identified as causes of the deficiencies.

Wellpath has provided several monthly quality assurance reviews that show compliance in the elements of chronic care timing and adequacy ranging from 71%-100%. multiple areas of review for chronic care visits. The approach taken in these reviews is good, but there is a gap relevant to this aspect of the remedial plan. One of the elements reviewed in these forms is “Treatment plan is modified if conditions change or if disease control is poor?” This approach does capture whether a change occurs in response to a poor level of control is poor, but it leaves

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out whether the level of control was captured in all other scenarios, so that a person who has moved from good to fair control might not be detected.

As I have previously reported, the lack of adequate treatment resources for people with OUD represents a major and ongoing deficiency in the County's jail health services. The collaboration with Behavioral Wellness, and the considerable work being conducted by the MAT/MOUD coordinator is important, but the persistence of a significant MOUD wait list make clear that this is largely a resource issue.

Recommendation: The County should develop their chronic care policy and oversight to reflect correctional standards, including documentation of level of control at chronic care encounters. As part of this, the County should have their own policies regarding who should be screened for and who should receive Hepatitis C treatment and who should be referred to care outside the facility on discharge. Oversight of the adequacy of care in this area should include County level policies and review of encounters by County medical staff. Wellpath policies and procedures appear adequate in their clinical approach, with the one recommendation to explicitly review level of control for all chronic care encounters. deficiencies in these encounters reflect the need for more monitoring of chronic care encounters. The County should have an audit tool for chronic care visits that allows them to track the adequacy and timeliness of these encounters. One specific recommendation is for providers to review and document the range of recent blood pressures for hypertension encounters. Regarding MOUD treatment, the County should include this area in their health care policy and determine the resources needed to eliminate the MOUD wait list. The County has reported that "The County Department of Public Health will be reviewing all Wellpath policies once the outstanding policies are completed."

2. The Chronic Disease Management Program shall include provision of written individual treatment plans, case tracking, adherence to community standards, and routine scheduled follow up with Qualified Health Professionals including specialists.

Prior rating	Partial compliance
Self-Assessment from status report	Underway
Current rating	Partial compliance

Analysis: As stated above, I believe the Wellpath templates are largely adequate to allow for creating these types of treatment plans in chronic care, but the County needs to establish a real oversight role in monitoring how and whether these templates are utilized. The County has reported a current process for MOUD and substance use disorder treatment and the partnerships with the County Departments of Behavioral Wellness and Public Health plans is underway. The County has also provided sample treatment plans for review which appear adequate.

Recommendations: Finalize MOUD/SUD treatment plan implementation, work to address the backlog of patients who meet clinical criteria for treatment.

3. The Chronic Disease Management Program shall include, at a minimum, the following protocols, which will be regularly evaluated through quality management processes:

a) A Comprehensive Asthma Protocol: The protocol shall ensure that patients with significant asthma histories are regularly evaluated by physicians. Medical staff shall use appropriate diagnostic tool(s) to assess a patient's ability to breathe. The County will allow patients to keep prescribed rescue inhalers on their person, consistent with

individualized clinical and security input.

b) A Comprehensive Hypertension Management Protocol: The protocol shall ensure that patients with hypertension receive complete initial exams, including but not limited to lab tests and EKGs per clinical input, and medication at the appropriate times and intervals.

c) A Comprehensive Diabetes Management Protocol: The protocol shall ensure regular testing of blood sugar and hemoglobin A1C levels for patients with diabetes, at clinically appropriate intervals. Patients shall have access to the types of insulin and dosing frequency consistent with the treatment they were receiving prior to detention or most appropriate to their individual treatment goals and correctional setting, including multiple daily injection therapy using long-acting and rapid-acting insulins and insulin pump therapy, as clinically appropriate. The County will provide a diabetes-appropriate diet, compiled by a qualified registered dietician, to prisoners with diabetes.

Prior rating	Substantial compliance
Self-assessment from status report	Complete
Current rating	Substantial compliance

Analysis: The protocols utilized by Wellpath for treatment of asthma, hypertension and diabetes are adequate.

Recommendations: To maintain this level of compliance, Wellpath should continue to report on the meeting of these chronic care goals through their quality management program in the coming year.

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4. The County shall develop policies and procedures to ensure that labs ordered by clinicians are drawn in a timely manner, that the results are reviewed by nurses and clinicians in a timely manner, that the results are communicated to patients in a timely manner, and that the results are placed in the patient's health care record in a timely manner.

Prior rating	Partial compliance
Self-assessment from status report	Underway
Current rating	Partial compliance

Analysis: The County has rated itself as underway for this metric and estimates compliance in the next six months. The County has also reported “The County intends to conduct this CQI quarterly”.

Recommendations: Create quarterly facility reports on the percentage of timely laboratory reviews and reports of results to patients, including response to abnormal and critical results.

H. Pharmacy Services:

- 1. The County shall develop and implement policies to ensure continuity of medication at the time of Jail arrival and throughout the period of detention. Verified medications from the community shall be continued without interruption. Prisoners with unverified medications for serious conditions shall be evaluated promptly to ensure timely provision of necessary treatment.*

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Prior rating	Partial compliance
Self-assessment from status report	Underway
Current rating	Substantial compliance

Analysis: This area appears to have improved in the past year, based on review of medical records as well as interviews with patients. Review of 20 chronic care patients shows that while there are deficiencies in some of the actual chronic care encounters (below), the initiation and maintenance of medications is adequate. I have reviewed the Wellpath medication/pharmacy policies and find them to be adequate, but the County health care policy should be more specific about what elements of these policies are essential. The keep on person program remains far too limited, which continues to create the need for extra staffing and increases the opportunities every day for medication errors at medication pass. I have reviewed the waitlist for Substance Abuse Counseling services and this delay appears to involve mostly people who are not yet receiving treatment with MOUD but who meet clinical criteria, as opposed to those who are already on community treatment. This area of compliance is mentioned in G.2. Overall, I find the improvements over the past year to bring the County into substantial compliance in this area.

Recommendations: Improve the County health policy area dealing with medications/pharmacy with more detail about essential functions and create a County role for monitoring of medication administration.

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- 2. The County shall ensure that the Jail's formulary policies and procedures are sufficient to provide adequate individualized care to patients, including through ongoing staff training on the process of requesting non-formulary medications.**

Prior rating	Substantial compliance
Self-Assessment from status report	Completed
Current rating	Substantial compliance

Analysis: The current Wellpath approach to prescribing formulary medications and access to non-formulary medications is adequate. The issues reported elsewhere regarding lack of access to MOUD do not stem from problems with the formulary, but more with staffing and resources.

Recommendations: None

- 3. The County shall revise its Keep on Person medication policies and procedures for common over-the-counter medications, including but not limited to rescue inhalers for asthma treatment.**

Prior rating	Partial compliance
Self-Assessment from status report	Underway
Current rating	Partial compliance

Analysis: The County continues to rely on medication carts for virtually all medications, which increases the number of times each day that nursing staff hand a single pill to a patient instead of them taking their medication on their own. This increases staffing needs for nursing as well as

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security staff. This process is especially problematic at the Main Jail because of the physical plant.

Recommendations: I have recommended that patients in the chronic care program be prioritized for the next step of KOP expansion and this approach should be prioritized at the Main Jail.

4. The County shall develop and implement policies and procedures to ensure that all medications are appropriately prescribed, stored, controlled, dispensed, and administered in accordance with applicable laws and through the following:

a) ensuring that initial doses of prescribed medications are delivered to patients within 48 hours of the prescription, unless it is clinically indicated to deliver the medication sooner;

b) ensuring that medical staff who administer medications to patients document in the patient's Medical Administration Record (1) name and dosage of each dispensed medication, (2) each date and time medication is administered, (3) the date and time for any refusal of medication, and (4) in the event of patient refusal, documentation that the prisoner was made aware of and understands any adverse health consequences by medical staff. Rating for this (H.4) and the following metric (H.5) are combined below.

5. The County shall develop and implement policies and procedures to ensure that patients are provided medications at therapeutically appropriate times, including when out to court, in transit to or from any outside appointment, or being transferred between facilities. If administration time occurs when a patient is in court, in transit or at an outside appointment,

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medication will be administered as close as possible to the regular administration time. (Both subsections H.4 and H.5 are rated together)

Prior rating	Substantial compliance
Self-Assessment from status report	Completed
Current rating	Partial compliance

Analysis: Review of medical records and reports from patients via counsel and grievances indicate that medications are intermittently administered outside the expected timeframes. The County has recently replied to this issue by stating the new staff are being hired and trained. This issue will require ongoing surveillance.

Recommendations: Continue with planned hiring of nursing staff, and oversight by the County of med pass times. The County should request a notification from Wellpath whenever med pass occurs outside expected timeframes and this metric should be reviewed at quality meetings with County oversight staff.

6. The County shall provide sufficient nursing and custody staffing to ensure timely delivery and administration of medication.

Prior rating	Partial compliance
Self-Assessment from status report	Underway
Current rating	Partial compliance

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Analysis: The County and Wellpath report this area as underway. As stated above, this issue is more pressing at the Main Jail, because nursing staff are able to safely complete their work more independently, even during short staffing, at the Northern Branch Jail due to efficiencies facilitated by the physical plant at that facility. The County acknowledges that “there have been some delays with medication pass at the Main Jail,” and notes in its Status Report that “the County and Wellpath are analyzing and assessing the circumstances,” including “working with an independent company to complete a staffing study.” The County reports that the Electronic Health Record will be used to monitor medication delivery times, and that “the County and Wellpath will work on a tracking mechanism to identify if medications were delayed due to custody or clinical staffing shortages.” These steps are essential and should move forward expeditiously.

In addition, any expansion of the discharge planning work, MOUD and higher level of care for patients with complex health problems or being managed for withdrawal will likely require additional nursing staff.

Recommendations: Ensuring adequate staffing is the core solution to this issue, although broadening the KOP program will reduce the number of medication passes significantly, which will also decrease the burden on security staff.

I. Transgender and Gender Nonconforming Health Care

- 1. The County shall treat transgender prisoners based upon an individualized assessment of the patient’s health care and related needs, consistent with relevant legal requirements.***

Prior rating	Partial compliance
Self-Assessment from status report	Completed
Current rating	Partial compliance

Analysis: The County reports this area as in process based on their own policy review. Plaintiffs' class counsel provided input and resources to support implementation of this provision via letter dated July 18, 2022. In addition, one case in which a person was not maintained on their community treatment was identified by the Mental Health Monitor, Dr. Belavich.

Recommendations: Complete policy revision, several nearby county jail systems (e.g., Los Angeles, Orange, San Francisco, and San Diego Counties) may have current policies that can provide guidance. This is an area where the coordination and communication between health and mental health staff during the initial 48-72 hours after arrival requires improvement.

J. Drug/Alcohol Withdrawal

- 1. The County shall develop and implement drug/alcohol withdrawal policies and procedures that include specific guidelines as to the frequency and documentation of patient assessment.***

Prior rating	Partial compliance
Self-Assessment from status report	Underway

Current rating	Partial compliance
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Analysis: As previously reported, the current approach to withdrawal management relies on cells in the intake area to hold people being medically managed for withdrawal, a practice that is unsafe. The County has reaffirmed during multiple conversations that they do not intend to have an infirmary level of care in either facility. This approach is problematic because every jail must have some setting where people who are ill but who do not meet admission criteria for hospitals can be safely housed and provided care. This represents a wide range of people, from those who have complex medical problems to those being monitored for acute intoxication, withdrawal and mental health crises. I have reviewed the medical records of patients who are designated as “total care” who are held in the jail in a cell, and who require multiple nursing and medical interactions on a daily basis, but who do not meet criteria for hospital admission. In terms of this area of evaluation, there is a clear need for a physical setting outside the intake units where people being managed for withdrawal can be cared for.

In August 2023, the parties reach an agreement and submitted a stipulation to the *Murray* court that provided further specifics, informed by Remedial Plan expert input, on implementation of this provision. Implementation of those specifically delineated requirements will be assessed in the next round of monitoring. Part of this agreement includes implementation of the type of care envisioned in the new Department of Justice guidelines regarding withdrawal management.

Recommendations: Develop the capacity to medically monitor patients undergoing withdrawal in a setting that includes either infirmary level care or some more therapeutic setting that does not rely on locked intake cells. This could be a combination of a dorm and cell areas but where

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health staff are able to see, hear and monitor patients in a dedicated space, out of the chaotic intake setting. This approach should also allow for confidential interactions between health staff, including mental health professionals, and patients. The recently released Department of Justice guidelines for management of withdrawal in jail settings make clear the need for this type of medical monitoring and confidential care.⁵

K. Utilization Management

- 1. The County shall develop and implement a utilization management (UM) system that ensures that health decisions about patient care are made with sufficient input from Providers and meaningful consideration of patients' health history and needs.***

Prior rating	Substantial compliance
Self-Assessment from status report	Completed
Current rating	Partial compliance

Analysis: This metric was previously rated as being in substantial compliance and is now rated as partial compliance. The reason for this change is that the obligations is for the County to implement and maintain a UM system, but the system that is in place belongs to and is operated by the vendor, Wellpath. The deficiency in this approach is that UM decisions by Wellpath are not regularly reviewed by any County level physician staff for appropriateness. In addition, it does not appear the nursing or physician staff working for the County are part of review of

⁵ <https://www.justice.gov/opa/pr/justice-department-releases-new-tool-manage-substance-withdrawals-jails>

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grievances when a person reports a delay or problem with these UM decisions. Instead, these tasks are left to Wellpath without active monitoring by the County. The County has stated that “While the County is increasing efforts to ensure cross-departmental coordination and oversight of the medical/mental health care provided at the jail facilities, the Remedial Plan does not require that a County physician review UM decisions.” While it is true that the County need not engage a physician for review of each UM decision made by Wellpath, there must be some physician level review of this area of work by the vendor to ensure that their practices are consistent with their own, and the County’s policies, as well as basic standards of care.

Recommendations: The County must implement and maintain a system that includes its own team (including physician level review) conducting correctional health care oversight to ensure the adequacy of vendor UM decisions.

2. The UM process shall ensure that Providers and patients are promptly informed about decisions made through the UM process, including with respect to specialist referral requests.

Prior rating	Partial compliance
Self-Assessment from status report	Completed
Current rating	Partial compliance

Analysis: The County reports this area as being in process. Discussions with patients, review of medical records and grievances shows that the process Wellpath currently utilizes leaves gaps in

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how timely patients are informed by their providers of key decisions about specialty assessments and care, as well as decisions about disability accommodations.

Recommendations: Creating and measuring an audit tool for the adequacy and timeliness of providing patient information could be an early CQI audit in this area. There should be a County role in oversight of this metric, including physician and nursing level reviews of timeliness and adequacy.

3. *The UM process shall include an appeal process to enable patients and Providers to appeal a decision denying a referral request.*

Prior rating	Substantial compliance
Self-Assessment from status report	Completed
Current rating	Substantial compliance

Analysis: Compliant. This appeal process exists and is adequate.

Recommendations: None.

L. Review of Inmate Deaths

1. *The County shall complete timely and adequate death reviews, within 30 days of any death, including a clinical mortality review in all cases and a psychological autopsy if death was by suicide or is otherwise indicated. The County shall also complete a*

multidisciplinary administrative review to assess custodial and emergency response actions.

Prior rating	Partial compliance
Self-Assessment from status report	Underway
Current rating	Partial compliance

Analysis: The most recent visit confirmed earlier discussions that while Wellpath conducts its own death review, and meets with County staff to discuss their findings, County correctional health experts do not review medical data and formulate findings independently. Instead, the vendor Wellpath conducts an internal clinical review and presents their finding to County staff, who do not include physicians or nurses. This is very concerning because the County is the health authority and they should rely on their own correctional health experts to review data from each case and formulate findings for and about Wellpath and their care. The current process is timely, but still lacks sufficient involvement by County health experts in assessing the adequacy of care.

The County's Fourth Status Report states that implementation of this provision has been "completed," which is not accurate. More work remains to establish substantial compliance.

Recommendations: Designate a County-level correctional health physician and nurse to review each case of death and formulate an initial set of findings that can be shared and discussed with security leadership and Wellpath staff. In my last report I made the following recommendations regarding mortality reviews:

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In addition, there should be a consideration in each mortality review as to whether the death is part of a trend. Ensure that mortality reviews include the following elements:

- *Did the patient receive the standard of care for their health problems?*
- *Did any factors inside the jail significantly contribute to the patient’s death?*
- *Does the patient’s death potentially indicate a pattern or trend?*

Since that time, the County has reported on five overdose deaths-in-custody in the span of less than nine months (September 2022 to May 2023). The mortality reviews in the past year do not indicate that the common clinical trends of how people die are being reviewed and assessed with each new case. In review of potential trends, the mortality reviews should document what findings and corrective actions have been taken in other similar cases and present these as either ongoing efforts, efforts that were never implemented or efforts that that were unsuccessful.

2. The death review process shall include a root cause analysis, as appropriate, and the development of corrective action plans to identify and address systemic or individual issues.

Prior rating	Partial compliance
Self-Assessment from status report	Underway
Current rating	Partial compliance

Analysis: Partial compliance. Without County-level physicians nursing staff as part of the process, the adequacy of this process cannot be established.

The County’s Fourth Status Report states that implementation of this provision has been “completed,” noting that the County has “incorporated root cause analysis into the mortality

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review process.” However, more implementation work remains to establish substantial compliance. Some of the recent mortality reviews indicate that there is pending data not included in the review. This is normal occurrence, but one that requires re-examination of the new information when available, something the County and Vendor appear to acknowledge but not always comply with. For example, one recent review reported that “A complete analysis of this incident is hindered by the inability to review the reports and written statements that are sealed pending closure of the various ongoing investigations.” This report continued “Will follow-up once autopsy and investigation packages are completed.” No corrective actions were identified in the initial review and no subsequent review was produced. Full compliance with this area requires that the County establish an effective mechanism so that they (not the vendor) track the timely and complete review of mortality among detained people, as well as the content of the findings and corrective actions (mentioned above in L.1).

Recommendations: Designation of County level physician and nursing staff for leading or otherwise substantially participating in the mortality review, including the root cause analysis.

M. Discharge Planning: The County shall implement an in-custody discharge/reentry planning program, described in a written policy, with emphasis on prisoners who suffer from chronic mental health and medical conditions, including addiction.

- 1. The reentry services program shall include the provision of assistance to chronic care patients, including outpatient referrals and appointments, public benefits, inpatient treatment, and other appropriate reentry services.***

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2. *The reentry services program shall include the provision of assistance to chronic care patients, including outpatient referrals and appointments, public benefits, inpatient treatment, and other appropriate reentry services.* (Both metrics rated together)

Prior rating	Partial compliance
Self-Assessment from status report	Underway
Current rating	Partial compliance

Analysis: The county rates both of these metrics as underway. The County has implemented a required workflow for people leaving their custody that ensures contact with a nurse and discharge planning encounter. I have observed the process in the facilities as well as reviewed documentation of these encounters in medical records of individual patients. While this encounter is an important step forward, there is a need to provide more for people leaving the facility than a handout or brief counseling, which generally is what has been the practice at Santa Barbara County Jail to date. One of the most important remaining needs is to provide people with a short-term supply of medications, especially for people who take life-sustaining medications for serious physical health problems and/or who take psychotropic medications. This settlement refers to “*other appropriate reentry services,*” and provision of medications represents a crucial resource for people leaving jail that is part of modern practice for jail and prison re-entry services.

Recommendations: Design workflows for re-entry planning that start with admission and create a staffing matrix of needed roles, as well as criteria for provision of medications. I have

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previously reported that this area will likely require 2-3 dedicated staff at a minimum, however analysis of the need and potential staffing models was not included in the County's contracted staffing report. This area of compliance includes, and will continue to rely on, input from the custody operations expert (Ms. McDonald) and the mental health care expert (previously, Dr. Johnson, and now Dr. Belavich).

N. Quality Management

- 1. The County shall develop a Quality Management program to regularly assess and take necessary measures to ensure quality and efficiency of care.***

Prior rating	Partial compliance
Self-Assessment from status report	Completed
Current rating	Partial compliance

Analysis: The County and Wellpath have some important quality management structures in place, but adequate involvement of the County in monitoring clinical quality requires County staff to engage in further analysis of quality outcomes and review of clinical performance. The process described to me thus far is that County staff are recipients of quality management data but do not actually collect and analyze data on quality assurance indicators. The hiring of a quality assurance member of the Wellpath team is an important step in that collection of data can be standardized and tracked, as can follow-up actions on corrective actions. This move is important for creating a more responsive and data-driven health service from the vendor but does not replace or diminish the need for County-level, independent assessment of the adequacy of health services.

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Recommendations: Ensure that County staff, including from Behavioral Wellness and Public Health, are part of the design and analysis of quality projects, as well as corrective action plans.

2. *The County shall establish a Continuous Quality Improvement (CQI) Unit to develop tracking mechanisms and to monitor the timeliness and effectiveness of care, to be reviewed at least quarterly and with corrective action plans employed where issues are identified.*

Prior rating	Partial compliance
Self-Assessment from status report	Underway
Current rating	Partial compliance

Analysis: The County has identified that this part of compliance is underway and predicts compliance within eight to ten months. While tracking of timeliness can be assisted by the electronic medical record and done somewhat administratively, assessing the adequacy of clinical encounters requires direct involvement of clinical leadership, including the head nurse and physician.

Recommendations: Ensure vendor clinical leadership have dedicated time for clinical review of cases. The County should have its own nursing staff to participate in and oversee this work.

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3. The County shall track and document all completed, delayed, and canceled medical appointments, including reasons for delays and cancelations. Such documentation shall be reviewed as part of the quality management process.

4. The County shall track compliance with the Chronic Disease Management Program requirements for timely provision of appointments, procedures, and medications. (Both metrics rated together)

Prior rating	Partial compliance
Self-Assessment from status report	Underway
Current rating	Partial compliance

Analysis: The County reports these two areas as be in in process.

Recommendations: Complete the tracking mechanisms for missed appointments presented in the Status Update and have County nursing and physician level staff review and make recommendations on data at quality meetings. The County reports that “Information regarding missed appointments will be added to the MAC/CQI meetings which are attended by County Departments of Public Health and Behavioral Wellness.” Tracking and use of this data will be crucial to establishing substantial compliance in this area.

Section VIII - Staffing for Health Care Services

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- 1. The County shall establish and maintain appropriate Qualified Health Professional staffing levels and sufficient custodial staff to provide timely escorts for inmates to health care appointments.*
- 2. The County shall perform the following analyses:*
 - a) Comprehensive staffing analysis based on a needs assessment, to include medical and mental health care providers and clinical staff, office and technological support, Quality Assurance staff, supervisory staff, and custody staff for escorts and transportation;*
 - b) Determination of the number of positions required in each discipline for health care needs at each facility, based on current populations;*
 - c) Timeline for implementation of the staffing analysis (including authorization, funding, and hiring).*
- 3. The County shall regularly monitor and adjust, as needed, staffing in order to ensure timely access to care.*

The Mental Health Care/Suicide Prevention Expert is providing the compliance designations for each provision in Section VIII of the Remedial Plan. My input as to the progress to date is provided below.

This area of compliance has three elements, including the requirement to maintain adequate staffing levels, to undertake a comprehensive staffing analysis and to monitor staffing levels for shortages in staff for the spectrum of health services. The County recently shared a staffing report, May 2023, provided by an outside vendor, Avocet Enterprises, LLC. This report was more of a review of workflows than an actual staffing analysis in that there was no review of data concerning the prevalence of various medical problems and the anticipated or estimated

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number of encounters and full-time equivalents of various staffing required to provide care in these encounters either under the current scope of services or the scope envisioned by the Stipulated Judgment and Remedial Plan. The review did provide helpful recommendations regarding productivity of health staff and filling of existing health staff positions. There remains a serious need, and explicit Remedial Plan requirements, for a staffing analysis that reviews the scope of services envisioned by the Stipulated Judgment and Remedial Plan, as well as the acuity levels of patients, and makes recommendations based on this data. This need is especially apparent in the areas of MOUD and re-entry/discharge planning. The County does continue to monitor the number of staff working each shift and oversee the filling of the allotted staffing lines.

IV. Next Steps

Overall, this compliance assessment shows that Wellpath continues to meet many of the expectations provided by the County, but that the County continues to have serious deficiencies in their own oversight and monitoring responsibilities. Several areas of compliance have improved, including medication prescribing and renewal, while others remain partially compliant. I do not believe the County will be able to come into full and sustained compliance with this Stipulated Judgment and Remedial Plan without creating a more organized and professional correctional health mechanism. Other barriers to compliance continue to include the physical plant and staffing challenges in the South Branch Jail, the lack of the ability to provide medical monitoring for high-risk patients during the intake period, and the need for expanded clinical care for people with substance use disorders and re-entry planning. Two previously

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identified practices relate to morbidity and mortality, the reliance on locked cells for people needing treatment of complex medical and mental health crises, and the lack of sufficiently widespread access to MOUD to meet the patient population needs. Creation of physical settings where more consistent and confidential care/monitoring can occur has been discussed with the County and appears to be a priority for their redesign of the Southern Branch Jail. Interim measures to address patient needs during the physical plant remediation process will be necessary in the meantime. At the time of this report, another person is reported to have died in the Santa Barbara County Jail. Although the mortality review is underway, the press release from the Sheriff's Department includes "The inmate was housed in a single observation cell due to medical concerns including alcohol detox and was being checked by staff at regular intervals. Shortly after midnight on Sunday, September 3, 2023, Custody Deputies found the inmate unresponsive in his cell." I plan to make a mid-year visit in the late fall to the facilities to provide support and feedback on the implementation of new withdrawal protocols as well as discharge planning and several other areas.