

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RALPH COLEMAN, et al.,
Plaintiffs,
v.
GAVIN NEWSOM, et al.,
Defendants.

No. 2:90-cv-0520 KJM DB P

ORDER

In an order filed September 3, 2020, the court directed the parties to file briefs addressing specific questions presented in the order. Sept. 3, 2020 Order, ECF No. 6846, at 24-27. The questions all concern “interim steps toward full and durable implementation” of the two primary remedial plans in this action, the Program Guide and the Compendium of Custody Related Remedial Measures (hereafter Compendium). *Id.* at 25. The parties have filed the required briefs and accompanying evidence. *See* ECF Nos. 6936, 6936-1 (Defendants’ Brief and Evidence); ECF Nos. 6937, 6937-1 through 6937-4 (Plaintiffs’ Brief and Evidence). The parties have also filed responsive briefing and evidence as authorized by the court, ECF No. 6946. *See* ECF No. 6969 (Plaintiffs’ Reply); ECF Nos. 6971, 6971-1, 6971-2 (Defendants’ Reply and Evidence).

/////
/////

1 I. BACKGROUND

2 A quality assurance program and a quality improvement process are required parts
3 of the remedy in this action. *See Coleman v. Wilson*, 912 F. Supp. 1282, 1308 (E.D. Cal. 1995);
4 *see also, e.g.*, Mar. 3, 2014 Order, ECF No. 5092, at 4-5¹ (quoted in ECF No. 6846 at 10); Aug.
5 30, 2012 Order, ECF No. 4232, *passim*. Quality assurance and quality improvement are
6 components of an adequate quality management system: quality assurance focuses on
7 quantification of system performance, while quality improvement focuses on the quality of that
8 same system's performance. *See, e.g.*, ECF No. 4205 at 74-75.²

9 Defendants' expert previously has testified via declaration "that defendants cannot
10 provide adequate mental health care without some form of quality assurance." *Coleman v.*
11 *Wilson*, 912 F. Supp. at 1308. The Eighth Amendment requires access to "adequate" mental
12 health care; a quality assurance program is a necessary part of ensuring the adequacy of the
13 mental health care delivered in a system the size of defendants' Mental Health Care Delivery
14 System (MHSDS). *Id.* As early as 1998, the Special Master reported to the court that

15 [a] strong quality assurance system is the best, and perhaps the only,
16 long-term method for continuing evaluation and enhancement of the
17 quality of mental health services delivered by the defendants to
18 seriously mentally disordered prisoners in the California Department
19 of Corrections. If effectively implemented and thoroughly
institutionalized in the defendants' mental health delivery system, its
impact will inure to the benefit of the plaintiff class long after the
court has ceased to monitor this case. Quality assurance is the critical
key to an enduring remedy.

20 Special Master's Recommended Schedule for Implementation of Defendants' Quality Assurance
21 Plans, filed July 20, 1998, ECF 958, at 3 (quoted in Twenty-Sixth Round Monitoring Report,
22 ECF No. 5439, at 104).

24 ¹ This order was signed February 27, 2014 and is referred to in the court's September 3,
25 2020 order by that date as well as its ECF number. It was entered on the docket in this action on
26 March 3, 2014 and is referred to here by that date and its ECF number.

27 ² Citations to page numbers in documents filed in the Court's Electronic Case Filing
28 (ECF) system are to the page number assigned by the ECF system and located in the upper right
hand corner of the page.

1 Full implementation of a quality improvement process is equally integral to a
2 durable remedy in this action. In 2012, the court adopted the Special Master's recommendation
3 and ordered defendants, over the following six months, to

4 review and assess their existing quality assurance process and . . .
5 develop an improved quality improvement process by which they can
6 address issues with the quality of care that is delivered, as described
7 in the Special Master's Twenty-Fourth Round Monitoring Report.
8 The quality improvement process shall be developed from the
standpoint of it being the beginning of a transition by CDCR
[California Department of Corrections and Rehabilitation] into self-
monitoring by its own DCHCS [Division of Correctional Health Care
Services].

9 ECF No. 4232, at 5-6. Defendants objected to the recommended order on three grounds:

10 (1) their quality assurance process was “constitutionally adequate” and “an order directing
11 Defendants to revise a presumptively constitutional process” was “not needed”; (2) the order was
12 “unnecessary and could be counterproductive” because of efforts by the Receiver, in *Plata v.*
13 *Brown*, No. 01-1351 JST (N.D. Cal.), “to implement a ‘comprehensive remodeling and revision
14 of CDCR’s health care quality assurance process, of which mental health’s quality assurance
15 process is a subset’”; and (3) they were willing to work with the Special Master without a court
16 order. ECF No. 4232 at 2 (quoting Defs.’ Objections, ECF No. 4212, at 1-2). Noting that
17 defendants’ prior comments to the Special Master about the draft recommendation had signaled
18 their acquiescence in it, ECF No. 4232 at 3, the court refused to entertain defendants’ objections
19 because they had not complied with the requirement set forth in the Order of Reference, of
20 presenting their objections to the Special Master in the first instance. *Id.* at 3-4. The court
21 specifically noted its concurrence in the Special Master’s finding that development and
22 implementation of the quality improvement process would be integral to completion of the
23 remedy in this case. *Id.* at 4-5.

24 After the court extended the initial six month deadline, *see* Apr. 23, 2013 Order,
25 ECF No. 4561, at 2, on August 2, 2013, the Special Master filed a report on the work required by
26 the August 30, 2012 order. ECF No. 4730. The report included “recommendations for further
27 work on the quality improvement process” but no recommendations for specific court orders.

28 //

1 ECF No. 5092, at 2.³ In its order denying plaintiffs’ subsequent request for specific orders on the
2 Special Master’s report, the court reiterated its finding that defendants had not objected “to the
3 Special Master’s recommendation that they be ordered to review and assess their existing quality
4 assurance process and develop an improved quality improvement process as part of the transition
5 to self-monitoring and the end of federal court oversight; indeed, . . . , they acquiesced in the
6 recommendation.” *Id.* at 4. The court also reiterated that “defendants’ development and
7 implementation of an improved quality improvement process” is “a key component of a durable
8 remedy” in this action. *Id.* at 4-5 (quoted in ECF No. 6846 at 10). CQIT is the “comprehensive
9 tool that, once finalized, defendants will ultimately use as part of” that quality improvement
10 process. ECF No. 6846 at 10.

11 II. UPDATE/IDENTIFY KEY CQIT INDICATORS

12 The first and fourth questions raised in the September 3, 2020 order are whether
13 the court should “allow a period of six months for defendants, under the supervision of the
14 Special Master who may seek input from plaintiffs as appropriate, to update the key indicators in
15 CQIT [the Continuous Quality Improvement Tool] to reflect any changes required by the 2018
16 Update to the Program Guide. . . . [and] identify key indicators for CQIT to reflect the material
17 provisions of the Compendium.” ECF No. 6846 at 25, 26. The parties are in general agreement
18 that the court should order this update. *See* ECF No. 6936 at 9⁴; *see also* ECF No. 6937 at 3. In
19 consultation with the Special Master, the court has now determined this update can be finalized
20 within three months from the date this order is filed.

21 Plaintiffs request the court direct the inclusion of their counsel from the beginning
22 of this process, rather than at the discretion of the Special Master. *See* ECF No. 6937 at 3, 6;
23 ECF No. 6969 at 4. The 1995 Order of Reference provides that the main work of the Special

24 ³ This order was signed February 27, 2014 and is referred to in the court’s September 3,
25 2020 order by that date as well as its ECF number. It was entered on the docket in this action on
26 March 3, 2014 and will henceforth be referred to by that date and its ECF number.

27 ⁴ References to page numbers in documents filed in the Court’s Electronic Case Filing
28 (ECF) system are to the page number assigned by the ECF system and located in the upper right
hand corner of the page.

1 Master is “with the defendants in this litigation”; at the same time, because this is an adversarial
2 proceeding in which “[a]ll parties are entitled to the advice of counsel as this litigation proceeds”,
3 the Special Master is also “directed to consult with counsel for all parties as necessary in the
4 discharge of his duties.” Dec. 11, 1995 Order, ECF No. 640, at 2-3. The court finds no reason to
5 depart from this long-standing direction. Plaintiffs’ request is denied.

6 Defendants contend that while some CQIT indicators “measure compliance with
7 provisions of the Program Guide that reflect constitutional obligations” this is not true of all
8 CQIT indicators; some measure compliance with California Department of Corrections and
9 Rehabilitation [CDCR] policies “designed to inspire best practices and for administrative
10 coordination, among other reasons, and not simply to reflect what is minimally required in a
11 constitutionally adequate system.” ECF No. 6936 at 8. They contend it is critical that those
12 CQIT “indicators that measure compliance with constitutionally-mandated functions are
13 identified and distinguishable from those that do not carry such import, but instead are used to
14 enhance or improve performance.” *Id.* at 9.

15 These contentions misperceive the remedial function of the quality improvement
16 process and CQIT. For the reasons explained above, it is settled in this action that full
17 implementation of the quality improvement process, including CQIT, is essential to a durable
18 remedy in this action. For that reason, implementation of all components of CQIT is essential to
19 the proper function of this key remedial requirement; the court’s questions did not invite parsing
20 of that tool in any way that would impede this function. Identification of “key” indicators and
21 confirmation of the degree of compliance required for each indicator serves separate remedial
22 functions by facilitating assessment of the degree to which full implementation of the remedial
23 plans in this action remains to be accomplished. Once full implementation is accomplished using
24 these measures, what will remain is a demonstration that these fully implemented remedies are
25 durable.

26 After review of the record, and considering that CQIT has been under development
27 for several years, the court concludes that a three month period is sufficient to update CQIT’s list
28 of key indicators. That will be the order.

1 III. CONFIRM UPDATED LIST OF KEY INDICATORS AS COMPREHENSIVE
2 LIST OF MATERIAL PROGRAM GUIDE/COMPENDIUM PROVISIONS FOR
3 COMPLIANCE PURPOSES

4 The second and fifth questions are whether the court should “confirm that the
5 updated list of key indicators in CQIT that pertain to Program Guide requirements may properly
6 be considered a comprehensive list of the material provisions of the Program Guide, that, taken as
7 a whole and met at the requisite degree of compliance, signal constitutionally adequate
8 compliance with the Program Guide.” ECF No. 6846 at 25, 26.

9 Plaintiffs argue that compliance with the CQIT key indicators can signal
10 constitutionally adequate compliance with the Program Guide only “in combination with an
11 overall systemic view of the system that includes review of a significant number of individual
12 patient cases to determine whether failures are occurring in a pattern that creates a substantial risk
13 of serious harm to patients.” ECF No. 6937 at 4, 6. In the reply, defendants contend the CQIT
14 review process “already contains a qualitative component that includes both patient interviews
15 and a review of individual patient files, in concert with extensive onsite tours over several days.”
16 ECF No. 6971 at 5.

17 As discussed above, CQIT is the implementation tool for the quality improvement
18 process that is a necessary component of complete remediation in this action. The Special
19 Master’s Twenty-Sixth Round Monitoring Report, filed May 6, 2016, includes a thorough
20 overview of the ongoing development of the comprehensive Continuous Quality Improvement
21 (CQI) process, for which CQIT is “[t]he self-auditing tool.” ECF No. 5439 at 104-113. That
22 overview is incorporated into this order by reference.⁵ It shows that implementation of the
23 quality improvement process in its entirety, assuming implementation can be achieved, will result
24 in a process by which defendants not only continuously “measur[e] performance indicators but
25 also . . . identify[] and craft[] resolutions with system-wide application, and thus . . . improv[e]
26 the [mental health] care that is delivered throughout CDCR prisons.” ECF No. 5439 at 110

27 ⁵ No party raised objections to the Twenty-Sixth Round Monitoring Report. *See* Aug. 9,
28 2016 Order, ECF No. 5477, at 1.

1 (quoting Special Master’s Report on Defendants’ Quality Improvement Process, ECF No. 5730,
2 at 3).

3 Defendants contend it is “critical” to “identify those material CQIT indicators that
4 undeniably measure a constitutionally adequate mental health care delivery system” in order to
5 avoid requiring of them more than the Eighth Amendment requires and running afoul of the
6 needs-narrowness-intrusiveness requirement of the Prison Litigation Reform Act. ECF No. 6936
7 at 11.⁶ In their opening brief, defendants also argue that “CQIT was not designed to measure
8 CDCR’s provision of the minimum level of services and care that should be provided to *Coleman*
9 class members to meet constitutional standards.” *Id.* at 5. In reply, defendants modify that
10 position to contend CQIT has two purposes: “not only . . . to measure CDCR’s provision of the
11 minimum level of services and care that should be provided to *Coleman* class members to meet
12 constitutional standards,” CQIT is “also . . . intended to be aspirational, reflecting best practices
13 and encouraging improvement. ECF No. 6971 at 2.

14 As discussed above, the quality improvement process serves an integral remedial
15 function in this action: defendants’ assumption of responsibility for self-monitoring the adequacy
16 of mental health care delivered to the plaintiff class. This function is as essential to the
17 constitutional remedy as are individual components measured by CQIT. Viewed through this
18 lens, defendants’ contention that CQIT includes components that exceed constitutional minima is
19 misplaced. While key CQIT indicators must be identified as an aid to measurement of
20 compliance with remedial plans in this action, namely the Program Guide and the Compendium,
21 that identification is but a component of full implementation of CQIT and the quality
22 improvement process. As discussed above, full implementation of CQIT and the quality
23

24 ⁶ The needs-narrowness-intrusiveness requirement is found in 18 U.S.C. § 3626(a)(1)(A),
25 which provides in relevant part: ”Prospective relief in any civil action with respect to prison
26 conditions shall extend no further than necessary to correct the violation of the Federal right of a
27 particular plaintiff or plaintiffs. The court shall not grant or approve any prospective relief unless
28 the court finds that such relief is narrowly drawn, extends no further than necessary to correct the
violation of the Federal right, and is the least intrusive means necessary to correct the violation of
the Federal right.”

1 improvement process is required as part of the constitutional remedy in this action to the same
2 extent as all other court-ordered remedies.

3 Defendants also suggest that “once compliance with a key indicator is durably
4 achieved, that requirement should be terminated from this case, as envisioned by this Court’s
5 July 12, 2018 order.” *Id.* (citing ECF No. 5852 at 8:12-17). This contention is, at best,
6 premature. As the September 3, 2020 order observes, the complex remedy for the persistent
7 Eighth Amendment violation identified in this action must be both fully implemented and durably
8 sustained. *See* ECF No. 6846 at 29. Defendants’ ultimate constitutional obligation is to provide
9 the tens of thousands of seriously mentally ill inmates in their custody with “access to adequate
10 mental health care,” *Coleman v. Wilson*, 912 F. Supp. at 1298, as well as to remedy the identified
11 custody-related violations of plaintiffs’ constitutional rights. Meeting that obligation will require
12 durable implementation of all material aspects of court-ordered relief as well as, ultimately,
13 demonstrating the ability to assume full responsibility for self-monitoring. The question of
14 whether these remedial objectives can be achieved in full without full court supervision
15 continuing until they are met is not before the court at this time.

16 The court does not address the other arguments raised by the parties in response to
17 questions two and five, either because it would be premature to do so or because the issue
18 presented has already been addressed by the court.

19 After review of the parties’ briefing, the court anticipates confirming that the
20 updated list of key indicators in CQIT that pertain to Program Guide requirements is properly
21 considered a comprehensive list of the material provisions of the Program Guide, that, taken as a
22 whole and met at the requisite degree of compliance, signals constitutionally adequate compliance
23 with the Program Guide.

24 IV. ESTABLISHMENT OF PERCENT COMPLIANCE RATE FOR KEY
25 INDICATORS

26 The third and sixth questions focus on the percent compliance rate for the
27 identified key indicators, and specifically ask why the court should not “confirm that a 90 percent
28 compliance rate for each key indicator for which the court has not previously expressly

1 established a different compliance requirement will indicate, as to that key indicator, the
2 constitutional minimum has been met.” ECF No. 6846 at 25, 26. Plaintiffs contend a 90 percent
3 compliance rate should be confirmed provisionally, “subject to resetting key indicators at a higher
4 level” if the review of a significant number of patient cases, which they suggest is required to
5 confirm the constitutional adequacy of defendants’ delivery of mental health care, reveals
6 ongoing deficiencies. ECF No. 6937 at 4; ECF No. 6969 at 7. Defendants, on the other hand,
7 suggest “substantial compliance” is the appropriate standard “as opposed to rigid quantitative
8 percentages.” ECF No. 6936 at 12; ECF No. 6971 at 7-9.

9 The remedial phase of this action has proceeded on the principle that adequate and
10 durable implementation of the comprehensive set of remedial plans finally developed in this
11 action will achieve the constitutional remedy. With the court’s approval, the Special Master has
12 for years used a 90 percent compliance rate as the target for monitoring most of the key measures
13 in those plans. Generally, the court is inclined to confirm this compliance rate. It will, however,
14 direct the Special Master to file findings and recommendations recommending different
15 compliance rates, if any, for one or more of the key indicators on the completed list, providing the
16 parties a final chance to weigh in before court approval.

17 V. UPDATING CQIT

18 The court also required the parties to address whether the finalized CQIT “should
19 be subject to annual updates when the Program Guide and the Compendium are updated.”
20 ECF No. 6846 at 24 n.11. The parties appear to agree that CQIT must be updated as necessary to
21 remain congruent with the Program Guide and the Compendium, though they have some
22 differences over the precise method for assuring this congruence. *Compare* ECF No. 6937 at 5
23 *with* ECF No. 6936 at 9; ECF No. 6971 at 4.

24 The court previously has observed “[t]he ‘key indicators’ in CQIT are likely
25 equivalent to the material provisions of the Program Guide and the Compendium that may not be
26 modified without court approval,” ECF No. 6846 at 24 n.11, and neither party disputes this.
27 Consistent with this determination, once the key CQIT indicators have been identified, defendants
28 will be required to seek leave of court before making any substantive change to any key CQIT

1 indicator. They may do this by including a request for court approval of such changes with the
2 annual updates to the Program Guide and the Compendium, or they may file individual requests
3 for approval when they request court approval of modification to any material provision of the
4 Program Guide or the Compendium. In either event, they shall include with the annual updates to
5 the Program Guide and the Compendium a certification that the requirements of this order have
6 been met together with a list identifying any material change to a key CQIT indicator or a
7 statement that no such changes have been made in the preceding year. The court anticipates any
8 such changes will be rare given that the remedial planning for this action has been lengthy and
9 comprehensive, and is essentially complete. *See, e.g.*, July 9, 2019 Order, ECF No. 6214, at 4;
10 Aug. 3, 2020 Order, ECF No. 6806, at 14; ECF No. 6846 at 3-4. While defendants will also be
11 expected to update CQIT as necessary, if at all, to ensure it fulfills its equally important role in
12 enabling defendants to assume responsibility for self-monitoring and ending federal oversight,
13 they will not be required at this time to obtain court approval for updates outside those proposed
14 for key indicators.

15 VI. ADMINISTRATIVE SEGREGATION UNIT (ASU) ENHANCED OUTPATIENT
16 PROGRAM (EOP) TREATMENT IMPROVEMENT PLAN

17 The court's September 3, 2020 order also required the parties to address "why the
18 court should not confirm a 90 percent compliance rate for the required review of and compliance
19 with all elements of defendants' Administrative Segregation Unit Enhanced Outpatient Program
20 Treatment Improvement Plan (the Plan), including the conduct of a review every 30 days of all
21 EOP inmates housed in ASU hubs for over 90 days." ECF No. 6846 at 27. Plaintiffs contend
22 that (1) EOP inmates should no longer be housed in administrative segregation; or, at a minimum
23 (2) the entire EOP ASU Treatment Improvement Plan should be revisited; and (3) if EOP patients
24 remain in administrative segregation, the court should confirm the 90 percent compliance rate.
25 ECF No. 6937 at 10-11. Defendants contend the court should not confirm the 90 percent
26 compliance rate for the Plan because the Plan "has been incorporated into the EOP Hub
27
28

1 certification process,” which is being reviewed by the Special Master, and “because certain
2 indicators do not lend themselves to a numerical threshold.” ECF No. 6936 at 14-15.

3 While plaintiffs are not precluded from making an appropriate motion, the first
4 two issues raised by plaintiffs are not currently before the court and are not addressed by this
5 order. Given the parties’ agreement that the Plan has been incorporated into the EOP Hub
6 certification process and that the Special Master is currently reviewing that process, the court will
7 defer resolution of this question until the Special Master’s review is complete, while maintaining
8 this issue as a very high priority.


9 In accordance with the above, IT IS HEREBY ORDERED that:

- 10 1. Within **three months** from the date of this order, defendants shall, under
11 the supervision of the Special Master who may seek input from plaintiffs as
12 appropriate, update the key indicators in the Continuous Quality Improvement
13 Tool (CQIT) to reflect any changes required by the 2018 Update to the
14 Program Guide and the Compendium of Custody Related Remedial Measures.
- 15 2. Defendants shall file the updated list of key indicators within **three months**
16 from the date of this order.
- 17 3. The court defers confirmation of the compliance rate for each key indicator
18 pending defendants’ compliance with paragraph 2 of this order and
19 consideration of findings and recommendations filed by the Special Master, if
20 any, for a different compliance rate for one or more of the key indicators
21 followed by resolution by this court of objections, if any, to such findings and
22 recommendations.
- 23 4. After the list of key CQIT indicators has been finalized, defendants will be
24 required to seek leave of court before making any substantive change to any
25 key CQIT indicator. They may do this by including a request for court
26 approval of such changes with the annual updates to the Program Guide and
27 the Compendium, or they may file individual requests for approval when they
28 request court approval of any material provision of the remedy. In either

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

event, defendants shall include with the annual updates to the Program Guide and the Compendium their certification that the requirements of this order have been met together with a list identifying any material change to a key CQIT indicator or a statement that no such changes have been made in the preceding year.

DATED: December 16, 2020.



CHIEF UNITED STATES DISTRICT JUDGE