FUTTERMAN DUPREE DODD CROLEY MAIER LLP
MARTIN H. DODD (104363)
601 Montgomery St., Suite 333
San Francisco, California 94111
Telephone: (415) 399-3840
Facsimile: (415) 399-3838
mdodd@fddcm.com

Attorneys for Receiver
J. Clark Kelso

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

AND FOR THE NORTHERN DISTRICT OF CALIFORNIA

MARCIANO PLATA, et al., *Plaintiffs*, v. EDMUND G. BROWN, JR., et al., *Defendants*.	Case No. C01-1351-JST
RALPH COLEMAN, et al., *Plaintiffs*, v. EDMUND G. BROWN, JR., et al., *Defendants*.	Case No. CIV-S-90-0520-KJM-DB
JOHN ARMSTRONG, et al., *Plaintiffs*, v. EDMUND G. BROWN, JR., et al., *Defendants*.	Case No. C94-2307-CW

NOTICE OF FILING OF RECEIVER'S THIRTY-EIGHTH TRI-ANNUAL REPORT

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PLEASE TAKE NOTICE that the Receiver in *Plata, et al. v. Brown, Jr., et al.*, Case No. C01-1351-JST; *Coleman, et al. v. Brown, Jr., et al.* Case No. CIV-S-90-0520-KJM-DB; and *Armstrong, et al. v. Brown, Jr., et al.* Case No. C94-2307-CW has filed herewith his Thirty-Eighth Tri-Annual Report.

Dated: June 1, 2018

FUTTERMAN DUPREE DODD CROLEY MAIER LLP

By: /s/ Martin H. Dodd
Martin H. Dodd
Attorneys for Receiver J. Clark Kelso

CALIFORNIA CORRECTIONAL
HEALTH CARE SERVICES

Achieving a Constitutional Level of Medical Care in California's Prisons

Thirty-eighth Tri-Annual Report of the Federal Receiver For January 1 – April 30, 2018

June 1, 2018

California Correctional Health Care Receivership

Vision:

As soon as practicable, provide constitutionally adequate medical care to patients of the California Department of Corrections and Rehabilitation within a delivery system the State can successfully manage and sustain.

Mission:

Reduce avoidable morbidity and mortality and protect public health by providing patients timely access to safe, effective and efficient medical care, and integrate the delivery of medical care with mental health, dental and disability programs.

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Section 1: Status and Progress Concerning Remaining Statewide Gaps

A. Reporting Requirements and Reporting Format

This is the thirty-eighth report filed by the Receivership, and the thirty-second submitted by Receiver J. Clark Kelso.

The Order Appointing Receiver (Appointing Order) filed February 14, 2006, calls for the Receiver to file status reports with the *Plata* Court concerning the following issues:

1. All tasks and metrics contained in the Turnaround Plan of Action (Plan) and subsequent reports, with degree of completion and date of anticipated completion of each task and metric.
2. Particular problems being faced by the Receiver, including any specific obstacles presented by institutions or individuals.
3. Particular success achieved by the Receiver.
4. An accounting of expenditures for the reporting period.
5. Other matters deemed appropriate for judicial review.

(Reference pages 2–3 of the Appointing Order at https://cchcs.ca.gov/wp-content/uploads/sites/60/2017/08/2006-02-14_Order_Appointing_Receiver.pdf)

The Court's March 27, 2014, Order Re: Receiver's Tri-Annual Report directs the Receiver to summarize in each Tri-Annual Report the level of care being delivered at California Health Care Facility (CHCF); difficulties with recruiting and retaining medical staff statewide; sustainability of the reforms the Receiver has achieved and plans to achieve; updates on the development of an independent system for evaluating the quality of care; and the degree, if any, to which custodial interference with the delivery of care remains a problem.

The Receiver filed a report on March 10, 2015, entitled Receiver's Special Report: Improvements in the Quality of California's Prison Medical Care System wherein he outlined the significant progress in improving the delivery of medical care in California's prisons and also the remaining significant gaps and failures that must still be addressed. The identified gaps are availability and usability of health information; scheduling and access to care; care management; and health care infrastructure at facilities.

To assist the reader, this Report provides two forms of supporting data:

- *Appendices*: This Report references documents in the Appendices of this Report.
- *Website References*: Website references are provided whenever possible.

In support of the coordination efforts by the three federal courts responsible for the major health care class actions pending against California Department of Corrections and Rehabilitation (CDCR), the Receiver files the Tri-Annual Report in three different federal court class action cases: *Armstrong, Coleman,* and *Plata*. An overview of the Receiver's enhanced reporting responsibilities related to these cases and to other *Plata* orders filed after the Appointing Order

can be found in the Receiver's Eleventh Tri-Annual Report on pages 15 and 16. (https://cchcs.ca.gov/wp-content/uploads/sites/60/2017/08/T11_20090601_11thTriAnnualReport.pdf)

Court coordination activities include: facilities and construction; telemedicine and information technology; pharmacy; recruitment and hiring; credentialing and privileging; and space coordination.

B. Progress during this Reporting Period

Progress towards improving the quality of health care in California's prisons continues for the reporting period of January 1 through April 30, 2018, and includes the following:

(i) Office of the Inspector General

As of the filing of this report, the Office of the Inspector General (OIG) has completed or initiated medical inspections at all 35 institutions for Cycle 5. The OIG issued final reports for Centinela State Prison (CEN), Central California Women's Facility (CCWF), Chuckawalla Valley State Prison (CVSP) and High Desert State Prison (HDSP). CEN, CVSP, and HDSP received adequate ratings and CCWF received an inadequate rating.

(ii) Standardizing Practices Regarding Custody Presence during Health Care Exams

Corrections Services, California Correctional Health Care Services (CCHCS), and Division of Adult Institutions, CDCR, distributed a policy directive to Wardens and Chief Executive Officers concerning security precautions and patient privacy during health care encounters. The directive outlines the requirements for custody and health care staff to ensure health care encounters are provided in a manner that affords both auditory and visual confidentiality consistent with security and safety concerns of that particular patient and health care provider. The necessary health care processes within the directive have been integrated into the Inmate Medical Services Policies and Procedures. In the previous Tri-Annual Report, it was indicated that training is "being provided to all health care and custody staff statewide beginning in 2018." To clarify, CDCR began training all custody staff via an in-service training lesson entitled "Access to Care - Staff Interactions." Health care providers and nursing staff will receive training in summer 2018.

(iii) Delegations

As of the filing of this report, the Receiver has delegated to CDCR authority for the medical operations at 16 institutions. Meet-and-confer meetings were held on January 30, 2018; February 27, 2018; March 27, 2018; and April 24, 2018. During this reporting period, the Receiver delegated California Correctional Center (CCC) on March 23, 2018. Monitoring of institution performance for all 16 delegated sites continues to ensure sustainability. Delegation determinations are currently pending. The remaining meet-and-confer meetings have been scheduled with the parties through early 2019 to discuss the potential delegation of additional institutions.

(iv) *Armstrong*

All parties in the *Armstrong* case developed a joint audit tool which will measure compliance of all elements of the case. After a mini-trial implementation at California Men's Facility (CMF) in December 2017, a complete audit at the California State Prison, Los Angeles County was conducted by the CDCR's Office of Audits and Court Compliance, in conjunction with plaintiffs' counsel, CDCR staff and counsel, as well as CCHCS staff. The audit occurred on May 5-8, 2018. The next planned combined audit is scheduled for Richard J. Donovan Correctional Facility (RJD) in August 2018.

C. Particular Problems Faced by the Receiver, Including Any Specific Obstacles Presented by Institutions or Individuals

(i) In-State and Out-of-State Contracting for Community Correctional Facilities

During this reporting period, CCHCS conducted a total of six audits, four in-state and two out-of-state. Systemwide issues continue in the areas of Chronic Care Medication and Daily Care Huddles. Chronic care medications are not being distributed to patients within required time frames, and medical staff are neither conducting nor documenting daily care huddles.

The total In-State Modified Community Correctional Facility (MCCF) patient population as of April 25, 2018, was 4,082 or 96.77 percent of the budgeted capacity of 4,218. During this reporting period, one MCCF received a proficient rating, two received adequate ratings, and one rating is pending. The MCCFs are being added to the Over the Counter (OTC) medication contract enabling the facilities to order OTC medications pursuant to CCHCS policy.

The total California Out-of-State Correctional Facility patient population as of April 27, 2018, was 3,420 or 92.43 percent of the budgeted capacity of 3,700. During this reporting period the population at the Tallahatchie County Correctional Facility (TCCF) has been reduced by 651 patients, leaving a total of 597 patients. CDCR is reporting that the TCCF projected deactivation date is now June 30, 2018. Both out-of-state facilities received pending adequate ratings during their latest audits.

(ii) Transportation Vehicles

CDCR submitted for $17.5 million in funding from the General Fund in Fiscal Year (FY) 2018–19, to replace all current high-priority health care fleet assets and purchase additional health care fleet assets. CDCR will replace 291 high-priority health care fleet assets and purchase 47 additional vehicles to expand the existing fleet statewide. This is the first instance of CDCR expanding the existing health care fleet, since the Federal Receiver delegated procurement authority to CDCR in September 2012. CCHCS is optimistic and will continue to monitor the procurement, security retrofitting, and delivery of these vehicles to the respective institutions.

(iii) Health Care Infrastructure at Facilities

A significant issue impacting the delivery of care has been the failure of the State to provide adequate infrastructure repairs and maintenance, including roof replacement. As reported in the previous Tri-Annual Report, the FY 2018–19 Governor's Budget request included over

$107 million for roof replacements at Substance Abuse Treatment Facility (SATF) ($32.5 million), Salinas Valley State Prison (SVSP) ($17 million), Calipatria State Prison (CAL) ($24.4 million) and California State Prison, Corcoran (COR) ($33.8 million). The May Revision requests an additional $22.6 million funding for roof replacements for CCWF. While $130 million is a considerable infusion of resources, this will only address the needs at five of the department's 35 State prisons. This request is under review through the legislative process and a budget is expected to be sent to the Governor no later than June 15, 2018.

Clinical facility upgrades through the Health Care Facility Improvement Program (HCFIP) are progressing, and several subprojects were activated during this reporting period. The more notable activations include the Health Care Administration Building and the second Facility D Primary Care Clinic at California Institution for Men (CIM); two medication Distribution Rooms at California Men's Colony (CMC); one medication Preparation Room, K Wing Administrative Segregation Unit clinic, Lab renovation, Medical Screening/Dental Processing, and Minimum Security Facility Primary Care Clinic at Deuel Vocational Institution (DVI); Primary Care Clinic in Building 1 at Folsom State Prison; Facility A Primary Care Clinic and the Pharmacy and Lab Building at Mule Creek State Prison (MCSP); Facility C Clinic at RJD; three Medication Distribution Rooms at California State Prison, Sacramento (SAC); New Pharmacy and Lab, and Health Care Administration Building at Sierra Conservation Center (SCC); and Pharmacy Renovation and three Medication Distribution Rooms at Valley State Prison (VSP).

The HCFIP has continued to experience construction delays, as previously reported, based on the complexity of the individual projects. The resolution of design errors and omissions, including but not limited to connections to existing infrastructure (electricity, water, sewer, etc.) and deficient existing fire alarm systems discovered during construction, have contributed to extended construction schedules.

Due to delays in construction at the California Institution for Women (CIW) CDCR agreed to fund a mobile medical clinic. The mobile clinic was expected to be completed before March 30, 2018; however, due to vendor design issues, the mobile medical clinic is now expected to be completed in July 2018. The issues related to constructing the Primary Care Clinic at CIW have been addressed and the Primary Care Clinic is currently on track for completion in June 2018. Once complete, the mobile medical clinic will be used in the interim to address clinic space issues at selected institutions as needed.

At the urging of the Office of the Receiver, CDCR has updated their construction completion dates. As previously reported, construction completion for HCFIP projects at six institutions had exceeded the original completion dates. That number has increased to 13 institutions and the revised construction completion dates are as follow:

	Original Construction Completion Date	***December 30, 2017 Previously Reported Construction Completion Date***	***April 30, 2018 Revised Construction Completion Date***
HDSP	August 7, 2017	May 11, 2018	September 12, 2018
CTF	October 7, 2017	September 28, 2018	February 8, 2019
SVSP	October 20, 2017	March 29, 2018	June 18, 2018
MCSP	October 25, 2017	June 10, 2018	August 18, 2018
SAC	October 31, 2017	September 26, 2018	December 27, 2018
CMF	November 27, 2017	December 9, 2018	February 26, 2019
CCC	January 4, 2018	November 12, 2018	March 15, 2019
NKSP	January 13, 2018	March 26, 2019	April 15, 2019
CCI	January 30, 2018	January 18, 2019	April 15, 2019
SATF	March 1, 2018	June 11, 2018	October 9, 2018
PVSP	April 2, 2018	May 15, 2019	April 28, 2019
CIM	May 3, 2018	June 26, 2019	August 7, 2019
VSP	May 10, 2018	December 17, 2018	March 6, 2019

The most recent construction schedules continue to show additional delays. It is anticipated that not all projects scheduled for construction completion in 2018 and 2019 will meet the original target dates. This is evidenced by the fact that all but three institution's schedules have increased timeframes for construction completion, with most schedules changing by several months. Pleasant Valley State Prison (PVSP) and RJD's schedules improved slightly and CMC's schedule remained essentially unchanged. The latest completion date is now August 2020. The new completion dates have been projected by CDCR as follows:

	Original Construction Completion Date	***December 30, 2017 Previously Reported Construction Completion Date***	***April 30, 2018 Revised Construction Completion Date***
FOL	June 4, 2018	November 16, 2018	July 8, 2019
WSP	July 18, 2018	April 9, 2019	June 11, 2019
SOL	July 10, 2018	August 1, 2019	December 18, 2019
CCWF	August 1, 2018	February 25, 2019	July 10, 2019
PBSP	August 18, 2018	October 31, 2018	March 26, 2019
KVSP	August 28, 2018	December 28, 2018	April 17, 2019
RJD	September 10, 2018	April 9, 2019	March 12, 2019
DVI	October 8, 2017	June 5, 2018	July 13, 2018
SCC	November 8, 2018	January 23, 2019	May 28, 2019
CMC	December 17, 2018	August 28, 2019	August 30, 2019
COR	January 3, 2019	February 1, 2019	May 20, 2019
ISP	January 19, 2019	January 19, 2019	September 10, 2019
CVSP	February 28, 2019	February 28, 2019	August 5, 2020
CAL	June 15, 2019	June 15, 2019	June 19, 2020

	Original Construction Completion Date	***December 30, 2017 Previously Reported Construction Completion Date***	***April 30, 2018 Revised Construction Completion Date***
CEN	September 1, 2019	September 24, 2019	January 2, 2020

Partially as the result of the design errors and omissions outlined previously, CDCR has reported the costs of HCFIP have exceeded $1,019,000,000. This includes an augmentation of $27.3 million approved in April 2018. However, this augmentation has nearly exhausted the funding appropriated for this program. Accordingly, CDCR has submitted a request as part of the FY 2018–19 budget to augment this total by an additional $73 million, bringing the total authority to $1,092,000,000.

Section 2: Other Matters Deemed Appropriate for Judicial Review

A. California Health Care Facility – Level of Care Delivered

CHCF's health care leadership remains focused on ensuring the delivery of quality health care services to its patient population. CHCF is open to intake for Enhanced Outpatient Program, Special Outpatient Program, and Psychiatric Inpatient Program admissions. Resumption of gradated admissions to the Outpatient Housing Unit and Correctional Treatment Center began in December 2017. As of April 30, 2018, CHCF is at 89.2 percent capacity (2,631 current population; 2,951 capacity). As depicted on the April 2018 Human Resource Recruitment and Retention Report (Refer to Appendix 1), of the 36 budgeted primary care provider (PCP) positions at CHCF, 24.5 are filled as follows:

- Physician and Surgeon (P&S): 32 positions, 20.5 filled, 11.5 vacant
- Nurse Practitioners: 1 positions, 1 filled, 0 vacant
- Physician Assistants: 3 positions, 3 filled, 0 vacant

As depicted on the April 30, 2018, Primary Care Provider Vacancy/Coverage Report (Refer to Appendix 2), civil service telemedicine providers and contract registry providers are utilized to deliver care at CHCF which increases the coverage to over 100 percent for PCPs.

B. Statewide Medical Staff Recruitment and Retention

During this reporting period, CCHCS continues to focus efforts on medical staff recruitment and retention to ensure quality health care services are delivered timely to patients. As depicted on the April 2018 Human Resource Recruitment and Retention Report (Refer to Appendix 1), 49 percent of institutions (17 institutions) have achieved the goal of filling 90 percent or higher of their civil service PCP positions. Of these 17 institutions, 9 are 100 percent filled. Additionally, 11 percent (4 institutions) have filled between 80 and 89 percent of their civil service PCP positions, and 40 percent (14 institutions) have filled less than 80 percent of their civil service PCP positions. Additionally, as depicted on the April 30, 2018, Primary Care Provider Vacancy/Coverage Report (Refer to Appendix 2), civil service telemedicine providers and contract registry providers are utilized to deliver care statewide which increases the coverage at 30 institution to at or above 90 percent. The following summarizes some additional achievements during this reporting period:

- As of May 7, 2018, CCHCS has hired 25 new physicians, with 6 hired into the Telemedicine Program and 19 hired at institutions. Six new Advanced Practice Providers were hired, with 2 hired into the Telemedicine Program and 4 at the institutions.
- The telemedicine provider workforce is 82.5 percent filled. Of the 40 physician positions, 33 are filled and 7 are pending hires.
- Dual appointments allow physicians working full-time positions at one institution to provide support at another institution and be compensated as a second State appointment. During this reporting period, dual appointments have increased to 7 appointments at Avenal State

Prison, CHCF, Correctional Training Facility (CTF), DVI, North Kern State Prison (NKSP), and VSP.

- The Telemedicine Program also implemented a process by which telemedicine providers can be utilized to assist institutions with part-time after-hours coverage. There are currently 8 telemedicine providers in dual appointments.
- CCHCS, in partnership with CDCR's Communications Office, developed a Physician Recruitment Video which was designed to depict employment as a CCHCS provider, highlights work-life balance, emphasizes the modern medical facilities, and addresses frequently asked questions by candidates regarding correctional health care. The video will be utilized as a recruitment tool at conferences and for various recruitment efforts.

C. CCHCS Data Quality

The Receiver continues to assess the impact of Electronic Health Records System (EHRS) implementation on the integrity of data presented in CCHCS performance reports and operational tools. As reported in the previous Tri-Annual Report, CCHCS initiated a number of active interventions which continued during this reporting period to improve data quality in areas currently considered problematic.

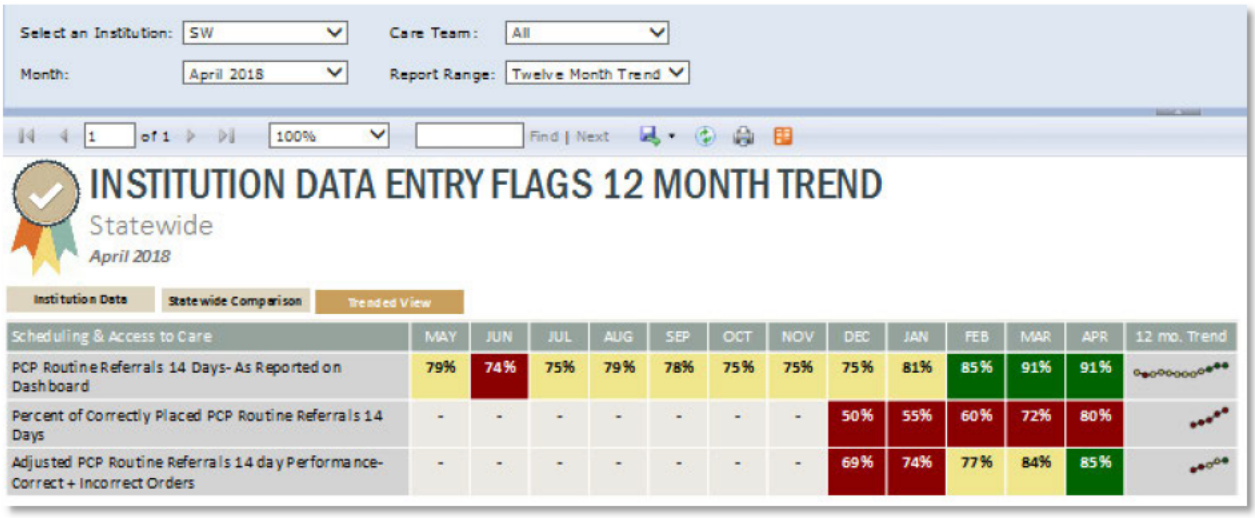
(i) Targeted Interventions for Measures Showing Data Entry Errors.

Some medical access metrics and the performance measures relating to durable medical equipment are vulnerable to data entry error, due to their methodologies relying upon health care staff entering certain data points correctly into EHRS such as the correct order type. CCHCS has begun to investigate these data entry issues, which may be slightly different for each measure, and has begun to provide feedback to institutions to prompt appropriate follow-up action.

In March 2018, the Statewide Quality Management Committee (QMC) issued its first Data Quality Alert which addressed referrals to PCPs generated during nursing face-to-face triage. Statewide, nurses have been using incorrect order types to make these PCP referrals, in part because there are a number of order types that would appear appropriate; however, only one order type should be selected per the approved workflow. When health care staff select the inappropriate order type, the Dashboard methodology does not include the order in the denominator for the associated medical access metric.

As part of the Data Quality Alert, the QMC made a daily report available which indicates the proportion of PCP referrals made using the correct order type, the performance score presented in the Dashboard, and what the score would have been if all orders had been included appropriately. Refer to Figure 1: Data Entry Flag Report, Statewide Data, Trended View.

Figure 1: Data Entry Flag Report, Statewide Data, Trended View



Select an Institution: SW Care Team: All

Month: April 2018 Report Range: Twelve Month Trend

1 of 1 100% Find | Next

INSTITUTION DATA ENTRY FLAGS 12 MONTH TREND

Statewide

April 2018

Institution Data | Statewide Comparison | Trended View

Scheduling & Access to Care	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	12 mo. Trend
PCP Routine Referrals 14 Days- As Reported on Dashboard	79%	74%	75%	79%	78%	75%	75%	75%	81%	85%	91%	91%	
Percent of Correctly Placed PCP Routine Referrals 14 Days	-	-	-	-	-	-	-	50%	55%	60%	72%	80%	
Adjusted PCP Routine Referrals 14 day Performance- Correct + Incorrect Orders	-	-	-	-	-	-	-	69%	74%	77%	84%	85%	

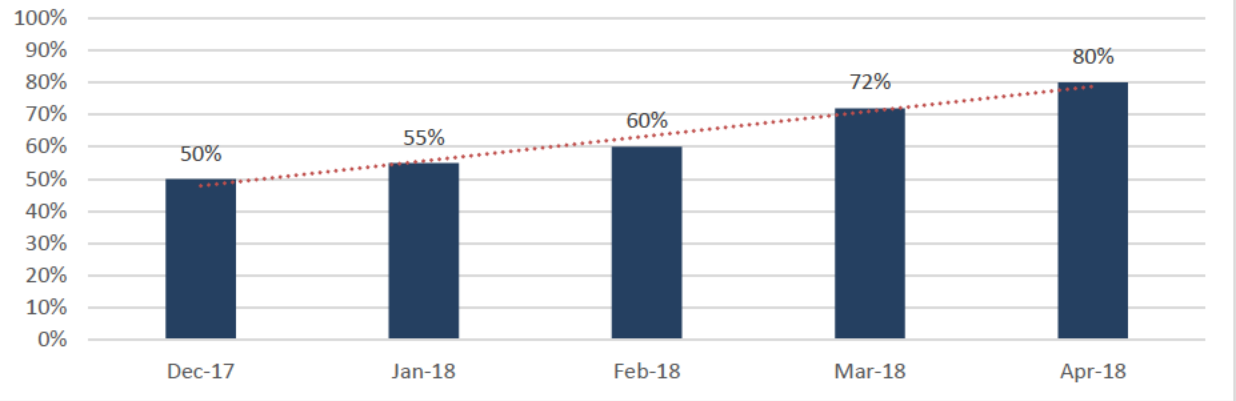
Viewers of the daily report are able to verify the accuracy score and access a list of all PCP referrals generated in face-to-face triage and the order type used to create the order. Institutions also have the capacity to filter the information by care team to identify specific staff who may need training.

After the issuance of the Data Quality Alert, Regional Health Care Executives and their regional teams and statewide health care executives, such as the Deputy Director, Nursing Services, made staff aware of the new tools available and urged institution leaders to ensure resolving this data discrepancy is a priority. In addition, CCHCS made this issue a topic at statewide conferences and statewide coordinating calls during this reporting period.

To date, this initiative has resulted in substantial improvement. After six weeks of concentrated action, institutions statewide were entering PCP referrals correctly nearly 80 percent of the time, as opposed to 50 percent of the time just four months earlier. Refer to Figure 2: Percentage of PCP Referrals Entered with the Correct Order Type, Statewide Data.

Figure 2: Percentage of PCP Referrals Entered with the Correct Order Type, Statewide Data

December 2017 - April 2018



CCHCS also posted a new webpage on the Quality Management (QM) Portal with resources institutions can access to educate staff about data entry issues, including decision support to direct workers toward approved workflows.

In the coming months, using this same model, CCHCS will continue to issue Data Quality Alerts for additional measures and provide custom, near real-time feedback to institutions about data accuracy. Also, QM staff are hosting weekly statewide webinars and monthly regional meetings, offering observations around unexpected workflow variability, and guidance to improve data entry reliability.

(ii) Improving EHRS Workflows and Modifying Interfaces.

During this reporting period, CCHCS established an Enterprise Business Intelligence and Informatics Team to address data governance. Among its highest priorities are revisiting workflows connected to the most concerning access and durable medical equipment metrics, to determine ways in which process steps might be simplified or EHRS interfaces improved to better support service delivery and performance monitoring.

D. Coordination with Other Lawsuits

Meetings between the three federal courts, *Plata, Coleman,* and *Armstrong* (Coordination Group) class actions have occurred periodically. A Coordination Group meeting was held on January 17, 2018.

E. Master Contract Waiver Reporting

On June 4, 2007, the Court approved the Receiver's Application for a more streamlined, substitute contracting process in lieu of State laws that normally govern State contracts. The substitute contracting process applies to specified project areas identified in the June 4, 2007, Order and in addition to those project areas identified in supplemental orders issued since that date. The approved project areas, the substitute bidding procedures, and the Receiver's corresponding reporting obligations are summarized in the Receiver's Seventh Quarterly Report and are fully articulated in the Court's Orders, and therefore, the Receiver will not reiterate those details here.

During this reporting period, the Receiver used the substitute contracting process to assist the Office of the Receiver in the development and delivery of constitutional care within CDCR and its prisons. A sole source contract was executed on January 5, 2018, with Aleph Group, Inc. to construct, configure and place two modular medical provider clinical units, critically needed in support of the HCFIP project implementation at CIW. The HCFIP project at CIW experienced serious scheduling delays, and the available swing space at CIW was inadequate to meet clinical needs, appropriate staff workspace, or access to care. A bid process under the waiver was determined not timely enough to meet access to care needs. Procurement from a vendor that could construct and deliver the modular space to meet the need was limited to sole source, as Aleph Group, Inc. was the only vendor who would be able to perform in the time required to

meet the clinical need. When delivered, the modular units will be available at selected institutions as needed.

F. Consultant Staff Engaged by the Receiver

The Receiver has not engaged any consultant staff during this reporting period.

G. Accounting of Expenditures

(i) Expenses

The total net operating and capital expenses of the Office of the Receiver for the four month period from January through April 2018 were $421,371 and $0.00 respectively. A balance sheet and statement of activity and brief discussion and analysis is attached as Appendix 3.

(ii) Revenues

For the months of January through April 2018, the Receiver requested transfers of $500,000 from the State to the California Prison Health Care Receivership Corporation (CPR) to replenish the operating fund of the Office of the Receiver. Total year to date funding for the FY 2017–18 to CPR from the State of California is $975,000.

All funds were received in a timely manner.