



Senate Committee on Health and Human Services  
Interim Charge #9

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Department of Aging and Disability Services

Commissioner Chris Traylor

07/31/2012

# Department of Justice Settlement Agreement

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- In June 2009, the Department of Aging and Disability Services (DADS) entered into a settlement agreement with the U.S. Department of Justice (DOJ) to establish system-wide improvements in all 12 state supported living centers (SSLCs) and the ICF/IID component of the Rio Grande State Center.
- The term of the current agreement ends in June 2014. There is however a provision in the agreement that if a facility has not been in substantial compliance for at least one year, the term of the agreement will continue until the facility has been in substantial compliance with that provision for at least one year.

# Department of Justice Settlement Agreement

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- Under the settlement agreement, three monitors were selected and each monitor established a team. The monitors and their teams:
  - Conducted baseline reviews to give the monitors and the state an accurate picture of the starting point for each facility and identify areas where service delivery improvements are required.
  - Produced a written report of each baseline review within approximately 60 days of the visit.
  - Are conducting compliance reviews every six months to ensure compliance with the elements of the settlement agreement.
    - The first phase of compliance reviews began in July 2010 and reviews have been carried out semi-annually at each facility since that time. The fifth round of compliance reviews are currently underway and began in July 2012.
- The most recent monitor's report for each facility is posted on the DADS website at:  
<http://www.dads.state.tx.us/monitors/reports/index.html>

# Settlement Agreement Structure

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- 20 broad areas are broken down into 161 measurable sub-sections.
  - During each semi-annual monitoring visit, the monitoring teams assess services and whether or not substantial compliance has been achieved.
  - At this time, none of the centers have achieved substantial compliance in any of the 20 broad areas.
- Following are statements made by the independent monitors in each of the compliance reports for the current sequence of monitoring reports:
  - “Merely counting the number of substantial compliance ratings to determine if the facility is making progress is problematic for a number of reasons:

# Settlement Agreement Structure

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- First, the number of substantial compliance ratings generally is not a good indicator of progress.
- Second, not all provision items are equal in weight or complexity; some require significant systemic change to a number of processes, whereas others require only implementation of a single action.
- Third, it is incorrect to assume that each facility will obtain substantial compliance ratings in a mathematically straight-line manner ... More likely, most substantial compliance ratings will be obtained in the fourth year of the Settlement Agreement because of the amount of change required, the need for systemic processes to be implemented and modified, and because so many of the provision items require a great deal of collaboration and integration of clinical and operational services at the facility (as was the intent of the parties.)”

# Settlement Agreement Structure

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The Settlement Agreement has 20 targeted improvement areas:

- restraint reduction;
- reducing abuse, neglect and exploitation;
- quality assurance;
- integrated protections, services, treatments and supports;
- integrated clinical services;
- minimum common elements of clinical care;
- identifying and addressing at-risk individuals;
- psychiatric care and services;
- psychological care and services;
- medical care;
- nursing care;
- pharmacy services and safe medication practices;
- physical and nutritional management;
- physical and occupational therapy;
- dental services;
- functional communication therapy;
- skill acquisition program services;
- serving persons in the most integrated setting appropriate to their needs;
- consents to treatment; and
- recordkeeping.

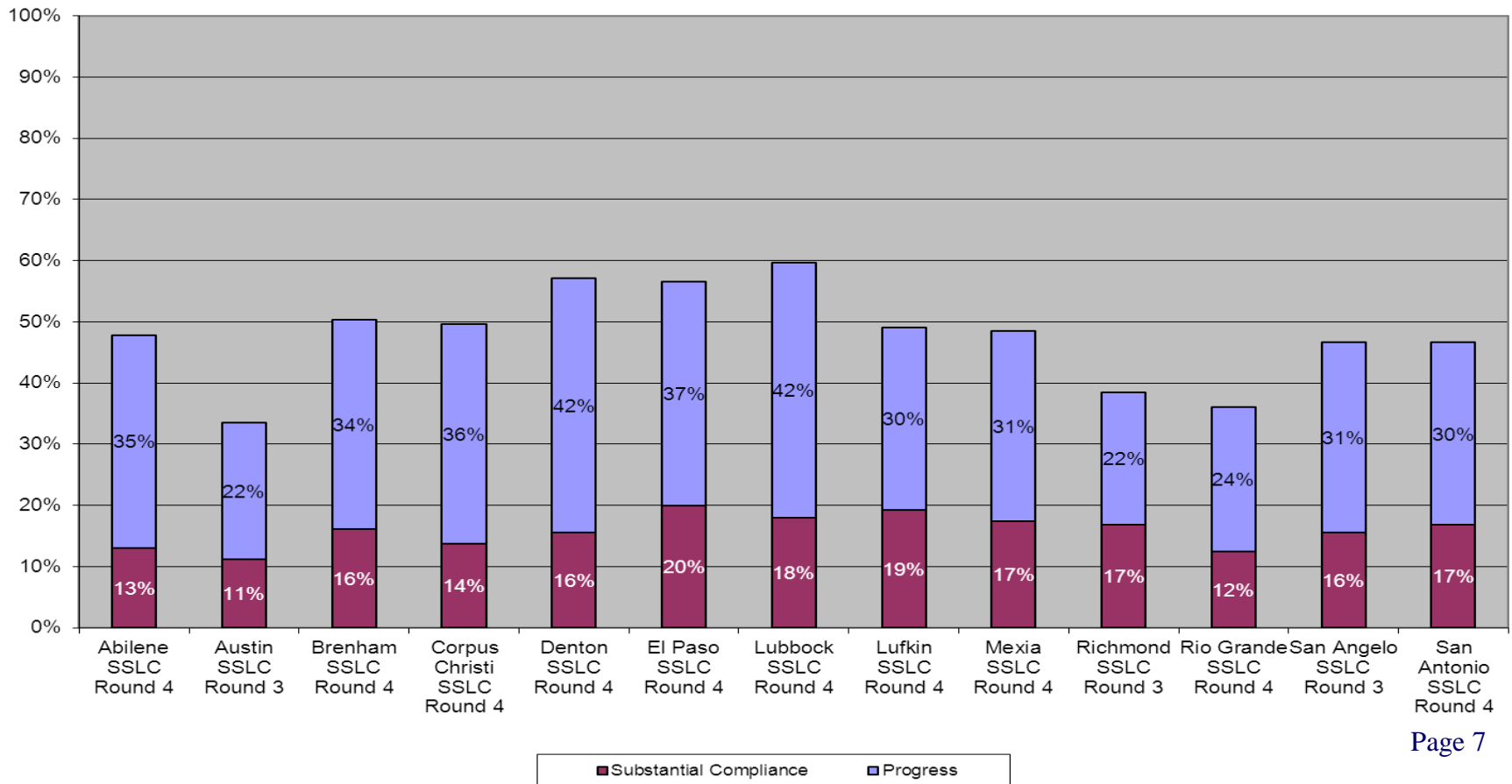
# Substantial Compliance Defined

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- In determining substantial compliance, the monitors evaluate whether evidence exists that the facility:
  - Has established policies, procedures and practices that are consistent with the requirements set out in each section of the settlement agreement;
  - Has provided sufficient competency-based training regarding these policies, procedures and practices to all relevant staff sufficient to ensure consistent implementation of the requirements;
  - Presents evidence through regular operations that there is consistent implementation of all required policies, procedures and practices and that remediation efforts are appropriately and sufficiently employed when variances occur; and,
  - Presents evidence that this consistent implementation is sustained over a sufficient period of time to determine operational stability.

# SSLC Compliance Summary

**State Supported Living Center Compliance Summary**  
**Department of Justice Settlement Agreement**  
**Percentage of Requirements Showing Progress or Substantial Compliance**  
**Total Number of Requirements = 161**  
**Final Reports as of July 16, 2012**





# Achieving Substantial Compliance

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- According to the independent monitors:
  - Terms of the settlement agreement only allow ratings of substantial compliance or noncompliance. No provisions were made for intermediate ratings, such as partial compliance, progress or improvement.
  - Noncompliance will be rated until evidence exists to support substantial compliance.
  - Timeframes are noted in the settlement agreement; however, all parties recognize that in some areas compliance might take longer than four years and this possibility is provided for in the agreement.
  - The narrative sections of each DOJ monitor compliance report contain evidence of substantial progress.

## Positive Themes Identified in Compliance Reviews

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- Continued reduction of restraint use across all facilities.
- Consistent and timely identification, reporting and investigation of allegations of abuse, neglect and exploitation (a cross-agency collaboration).
- Stabilization of residential direct contact staffing in all facilities.
- Consistent improvement in collaboration among clinical professionals in developing and implementing services and supports.
- Improved delivery and documentation of healthcare services.
- Supporting individuals and/or their legally authorized representatives when they choose to transition to community-based services.

## Common Challenges Identified and Corrective Actions Taken

Common Challenges	Corrective Actions Taken
<p>Recruiting and retaining key clinical professionals, including physicians, psychiatrists, occupational and physical therapists, speech/language pathologists, clinical dietitians and nurses.</p>	<p>Continuing and refining intensive recruitment efforts to have the greatest impact in varying areas of the state. Established additional contractual arrangements for certain hard-to-fill professional positions.</p>
<p>Improving early identification and treatment of symptoms of aspiration pneumonia and other high-risk medical diagnoses.</p>	<p>Developed and implemented staff training and system improvements to diagnose and treat aspiration pneumonia and improve ongoing evaluation of clinical needs of individuals at greatest risk of aspiration.</p>
<p>Improving procedures to accurately identify and measure a resident's health and other types of risk.</p>	<p>Continue to refine risk identification and response procedures. Provided extensive training at all facilities to increase the capacity and accuracy of this critical process.</p>

## Common Challenges Identified and Corrective Actions Taken

Common Challenges	Corrective Actions Taken
<p>Strengthening professional collaboration to develop effective individual resident treatment plans and strategies.</p>	<p>Required each facility to establish a Quality Assurance/Quality Improvement Council to provide a consistent forum for review of relevant operational data and indicators of improved performance.</p>
<p>Expanding and enhancing stimulating and engaging day program services, including employment opportunities for residents.</p>	<p>Each facility developed specific focus areas to increase compliance in areas most central to improved quality of services and quality of life for residents.</p>
<p>Increasing staff competence to consistently and effectively carry out individual resident treatment plans and strategies.</p>	<p>Developing expanded and enhanced competency-based staff training procedures to ensure greater competence of staff delivering services.</p>

## Common Challenges Identified and Corrective Actions Taken

Common Challenges	Corrective Actions Taken
<p>Expanding information sharing with individuals, legal guardians and/or families regarding community-based living options.</p>	<p>The SSLC division is working to increase joint efforts with the local authorities and has added staffing resources (transition specialists) for each facility to support the sharing of information and visits to community-based providers to assure exposure to and knowledge about the array of services available.</p>
<p>Improving individual resident community living discharge plans to assure appropriate transition of services and supports from the SSLC to a community-based setting.</p>	<p>Continue to provide interdisciplinary teams with extensive training to improve the quality and relevant content of community living discharge plans.</p>
<p>Improving the quality of post-transition monitoring of services and supports for individuals who have moved to community-based settings.</p>	<p>Developed more specific guidance for post-move monitors and testing a joint pilot project with local authorities in the Austin area to improve these transition planning and follow-through processes.</p>

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# APPENDIX

# DOJ Settlement Agreement Chronology

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- **March 2005** – DOJ notified Governor Perry of intent to investigate alleged civil rights violations at the Lubbock State School pursuant to the Civil Rights of Institutionalized Persons Act (CRIPA).
- **June-December 2006** – Investigation conducted and findings reported regarding the Lubbock State Supported Living Center (SSLC, formerly the Lubbock State School).
- **March-May 2008** – DOJ investigated the Denton SSLC (formerly the Denton State School).
- **August-December 2008** – DOJ sent investigation and findings letter regarding civil rights violations at all 12 SSLCs and the ICF component of the Rio Grande State Center.
- **November 2008-May 2009** – Settlement agreement negotiations occur to establish system-wide improvements in all 13 facilities.
- **June 4, 2009** – Governor signed Senate Concurrent Resolution 77 approving the settlement agreement.

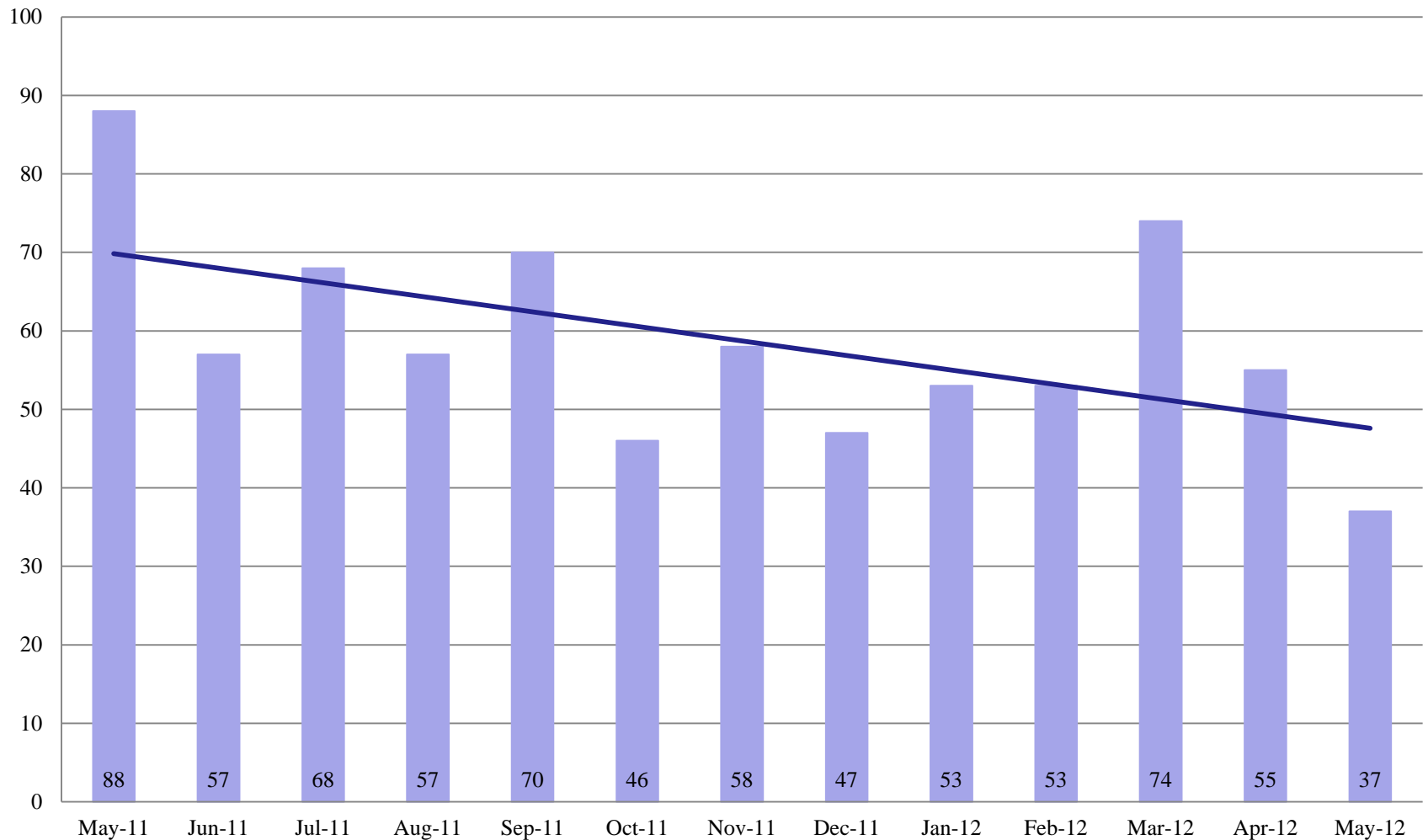
# DOJ Settlement Agreement Chronology

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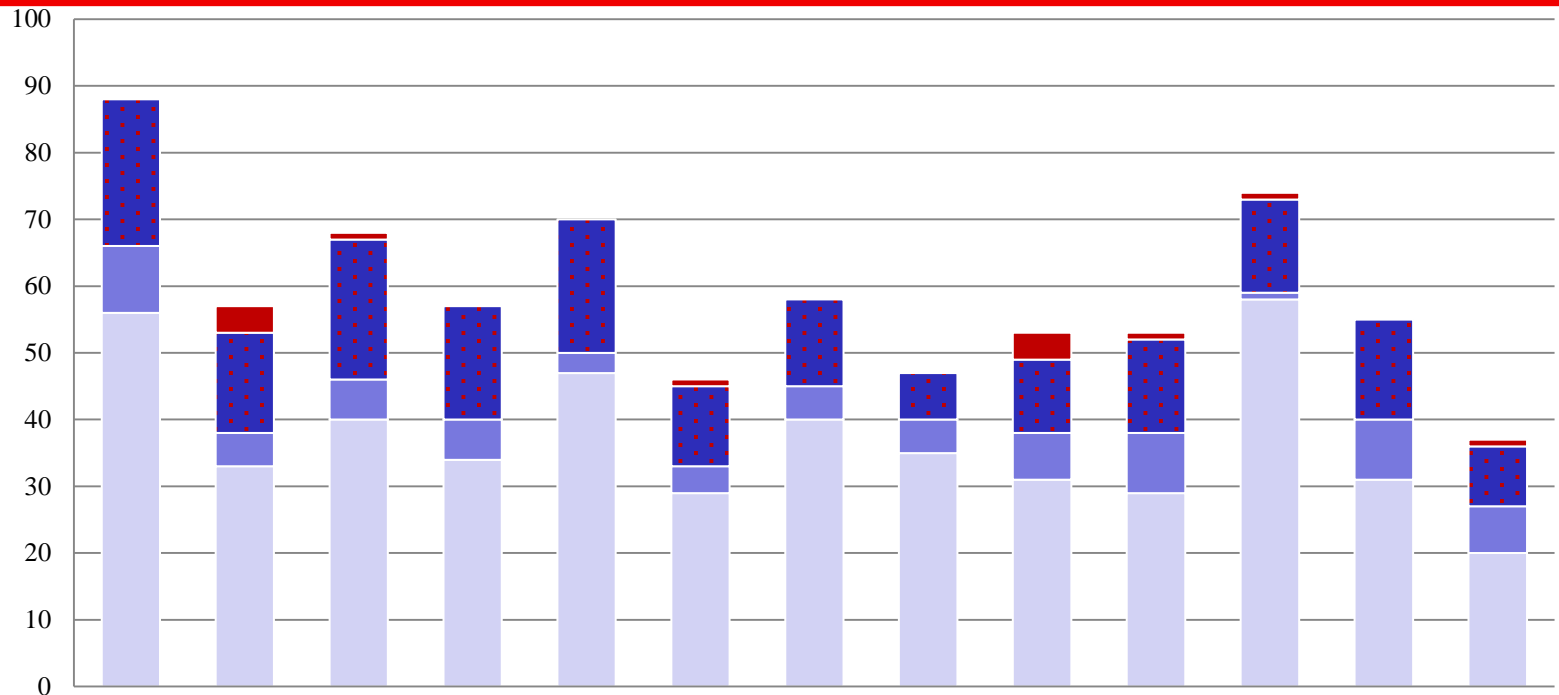
- **June 26, 2009** – Settlement agreement filed with the US District Court, Western District, establishing the effective date of the settlement agreement.
- **November 2009** – Three lead monitors are selected and approved jointly by DOJ and the state of Texas to conduct semi-annual on-site monitoring of implementation to achieve compliance with the terms of the settlement agreement.
- **January-May 2010** – Baseline reviews are conducted at each of the 13 facilities by the lead monitors and their teams of professional reviewers. Formal reports issued approximately 45-60 days after completion of each review.
- **July 2010-Present** – Semi-annual compliance reviews conducted at each of the 13 facilities to measure effectiveness of compliance improvement activities. Formal reports of these compliance reviews are issued 45-60 days after completion of the review.



## Number of Confirmations of Abuse, Neglect and Exploitation in State Supported Living Centers

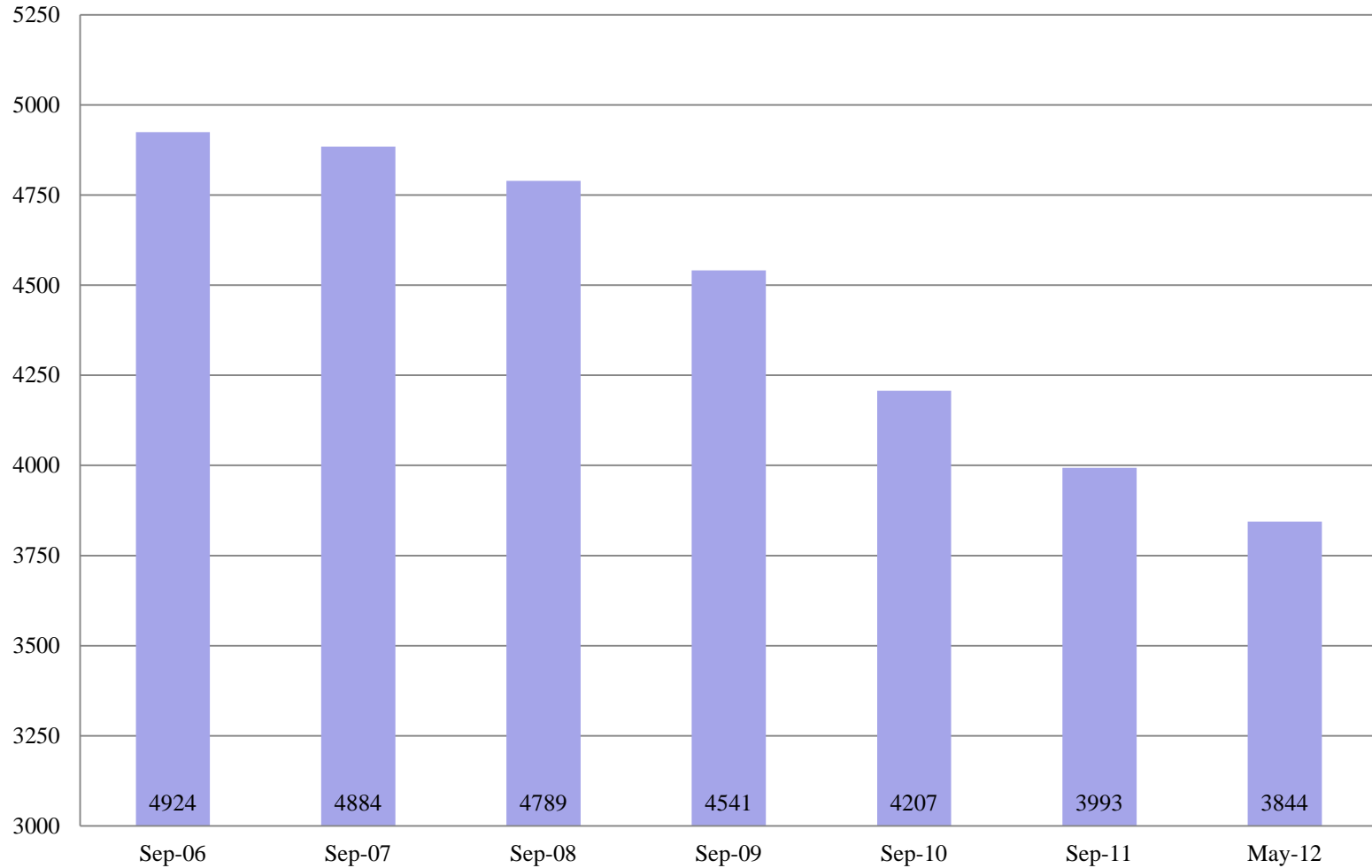


## Number of Confirmations of Abuse, Neglect or Exploitation in State Supported Living Centers by Type of Confirmation

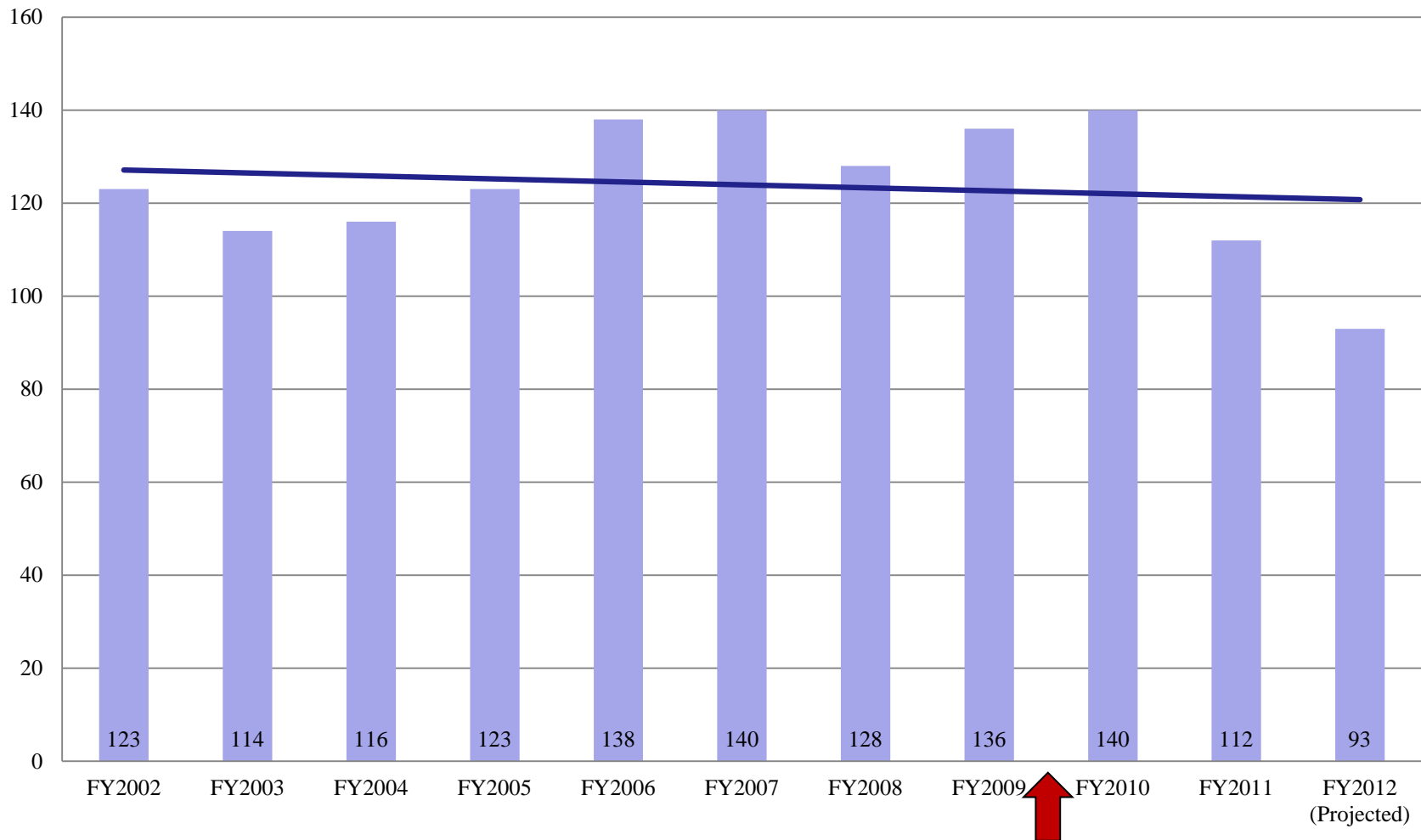


	May-11	Jun-11	Jul-11	Aug-11	Sep-11	Oct-11	Nov-11	Dec-11	Jan-12	Feb-12	Mar-12	Apr-12	May-12
■ Class I Confirmations	0	4	1	0	0	1	0	0	4	1	1	0	1
■ Class II Confirmations	22	15	21	17	20	12	13	7	11	14	14	15	9
■ Class III Confirmations	10	5	6	6	3	4	5	5	7	9	1	9	7
■ Neglect Confirmations	56	33	40	34	47	29	40	35	31	29	58	31	20

# SSLC Census Management



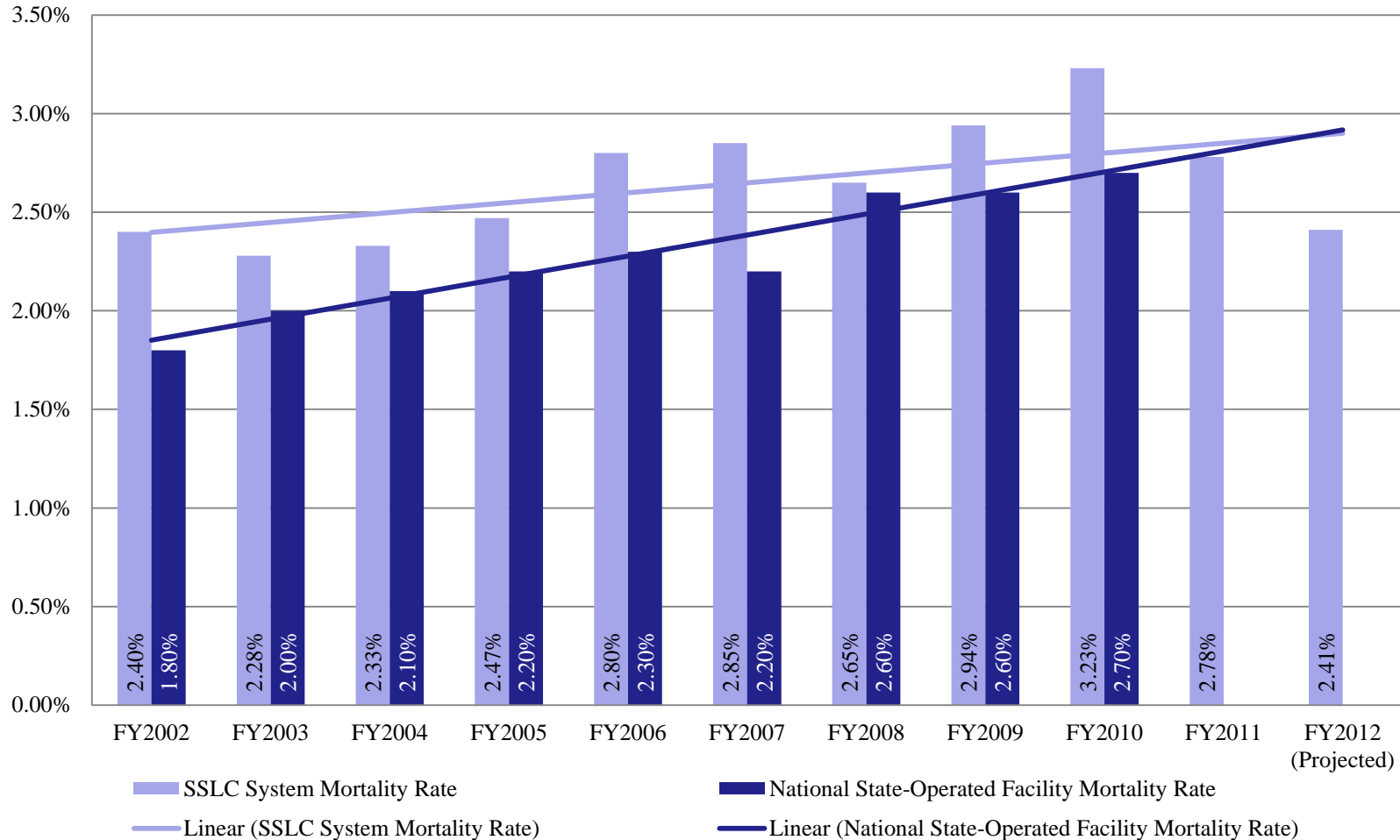
# Number of Deaths in SSLCs



Settlement  
Agreement Began

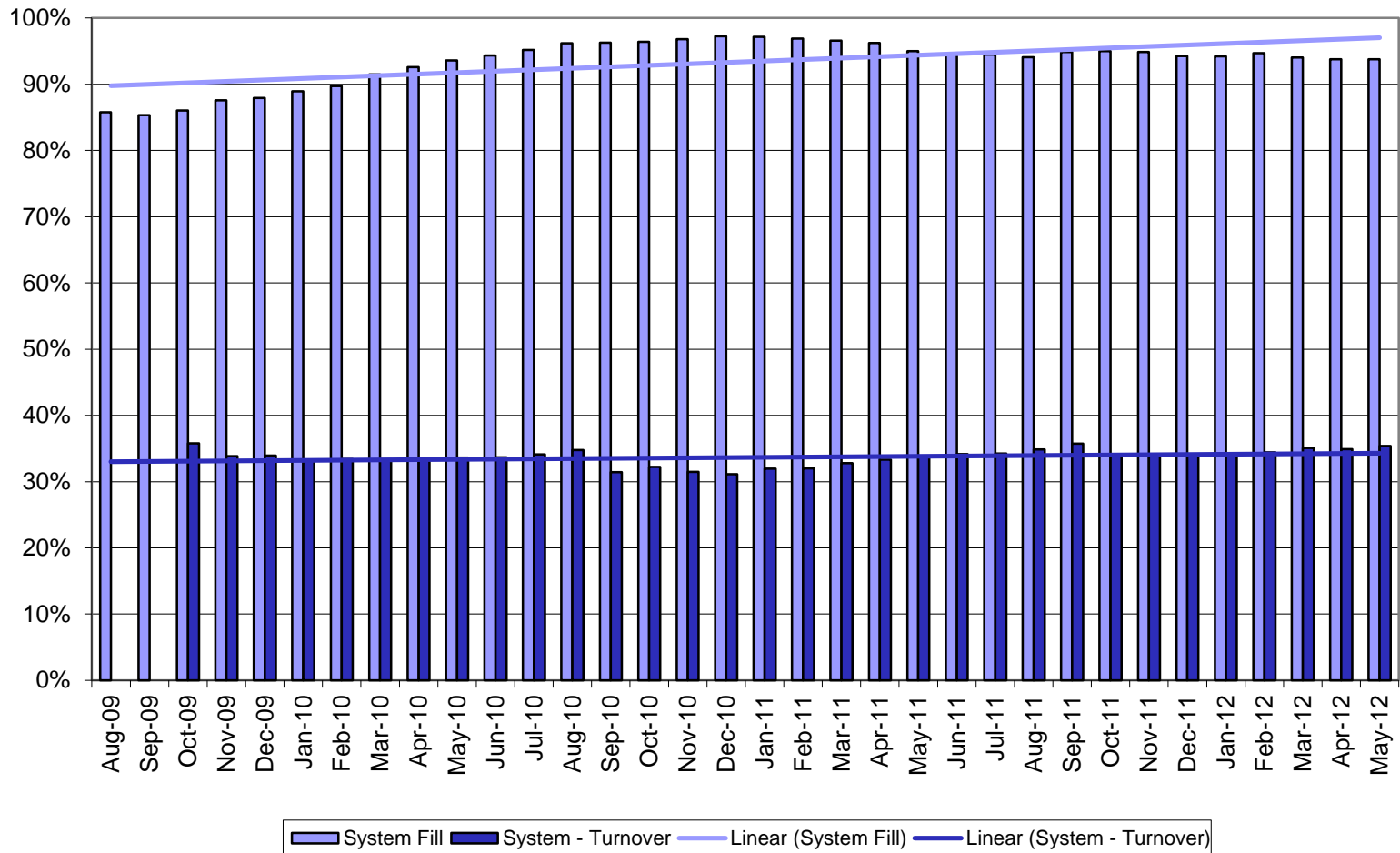
## Texas SSLC System vs. National Large State-Operated IID Facilities Comparison of Trends in Mortality Rates as % of Average Census

(National Data Not Yet Available for 2011 & 2012)



# SSLC Position Fill and Turnover Rates

All State Supported Living Centers



# Direct Service Professional Position Fill and Turnover Rates

All State Supported Living Centers

