



**MECKLENBURG COUNTY**  
Office of the County Manager

July 11, 2011

Mr. Michael Tarwater  
Chief Executive Officer  
Carolinas Healthcare System  
P.O. Box 32861  
Charlotte, NC 28232-2861

Dear Mr. Tarwater:

The County is giving you notice of an additional breach of the Restated Consolidated Shared Programs Joint Undertaking Agreement of November 2, 2000 between Mecklenburg County and the Charlotte-Mecklenburg Hospital Authority (the Agreement), and giving you notice that Mecklenburg County will continue to withhold payment of funds under the Agreement until such time as the Charlotte-Mecklenburg Hospital Authority (d/b/a Carolinas HealthCare System, hereafter "CHS") complies with the Agreement's terms.

Specifically, this breach is of Section III. Mental Health Services, B. Services, 2. Outpatient. This section provides in pertinent part that CHS will provide hospital based comprehensive inpatient and outpatient services. Outpatient services are defined in this subsection as "child, adolescent and adult services including emergency assessment and treatment for facility and physician care, Medication Clinic, physician service, psychological evaluation, screening and assessment services, and custody evaluations."

CHS untimely provides, and now appears to be refusing to provide, the Department of Social Services Adult Protective Services Division with psychological evaluations that are required by the Agreement and are necessary for use by DSS and the courts in petitions for guardianship of disabled clients, some of whom are frail and elderly, all of whom are unable to care for themselves. CHS's delays in fulfilling this obligation may cause placement and treatment delays for people who are unable to care for themselves, and in some cases may place them in harm's way.

The Agreement further provides that the County will provide deficit funding for these services on an annual basis, which the County has done, as confirmed to Michelle Lancaster, Mecklenburg County General Manager, by Greg Gombar with CHS. A copy of an email to Ms. Lancaster from Mr. Gombar in which he confirms this deficit funding is attached for your reference.

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Because of CHS's contractual obligation to provide this service, and the County's obligation to fund deficits incurred by CHS for providing this service, it is unclear why CHS has failed to sufficiently staff this function to assure timely completion of the required work.

I have attached an April 26, 2011 email from Dr. Thomas Gettelman to Dr. Elizabeth Peterson Vita with the County, in which Dr. Gettelman states his position regarding these evaluations, which is contradictory to the language of the Agreement and to the information provided by Mr. Gombar. Dr. Gettelman states the following:

"Here's the history. For as long as I can remember, CMC-R has been a primary resource for APS to complete these evaluations. This is not something for which we receive reimbursement and actually takes away billable hours from the therapists who provide these evaluations. However, the need in the community existed and the fiscal times were quite different thus allowing us to provide this community benefit. Additionally, in the past we had a larger group of clinicians available who could complete these evaluations. As we've gone through several years of program eliminations both due to county budget limitations and "unforeseen" consequences with the implementation of CABHAs, our ability to provide the pre-competency evaluations has been greatly reduced. Currently we have two part-time clinicians who attempt to work in these referrals and one of them is going on maternity leave."

With all due respect to Dr. Gettelman, he is mistaken on several issues. CMC-R is indeed the primary resource for APS for these evaluations by contract. CHS does in fact receive reimbursement, because whether there is billing of the client or third parties for this service, the County pays the deficit charged by CHS. Please see Mr. Gombar's email. The service would not take away billable hours from your therapists, because there should be sufficient therapists hired with the \$20 m. County subsidy to provide all of the services required under the Agreement.

There has been no change in the "fiscal times" with respect to this obligation, and it is an obligation by contract, not a "community benefit" as Dr. Gettelman characterizes it.

I am unaware of relevant County "program eliminations" to which Dr. Gettelman refers, because the County has eliminated no programs that would affect CHS's ability to provide this service. Additionally, over the past six years, the County subsidy to CHS for deficit funding of services has grown 124%, which is not indicative of significant County program elimination.

Dr. Gettelman, by his own admission, has not sufficiently staffed this function to meet the obligation of CHS under the Agreement.

It is the County's expectation that CHS assume its responsibility under the Agreement and work with County staff to complete all outstanding evaluations in a timely manner.

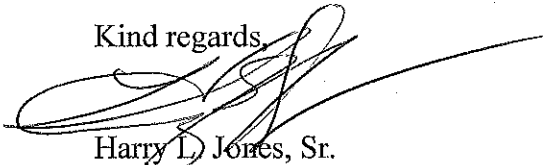
With respect to the June 3rd letter notifying you of your breach of the Agreement, the County has received data and other information over the past few weeks from your General Counsel. Some of the data is incomplete, indecipherable, several years old, or raises obvious questions. For example, one patient from Cabarrus County was noted in a particular month as having been present in CMC-R for 62 days, yet he does not appear in the information from the previous month.

I understand that many of these reports were "customized" to accommodate the County's request, which has caused the County to wonder how this information is not essential to the basic operation of the facility. The County fully expects CDW and other data to be submitted on an ongoing basis on schedule and pursuant to the Agreement. This data is required by the State of North Carolina.

July 8<sup>th</sup> has passed and CHS has not provided the County with the CDW data as required by the Agreement. County Attorney Marvin Bethune received a letter dated July 7, 2011 from your General Counsel's Office with respect to this issue, and Mr. Bethune responded on behalf of the County. I have enclosed copies of these letters for your convenience. I have also enclosed a copy of a letter to Mr. Bethune dated July 11, 2013 from your General Counsel's Office with respect to the DSS issue, which is also addressed in Mr. Bethune's response.

The County considers both of these breaches ongoing until such time as the utilization information is complete and CHS provides assurance that it will give the County utilization data and information and CDW information in a timely manner and in accordance with the Agreement. Also, the breach with respect to DSS will continue until such time as CHS fully complies with the terms of the Agreement.

Kind regards,



Harry L. Jones, Sr.  
County Manager

Cc: Board of Commissioners  
Marvin Bethune  
Michelle Lancaster

RUFF, BOND, COBB, WADE & BETHUNE, L.L.P.

JAMES O. COBB  
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THOMAS C. RUFF  
(1919-2009)  
RETIRED  
LYN BOND, JR.

TELECOPIER  
(704) 342-3308

July 11, 2011

VIA E-MAIL AND FIRST CLASS MAIL

Caroline T. Wilson, Esq.  
Senior Associate General Counsel  
The Charlotte-Mecklenburg Hospital Authority  
Post Office Box 32861  
Charlotte, North Carolina 28232-2861

Re: CDW Data Run and Pre-Competency Evaluations

Dear Carol:

I received your letters of July 7<sup>th</sup> and July 11<sup>th</sup> today, and I would like to respond to both.

With respect to your July 7<sup>th</sup> letter, County staff believes that you are mistaken that some of the Consumer Data Warehouse information is not required, and that other information is being provided via facsimile.

It is my understanding that the State requires the submittal of all Consumer Data Warehouse information. The Interlocal Agreement requires that this be done by no later than the 8<sup>th</sup> of the month. CHS has never complied with this requirement, or at least has not since 2006 which is the earliest date that we are able to confirm that data has not been provided, and I am told has refused to do so.

The Form STR-REG to which you refer was suggested for use not because CHS provides screening triage and referral services for the County, although we assume that CHS does screen and triage patients at CMC-R, but because this form contains the most comprehensive listing of information required by the State for the Consumer Data Warehouse. If your client would like to use a different form, feel free to do so, provided whatever you use contains all of the data required by the State of North Carolina. The State does require answers to questions 2 through 50 for every consumer who receives State funded services. Providing this data is not a problem for the County's other contractors.

The County disputes your representation that "CMC-R regularly faxes to the County items 1 and 51-57 for all consumers receiving enhanced benefits services". I understand that CHS faxes a minimum number of these forms per week, which is insignificant relative to your patient base.

RBCWB:172702:7/11/2011

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It seems to the County that this breach is continuing.

With respect to your July 11<sup>th</sup> letter, the information that you have provided is inconsistent with the language of the Interlocal Agreement and with information previously provided to Michelle Lancaster by Greg Gombar. The pre-competency evaluations are indeed used by DSS Adult Protective Services to determine whether to initiate a petition for adult guardianship due to incapacity or incompetence. I would respectfully disagree with your statement that these evaluations are not considered "forensic evaluations". They are regularly used by the courts in determining the competency of an individual. Typically there are not two separate evaluations performed as your letter suggests. That notwithstanding, however, psychological evaluations do not have to be forensic to be considered within the scope of the Interlocal Agreement.

The Interlocal Agreement is clear that by definition outpatient services include "Child, adolescent and adult services including emergency assessment and treatment for facility and physician care, Medication Clinic, and physician service, psychological evaluation, screening and assessment services, and custody evaluations." The Interlocal Agreement does not differentiate between evaluations for pre-competency or evaluations used as evidence by the court in making a competency determination. It would seem from this language that CHS is required to perform both, if necessary.

Also, you state that in the past these evaluations were performed "as a courtesy to Mecklenburg County Adult Protective Services". There is no evidence to suggest that the salaries of your employees who have performed these courtesy evaluations have been deducted from the cost submitted to the County. In support of the County's understanding on this matter, I call your attention to the enclosed email sent to Ms. Lancaster by Mr. Gombar that states the County is being charged for these evaluations. This is yet another inconsistency that raises concerns for the County.

It is not true that Mecklenburg County uses other providers in addition to CHS for this service.

This situation should not be confused with another issue. As a courtesy to CHS, upon CHS's request the County does send a social worker to your facilities to initiate the filing of guardianship petitions so that CHS staff will not have to suffer this inconvenience. This truly is a courtesy, as the County receives no remuneration from CHS for providing this service that CHS would otherwise be required to do, nor is there any contract requiring the County to provide this service.

It is the County's position that the breach with respect to the Consumer Data Warehouse information continues, and that the refusal by CHS to provide the pre-competency evaluations constitutes a new breach. The County is determining whether the data under the program formerly known as Pioneer has been remedied to the County's satisfaction under the Agreement.

RBCWB:172702:7/11/2011

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My client plans to send your client another notice of breach today.

Very truly yours,

**RUFF, BOND, COBB, WADE & BETHUNE, LLP**

A handwritten signature in cursive script that reads "M A Bethune".

Marvin A. Bethune  
Mecklenburg County Attorney

Cc: Harry L. Jones, Sr., Mecklenburg County Manager  
Michelle Lancaster, General Manager

## Marvin Bethune

---

**From:** Lancaster, Michelle [Michelle.Lancaster@mecklenburgcountync.gov]  
**Sent:** Monday, July 11, 2011 3:20 PM  
**To:** Sandra Bisanar  
**Subject:** FW: Behavioral Health questions  
**Attachments:** 12 10 County Financial Report revised 3.xls; 2Q11 Intercompany Expense.xls

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**From:** Gombar, Greg [mailto:Greg.Gombar@carolinashealthcare.org]  
**Sent:** Friday, March 04, 2011 5:25 PM  
**To:** Lancaster, Michelle  
**Subject:** Behavioral Health questions

Michelle,

Sorry to not get these to you earlier

We have the meeting set up for Tuesday.

Greg A. Gombar, CPA  
Executive Vice President and CFO  
Carolinas HealthCare System  
704-355-2154

""It's about the journey--mine and yours--and the lives we can touch, the legacy we can leave, and the world we can change for the better." "

Tony Dungy

### Questions were as follows:

My more specific questions regarding the quarterly spreadsheet AMH receives are as follows:

What are revenue deductions and how does this relate to patient revenue? Patient revenue is recorded at gross charges. All payers ( Medicare, Medicaid and Commercial) pay less than gross and the difference is recorded as revenue deductions. Also, sliding fee discounts, charity care and other deductions from gross for patients without insurance are captured in revenue deductions. Today it is not a meaningful line as the gap between gross and net has increased.

I want a breakdown of the Direct Expenses line.

The quarterly report attached has been modified to provide a breakdown of the direct expense line by major category. Direct expenses include personnel expense, pharmaceuticals, supplies, purchased services (clinical care services, equipment maintenance cost, etc), fees (physician fees, legal & consulting, etc), and other.

I want to better understand the intercompany expenses and allocations – how is this number derived?  
What is specifically included?

CHS operates an expertise model where all non-clinical services and some common clinical services (i.e. lab, pharmacy, and radiology) are managed centrally for the entire Metro group. This allows us take advantage of scarce economies and efficiencies. The Intercompany expense line as historically reported on the quarterly report are broken down into three categories which include Direct Patient Care, Cost Directly Assignable to CMC-Randolph (CMC-R) and Support Services.

Direct Patient Care reflects services that are purchased from CHS for direct patient care and represents Laboratory services. Cost Directly Assignable to CMC-R are cost for services provided by CHS directly to CMC-R and include services such as transcription services, patient registration, patient financial services, reimbursement, security services and behavioral health insurance contracting and marketing. Support Services are other costs benefiting CMC-R and include items such as information services, liability & malpractice insurance, human resources, quality management and pharmacy services.

Costs are allocated using a methodology that is consistent across all CHS entities. There are different allocation methodologies based on the type of service provided that attempt to get the most accurate result for the particular centralized service. As part of the Agreed Upon Procedures engagement, Deloitte annually confirms 1) the allocated costs charged to CMC-R were for services that the facility purchases from CHS; 2) the allocated costs charged to CMC-R are also charged to its other facilities and business units; and 3) the methodology is consistent from prior year and across the other facilities and business units.

Attached is the listing of second quarter FY2011 intercompany costs broken down by category and includes an allocation methodology reference guide for each of the major items. We met with Dena Diorio last year to review the allocation methodologies and will be happy to meet you or your designee to address any further questions you may have as it may be easier to discuss in person rather than email.

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What is included in the capital outlay line?

Capital Outlays represent purchases of furniture, fixtures and equipment (FFE) that meet the CHS capital criteria, which comply with the Medicare/Medicaid rules. For six months ending December 2010, the cost includes furniture of \$14k, information services equipment of \$9k and miscellaneous FFE of \$9k. Normally very little has ever been budgeted for the major capital needs for the facility which is owned by the County. What has been the practice over the years is to work with AMH management to fund major capital needs when there are excess funds available. Note that major capital for the centralized functions such as the major investment in our EPACT initiative is not charged out to CHS facilities as capital is expended but included in the allocations as the capital is depreciated.

I also understand that forensic evaluations are completed for the LME at CMC-Randolph – where is this in the financials? In the outpatient services revenue and expenses – Adult Outpatient

Additionally, my understanding from Laura Thomas is that the Crisis Stabilization Unit is currently used (and has been for some time) as a “step-down” unit – this is a financial loser and not being used as intended, although they list the expenses for this item as crisis unit – I am interested in an actual Crisis Stabilization Unit at this location.

The use of this unit is used as intended to avoid hospital days and more acute levels of care. This is both on the front end of the care and after the acute level is no longer needed or what is referred to as “step-down”. If a patient cannot be discharged without residential observation, it costs far less to have the patient in CSU than in a licensed bed. Also, it frees up a licensed bed for patients waiting for inpatient services. CSU does not have an “intention” that excludes inpatient step-down.

The Medicaid service definition states that it is an alternative to prevent hospitalization:



*This service provides an alternative to hospitalization for adults who have a mental illness or substance*

*abuse disorder. This is a 24-hour residential facility with 16 beds or less that provides support and crisis*

*services in a community setting. This can be provided in a non-hospital setting for recipients in crisis who*

*need short-term intensive evaluation, treatment intervention or behavioral management to stabilize acute*

*or crisis situations.*

The services in the CDS are authorized by Value Options for Medicaid reimbursement based on medical necessity.

Thanks in advance -

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# The Charlotte-Mecklenburg Hospital Authority

Office of General Counsel  
704 355-3063  
Fax 704 355-6330

July 11, 2011

Marvin A. Bethune, Esq.  
Ruff, Bond, Cobb, Wade & Bethune, L.L.P.  
831 E. Morehead Street, Suite 860  
Charlotte, NC 28202

Re: Pre-Competency Evaluations

Dear Marvin:

I am writing in response to an email from Michelle Lancaster to Greg Gombar dated July 1, 2011 (copy enclosed). As requested, CMC-Randolph administration has provided us with additional information and clarification regarding pre-competency evaluations. In keeping with CHS's plan for centralized communications between us, I have summarized this information below and trust that you will pass it on to Ms. Lancaster.

CHS is not obligated to perform pre-competency evaluations under the Restated Consolidated Shared Programs Joint Undertaking Agreement dated November 2, 2000. There is no payment or billing for the pre-competency evaluations. As indicated in Tom Gettelman's April 26, 2011, email to Elizabeth Person-Vita (copy attached), CHS has historically provided a portion of these evaluations as a courtesy to Mecklenburg County Adult Protective Services. As we understand it, CMC-Randolph is not now, nor has it ever been, the only provider of pre-competency evaluations.

To clarify, pre-competency evaluations are not court-ordered. In fact, we are not aware of any State or local law or regulation requiring pre-competency evaluations. Pre-competency evaluations are not, therefore, forensic evaluations. In addition, pre-competency evaluations are not a part of or related to custody evaluations, which are court-ordered parenting evaluations in a custody case.

The pre-competency evaluation is a practice in Mecklenburg County tied to the adult guardianship process. Such evaluations are not substitutes for the evaluations required by the court to determine competence. Mecklenburg County Adult Protective Services uses the information from the pre-competency evaluation to initiate the petition for adult guardianship due to incapacity or incompetence.

We hope that this information addresses Ms. Lancaster's questions.

Sincerely,

A handwritten signature in cursive script, appearing to read "Caroline T. Wilson".

Caroline T. Wilson  
Senior Associate General Counsel

CTW/wrp

Attachment

**From:** Lancaster, Michelle [mailto:Michelle.Lancaster@mecklenburgcountync.gov]  
**Sent:** Friday, July 01, 2011 10:48 AM  
**To:** Gombar, Greg  
**Cc:** Hernandez, Carlos <Carlos.Hernandez@mecklenburgcountync.gov>  
**Subject:** FW: Pre-competency evaluations

Greg – I hope you are doing well, I called your office and Pam indicated you were out until Tuesday, so I'm sending this email in lieu of a telephone conversation. Feel free to call me Tuesday if you'd like.

I'm forwarding an email I received this morning from Carlos Hernandez regarding pre-competency evaluations at CMC-Randolph. The email forwarded from our Clinical Director is from Tom Gettleman dated in late April.

In an email I sent to you in March I asked a question about forensic evaluations (this would include pre-competency evaluations) and you indicated in the financials this was covered under Adult-outpatient as both a revenue/expense. Additionally, the Interlocal Agreement (pg. 6) notes under the outpatient category – custody evaluations as a service provided. (For clarification, pre-competency evaluations are custody evaluations for Adult Protective Services).

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~~Dr. Gettleman's email states that these evaluations had been completed in the past as a "community benefit" with no reimbursement.~~

I'm unclear as to this correspondence from CMC-Randolph – please clarify for me the role of CMC-Randolph in these evaluations.

My understanding from DSS staff in a conversation this morning is that there is a tremendous back-log of evaluations for Adult Protective Services.

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**From:** Hernandez, Carlos  
**Sent:** Friday, July 01, 2011 10:16 AM  
**To:** Lancaster, Michelle  
**Subject:** FW: Pre-competency evaluations

**Carlos A. Hernandez, MSW, LCSW**  
Deputy Director  
Mecklenburg County AMH/DD/SAS  
429 Billingsley Road  
Charlotte, NC 28211  
office: 704-336-6089  
fax: 704-336-4383  
[Carlos.Hernandez@MecklenburgCountyNC.gov](mailto:Carlos.Hernandez@MecklenburgCountyNC.gov)

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7/11/2011

to believe you are not authorized to receive it, please contact the sender by reply email and destroy all copies of the original message. Thank you!

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**From:** Peterson-Vita, Elizabeth  
**Sent:** Thursday, June 30, 2011 10:33 AM  
**To:** Hernandez, Carlos  
**Subject:** FW: Pre-competency evaluations

C, here is Dr. G.'s original email.....in it, he suggests that the LME's evaluators, or perhaps some CABHA staff could do these.

**Dr. Elizabeth Peterson-Vita, Ph.D.**  
**Licensed Psychologist**  
**LME Clinical Director**  
**Mecklenburg Area MH/DD/SA Services**  
**Phone 704.336.7149**  
**Fax 704.353.0226**  
**Elizabeth.Peterson-Vita@mecklenburgcountync.gov**

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**From:** Gettelman, Tom [mailto:Tom.Gettelman@carolinashealthcare.org]  
**Sent:** Tuesday, April 26, 2011 11:59 AM  
**To:** Peterson-Vita, Elizabeth  
**Subject:** Pre-competency evaluations

Hi Elizabeth,

I hope you're well.

This morning I met with several folks from adult protective services to discuss the current and ongoing mechanism for completing pre-competency evaluations. APS has seen a significant increase in the number of county residents who need a pre-competency evaluation while our capacity to meet existing needs is significantly compromised. I'm writing to keep you in the loop and let you know what we discussed.

Here's the history. For as long as I can remember, CMC-R has been a primary resource for APS to complete these evaluations. This is not something for which we receive reimbursement and actually takes away billable hours from the therapists who provide these evaluations. However, the need in the community existed and the fiscal times were quite different thus allowing us to provide this community benefit. Additionally, in the past we had a larger group of clinicians available who could complete these evaluations. As we've gone through several years of program eliminations both due to county budget limitations and "unforeseen" consequences with the implementation of CABHAs, our ability to provide the pre-competency evaluations has been greatly reduced. Currently we have two part-time clinicians who attempt to work in these referrals and one of them is going on maternity leave.

During my meeting this morning, I suggested to Laura Wasson, the social service manager over this area, that she contact you as a representative of the LME to talk through potential options that DSS and the LME/PSO have in meeting this need. I relayed that the LME is apparently hiring 6 certified forensic evaluators to become part of the Forensic Evaluation unit and suggested that these individuals and/or this unit within the LME might be able to play a role in meeting this need. While I don't know what the plans are for these individuals, it at least made logical sense that they could be a resource. They evaluations can be completed by non-licensed staff.

The bottom line is that I don't see how CMC-Randolph can continue to provide these evaluations for outpatient

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consumers in the future. We will continue to provide them for anyone on our inpatient unit. I am trying to work with APS to help them brain storm other options for who might be able to meet this need (CABHAs for example) and hoped that together we could work out a viable solution.

To that end, you will likely receive communication from Ms. Wasson to brain storm and talk through options and I wanted to give you a heads up.

If you need me for anything, don't hesitate to let me know.

Thanks--Tom

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7/11/2011



## The Charlotte-Mecklenburg Hospital Authority

Office of General Counsel  
704 355-3063  
Fax 704 355-6330

July 7, 2011

Marvin A. Bethune, Esq.  
Ruff, Bond, Cobb, Wade & Bethune, L.L.P.  
831 E. Morehead Street, Suite 860  
Charlotte, NC 28202

Re: Carolinas Medical Center-Randolph/CDW Data Run

Dear Marvin:

On June 10, 2011, Carolinas Medical Center-Randolph ("CMC-Randolph") received from Christine Payseur an exception report on the CMC-Randolph CDW Data run. CMC-Randolph will be working with County staff to provide any data identified in the exception report that is necessary for the County, as the LME, to complete Form ADM-DSG.

Upon careful examination, however, we realized that most of the data identified in the exception report is data required to complete Form STR-REG. CMC-Randolph does not contract with the County to provide screening triage and referral (STR) services, and, therefore, CMC-Randolph is not required to, nor is it able to, provide all of the data required for Sections 2 through 50 of Form STR-REG.

CMC-Randolph does contract with the County to provide enhanced benefits services. Form STR-REG states specifically that "registration items 1 and 51-57 are required to be completed for all new or previously inactive consumers initiating an enhanced benefit service." CMC-Randolph regularly faxes to the County items 1 and 51-57 for all consumers receiving enhanced benefits service.

Please let me know if you have any other questions or concerns regarding this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Caroline T. Wilson".

Caroline T. Wilson  
Senior Associate General Counsel

CTW/wrp