

NEW HAMPSHIRE ADULT PAROLE BOARD

PERFORMANCE AUDIT SUMMARY OF OBSERVATIONS
WITH COMMENTS AND MITIGATION PLANS

Prepared for the Senate Finance Committee
by New Hampshire Adult Parole Board Chairman Jennifer Sargent

RECOMMENDATION SUMMARY

(Parole Board Chairman's notes in **bold** under recommendations)

Observation Number	Page	Legislative Action May Be Required	Recommendations	Agency Response
1	19	No	<p>The New Hampshire Adult Parole Board (Board) should develop a process to ensure information used to make parole decisions is accurate and complete.</p> <p>The Board should work with the Department of Corrections (DOC) to ensure all relevant information is updated before an inmate's parole hearing.</p> <p>The Chairman and DOC Commissioner have been actively working together on this together. Improvements include a new Parole Synopsis checklist so that CC/CMs and residents can provide a more complete history and parole plan, Behavioral Discharge Summaries drafted for each resident up for parole by DOC Behavioral Health, and access to CORIS. Things we must continue to work on are disciplinary ticket notice in a timely manner, Parole Synopsis information coming to the office by the deadline for parole packet assembly, quality control of CC/CM information about residents, and training of DOC staff on how the parole office operates (timelines, releases, etc.).</p> <p>Responsibility: Chairman and Commissioner</p>	<p>Board: Concur</p> <p>DOC: Concur</p>
2	23	No	<p>The Board and DOC should continue to work on Board access to substance abuse and mental health information necessary for making parole decisions.</p> <p>The Chairman and DOC Commissioner have been actively working on this together. Behavioral Health Discharge Summaries have greatly improved information sharing. We will continue to work with the DOC on information sharing.</p>	<p>Board: Concur</p> <p>DOC: Concur</p>

			Responsibility: Chairman and Commissioner	
3	26	No	<p>The Board should modify and consistently implement weighted decision-making guidelines and collaborate with the DOC to develop a process to ensure information given to members is accurate and complete.</p> <p>The Board should develop formal training to incorporate established guidelines, adopt policies and procedures to ensure guidelines are reviewed, and establish processes to begin data collection and analysis.</p> <p><u>Without a full-time Parole Board Chairman, it is safe to say this audit directive will not happen.</u> This is a massive undertaking that falls directly on the Chairman. The Chairman has taken steps through her connections at Dartmouth College to have the DALI (Digital Applied Learning and Innovation Lab) scaffold and create a desktop application to analyze parole board members' use and application of parole criteria (without disclosing any inmate information used to make a decision to protect all privacy – the scaffolding relies on the measuring administrative criteria only). Once enough data is collected to yield a statistically significant data analysis, coding, weighting and data analysis will follow. It appears the project will receive initial funding and construction this summer (2021) from the DALI Lab, led by a Thayer School of Engineering Master's Degree candidate specializing in Computer Science and Design Thinking. This project has national implications – once developed, it could be an instrument that every state could use (one of the reasons it is receiving Dartmouth College support).</p> <p>Creating data collection methodology and a canonical model database is a time-consuming and generally expensive process. It is also extremely labor intensive. At this point, neither the DAS DoIT or the DOC DoIT departments have the time or resources to assist the parole board in this endeavor. Thus, the Chairman must work with professionals outside the DOC</p>	<p>Board: Concur</p> <p>DOC: Concur</p>

		<p>to attempt to secure funding and meet regularly to help craft the necessary structure and scaffolding for the entire process. It may also require the Chairman to seek external grant funding.</p> <p>There are currently no weighted decision-making guidelines to modify and consistently implement (based on our national research). We must start from ground zero on this.</p> <p>Jennifer Sargent, Chairman, has academic and research experience to guide this project from the parole side. Please see her CV.</p>	
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4	29	No	<p>The Board should develop a process to ensure parolee records are reviewed every 36 months as required by statute, including policies and procedures to address how the review should be conducted, frequency of the review, and how the Board will receive information.</p> <p>The Board and DOC should review criteria for when to bring parolees back before the Board, ensure recidivism risk assessments are updated, and ensure issues identified by Chief Probation/Parole Officers (PPO) are corrected timely.</p> <p>The first paragraph is currently something that the Parole Office cannot undertake due to staffing issues. The Office would have to have a staff member devoted to this review process full-time, and the Chairman would have to design the review criteria and analyze whether all parolee records could be analyzed on a rolling basis (as a once every 36 month review of every parolee is simply not possible). Additionally, the DOC, specifically the Division of Field Services, would have to work in conjunction with the parole office to undertake such a review. It may not have appropriate resources to devote to this objective. Because the Parole Board is required by statute to undertake such a 36 month review, the Parole Board asks in HB 178-FN to strike the requirement from the statute.</p> <p>The second paragraph is achievable, but will take significant time and requires a full-time Parole Board Chairman. The responsibility falls directly on the Chairman and Commissioner to work together, with the Chairman having the primary responsibility of initiating the collaboration on the issue by designing such criteria, reducing it to writing, and going through the Administrative Rulemaking process and PPD processes.</p>	<p>Board: Concur In Part</p> <p>DOC: Concur</p>

5	35	No	<p>The Board should develop rules, policies, and procedures related to excessive costs, periodic medical reports, review hearings, and medical parole criteria. It should also remedy conflict between statute and rules regarding authority to revoke parole.</p> <p>The Chairman, Dr. Horace Henriques (Board Member), and the Commissioner have worked diligently on this directive and have almost finished a first draft of proposed amended legislation that was the product of a three month national study of medical parole processes in 50 states (led by Chair Sargent with research assistants from Pomona College and Dartmouth College). All Administrative Rulemaking and PPD drafting will have to be done on the Parole side by a full-time Chairman.</p>	Board: Concur
6	39	No	<p>The Board should apply a similar level of scrutiny for inmates recommended for medical parole as it does for those requesting parole at their minimum. The Board should consider whether the record adequately reflects the Board's assessment of the reasonable probability an inmate will not violate the law while on medical parole.</p> <p>The full-time Chairman will have to undertake this initiative, and develop criteria and process. All Administrative Rulemaking and PPD drafting will have to be done on the Parole side by a full-time Chairman.</p>	Board: Concur
7	41	No	<p>The Board should establish a process to track medical parolees, review those reaching their minimum, and address those violating parole conditions. The Board and DOC should work to develop procedures to ensure all entities with legal responsibility over medical parolees have the necessary information to enforce all parole conditions, and ensure the Board receives periodic medical report findings.</p> <p>The Chairman and Commissioner will work collaboratively on this. On the Parole side, the full-time Chairman will have to undertake this initiative, develop criteria and a process. All Administrative Rulemaking and PPD drafting will have to be done on the Parole side by a full-time Chairman.</p>	Board: Concur DOC: Concur

Observation Number	Page	Legislative Action May Be Required	Recommendations	Agency Response
8	44	No	<p>The Board should impose special conditions of medical parole using information from DOC personnel and stakeholders. It should also adopt and consistently apply house arrest conditions, ensure parole certificates reflect conditions stipulated at the hearing, and establish policies and procedures to modify parole conditions when necessary.</p> <p>The full-time Chairman will have to undertake this initiative, develop criteria and a process. All Administrative Rulemaking and PPD drafting will have to be done on the Parole side by a full-time Chairman.</p>	Board: Concur
9	49	Yes	<p>The Board and DOC should seek clarification from the Department of Justice (DOJ) on whether sanctions other than a seven-day community based or residential program are permitted. If alternative sanctions are not permitted, the Board and DOC should petition the Legislature to allow for their use.</p> <p>Once clarified, the Board and DOC should collaborate to adopt a graduated sanction schedule, ensure the use of alternative sanctions is documented, and ensure all sanctions used are presented to the Board when requesting an arrest warrant.</p> <p>The Chairman and Commissioner will work collaboratively on this. The Chair believes after preliminary research that alternative sanctions as used by the Division of Field Services are constitutional. Once she definitively determines (in consultation with the DOJ) that this is the case, the Chairman will have to undertake this initiative, develop criteria and a process. All Administrative Rulemaking and PPD drafting will have to be done on the Parole side by a full-time Chairman. This required a full-time Chairman.</p>	Board: Concur DOC: Concur In Part

10	52	No	<p>The Board should ensure revocation sanctions are compliant with statutory guidelines by allowing only cases with circumstances permitted by statute to be given sanctions shorter than 90 days.</p> <p>The Chairman has done this and trained members on this. This will be included in new training materials the Chairman will develop. The Chairman would like to work with the Commissioner and the Director of Field Services to make sure that Parole Officers understand all statutes regarding revocation sanctions, because many recommendations for sanctions by Parole Officers do not comport with statutory requirements. The Chairman has trained, and will continue to train, Board members to recognize this if they hadn't known it already. The Board members are typically excellent at maintaining familiarity with all statutes and administrative rules, and keep a binder of reference material with them during hearings.</p>	Board: Concur
11	53	Yes	<p>The Board should ensure presence of members serving in the capacity of attorney of the Board is documented during revocation hearings and in the hearing results.</p> <p>The Board should seek clarification from the Legislature regarding the role of the attorney of the Board during revocation hearings, determine whether the attorney should be in active status, and consider skills or experience the attorney of the Board should possess.</p> <p>A process for the first paragraph is in place and now must be reduced to writing in the aggregate PPDs.</p> <p>Regarding the second paragraph, the Board does not have the resources to have a non-Board member attorney come in every Tuesday for a day of revocation hearings to act as attorney for the Board. If the Legislature recommends that the attorney for the Board be a non-member of the Board, the Parole Board will need funding for such. Currently, the Chairman and another board member have active law licenses and serve as the attorneys for the Board on hearing days. The proposed amendment to 651-A:3 in HB2 requires that the Board have at least two attorneys with active licenses on the Board. Furthermore, the</p>	Board: Concur

		<p>Chairman, Jennifer Sargent, has extensive criminal law experience as a former public defender and former District Court judge, and she presides over virtually every parole revocation hearing in an effort to have the Board make correct criminal law and constitutional law decisions. The Parole Board is a quasi-judicial board and must be able to operate like a criminal court in many regards, especially because the Board's Administrative Rules allow for pre-hearing motions practice.</p>	
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12	55	Yes	<p>The Board and DOC should seek an amendment to allow it more flexibility in re-engaging parolees in their parole plan. If a statutory amendment is not successful, the DOC should establish the required programming, and the Board should ensure those not participating in the program are brought for a hearing.</p> <p>This will be impossible if the DOC is required by the Legislature to cut funding for transitional programming, vocational programming, and educational programming. That aside, the Chairman and Commissioner collaborate regularly regarding such matters. Given the new, highly effective collaborative relationship Chairman Jennifer Sargent and Commissioner Helen Hanks have developed over the past year, it may be that parolee reengagement is something that need not be addressed Legislatively. It can likely be addressed with Administrative Rules and PPDs alone.</p>	<p>Board: Concur</p> <p>DOC: Concur In Part</p>
13	57	No	<p>The Board should develop a process for evaluating petitions for reduction of maximum sentences and ensure criteria are formally adopted in rules and consistently applied. As part of this process, the Board should work with the DOC to determine whether current policies for recommending parolees for a reduction aligns with the Board's criteria and expectations.</p> <p>The Board should also consult with its DOJ representative to determine whether hearings should be held to evaluate these petitions. If appropriate, the Board should determine who should be present for hearings and the number of members required to take action on a petition. The Board should also ensure petitions are signed by the members.</p> <p>The Board has done everything in this observation this year. It has ROM (reduction of maximum) criteria, a notice provision for the</p>	<p>Board: Concur</p> <p>DOC: Concur</p>

			<p>victim services office when a petition comes in from a PPO, a full-hearing procedure on the record with three members of the Parole Board making the decision, and a final recorded decision on paper.</p> <p>The Commissioner and Chairman also believe that the ROM petition procedure should be utilized more frequently by PPOs. The Chairman must formally codify the ROM procedure in Administrative Rules and PPDs and the DOC must train its PPOs to petition within the criteria.</p>	
14	60	No	<p>The Board should establish a process to verify petitions for reduction of maximum sentences for accurate and complete information. The DOC should ensure petitions are properly reviewed for accuracy and completeness.</p> <p>The Chairman and the Assistant Director of Field Services have already agreed to assess whether they should collaborate on a more comprehensive petition to replace the petition now in use. The current petition form is very thorough, but may require even more information in the interest of maximal disclosure of relevant information.</p>	<p>Board: Concur</p> <p>DOC: Concur</p>
15	63	No	<p>The Board should develop and adopt a policy and procedure manual for all administrative operations by establishing clear reporting relationships, delegating duties and responsibilities, and monitoring practices and periodically modifying procedures as necessary.</p> <p>The Board should collaborate with the DOC to develop written policies outlining expectations, responsibilities, and the relationship between the two entities.</p> <p>The Chairman and Commissioner wholeheartedly agree with this observation, and many of the plans to do so are laid out in answers throughout this summary. <u>It is important to note that this amount of work cannot be done without a full-time Chairman paid at the rate requested in the amendment to RSA 651-A:3 in HB2.</u></p>	<p>Board: Concur</p> <p>DOC: Concur</p>

Observation Number	Page	Legislative Action May Be Required	Recommendations	Agency Response
16	67	No	<p>The Board should develop and adopt a policy and procedure manual for Board practices by formalizing an orientation and training program, establishing and adopting operating procedures for rotating Board members on hearing panels. It should also document designation of an Acting Chair and presiding officer, adopt a code of conduct, and seek legal counsel to confirm proper acceptance of evidence for certain violations.</p> <p>The Board and DOC should review DOC policies and current Board practices to align, develop, and adopt written policies and procedures pertinent to related functions.</p> <p>The Chairman and Commissioner wholeheartedly agree with this observation, and many of the plans to do so are laid out in answers throughout this summary. <u>It is important to note that this amount of work cannot be done without a full-time Chairman paid at the rate requested in the amendment to RSA 651-A:3 in HB2.</u></p> <p>The Chairman, in conjunction with three Dartmouth College research assistants, has completed a first draft of a comprehensive Code of Conduct (based on a four month study of Parole Board Codes of Conduct in 50 states). The Chairman’s next steps regarding the Code are to further edit and condense the draft Code, consult with the DOJ regarding certain portions of it, and submit it to the Board for comment. Then, the Chairman will edit it into final form and decide whether to submit it to the Legislature for inclusion in RSA 651-A or to otherwise formally codify it.</p>	<p>Board: Concur In Part</p> <p>DOC: Concur</p>

17	71	No	<p>The Board, with the help of its DOJ representative, should review statutory responsibilities to ensure rules are promulgated for all activities under its authority and requirements imposed on persons outside of its own personnel. The Board should also adopt all forms it requires inmates and DOC personnel to use when providing information in its rules.</p> <p>Agreed. The Chairman intends over the next year and more to do two things specific to this observation. Over the last year, the Chairman has been working with Alan Volpe of NH DoIT to create our own Parole Board website, so that we do not have to have our webpage connected to the DOC website. This has taken longer than expected because the NH DoIT was rolling out new websites for all agencies. However, things should be able to move more quickly for the Board's website soon. The website will have both an outward facing (public) side and an inward (DOC) facing side. The website will contain Forms, Administrative Rules, PPDs, answers to FAQs, Parole and Parole Revocation Hearing lists, and much more information about the Parole Board.</p> <p>Moreover, the Chairman is currently creating many fillable forms to standardize many processes that will be codified. The Chairman knows how to use technology well, which is one of the reasons why Governor Sununu appointed her.</p> <p><u>It is important to note that this amount of work cannot be done without a full-time Chairman paid at the rate requested in the amendment to RSA 651-A:3 in HB2.</u></p>	Board: Concur
18	76	No	<p>The Board should comply with <i>Right-to-Know Law</i> requirements when conducting Board business, enter into non-public session when discussing sensitive and confidential matters, and limit discussions to legal matters during consultation with legal counsel.</p> <p>The Board should formalize <i>Right-to-Know Law</i> training by incorporating DOJ guidance and exploring available DOJ training for Board members and key Board staff.</p> <p>Agreed. Over the last year, the Chairman has</p>	Board: Concur In Part

participated in two continuing legal education courses and on Administrative Rule process and NH's Right-to-Know Law (at her own expense) in order to best determine how the Board's practices must align with Nh's Right-to-Know law. The Chairman undertook her own legal research investigation to determine proper use of email by the Board since NH has no specific law on the subject. The Chair now specifically prohibits all-Board email conversations about anything. If the Board needs to review documents for comment, the Chair asks that individual comments be sent only to her and then all conversation and discussion is reserved for monthly administrative meetings. Monthly Parole Board administrative meetings are public, even though they need not be.

It is the culture of the Parole Board led by Chairman Jennifer Sargent to be as informational and transparent as possible. This is why it is imperative that the Chairman be a full-time, paid head of agency and the other 4 members (as proposed in amended legislation to RSA 651-A in HB2) be compensated with an appropriate stipend. The Chairman will be creating a significant body of written legislation, rules and PPDs, and the Board members will have to spend significant time reviewing practices and procedures for comment, in addition to preparing for hearings 25-30 hours per week and sitting on all-day hearings twice a week.

Observation Number	Page	Legislative Action May Be Required	Recommendations	Agency Response
19	79	No	<p>The Board should clarify with the DOJ whether parole release and revocation hearings should be conducted in public or non-public session. Regardless of the final determination, the Board should develop formal procedures to ensure hearings are compliant with <i>Right-to-Know Law</i> requirements.</p> <p>The Board should also review its rules regarding disclosure of member votes and providing verbatim recordings upon request, and remedy conflicts with statute.</p> <p><i>Re: first observation paragraph: All Parole Board hearings are public, and the Board goes into closed session when it needs to discuss non-public information. The following information is provided to demonstrate the allegiance to how the Chairman regards the Right-to-Know law and constitutional due process.</i></p> <p>When the COVID-19 pandemic hit and the DOC prohibited in-person hearings in the prison hearings rooms, the Chairman quickly (within 3 days) set up a process for Zoom parole hearings to meet all statutory and due process obligations of parole. Fortunately, the Chairman had been teaching her Dartmouth classes virtually on Zoom for a few weeks before the DOC prohibited the in-person hearings, and she had received extensive Zoom training through Dartmouth College. Otherwise, the entire parole system would have failed to operate.</p> <p>Once the DOC understood the dire need for creating a virtual process for holding hearings, it cooperated to install as much equipment as possible to assist in the endeavor. <i>This is because the Commissioner is dedicated to collaborating with the Parole Board Chairman and upholding the constitutional rights of its inmates.</i> At the time of this writing, Parole</p>	Board: Concur In Part

Hearings at all NHSP facilities are virtual. It has been an extraordinary effort for the Chairman to train Parole Board and DOC staff, and Parole Board members (not a tech-savvy group) for virtual hearings with restricted inmate movement, especially in quarantine tiers. Because the Parole Office is understaffed, the Chairman must run all of the virtual technology to pre-register all participants and spectators in accordance with DOC safety protocol, manually admit and remove all participants after checking their registrations *while* chairing hearings, create written procedures for the public to follow, etc. It is like being an air traffic controller and is mentally and physically exhausting. During the pandemic the Chairman has been working 80-92 hour work weeks (7 days per week). The system must operate and the Parole Office is understaffed.

Please know that without Jennifer Sargent as Chairman during this pandemic, the NH Parole System would have shut down. Other state parole systems contacted the Chairman to ask how to implement her system to avoid their impending shutdowns.

Re: second observation paragraph: While the Board cannot divulge its deliberations and votes for safety reasons, the Board keeps a vote tally sheet and reports general statistics from it. Moreover, all hearings are audio recorded and audio recordings are available to anyone via proper request procedures. The Chairman intends for all procedures to be reduced to writing in a PPD as soon as practicable.

20	84	Yes	<p>The Board should establish a policy to address disclosure of potential conflicts of interest and how they should be handled. The Board should also ensure all members file timely statements of financial interests.</p> <p>The Legislature may wish to consider clarifying RSA 15-A:6 regarding whether failure to file annual financial disclosures should prohibit public officials from serving on their appointed capacity.</p> <p>The disclosure of conflicts and recusal policies are currently those the Chairman abided by when she was a District Court judge (Canon 2 – Rule 2.11). All members have been trained by the Chairman to bring any potential conflict or any potential appearance of conflict to the Chairman’s attention as soon as the member recognizes the potentiality. The drafted Code of Conduct (elaborated upon in observation 16) has a section on conflicts and recusals.</p> <p>All members are required to submit timely statements of financial interests. The Chairman knows of specific instances where this was not done in the past (this was not the fault of the former Chairman, but rather the fault of a former Executive Assistant). This year, Chairman Jennifer Sargent personally collected each financial statement and mailed them all to the Secretary of State’s Office from the NHSP-M mailroom. She has also placed “ticklers” in her calendars to collect them and mail them every year, so past catch-as-catch can practice is not going to recur. She will be drafting the PPD by which they will be collected and mailed in the near future, as well as including it in the new Code of Conduct. The Chairman does not object in the least to any Legislative clarification, but rest assured, the Parole Board members’ statements of financial interest shall be filed annually in a timely manner.</p>	Board: Concur
21	86		<p>The Board should track and document when it provides notices of hearing, ensure all statutory language is incorporated into the notice, and ensure parolees receive an updated notice for rescheduled hearings.</p>	Board: Concur In Part

			The Chairman has worked with office staff to improve this process. We have good practices in place and they will be reduced to writing in a PPD as soon as practicable. The Chairman must do all of the drafting.	
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Observation Number	Page	Legislative Action May Be Required	Recommendations	Agency Response
22	88	Yes	<p>The Board and DOJ should determine whether notice requirements apply to reconsideration hearings. The Board should adopt policies, develop corresponding procedures, and adopt rules outlining the process for conducting reconsideration hearings.</p> <p>If the Board determines timeframes in law would not allow it to conduct reconsideration hearings for inmates committing major disciplinary infractions within 15 days of release, it may want to consider seeking statutory amendments to allow more flexibility.</p> <p>The Board is currently considering this observation. The Chairman has consulted with Linda Paulsen, hearings director, about the entire disciplinary process and she will be presenting information to the Board at an upcoming monthly administrative meeting. The DOC's CORIS system and other reporting procedures complicate reconsideration hearings for major disciplinary offenses. The Board will likely be asking for statutory amendments in the near future, but the Board must understand the process and its reporting limitations before acting. The DOC is in the process of reassessing its PPD that controls all disciplinary matters, so the Board feel it is appropriate to wait until the DOC promulgates that new PPD to make any final decisions.</p>	Board: Concur

23	90	No	<p>The Board should establish: a process for submitting supervision fee waiver requests; guidelines outlining instances which may warrant a waiver; thresholds for which the Executive Assistant is granted authority to approve waiver requests; a process for periodic Board review of waiver requests approved on its behalf; and a process for Board review of waiver requests not meeting guidelines.</p> <p>The DOC should establish rules for supervision fee payment and collection as required by statute.</p> <p>The Board is taking this matter up in an upcoming monthly administrative meeting.</p>	<p>Board: Concur</p> <p>DOC: Concur</p>
24	91	No	<p>The Board should establish record retention policies as required by State law and resolve the conflict between its rule requiring recordings be destroyed after one year and State law requiring records be retained for at least four years.</p> <p>The Board should ensure meeting minutes are produced timely, adequate storage is available to retain audio recordings, Board files are appropriately retained, staff are trained on records retention policies, and parolee files are periodically reviewed for accuracy and completeness.</p> <p>Agreed. Meeting minutes are produced in a timely manner. The meetings are public and noticed according to statute. The records are retained in two areas where the office staff and Board Chairman can retrieve them upon request.</p> <p>The Chairman recently trained the entire staff on the new inter-office procedure of retaining minutes and records, as well as distributing minutes upon proper request.</p> <p>The Board is currently retaining all records according to statute and the Chairman will reconcile all conflicting Rules and Statutes. Currently, two Dartmouth College research assistants are working with the Chairman to identify all existing conflicts and potential redrafts.</p>	<p>Board: Concur</p>

Recommendation Summary

Observation Number	Page	Legislative Action May Be Required	Recommendations	Agency Response
25	94	No	<p>The Board should develop a process to record individual member votes which preserves this information from public disclosure but allows the record to be retrieved if ordered by a court.</p> <p>The Board has such a procedure.</p>	Board: Concur
26	96	No	<p>The Board should begin data collection to eventually support a performance measurement system by identifying data necessary to evaluate whether its parole criteria are appropriate, what data are currently available, and what additional data may be needed.</p> <p>Once it identifies these data elements, the Board should work with the DOC to determine how data can be collected and how data reporting can be automated.</p> <p>Agreed, but recognize this data collection and analysis process is time and resource heavy. Please see observation 3 comment.</p>	Board: Concur DOC: Concur