

RECENT ACTIVITY ALLEGING OLMSTEAD CASE VIOLATIONS (Listed in order of most recent action)


South Legislative Budget Committee
 September 12, 2012
 Attachment 18
DRAFT

Joint Legislative Budget Committee
 September 12 and 13, 2012
 Attachment: 18

STATE	DOJ FINDINGS LETTER	OTHER ACTION BY DOJ
FLORIDA	<p>Issued in September 5, 2012, concluding Florida's system of care has led to unnecessary institutionalization of medically complex and medically fragile children in nursing facilities and limits access to medically necessary services and supports that would allow children to transition to community-based settings.</p>	<p>06-28-2012—The U.S. filed a Statement of Interest in <i>T.H. et al. v. Dud et al.</i>, 0:12cv-60460-WJZ (S.D. Fla. 2012) opposing Florida's motion to dismiss. The plaintiffs allege the State unnecessarily institutionalized medically fragile Medicaid-eligible children in nursing facilities. The complaint also alleges a violation of the Pre-Admission Screening and Resident Review (PASRR) provisions of the Nursing Home Reform Amendments to the Medicaid Act for failure to fully evaluate children prior to nursing facility admittance.</p>
OREGON	<p>Issued in June 2012 concluding the State provides employment and vocational services to individuals with intellectual and developmental disabilities primarily in segregated sheltered workshops rather than in integrated community employment settings, in violation of the Americans with Disabilities Act's (ADA's) integration mandate.</p>	<p>04-20-2012—The U.S. filed a Statement of Interest in <i>Lane v. Kitzhaber</i>, 12-CV-00138 (D. OR 2012) in opposition to the defendant's motion to dismiss. The plaintiffs allege the State unnecessarily segregates individuals with intellectual and developmental disabilities in sheltered workshops. 06-18-2012—The U.S. filed a Statement of Interest in support of plaintiffs' motion for class certification.</p>
NORTH CAROLINA	<p>Issued in July 2011 concluding the State's administration of its mental health system results in unnecessary institutionalization of individuals with mental illness in segregated settings, known as adult care homes.</p>	<p>08-23-2012—The U.S. filed a complaint and entered an eight-year settlement agreement with the State which includes, in part: increasing access to community-based supported housing to 3,000 individuals currently residing in, or at risk of entry into, adult care homes; ensuring access to critical community-based mental health services to thousands of individuals; providing supported employment services to 2,500 individuals with mental illness; developing a crisis service system integrated employment opportunities; and appointing an independent reviewer to assist with and evaluate compliance.</p>

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<p>VIRGINIA</p>	<p>Issued in June 2011 concluding the state unnecessarily institutionalized more than 1,000 individuals with developmental disabilities and placed others at the risk of institutionalization (including over 3,000 on urgent wait list for community services).</p>	<p>01-26-2012—DOJ filed a complaint and simultaneous settlement agreement in District Court. The court-enforceable agreement is aimed at preventing unnecessary institutionalization of persons with developmental disabilities who are living in the community, including thousands on waiting lists for community-based services, and providing those currently in institutions the opportunity to receive services in the community. A group of disabled individuals, who believed the proposed consent decree would require they be moved from the training centers they considered to be their homes, was granted a motion to intervene.</p> <p>08-23-2012—The District Court approved and made the settlement agreement with modifications the final order. Some provisions of the settlement include the creation of: 4,170 additional HCBS waivers by June 30, 2021, and receipt of case management services for waiver service recipients under the agreement; a statewide crisis response system and crisis stabilization programs; an \$800,000 fund for housing; and the appointment of an independent reviewer responsible for reporting to the Court on the progress of implementing the decree. The Court indicated individuals desiring continued residence in training centers could not be forced to move into community settings.</p>
<p>NEW YORK</p>		<p>2009—Plaintiff filed a complaint in <i>Disability Advocates, Inc. v. Paterson</i>, 03-CV-3209 (E.D. NY 2009). After a trial on the merits, the U.S. District Court for the Eastern District of New York ruled thousands of persons with mental illness had been segregated and were denied the opportunity to “receive services in the most integrated setting appropriate to their needs.”</p> <p>11-25-2009—The DOJ, having intervened in the remedy phase of the case, filed a brief supporting the plaintiff’s proposed remedial plan.</p> <p>03-01-2010—A remedial order was issued by the District Court which adopted most of the plaintiff and DOJ proposals.</p> <p>04-06-2012—The remedial order and judgment was vacated by the Second Circuit Court and the action dismissed for lack of jurisdiction.</p>

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<p>NEW HAMPSHIRE</p>	<p>Issued in April 2011 stating “[s]ystemic failures in the State’s system place qualified individuals with disabilities at risk of unnecessary institutionalization now and going forward.”</p>	<p>02-09-2012—Plaintiff complaint filed in <i>Lynn E. v. Lynch</i>, 1:12-CV-53-LM (D. N.H. 2012), alleging the State fails to provide mental health services in community settings to persons with a disability, forcing them to go to segregated institutions.</p> <p>04-04-2012—Court granted the DOJ’s motion to intervene in <i>Lynn E. v. Lynch</i>. Plaintiffs have filed a motion for class certification, and the U.S. has filed a memorandum in support. Court action is pending. Negotiations are under way between the DOJ and State to resolve the matter.</p>
<p>TEXAS</p>		<p>12-20-2010—Plaintiff initial complaint filed in <i>Steward v. Perry</i>, 5:10-CV-1025 (W.D. TX 2010) alleging the State unnecessarily segregates individuals with developmental disabilities in nursing facilities.</p> <p>06-22-2011—U.S. filed a request to intervene in <i>Steward v. Perry</i> and filed, as an exhibit, a proposed complaint in intervention citing individuals on waiting lists for an average of almost nine years with waiting lists, as of 3-31-2011, of over 50,000 names for about 22,800 currently filed slots. The U.S. is awaiting the Court’s permission to file the complaint in intervention.</p> <p>11-30-2011—U.S. filed a Supplemental Statement of Interest opposing the State’s motion to dismiss the plaintiffs’ amended complaint.</p>
<p>CALIFORNIA</p>		<p>11-18-2011—U.S. filed comments in support of final approval of the proposed settlement agreement in <i>Katie A. v. Douglas</i>, CV-02-05662 AMH (SHX) (C.D. CA 2011)—formerly <i>Katie A. v. Bonta</i>. The settlement agreement relates to the manner in which the State will provide intensive, community-based mental health services to Medi-Cal eligible foster children or children at risk on entering into the foster care system. The U.S. indicated the agreement, which was reached after nine years of litigation, was “fair and reasonable.”</p> <p>Earlier case: 07-12-2011 and 10-31-2011—U.S. filed Statements of Interest in support of plaintiffs’ claim in <i>Darling v. Douglas</i>, 09-CV-3798 (N.D. CA 2009)—formerly <i>Cota v. Maxwell-Jolly</i>. The plaintiffs challenged the State plans to eliminate Adult Day Health Care (ADHC), which enable elderly individuals and individuals with physical and mental disabilities to receive services to live in the community.</p>

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<p>DISTRICT OF COLUMBIA</p>		<p>10-03-2011—U.S. filed a Statement of Interest in <i>Day et al. v. District of Columbia et al.</i>, 1:10-cv-02250-ESH (D. D.C. 2010) opposing the defendant's motion to dismiss or for summary judgment. The plaintiffs allege the unnecessary segregation of individuals with disabilities in nursing facilities.</p>
<p>DELAWARE</p>	<p>Issued in November 2010 citing violations, including the provision of mental health services in a manner which results in prolonged institutionalization for individuals who could be served in the community, and places individuals in the community at risk of unnecessary hospitalization and institutionalization.</p>	<p>07-06-2011—U.S. filed a complaint in District Court (<i>U.S. v. Delaware</i>, 11-CV-591) and a simultaneous settlement agreement to address concerns arising out of a DOJ investigation into whether individuals with mental illness were being served in the most integrated settings in accordance with their needs and to address concerns related to conditions of confinement at the Delaware Psychiatric Center.</p> <p>07-18-2011—The Court signed the order entering the settlement agreement. Among the provisions of the agreement, the State is required to create: a crisis system; intensive case supports; integrated supported housing in the form of vouchers or subsidies for 650 persons; supported employment for 1,100 persons; rehabilitation services for 1,100 persons; family and peer supports for 1,000 persons; a statewide quality management system; and to establish a monitor with the authority to hire staff to assist in the implementation of the agreement.</p>
<p>ARKANSAS</p>		<p>05-06-2010—<i>U.S. v. Arkansas</i>, 10-CV-327 (E.D. AR 2010), was filed alleging failure to provide services to individuals with developmental disabilities "in the most integrated setting appropriate to their needs" and community service options for 1,400 persons on waiting lists at risk of institutionalization.</p> <p>01-24-2011—The complaint was dismissed by the Court without prejudice due to procedural error.</p> <p>Earlier Case: 01-16-2009—<i>U.S. v. Arkansas</i>, 4:09-CV-00033 (E.D. AR 2009), alleging, among other arguments, the failure to provide facility residents with developmental disabilities with services "in the most integrated setting appropriate to their needs."</p> <p>06-08-2011—The Court dismissed the case with prejudice stating the evidence did not support such findings. The Court cited the <i>Olmstead</i> case to support the position that there is no requirement that community based treatment be imposed on those who do not want it. The Court relied on evidence that no resident had been denied community placement when requested by the parent or guardian.</p>



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<p>GEORGIA</p>	<p>2010—U.S. filed a complaint in District Court, <i>U.S. v. Georgia</i>, 10-CV-249 (N.D. GA 2010) alleging individuals with mental illness and developmental disabilities in State hospitals were unnecessarily institutionalized.</p> <p>10-19-2012—The DOJ and the State entered into a settlement agreement.</p> <p>10-29-2010—The Court adopted the settlement agreement as revised to provide for an independent reviewer and with the Court retaining jurisdiction to enforce the revised agreement. The agreement contains provisions for individuals with developmental disabilities which include: expanding community services; ceasing all admissions to State-operated institutions; transitioning all individuals to the most integrated setting appropriate to their needs by July 1, 2015; and creating more than 1,100 HCBS waivers. With regard to individuals with mental illness, the agreement included requiring service in the community for 9,000 individuals with serious and persistent mental illness currently being served in State Hospitals, frequently readmitted to State Hospitals, frequently seen in emergency rooms, chronically homeless, and/or being released from jails or prisons.</p>
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Amicus curiae (“friend of the court”) briefs were filed by the Department of Justice in cases in: Pennsylvania [*Benjamin et al. v. Pennsylvania Department of Public Welfare*, 09-CV-1182 (M.D. PA)]; Virginia [*ARC of Virginia, Inc. v. Kaine*, 09-CV-686 (E.D. VA 2009)]; North Carolina [*Marlo M. v. Canisler*, 09-CV-535 (E.D. NC 2009)]

*Information obtained from the U.S. Department of Justice website: www.ada.gov/olmstead