



Press Release

July 2, 2009

**National Disability Rights Network Applauds “Year of Community Living”,
Continues to Question Department of Justice Pouring Millions into Preservation
of Failed Institutions**

The National Disability Rights Network (NDRN) applauds President Obama's proclamation of the “Year of Community Living,” but decries the Department of Justice’s continued support of segregation of persons with disabilities. The recent proclamation of the “Year of Community Living” from President Obama and the follow-up of specific programs from the Department of Health and Human Services are important steps to the full integration of people with disabilities into the community. However, across the Washington Mall at the Department of Justice (DOJ), actions by the Special Litigation Section of the Civil Rights Division continue to force states to funnel millions of precious state dollars into maintaining outmoded, discriminatory, and dangerous facilities that will warehouse people with disabilities for generations to come.

On June 22, 1999, the U.S. Supreme Court, in *Tommy Olmstead v Lois Curtis and Elaine Wilson*, ruled that unnecessarily segregating an individual into an institution when community supports exist is a violation of the American with Disabilities Act (ADA) Title II. Specifically, the regulations covering Title II of the ADA, 42 U.S.C. § 12131, *et seq.*, and its implementing regulations at 28 C.F.R. § 35.130(d) contain what is commonly called “the integration mandate,” requiring states to provide community-based services for persons with disabilities who are otherwise entitled to institutional services, when certain factors are met.

Despite the ruling in *Olmstead*, the Department of Justice continues to carry out the Bush Administration practice of forcing states to “fix up” facilities that many states have abandoned as unworkable and unsafe settings for people with disabilities to live. A review by NDRN of proposed and approved settlement agreements negotiated by DOJ under the Civil Rights of Institutionalized Persons Act (CRIPA) clearly shows the failure of the DOJ to creatively work to move people into the community in a planned and safe manner, in opposition to the will of a vast majority of disability advocates. DOJ’s settlements stand in stark contrast to the litigation brought by Protection and Advocacy agencies and others that have used the dreadful conditions in these facilities to move to a more humane community based system.

If the Administration is serious about its commitment to community integration, it is critical that DOJ CRIPA settlement agreements, including those pending in Texas, Georgia, and other states, be directed toward improving community integration. By wasting hundreds of millions of dollars in taxpayer money on segregated institutions, DOJ is virtually guaranteeing that these failed institutions remain the *status quo* for individuals with developmental disabilities in Texas and elsewhere.

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**COMPARISON CHARTS OF DOJ CRIPA SETTLEMENTS
VS. P&A SETTLEMENTS
(in cases involving ICF/MR or SNF)**

In April 2001 President Bush signed Executive Order 13217, requiring all federal agencies to evaluate Department regulations, policies, and programs to determine whether any should be revised or modified to improve the availability of community-based services for individuals with disabilities. The Department of Justice (DOJ) identified 33 actions that the Civil Rights Division would take to help implement the decision, including enforcement of the ADA integration mandate (Title II) at issue in the *Olmstead* decision. Sadly, the data shows that the Civil Rights Division has not focused on integration mandate compliance with the same commitment as it has other provisions of the ADA.

A 2006 Department of Justice report to Congress on the department's enforcement in the prior five years of the Americans with Disabilities Act, "*Access for All: Five Years of Progress Enforcing the ADA*," includes no mention of the *Olmstead* decision or any Civil Rights Division efforts to enforce the integration mandate of Title II. This is not to say that the DOJ has not enforced *Olmstead*, it has done so, but it has never brought a suit primarily to ensure *Olmstead* compliance. DOJ *Olmstead* enforcement has remained a secondary outcome of DOJ's main focus, which is squarely on enforcement of the Civil Rights of Institutionalized Persons Act (CRIPA).

CRIPA allows the DOJ to investigate conditions in public residential facilities and to take appropriate action if it sees a pattern or practice of unlawful conditions, such as abuse or neglect, that deprives persons confined in the facilities of their constitutional or federal statutory rights. While DOJ indicates in its 2008 *Report of Activities to Enforce CRIPA* that one aspect of CRIPA enforcement is to "ensure that public officials operating healthcare facilities are taking adequate steps to provide services to residents in the most integrated setting appropriate to their needs,"¹ this often becomes too insignificant an aspect of CRIPA settlements.

NDRN has reviewed several proposed and approved settlement agreements reached by the U.S. Department of Justice (DOJ) between 2005 - 2009 with states and municipalities under their CRIPA authority. The purpose of the review is to highlight the provisions that address community integration for individuals with disabilities versus the provisions focused on improving institutional conditions. Similarly, we have looked at settlement agreements negotiated by several Protection and Advocacy (P&A) agencies and compared the P&A agreements against the DOJ agreements on community integration and institutional conditions provisions.

The two charts attached show the emphasis placed on community integration versus the improvement of institutional conditions in these settlements. These charts are for illustrative purposes only and include a randomly selected sample of settlement agreements. However, **NDRN** believes these charts illustrate our concern, as we commemorate the ten year anniversary of the *Olmstead v. LC* decision, and as the Administration launches the "The Year of Community Living," that the promise of *Olmstead* and the rights of individuals with disabilities to live independently and enjoy the fullest inclusion in our society are not being recognized nor facilitated by the DOJ in its settlement agreements. The focus of the DOJ settlement agreements continues to be on improving conditions at facilities, despite the tremendous costs, both human and financial.

The DOJ CRIPA settlements reviewed are *U.S. v. Texas* (proposed, ICF/MR, 2009); *U.S. v. Nebraska* (ICF/MR, 2008); *U.S. v. City of San Francisco* (SNF, 2008); *U.S. v. Kentucky* (ICF/MR, 2006); and *U.S. v. New Jersey* (ICF/MR 2005).

The P&A settlements reviewed include *Capitol People First v. Department of Developmental Services* (CA 2008, ICF/MR); *Chambers v. San Francisco* (CA 2007, SNF); and *Travis D. v. Eastmont Human Services Center* (MT 2004, ICF/MR).

In considering the essential provisions for facilitating a community integration mandate, minimum requirements for any agreement should include adoption of the principal of providing services in the most integrated setting and the recognition and acceptance that all individuals can be served in the community; individual involvement; informed decision-making and choice; person-centered planning; transition planning; implementation of plans; developing and expanding community capacity; monitoring of community placements; and quality assurance. We consider these elements essential for any agreement.

The community integration provisions charted are: principle of most integrated setting; individual involvement and choice; individual transition planning; informed decision-making and consent; education for individuals and families on community integration options; person-centered planning; developing and expanding community capacity; community housing; community healthcare/services; enhanced case management; employment and vocational services; transportation; money management; monitoring of community placements; and quality assurance.

The improvement of institutional conditions provisions included in the chart are: integrated treatment plans; comprehensive needs assessments; psychiatric services; neurological services; psychological and behavioral services/PBS; general healthcare; nutrition; restraint/seclusion; related services (speech, occupational therapy, physical therapy, etc.); risk management/safety; daily activities/habilitation; increased staffing; implementation and monitoring of agreement; and quality assurance.

By way of visual comparison we have also included an approximation of the pages dedicated to community integration versus institutional conditions.

The simple exercise of charting the provisions reveals that the DOJ settlements heavily focus on improving institutional conditions, while the P&A settlements emphasize aspects of community integration. However, in settlement agreements reached in *U.S. v. San Francisco* (6/13/08) followed by *U.S. v. Nebraska* (7/2/08), the DOJ negotiated what we consider to be two of its strongest agreements, thus far, that include elements of community integration. We believe that this emphasis on community integration by DOJ was prompted by the active involvement of Disability Rights California, Disability Rights Education and Defense Fund, and other disability rights advocates in the San Francisco, California case. Yet, in 2009 DOJ has reversed this movement toward community integration, as illustrated in the settlement agreement proposed by DOJ in *U.S. v. Texas*.

Instead of embracing *Olmstead* and focusing on moving people into the most integrated living settings appropriate to their needs, the Texas agreement emphasizes changing institutional conditions and calls for the hiring of 1,160 additional staff at the Texas State Schools (ICFs/MR).

The enormous costs of institutions, both financial and human, are largely avoidable. It actually costs less to serve people in community settings than it does in ICFs/MR.ⁱⁱ For example, by focusing on ending the unnecessary institutionalization of people with developmental disabilities and embracing community integration, the Nebraska legislature has estimated the cost of compliance with the DOJ settlement agreement to be \$2.5 million per yearⁱⁱⁱ, while the Texas agreement with its greater emphasis on improvement of institutional conditions requires \$112 million over a five-year period.^{iv}

This is particularly troubling, given the lack of progress Texas has made with regard to community integration. According to the 2008 *State of the States in Developmental Disabilities*^v, a whopping 57% of federal intellectual and developmental disabilities (I/DD) Medicaid spending in Texas is on institutional care and only 31% on home and community-based services (HCBS). In contrast, Nebraska spends 25% of its I/DD Medicaid funds on institutions and 56% on HCBS.

If the Administration is serious about its commitment to community integration, it is critical that DOJ CRIPA settlement agreements, including those pending in Texas, Georgia, and other states, are directed towards improving community integration. By pouring over \$100 million into segregated institutions, DOJ is virtually guaranteeing that ICFs/MR remain the *status quo* for Texans with developmental disabilities and this is true in other states.

ⁱ See, http://www.usdoj.gov/crt/split/documents/split_cripa08.pdf at page 19.

ⁱⁱ See, Residential Services for Persons with Developmental Disabilities: Status and Trends Through 2007 at page 72, <http://rtc.umn.edu/docs/risp2007.pdf>

ⁱⁱⁱ See, State Of Nebraska FY2009-10 / FY2010-11 Biennial Budget at page 49, <http://www.nebraskalegislature.gov/pdf/reports/fiscal/2009budget.pdf>

^{iv} See, "State Reaches Settlement with DOJ on State Schools Investigations," <http://www.txddc.state.tx.us/resources/publications/fyi/fyijun09/fyistate06-09.asp>

^v Braddock et al., *State of the States in Developmental Disabilities*, University of Colorado, 2008.

COMPARISON OF DOJ AND PROTECTION AND ADVOCACY SETTLEMENT PROVISIONS RE INSTITUTIONAL CONDITIONS

INSTITUTIONAL CONDITIONS ELEMENTS	U.S. v. Texas (proposed 2009) Tx State Schools ICF/MR	U.S. v. Nebraska (2008) Beatrice State School ICF/MR	U.S. v. San Francisco (2008) Laguna Honda SNF	U.S. v. Kentucky (2006) Oakwood ICF/MR	U.S. v. New Jersey (2005) Woodbridge ICR/MR		Capitol People First v. Dept of Develop Services (CA 2008) ICF/MR	Chambers v. San Francisco (CA 2007) Laguna Honda SNF	Travis D. v. Eastmont Human Services Ctr (MT 2004)	Jackson v. New Mexico (1997) ICF/MR	Arnold v. Arizona Department of Health Services (1995) MH Facility
Integrated treatment plans	X	X		X					X	X	X
Comprehensive needs assessment	X	X	X	X	X		X	X	X	X	X
Psychiatric Services	X	X	X	X	X						X
Neurological Services	X	X		X	X						
Psychological & Behavioral services/PBS	X	X	X	X	X		X	X	X	X	X
General Medical Care	X	X	X	X					X		
Nutrition	X	X		X	X						
Restraint/ Seclusion	X	X	X	X	X						
Related Services (Speech, OT, PT, etc)	X	X	X	X	X						
Risk management/Safety	X	X	X	X	X		X		X	X	X
Quality Assurance	X	X		X	X			X		X	X
Implementation & Monitoring of Agreement	X	X	X	X	X			X			
Activities/Habilitation	X	X	X		X					X	
Increased Staffing	X	X					X	X			
Approximate Pages Dedicated to Conditions	25+	21+	9	5+	5+		3	2	3	3	5+

COMPARISON OF DOJ AND PROTECTION AND ADVOCACY SETTLEMENT PROVISIONS RE COMMUNITY INTEGRATION

COMMUNITY INTEGRATION ELEMENTS	U.S. v. Texas (proposed 2009) Tx State Schools ICF/MR	U.S. v. Nebraska (2008) Beatrice State School ICF/MR	U.S. v. San Francisco (2008) Laguna Honda SNF	U.S. v. Kentucky (2006) Oakwood ICF/MR	U.S. v. New Jersey (2005) Woodbridge ICR/MR		Capitol People First v. Dept of Develop Services (CA 2008) ICF/MR	Chambers v. San Francisco (CA 2007) Laguna Honda SNF	Travis D. v. Eastmont Human Services Ctr (MT 2004)	Jackson v. New Mexico (1997) ICF/MR	Arnold v. Arizona Department of Health Services (1995) MH Facility
Principle of Most Integrated Setting	X	X	X	X	X		X	X	X	X	X
Individual Involvement and Choice		X	X		X		X		X	X	X
Individual Transition Planning	X	X	X	X	X		X	X	X	X	
Informed Decisionmaking & Consent		X	X				X	X	X	X	X
Education on Options for Individuals & Families	X	X	X	X	X		X		X	X	X
Person-centered Planning		X	X				X	X	X	X	X
Developing & Expanding Community Capacity		X	X	X			X	X	X		X
Community Housing		X	X				X	X	X		X
Community Healthcare/Services		X	X				X	X	X	X	X
Enhanced Case Management		X	X				X	X	X	X	X
Employment & Vocational Services		X	X						X	X	X
Transportation			X					X	X		
Money Management											
Monitoring of Community Placements	X	X	X	X				X	X	X	X
Quality Assurance	X	X	X					X	X	X	X
Approximate Pages Dedicated to Community Integration	3+	6+	8+	1	3		13	16	17+	10+	5+