

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

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|------------------------|---|-------------------------------|
| LENIL COLBERT, et al., |) | |
| |) | |
| Plaintiffs, |) | |
| |) | No. 07 C 4737 |
| v. |) | |
| |) | Judge Joan Humphrey Lefkow |
| |) | Magistrate Judge Maria Valdez |
| BRUCE RAUNER, et al., |) | |
| |) | |
| Defendants. |) | |

ORDER APPROVING COST NEUTRAL PLAN

This matter came on for hearing before the Court on the Parties' cross-motions to enter a Cost Neutral Plan to supplement and amend the December 2011 Consent Decree, as amended. The Court has reviewed the submissions made by the Parties, and heard oral argument from the Parties on September 29, 2016. Being fully advised in the premises, the Court hereby approves the following Cost Neutral Plan:

INTRODUCTION AND BACKGROUND

Plaintiffs,¹ a class of Illinois residents with disabilities receiving Medicaid benefits and living in Nursing Facilities in Cook County, Illinois, filed this lawsuit on August 22, 2007, seeking declaratory and injunctive relief to redress alleged violations of Title II of the Americans with Disabilities Act (ADA), 42 U.S.C. §§ 12131-32, Section 504 of the Rehabilitation Act, 29 U.S.C. § 794(a), and the Social Security Act, 42 U.S.C. §§ 1396-1396v (SSA). Plaintiffs alleged that they were unnecessarily segregated and institutionalized in Nursing Facilities and forced to live in conditions in violation of the ADA and the Rehabilitation Act, which require Illinois to administer services in the most integrated appropriate setting.

Plaintiffs alleged that Defendants denied them the opportunity to live in appropriate integrated settings where they could lead more independent and more productive lives in their own communities. Plaintiffs sought injunctive relief requiring Defendants: (1) to inform Plaintiffs as to their eligibility for Community-Based Services and their choice of such services; (2) to provide comprehensive evaluations to determine each Plaintiff's eligibility for Community-Based Services, both prior to and after admission to Nursing Facilities; and (3) to provide, as appropriate, Plaintiffs with services and medical and other supports in Community-Based Settings and to refrain from providing services only in institutional settings. Defendants

¹ Capitalized terms set forth herein are defined in Section IV of the Consent Decree. All other terms will have the meaning ordinarily attributed to them.

denied liability and specifically denied that they violated the ADA, the Rehabilitation Act, or the SSA.

The Parties reached a settlement and filed a Consent Decree on August 29, 2011, that the Court approved on December 21, 2011, after appropriate notice and a hearing. The Parties have operated under that Consent Decree, as amended on July 24, 2014, and on December 1, 2015, and, as required by the amended Consent Decree, have negotiated for several months in an attempt to agree on a joint Cost Neutral Plan to be filed with the Court. The Parties relied on Berkeley Research Group, LLC (BRG), to perform the collection of costs data and information and the analysis of the costs incurred by the State of Illinois for certain Class Members to live in Nursing Facilities and compared those costs to the costs to the State of Illinois for those same Class Members to live in Community-Based Settings. (The BRG Report and Supplements are attached as Exhibit A.) BRG performed all of its work *pro bono*. BRG's analysis shows that the State's expenditures, with amortization of one-time costs and allocation of non-Class Member specific costs over a 10 year period, are on average over 35 percent less for the Class Members transitioned to and living in Community-Based Settings as compared to the costs to have them continue living in Nursing Facilities. The analysis also concluded that those same cost savings should be expected for other Class Members who will transition from Nursing Facilities to Community-Based Settings in the future. BRG's analysis further shows that the State's total expenditures for all costs related to transitioning Class Members and to operate and administer the systems related to Community-Based Services as compared to continuing to have Class Members living in Nursing Facilities, on a cash basis, are approximately 10 percent higher in the first 12 months after transition and are approximately 30 percent lower in the second year after transition and in every year thereafter. This means that, on a cash basis, the State saves money somewhere in the second year a Class Member is allowed to live where he or she desires. The

Parties agree that approximately 890 Class Members have been living in Community-Based Settings for at least one year, and that the State of Illinois has realized a reduction in expenditures due to the Consent Decree and will continue to see a reduction in expenditures as more Class Members are transitioned.

COST NEUTRAL PLAN

A. Master Class Member List. By November 10, 2016, Defendants shall create a list of all Class Members living in Nursing Facilities as of September 30, 2016, and shall update that list at least annually during the life of the Decree during the time period the Consent Decree, as amended and supplemented, and the Cost Neutral Plan is in effect.

B. Outreach. Defendants shall create and perform the outreach activities required to comply with the requirements of this Plan and the Consent Decree to achieve the transitions required. Defendants will inform all Class Members of their rights under the Consent Decree and this Plan. Details of the Defendants' specific outreach activities shall be contained in the Implementation Plan to be developed as outlined in paragraph H. Defendants shall also ensure that the Qualified Professionals conducting the Evaluations provide outreach with appropriate frequency to Class Members who express concerns about leaving Nursing Facilities, and that, as has previously been recommended by the Monitor, the Peer Mentor program receives appropriate support.

C. Transition Activity Schedule. By December 30, 2016, Defendants shall create a Transition Activity Schedule (Schedule), including Class Members from the November 10, 2016, list that includes Class Members who do not oppose moving to a Community-Based Setting. The initial Schedule shall include at least 150 Class Members (excluding Class Members not yet transitioned but who are in the housing queue on December 30, 2016). At least every six months following the creation of the Schedule, Defendants, through the

outreach efforts described in Paragraph B and in the Implementation Plan set forth in Paragraph H, shall identify and add to the Schedule at least 1,000 Class Members who do not oppose moving to a Community-Based Setting. Defendants shall ensure that Class Members on the Schedule will be moved to appropriate Community-Based Settings according to the time frames detailed in Paragraph F herein. Placements will be prioritized based on their urgency of need for Community-Based Services or placement in a Community-Based Setting, the length of time that the Class Member has resided in a Nursing Facility, geographical considerations, and other appropriate factors. The Defendants shall identify or develop sufficient and appropriate Community-Based Settings and services so that Class Members placed on the Schedule will be able to move to appropriate Community-Based Settings in the time frames stated in this plan, or at a reasonable pace to be determined as set forth in paragraph E below.

D. Evaluations. Defendants shall complete at least 1000 Evaluations of Class Members on the Schedule by June 30, 2017, and thereafter continue to complete a sufficient number of Evaluations in a timely manner in order to achieve the transitions required under paragraph F. For any Class Member who remains on the Schedule a year after their Evaluation, Defendants shall update the Evaluation at least annually, except as provided in Section VI.A.7 and VI.A.8 of the Decree. These updates shall not be included in calculating the 1000 minimum required above.

E. Service Plans. Qualified Professionals shall develop Service Plans, as provided in the Consent Decree, for Class Members with Evaluations indicating they are able to move to Community-Based Settings. These Service Plans shall be completed within three months of the Class Members' Evaluations.

F. Transitions. Until December 31, 2016, Defendants will continue to operate under the current Implementation Plan and will transition a sufficient number of Class Members to Community-Based Settings to comply with the Order Granting Agreed Motion to Amend Consent Decree dated December 1, 2015, Paragraph C.3. Defendants will transition 250 additional Class Members to appropriate Community-Based Settings by June 30, 2017, and 300 additional Class Members by December 31, 2017. During the second quarter of calendar 2017, the Parties and the Monitor shall discuss the proposals made by the consultant pursuant to his/her review outlined in paragraph I. Benchmarks for transitions for calendar 2018 and 2019 shall be determined by the Parties in conjunction with the Monitor or the Court if the Parties are unable to agree based on the Monitor's findings and systemic enhancements made as a result thereof. Prior to December 31, 2018, the Parties and the Monitor shall agree upon a reasonable pace for moving all Class Members determined appropriate for transition to Community-Based Settings beginning in January 2019, and such pace shall be presented in an addendum to this Plan to be filed with the Court. If the Parties and the Monitor cannot agree about what constitutes a reasonable pace, the issue will be presented to the Court for resolution.

G. Resources. The Defendants' responsibility to continue development of and increasing community capacity necessary and appropriate to comply with the Consent Decree and this Plan shall continue under this Plan and shall incorporate and respond to findings by the Monitor and the consultant pursuant to paragraph I herein.

H. Implementation Plan. By November 16, 2016, Defendants shall send to Class Counsel and the Court Monitor a proposed, updated Implementation Plan that will include detailed plans and programs to achieve compliance with this Cost Neutral Plan and the Consent Decree. The updated Implementation Plan will detail Defendants' plan to increase the pace

of transitions from the benchmarks required by the Consent Decree to those in this Cost Neutral Plan. Detailed plans will be set out to achieve the requirement to reach all Class Members. Specific targets for the pace of Evaluations, development of Service Plans, development of additional Community-Based Services and Settings, and all other actions and activities necessary to comply with this Cost Neutral Plan and the Consent Decree will be detailed in the updated Implementation Plan. The provisions of the Consent Decree regarding review and approval of proposed Implementation Plan updates remain in effect. This updated Implementation Plan shall be finalized by the Parties and the Monitor and filed with the Court by December 30, 2016.

I. Community Capacity-Building. The Monitor, at the State's expense, with the input of the Defendants and Class Counsel, will retain an appropriate independent consultant (who will be solely chosen by, directly supervised by, report to, be directed by and solely responsible to the Monitor) to advise the Monitor on how the Defendants can develop Community Capacity sufficient to transition the required number of Class Members under the Consent Decree and the Cost Neutral Plan. The Defendants, within 30 days of the entry of this Cost Neutral Plan, shall take any and all necessary steps to amend the contract of the Monitor to allow him to hire, retain and pay the consultant. The consultant will determine the current barriers to the Defendants' development of Community Capacity required to achieve compliance with the Consent Decree and the Cost Neutral Plan and to transition greater numbers of Class Members to Community-Based Settings in the future. Within six months of the Court's approval of this Cost Neutral Plan Order, the Monitor will submit a proposal to the Defendants and Class Counsel which includes recommendations for addressing barriers to development of Community Capacity and recommendations for substantially expanding Community Capacity in order to transition Class Members as required by the Consent Decree

and the Cost Neutral Plan. The Parties and the Monitor shall discuss the consultant's findings and incorporate the Monitor's recommendations based on those findings into or as an Amendment to the updated Implementation Plan.

J. Future Actions. All provisions of the Consent Decree and the current Implementation Plan not specifically changed or modified by this Cost Neutral Plan or the updated Implementation Plan described in paragraph H, shall remain in full force and effect. The Parties and the Monitor, after filing their reports, shall meet with the Court at least annually to discuss and report on their progress.

K. Termination. Until the Consent Decree is terminated, the Court shall retain exclusive jurisdiction to fully oversee, supervise, modify and enforce the terms of the Consent Decree, the current and updated Implementation Plan and this Cost Neutral Plan. Pursuant to Section XII.D of the Consent Decree, the Parties, jointly or separately, may request termination of the monitoring process described in Section XIII of the Consent Decree, the Consent Decree, the updated Implementation Plan and this Cost Neutral Plan at any time after December 31, 2019, if the Monitor agrees that Defendants have substantially complied with the terms of the Consent Decree, the Implementation Plan and this Cost Neutral Plan. Defendants shall notify Class Counsel in writing if they intend to seek termination of the Consent Decree (Termination Request). Class Counsel shall have 120 days from receipt of the Termination Request to conduct reasonable discovery concerning issues relevant to the determination of compliance. If Class Counsel oppose the Termination Request, Class Counsel may file a response within 120 days from the date of receipt of all information reasonably requested from Defendants in the conduct of discovery. The Court may grant Defendants' Termination Request if the Court finds that Defendants have substantially complied with the terms of the Consent Decree, and the Court determines that Defendants have implemented and are

maintaining a system that complies with the Consent Decree, the Implementation Plan and this Cost Neutral Plan. The Consent Decree, the Implementation Plan and this Cost Neutral Plan shall remain in effect, and the Court shall retain its jurisdiction over the Consent Decree, the Implementation Plan and this Cost Neutral Plan, until a final order is entered granting a Termination Request and all appellate rights have been exhausted.

SO ORDERED THIS 16th DAY OF NOV, 2016.


United States District Judge

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