

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

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

UPDATED COST NEUTRAL PLAN

This matter came on for hearing before the court on a status hearing March 8, 2018.

Being fully advised, the court hereby amends and restates the 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.

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

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 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, on December 1, 2015, and on November 16, 2016. As required by the amended Consent Decree, the Parties meet regularly in attempts to agree on ways and manners to comply with the Amended Consent Decree. 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. 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 1500 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 April 15, 2018, Defendants shall create a list of all Class Members living in Nursing Facilities as of December 31, 2017, and Defendants shall continue to update that list at least annually while the Consent Decree, as amended and supplemented, and this Updated Cost Neutral Plan are 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 April 22, 2018, Defendants shall create a Transition Activity Schedule (Schedule), including Class Members on the April 15, 2018 Master Class Member List, that includes Class Members who do not oppose moving to a Community-Based Setting. The initial Schedule shall include at least 300 Class Members (excluding Class Members not yet transitioned but who are in the housing queue on March 1, 2018). 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 F below.

D. Evaluations. Defendants shall complete at least 1,000 Evaluations of Class Members on the Schedule between March 1 and 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 1,000 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 June 30, 2018, 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 300 additional Class Members to appropriate Community-Based Settings between January 1 and June 30, 2018 (second half of FY2018), 400 additional Class Members by December 31, 2018 (first half of FY2019), an additional 450 Class Members by June 30, 2019 (second half of FY2019), and an additional 450 Class Members by December 31, 2019 (first half of FY2020). During the fourth quarter of calendar 2018, the Parties and the Monitor shall discuss the proposals made by the consultant and the Court Monitor pursuant to paragraph I. Benchmarks for transitions for the remainder of FY2020 and FY2021 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, 2020, 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 2021, 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 April 30, 2018, Defendants shall send to Class Counsel and the Court Monitor a proposed, updated Phase 4 Implementation Plan that will include detailed plans and programs to achieve compliance with this Cost Neutral Plan and the Consent Decree. The Phase 4 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 Phase 4 Implementation Plan. The provisions of the Consent Decree regarding review and approval of proposed Implementation Plan updates remain in effect. The Phase 4 Implementation Plan shall be finalized by the Parties and the Monitor and filed with the Court by June 30, 2018, or, if the Parties are unable to agree on an Implementation Plan, the Parties shall submit their proposed Implementation Plans to the Court no later than July 13, 2018.

I. Community Capacity-Building. In respectful reliance on the reports issued by the consultant in April 2017 and the Court Monitor in May 2017, the Phase 4 Implementation Plan shall include detailed and precise steps and plans to address barriers to development of Community Capacity and to expand substantially Community Capacity in order to transition Class Members as required by the Consent Decree and this Updated Cost Neutral Plan.

J. Future Actions. All provisions of the Consent Decree and the current Implementation Plan not specifically changed or modified by this Updated Cost Neutral Plan shall remain in full force and effect. The Parties and the Court Monitor 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 Updated Cost Neutral Plan at any time after December 31, 2021, 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.

A handwritten signature in black ink, reading "Joan H. Lefkow". The signature is fluid and cursive, with a long horizontal stroke at the end.

Date: April 5, 2018

U.S. District Judge Joan H. Lefkow