

NASDDDS Litigation Updates

July-December 2009

The following articles published in *State News Briefs (SNB)* (formerly called *Beyond the Beltway [BYB]*) and *Community Services Reporter (CSR)* summarize notable litigation cases concerning individuals with developmental disabilities throughout the country. Source citations for *SNB/BYB* or *CSR* are included at the end of each entry. For more information and/or to subscribe to *CSR*, click [here](#). Subscription form is at the bottom of the page. Updates are organized by the following categories and then by state:

1. Access to Services

- A.** Lawsuits challenging state policies that prevent people with disabilities from promptly obtaining Medicaid home and community services. Some of these lawsuits may concern people with developmental disabilities who are on waiting lists for services.
- B.** Lawsuits challenging policies that prevent people with disabilities from promptly obtaining services. Some of these lawsuits concern people with autism whose insurance companies have refused to pay for necessary autism services.

2. Community Placement of Institutionalized Persons

Lawsuits principally (but not exclusively) being brought by persons served in publicly operated institutions who want supports so they can live in community-based settings.

3. Limitations on Home and Community-based Services

Lawsuits challenging state policies that affect the scope and quality of Medicaid services in the community. Some lawsuits concern the adequacy of state payments for community services. Others challenge state restrictions on access to Medicaid benefits.

4. Institutional Reform / CRIPA

Lawsuits stemming from inadequate or unsafe conditions and services in institutions and/or lawsuits stemming from the Department of Justice implementation of the Civil Rights for Institutionalized Persons Act (CRIPA);

5. Death penalty exemption / determination of Intellectual Disability to be exempt

Lawsuits pertaining to states' definitions and determination of "mental retardation" and related issues to the 2002 U.S. Supreme Court ruling that executions of individuals with mental retardation is "cruel and unusual punishment" and therefore illegal. However, the Supreme Court did not define "mental retardation," leaving individual states to make that determination in order to discern if someone convicted of committing a capital crime is exempt from capital punishment.

6. Miscellaneous

Lawsuits that do not fit into any of the above categories.

LITIGATION UPDATES

1. ACCESS TO SERVICES

CALIFORNIA

Group Sues State Agency to Cover Autism Services

A Consumer Watchdog group in Santa Monica, California filed a lawsuit June 30 against the California Department of Managed Health Care for allowing insurance companies to refuse payment for applied behavioral analysis (ABA) to children with autism, the [Sacramento Business Journal](#) reported. **State News Briefs (SNB)** July 15, 2009 / August **CSR**

MICHIGAN

Autism Class Action Suit Reaches Settlement

A class action lawsuit brought against Blue Cross Blue Shield, by families of children with autism over reimbursement for screening and treatment has reached a \$1 million settlement, [The National Law Journal](#) reported June 23.

The suit, filed by the family of an autistic child, alleged that Blue Cross failed to acknowledge the scientific validity of a treatment called applied behavioral analysis (ABA), the report said. "The complaint also said Blue Cross treated ABA as experimental, which was arbitrary, among other things, and contradicted years of science that backs up its validity" (see **BYB** March 26 / April **CSR**). **SNB** July 15 / August **CSR**

2. COMMUNITY PLACEMENT OF INSTITUTIONALIZED PERSONS

ILLINOIS

Judge Rejects Consent Decree

Judge James F. Holderman rejected a proposed consent decree and vacated class certification July 7 in the **Ligas v. Maram** suit. Nine residents of privately run ICFs/DD originally filed the class action lawsuit against the Illinois Department of Healthcare and Family Services in 2005, claiming the state agency violated the Americans with Disabilities Act and other federal laws by confining them in institutional facilities when they preferred to live in community settings (see **BYB** November 26, 2008 / December 2008 **CSR**).

However, on July 1, the attached court document says, "the court held a hearing to determine the fairness, adequacy and reasonableness of the Proposed Consent Decree and to consider any objections by class members to the Decree. In preparation for the hearing, class members submitted more than 2,500 written objections to the Proposed Consent Decree. Approximately 240 people attended the fairness hearing, and thirty-four individual class members or their legal guardians spoke at the hearing. Many more objectors were represented at the hearing by counsel. A common theme among the objectors was the concern that many developmentally disabled individuals, who are

within the class definition, would be adversely affected by provisions of the Proposed Consent Decree even though the individual neither met the Olmstead criteria nor desired placement in a community-based setting.” **SNB** July 15 / August **CSR**

VIRGINIA

Federal Judge Dismisses Suit

Judge Robert E. Payne dismissed the *Arc of Virginia v. Kaine* lawsuit December 17. ARC of Virginia filed the lawsuit October 27 asking the court to stop the Commonwealth from building a new 75-bed facility for Virginians with intellectual disabilities (See **SNB** December 16 / **CSR** January 2010, and [VA Arc v Kaine dismissed Judge Payne Memo Opinion.pdf.](#))

“[It] is distantly possible that the Defendants will build a new facility and individuals will not be placed there because they do not need or desire institutional care under Olmstead,” Judge Payne said. “The record, however, indicates that more current [Southeastern Virginia Training Center] residents desire to reside in the replacement facility than there will be space for once the facility is completed....It is also important to note that Virginia plans to design the facility so that it can be converted readily to alternate uses as needed.” **SNB** December 30 / January 2010 **CSR**

3. LIMITATIONS ON HOME AND COMMUNITY-BASED SERVICES

CALIFORNIA

Judge Upholds Decision to Block State’s Cut to Medicaid Providers

The US 9th Circuit Court of Appeals in San Francisco issued its decision July 9 that upheld a lower federal court’s order last year that blocked the Schwarzenegger Administration from implementing a 10% reduction to most Medi-Cal providers,” reported Marty Omoto in a recent [CDCAN Report](#). “The 9th Circuit Court also overruled that same lower federal court and ordered the State to pay back to most Medi-Cal providers retroactively, the 10% which was deducted from their reimbursements last year before the federal district court order blocked that cut.”

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ILLINOIS

Budget Cuts Lawsuit Filed

[Equip for Equality](#) filed a lawsuit against the state June 30 for funding cuts that would eliminate services to 30,000 individuals with developmental disabilities and 57,800 individuals needing mental health services.

“On or about May 31, 2009,” the attached complaint reads, “the Illinois General Assembly passed a bill, which appropriated approximately 50% of the funds requested by the Governor of Illinois for [the Department of Human Services (DHS) and other

agencies]. This resulted in these state agencies reducing their services to be provided in fiscal year 2010 (commencing July 1, 2009) by approximately 50%.

“On or about June 15, 2009, DHS announced that it would cut or eliminate funding for a variety of programs, including eliminating programs for people with developmental disabilities and reducing funding for community mental health programs....

“On or about June 11, 2009, the head of DHS Division of Developmental Disabilities issued a memorandum to providers funded through the Division of Developmental Disabilities announcing the elimination of funding for certain programs provided by the Division of Developmental Disabilities effective June 30, 2009, including in-home respite care....

“Plaintiff’s constituents have been able to reside safely in the community with the assistance of community based services some of which are operated pursuant to federally approved Medicaid Home and Community Based Waivers....If the proposed reductions in services are implemented, these individuals will suffer great harm, and will be at risk of being forced into institutions to obtain care.”.

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NORTH CAROLINA

U.S. DOJ Files Brief in NC Case

In its ongoing commitment to enforce the Supreme Court decision in *Olmstead v. L.C.* that mandates eliminating unnecessary segregation of persons with disabilities, the U.S. Department of Justice [filed a brief December 23](#) as a friend of the court for *Marlo M. v. Cansle* in the Eastern District of North Carolina, a [DOJ announcement](#) said.

The government’s brief supports two individuals with dual diagnosis—having a developmental disability and mental illness, who are seeking to block the state of North Carolina from making major reductions in community-based services they receive.

Disability Rights North Carolina (DRNC) filed the suit against the North Carolina Department of Health and Human Services and the Beacon Center December 11 on behalf of the two clients who were notified that a large measure of the state-funded services that permit them to live in the community was being terminated. (See **SNB** December 16 / January 2010 **CSR**.)

The plaintiffs have successfully resided in the community for years. Cuts to the services provided by the state would put them and other individuals with disabilities at imminent risk of being placed in an institutional setting. The lawsuit alleges that the move to institutional placements will increase costs to the state.

"By supporting the plaintiffs in this case, we seek to ensure that the civil rights of individuals with mental illness and developmental disabilities in North Carolina are protected," said Assistant Attorney General for the Civil Rights Division Thomas E.

Perez. "North Carolina has provided critical services to disabled individuals with significant needs, allowing them to fully participate in their communities. Now cuts to these services threaten to take this away at a cost to the plaintiffs and the state. "

Click [here](#) to read the brief. **SNB** December 30 / January 2010 **CSR**

4. INSTITUTIONAL REFORM / CRIPA

CONNECTICUT

U.S. District Judge Signs Joint Motion to Dismiss Connecticut Training School Case

United States District Judge Ellen Bree Burns signed an "Order Granting Joint Motion to Dismiss" the case of ***United States of America v. State of Connecticut*** on October 30, a [Department of Developmental Services announcement](#) said. The case ((Civ. No. N-86-252 [EBB]).involved the Southbury Training School (STS), a large residential facility for individuals with developmental disabilities.

The United States Department of Justice (USDOJ) and the Connecticut Attorney General's Office filed a Joint Motion October 29 to dismiss the case which began in 1984 and focused on improving programs, services and conditions at STS. Over the years, there has been a Consent Decree (1986), a Special Master appointed and Remedial Plan ordered by Judge Burns.

In 2006, after substantial progress was noted, the State was released from active judicial oversight. Since 2006, the USDOJ has monitored STS. Both parties are now in agreement that the State has fully and faithfully met its obligations and requested that the Court dismiss the Consent Decree.

"This action is a testament to the dedication and tireless efforts of many over the last 25 years to assure that the individuals who call STS their home have excellent services, supports and opportunities to lead a meaningful life," said Department of Developmental Services (DDS) Commissioner Peter H. O'Meara.

On March 24, 2006, Judge Burns issued an order purging the state from a 1996 contempt ruling ending active judicial oversight. In her ruling Judge Burns said,

"The level of commitment and cooperation through the years has resulted in today's motion," said O'Meara. "We are committed to sustain the progress and maintain our efforts to provide quality services." **SNB** November 18, 2009 / December **CSR**

MINNESOTA

Restraints Lawsuit Filed

Parents of a boy with autism filed a class action lawsuit against a state-run mental health center, [Courthouse News Service](#) reported July 15.

“James and Lorie Jensen say their [son] was restrained with handcuffs and leg hobbles at least 70 times during his stay,” the article says, “Another patient was restrained 299 times in one year....”

A state ombudsman report, [Just Plain Wrong](#), the article cited, found that the Cambridge, Minnesota center had restrained 63% percent of its patients "most of them multiple times." **SNB** July 15 / August **CSR**

5. DEATH PENALTY EXEMPTION / DETERMINATION OF INTELLECTUAL DISABILITY TO BE EXEMPT

6. MISCELLANEOUS

CALIFORNIA

Judge Orders Calif. to Halt Wage Cut for Home-Care Workers

U.S. District Court Judge Claudia Wilken ordered the State of California July 13 to halt a proposed \$2 cut in wages for the state’s nearly half a million home-care workers.

“State Defendants,” she said in [the order](#), “shall, by the close of business on July 14, 2009, rescind the State’s approval of all county rate reduction requests....The State shall notify each affected county of these action [sic], using a method designed to ensure that the notification is received on July 14.”

For more information about this case, see the [California Disability Community Action Network](#) website. A related editorial in the [New York Times](#) July 8 decries that change is too slow in providing a fair wage to caregivers, “the most underpaid and overworked in the labor force.” **SNB** July 15/ August **CSR**