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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

UNITED STATES OF AMERICA

Plaintiff

v.

COMMONWEALTH OF PUERTO RICO, et. al.

Defendants

CIVIL NO. 99-1435 (GAG)

TRANSITION ORDER

This is a civil action filed by the United States of America pursuant to the Civil Rights of Institutionalized Persons Act of 1980 (CRIPA), 42 U.S.C. § 1907, against the Commonwealth of Puerto Rico and its officers seeking that the Commonwealth defendants provide to persons with mental retardation and other developmental disabilities in their case and custody, the rights, privileges and immunities of the United States Constitution and relevant federal statutes. See Olmstead v. L.C., 527 U.S. 581 (1999).

The Commonwealth defendants have entered and/or adopted various agreements and compliance plans to meet their legal obligations. On April 30, 1999, the Commonwealth entered into an Interim Settlement Agreement (ISA) between the parties (Docket No. 2). Thereafter, on April 17, 2000, the Commonwealth adopted the Supplemental Interim Settlement Agreement (SISA) that provided for the designation of a Joint Compliance Coordinator (JCC), Dr. John J. McGee (Docket No. 15). On April 23, 2001, the Commonwealth submitted a comprehensive Community Based Service Plan (CBSP), to guide its effort in achieving compliance with Olmstead. Said Plan received the endorsement of the United States and was approved by this Court on October 9, 2001 (Docket Nos. 99 and 105).

As a result of these agreements and the CBSP, the Commonwealth has to this date opened fifty five (55) community homes and eight (8) developmental centers, and has equally engaged a significant number of support and direct personnel that are essential to the services being provided by to the plaintiff participants in this case by the Commonwealth defendants.

1 **CIVIL NO. 99-1435 (GAG)**

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3 The Court takes judicial notice that on November 4, 2008, a general election was held in the
4 Commonwealth of Puerto Rico that produced a change in the executive branch of government. As
5 a result, there will be a new administration, and a new cast of Commonwealth defendants, taking
6 office on or after January 2, 2009. As informed by the parties during the last status conference held
7 on December 8, 2008, there are a number of direct and support contract personnel, whose contracts
8 will expire on December 21, 2008, by operation of state law, and not for lack of funds. These
9 positions are fully budgeted until June 30, 2009, with state funds earmarked for this litigation.

10 At the December 8, 2008 status hearing, the Court expressed its concern regarding the
11 potential impact the upcoming government administration change may have on the ongoing and
12 future operations of the Commonwealth's Mental Retardation Program ("MRP") and other pertinent
13 Commonwealth agencies, and on the services provided to participants in this case through them.
14 The Court wants to ensure the continuity of the protections, supports, and services provided to
15 participants, that they are not interrupted or diminished, and that any progress and momentum
16 toward meeting participants' needs under Olmstead will not be lost. The Court expressed similar
17 concerns prior to the last gubernatorial administration change in 2004. See Court Minutes of
18 Proceedings, June 10, 2004, at 2. (Docket No. 336).

19 In the autumn of 2004, pursuant to the direction from the Court, the parties jointly
20 collaborated to finalize a work plan that set forth plans and/or action steps that needed to be
21 undertaken and/or maintained so as to ensure the continuity of protections, supports, and services
22 to participants. The Commonwealth filed this work plan with the Court. See Motion Submitting
23 Proposed Work Plan (Docket No. 398), Dec. 13, 2004. Several days later, the United States filed
24 papers supporting the work plan. See United States' Statement in Support of the Continuity Work
25 Plan (Docket No. 401), Dec. 17, 2004.

26 Consistent with the language of this earlier initiative, the Court similarly directs the
27 Commonwealth to keep participants safe and to fully comply with all existing Court Orders in this
28 case, including the Interim Settlement Agreement ("ISA"), the Supplemental Interim Settlement
29 Agreement ("SISA"), and the Community-Based Service Plan ("CBSP"). More specifically, the

1 CIVIL NO. 99-1435 (GAG)

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2 Commonwealth shall:

- 3 - Provide participants with adequate and appropriate habilitation and
4 training services in integrated community settings according to the
individualized needs of each participant;
- 5 - Continue important ongoing efforts to find employment and/or
6 vocational opportunities for qualified participants, and maintain
7 employment and vocational opportunities for those participants that
8 qualify;
- 9 - Provide necessary habilitation, training, protections, supports, and
10 services to participants at the community-based Developmental
11 Centers;
- 12 - Ensure that participants transitioned to community settings have a
"reliable means of transportation" in order to get to health care and
13 other appointments, and to participate in community life,
- 14 - Develop and implement needed supports and services for those
15 participants that need communication assistance;
- 16 - Ensure that participants with a mental illness receive adequate and
17 appropriate psychiatric services;
- 18 - Ensure that all participants are provided with adequate and
19 appropriate health care services to meet the individualized needs of
20 each participant;
- 21 - Pay providers on time each month for legitimate invoices, and
22 maintain the MRP's provider payment tracking, reporting, and
23 follow-up system;
- 24 - Maintain the system of integrated community homes and day
25 programs to ensure that the participants are placed and served in the
26 most integrated setting;
- 27 - Ensure that all incidents are recorded promptly and fully and ensure
28 that appropriate serious incidents are investigated thoroughly;
- Ensure that appropriate remedial measures are developed and
implemented in response to incidents and investigations;
- Maintain and enhance the MRP's quality assurance system to track
and follow-up on participants and their ongoing needs;
- Emphasize the need to comply with the restraint, seclusion, and time-
out provisions in the CBSP;
- Maintain service mediators for all participants;
- Ensure that service mediators identify unmet needs and develop,
implement, and oversee remedial measures based on participant

1 CIVIL NO. 99-1435 (GAG)

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2 needs;

- 3 - Identify ways to make daily activities, habilitation, training, and
4 programming services meaningful for participants;
- 5 - Keep the funds in the Court Registry replenished so as to enable
6 prompt payments to the Joint Compliance Coordinator after the
7 submission of acceptable invoices;
- 8 - Explore how to develop and implement measures to meet the
9 requirements contained within the CBSP's "Family Support
10 Program", including the family subsidy program and the respite care
11 program;
- 12 - Explore how to establish a self-advocacy program for participants
13 and an independent guardianship office to ensure that participants are
14 participating in a meaningful way with regard to important life
15 decisions;
- 16 - Work with the JCC to develop and implement a compliance action
17 plan for outstanding areas; and
- 18 - Work with "J.C." to develop and implement a short-term safety plan
19 for this participant.

20 The Court also has a strong interest in ensuring that the continuity and integrity of the
21 protections, supports, and services provided to participants not be compromised by the termination
22 of essential personnel. Pursuant to local law, when there is a change in gubernatorial
23 administrations, Commonwealth contracts automatically terminate at the end of the calendar year
24 before the inauguration of the new Governor - in this case, on December 31, 2008. The Court
25 understands that this will impact certain contractors who provide essential protections, supports, and
26 services to participants as required by existing Court Orders in this federal case. Given the
27 Commonwealth Health Department's earmarked budget for this case (in excess of \$40,000,000.00)
28 the Court further understands that there should be sufficient funds to pay these contractors through
the end of the current fiscal year, which ends on June 30, 2009.

Given the essential function of these contractors, the Court hereby **ORDERS** the
Commonwealth Health Department to retain the services of all contract employees within the
Mental Retardation Program until further order of the Court. At the same time, the Court
also **ORDERS** the Commonwealth Health Department as of this moment not to hire any

1 CIVIL NO. 99-1435 (GAG) 5

2 employees (contract or otherwise) for the Mental Retardation Program until the new
3 administration is sworn-in. Specifically, the Court notes that there are twenty four (24) job
4 coach positions which need to be filled and are essential to continued success of the program.

5 The Directives set forth in this order should not be interpreted as creating any vested interest
6 for the incumbents in any of the positions within the Mental Retardation Program. To the contrary,
7 the Court recognizes that the incoming administration must be allowed to exercise its widest
8 discretion, so long as the needs and services to the program participants are duly met under
9 Olmstead.

10 Upon motion by the Commonwealth, filed after January 2, 2009, the Court will consider any
11 request to modify, amend or vacate any of the directives contained in this order.

12 The Secretary of Health, the Honorable John V. Rullán, is hereby ORDERED to
13 deliver copy of this order to the members of the transition committee for the incoming
14 administration during the Health Department transition meeting.

15 SO ORDERED.

16 In San Juan, Puerto Rico this 10th day of December, 2008.

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18 *S/Gustavo A. Gelpi*
19 GUSTAVO A. GELPI
20 United States District Judge
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