

BLUE RIBBON COMMISSION

SEPTEMBER 5, 2012

PRESENTATION ON THE AMERICANS WITH DISABILITIES ACT (ADA), THE *OLMSTEAD* DECISION AND AN OVERVIEW OF THE US DOJ SETTLEMENT AGREEMENT

- I. Background and Context of Several of Today's DHHS Presentations - Three Very Separate Issues
 1. IMD (Institutions for Mental Disease)

Issue: CMS concerns that some adult care homes may have so many residents with mental health that the character of the institution may have changed their federal status to an IMD. CMS generally does not pay for disabled adults living in IMDs. Another DHHS presenter will explain this issue more fully and give the current status.
 2. PCS (Personal Care Services)

Issue: CMS requires that Medicaid services be comparable in all settings. CMS contended that the way NC operated its PCS service was not comparable. Similarly, a recently filed lawsuit contended the same. The General Assembly addressed the issue by setting new eligibility criteria that apply equally to all individuals. Another DHHS presenter will explain this issue more fully and give the current status.
 3. US DOJ's Concerns and the Recent NC Settlement Agreement.
- II. Relevant Law and History of the NC Settlement Agreement
 - A. Requirements of The Americans with Disabilities Act of 1990 (ADA) and Olmstead
 1. ADA
 2. Olmstead Decision
 - B. US DOJ's Investigation and Findings Letter
- III. NC Settlement Agreement and Its Requirements for the State of NC
 - A. It is an agreement – not a court order or a consent decree.

1. Private Agreement

Parties have filed a joint dismissal that requests the Court to dismiss the federal lawsuit and to place case on inactive docket.

No Court involvement unless Federal Government can prove State has failed to achieve substantial compliance.

2. Reviewer

Mechanism for federal government to review the progress is through reports filed by an independent reviewer. Reviewer is a person mutually selected by the parties and who will be under contract with NC to perform a baseline evaluation and annual evaluations thereafter.

3. Distinction between this settlement and the Willie M. and Thomas S cases.

B. Requirements of NC Settlement Agreement

1. Services

- a. In reach
- b. Diversion
- c. Transition Planning
- d. Supported Housing Slots (Rental assistance and transition supports) (3000 over 8 years)
- e. ACTT fidelity (Assertive Community Treatment Team)
- f. Supported Employment
- g. Quality Assurance and Performance Improvement

2. Housing Requirements

- a. Numbers (by year)
- b. Characteristics
- c. Priorities