

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

PEOPLE FIRST OF TENNESSEE,)	
ET AL.)	
)	NO. 3:01-0272
v.)	JUDGE ECHOLS
)	
C. WARREN NEEL, ET AL.)	

SETTLEMENT AGREEMENT

1. Scope of Settlement

This Agreement is entered into by all defendants, including the Tennessee Department of Finance and Administration and the Commissioner of the Tennessee Department of Finance and Administration (“defendants”) and all plaintiffs, including People First of Tennessee and all individual plaintiffs (“plaintiffs”). The plaintiffs filed this action on their own behalf and on behalf of all other persons similarly situated asserting violations of Medicaid and other federal statutes the defendants’ alleged failure to provide Medicaid services with reasonable promptness to eligible individuals with mental retardation and developmental disabilities. The plaintiffs filed a motion for class certification, and defendants filed a motion for summary judgment. All parties then filed responsive pleadings, and ultimately the court certified a sub-class to include:

All mentally retarded individuals who are eligible for Medicaid waiver services and might apply for Medicaid waiver services but have not because of inadequate information about the program and/or being discouraged from applying or going through the pre-admission evaluation process.

This agreement is intended to resolve all issues in dispute in this action with respect to that certified sub-class.

II. Preamble and Guiding Principles

The parties enter into this Agreement recognizing that their overriding common interest is in assuring that Tennessee's citizens with mental retardation are provided reasonable opportunities to grow and develop, exercise independence, and lead full and productive lives in a safe environment. The parties also recognize the critical role of families in supporting individuals with mental retardation and want to support families by providing individuals with mental retardation at least a moderate level of services to supplement other natural supports and help reduce the need for crisis-driven, more intensive long-term care services. The system of delivering these services should promote consumer and family choice of available services.

In a separate action, Brown v. Tennessee Department of Finance and Administration (the "Brown" case), the state has agreed to measures intended to substantially reduce the waiting list for services by providing for: (1) the development of the mental retardation system infrastructure and provider network capacity necessary to support the expansion of quality home and community based waiver services; (2) access to interim services for Medicaid-eligible individuals seeking services; and (3) an appropriate planning process for the future expansion and/or development of home and community based waiver programs and services for Medicaid-eligible persons with mental retardation on the DMRS waiting list.

This settlement agreement does not encompass those measures. Rather, the aim of this agreement is to assure that all Tennessee citizens who might be eligible for waiver services are given a reasonable opportunity to learn of the availability of waiver services and to apply for them.

III. Definitions and Terms

A. "Plaintiffs" means the members of the Sub-Class certified under Rule 23, Federal Rules of Civil Procedure, by Order of this Court:

All mentally retarded individuals who are eligible for Medicaid waiver services and might apply for Medicaid waiver services but have not because of inadequate information about the program and/or being

discouraged from applying or going through the pre-admission evaluation process.

B. “State Defendants” means the State of Tennessee and the other named defendants: Tennessee Department of Finance and Administration and Dave Goetz, Commissioner of the Department of Finance and Administration (as successor to former Commissioner Warren Neel).

C. “Individual” means a person with mental retardation eligible for ICF/MR level of care.

D. “Guardian” means the legal guardian of an individual under the age of 18 or the conservator of an individual 18 or over. The term “guardian” and “conservator” may be used interchangeably.

E. “Waiting List” refers to the list maintained by the Division of Mental Retardation Services (DMRS) that includes individuals determined to be eligible for and seeking services under the ICF/MR program pursuant to 42 U.S.C. §1396a or a Home and Community Based Services waiver for the Mentally Retarded and Developmentally Disabled pursuant to 42 U.S.C. §1396n.

IV. Remedial Provisions

A. Defendants shall immediately undertake and maintain consistently thereafter an ongoing public information campaign to inform the public by newspaper, public information announcements, the Internet (TennCare and DMRS website), pamphlets and through partnerships with state advocacy agencies. In addition, Defendants will hold annual regional meetings for families and individuals who might be eligible for waiver services. Defendants will issue public notices for these meetings. The purpose of this public information campaign will be to provide information to Tennessee citizens who might be Medicaid-eligible regarding the various waiver programs available, including the existing Home and Community Based Services waiver, the proposed Self-Determination waiver, and any other waivers subsequently approved by the Centers for Medicaid and Medicare Services (CMS). Information will include services

available under these waivers, the benefits and importance of accessing and using waiver services, and how to apply for services under these waivers.

B. Defendants shall use notices, brochures and educational materials that use clear and non-technical terms to provide a combination of written and oral information so that the program is clearly and easily understandable. Defendants will furnish plaintiffs' counsel with copies of all notices, brochures or educational materials developed by defendants to notify sub-class members of their right to apply for medicaid waiver services.

C. Defendants also agree to solicit information regarding the number of individuals who are or may be mentally retarded individuals who are eligible for Medicaid waiver services and are not receiving such services. As sources of information for this statistical information, Defendants shall seek and compile information from Local Education Agencies, the Department of Health, the Department of Children's Services, public and private mental health hospitals, the Bureau of TennCare and the Division of Mental Retardation Services (DMRS). This information will be compiled on an annual basis through fiscal year 2005-06.

D. In the compilation of this statistical information regarding potentially Medicaid-eligible individuals not receiving services, Defendants shall distribute in writing and on the Internet a definition of persons who are eligible so the polled agencies may check their records. In addition, Defendants will, on an ongoing basis, provide the polled agencies with information regarding services available through DMRS and application forms for services. This information will also include a centralized phone number, e-mail address and fax number where any interested person may contact DMRS to obtain an application or additional information. Defendants will request the return of the statistical information from the polled agencies within sixty days.

E. Defendants will compile a report regarding the statistical information provided by the polled agencies as provided in paragraph IV.D. This report will be provided to the plaintiffs. Defendants shall compile statistical information quarterly identifying the number of potentially Medicaid-eligible individuals in each county and the number of applications for services

received by DMRS. Defendants agree to modify and/or intensify outreach efforts for specific counties if warranted by the quarterly reports.

F. Defendants shall remove the language in the Interagency Agreement, Section E.1, page 23, which provides that “It [DMRS] does not provide special education or related services as described in IDEA Part B.” DMRS will immediately notify the other agencies included in the Interagency Agreement that this sentence should be deleted. In addition, this sentence shall not be included in the next Interagency Agreement signed by DMRS.

V. Monitoring and Enforcement

Monitoring of this agreement shall be accomplished and carried out by plaintiffs' counsel in the companion case of *Brown v. Tennessee Department of Finance and Administration*, (Case No. 3:00-0665, M.D. Tenn., Judge Echols) pursuant to the monitoring provisions of that case. Defendants agree and confirm that they will not assert any defenses of lack of standing or similar jurisdictional defenses in opposition to these monitoring activities of *Brown* plaintiff's counsel or any resulting enforcement action.

VI. Attorney Fees, Expenses and Costs.

The parties agree that the plaintiffs are prevailing and successful parties for the purposes of an award of attorney fees under 42 U.S.C. §1988 for legal services rendered by their counsel in connection with these proceedings. The parties do not agree, however, on the degree of success obtained by plaintiffs and their counsel. As such, plaintiffs' may seek to recover their reasonable attorneys fees and costs incurred in connection with this litigation, but state defendants reserve their right to object to all or any part of plaintiffs' fee request on any basis. In the event that the parties cannot agree to the amount of reasonable attorney fees, expenses and costs, as defined above, plaintiffs shall file a fee application with the court within ninety (90) days of the effective date of this Agreement.

VII. Miscellaneous Provisions

A. The rights and obligations of this Agreement shall inure to the successors and assigns of the parties.

B. If any action beyond the control of the State, such as a change in State or federal law or action by a federal governmental agency, prohibits the State from performing a material provision of this Agreement, the remaining parts shall not be affected and shall remain in full force and effect.

C. This Agreement contains the entire agreement between the parties. The Agreement may not be modified except in writing.

XI. Term of Agreement

Upon approval of this Agreement, plaintiffs' action shall be dismissed with prejudice. The Court will retain jurisdiction for the purpose of resolving the issue of attorney fees and expenses.

Dated this _____ day of _____, 2003.

THIS SETTLEMENT IS HEREBY AGREED TO:

FOR THE PLAINTIFFS:

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