

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE**

Amanda D., et al., and)
others similarly situated,)
)
Plaintiffs,)
)
v.)
)
Margaret W. Hassan, Governor, et al.,)
)
Defendants.)
_____)
United States of America,)
)
Plaintiff-Intervenor,)
)
v.)
)
State of New Hampshire,)
)
Defendant.)
_____)

Civ. No. 1:12-cv-53-SM

**JOINT MOTION FOR PRELIMINARY APPROVAL OF
PROPOSED CLASS ACTION SETTLEMENT**

The Parties jointly move for preliminary approval of the Proposed Class Action Settlement Agreement, pursuant to Federal Rule of Civil Procedure 23(e) and Local Rule 23.1(b)(2). In support of this motion, the Parties state as follows:

1. On February 9, 2012, six individuals filed a class action Complaint on behalf of themselves and others similarly situated (collectively, “Plaintiffs”), in the United States District Court for the District of New Hampshire, alleging New Hampshire’s administration of its mental health system violates the rights of individuals with serious mental illness under the Americans with Disabilities Act, 42 U.S.C. §§ 12101 *et seq.*, the Rehabilitation Act, 29 U.S.C. §§ 794 *et seq.*, and the Nursing Home Reform Act (“NHRA”), 42 U.S.C. §§ 1396r *et seq.*

2. On March 27, 2012, the United States moved to intervene in the matter as Plaintiff-Intervenor, and on April 4, 2012, the Court granted its motion to intervene.

3. On September 17, 2013, the Court certified a class comprised of:

All persons with serious mental illness who are unnecessarily institutionalized in New Hampshire Hospital or Glencliff or who are at serious risk of unnecessary institutionalization in these facilities.¹

4. Over the past several months, the Parties have engaged in intensive negotiations in an effort to resolve this matter. The Parties have worked diligently to reach the comprehensive Proposed Class Action Settlement Agreement (the “Agreement”), submitted as Attachment A. This Agreement will expand and enhance the community-based mental health services available to eligible class members at New Hampshire Hospital and the Glencliff Home, as well as those class members living in the community. Summarized below are the central components of the Agreement.

- a. The State will add mobile crisis teams, available 24 hours per day, seven days per week, composed of clinicians trained to provide behavioral health emergency services and crisis intervention services to individuals experiencing a mental health crisis. The mobile crisis teams will be able to offer services and supports via telephone and, whenever necessary, consistent with legitimate safety concerns, meet face-to face in an individual’s home or other community setting.

Each mobile crisis team will have available to it at least four community crisis

¹ The Court found that “at risk of institutionalization” means persons who, within a two year period: (1) had multiple hospitalizations; (2) used crisis or emergency room services for psychiatric reasons; (3) had criminal justice involvement as a result of their mental illness; or (4) were unable to access needed community services. Although the Court did not certify the class to include claims brought under the NHRA, the proposed Settlement Agreement includes, by agreement of the Parties, claims brought by the Plaintiff Class under the NHRA. In the Joint Motion for Final Approval of the Proposed Settlement, the Parties will move that the Court modify its class certification order to include class claims brought pursuant to the NHRA.

apartment beds. Mobile crisis teams will be added over the next four years in three regions within the State.

- b. The State will expand and enhance Assertive Community Treatment (“ACT”) services. Specifically, ACT will be available 24 hours per day, seven days per week, and will deliver comprehensive, individualized, and flexible services, supports, treatment and rehabilitation in individuals’ homes or other natural settings in the community. ACT services will be customized to individuals’ needs and will include case management, initial and ongoing assessments, psychiatric services, assistance with employment and housing, family support and education, substance abuse services, and crisis services. By the end of the term of the Settlement Agreement, the State will have ACT service capacity to accommodate at least 1,500 individuals at any given time.
- c. The State will expand its supported housing available to individuals with serious mental illness. All new supported housing will be integrated, scattered-site, permanent housing with tenancy rights, and will be coupled with on-going mental health and tenancy support services provided by ACT, case management and/or a housing specialist. Over the next four years, the State will develop and maintain 450 supported housing units, apply for funding for an additional 150 units through federal programs, and add, if necessary, additional supported housing in accordance with negotiated parameters designed to minimize time spent on a waitlist.
- d. Subject to a negotiated budget cap, the State will identify and develop community settings for 16 individuals with mental illness and complex health

care needs who cannot be served cost-effectively in supported housing; these settings may include enhanced family care, supported roommate, or other non-congregate community residences. Within two years, if the State is unable to develop the capacity to serve at least four individuals with serious mental illness and complex healthcare needs, the State will reallocate the General Fund share of the funding for these settings to fund additional supported housing, supported employment, mobile crisis services, and/or ACT services.

- e. The State will develop and implement measures to provide and expand supported employment services, in accordance with the Dartmouth evidence-based model, to allow the opportunity for individuals to work the maximum number of hours in integrated community settings in accordance with their treatment plans. Services offered are to include, among other things, individually tailored job development, job customization, co-worker and peer supports, time management, workplace accommodations, assistive technology assistance, and on-the-job training. Over the next four years, supported employment services will be increased to a penetration rate of 18.6 percent of eligible individuals with serious mental illness.
- f. The State will maintain its system of family support services and ensure that peer support services are offered through peer support centers open a minimum of eight hours per day, five-and-a-half days per week, or the hourly equivalent thereof, in each mental health region in the State.
- g. The State will develop and implement a transition planning process for individuals with serious mental illness at New Hampshire Hospital and Glencliff

and create a central team to assist in addressing and overcoming any barriers to discharge identified during the transition planning process. The State will also design and implement a system for effective in-reach activities, engaging individuals in institutional settings to inform them about options for community living.

- h. The State will implement a quality assurance and performance improvement system to ensure that community services described in the Agreement are offered in accordance with the Agreement and are of good quality and are sufficient to provide reasonable opportunities to help individuals achieve increased independence, gain greater integration into the community, obtain and maintain stable housing, avoid harms, and decrease the incidence of hospital contacts and institutionalization.
- i. The State will conduct Quality Service Reviews (“QSR”) at least annually, collect and analyze data from the QSRs to identify strengths and areas for improvement in the service system, provide information for comprehensive planning and resource targeting, including whether additional community-based services are necessary, and develop and implement prompt and effective measures to ensure individuals have the opportunity to receive services in the most integrated setting.

5. The Agreement further provides that an independent Expert Reviewer will be jointly selected by the Parties to evaluate implementation of the Agreement, to assess compliance with its provisions, and to submit to the Parties a public report on the State’s implementation efforts and compliance at least twice a year. The Expert Reviewer may confer regularly and

informally with the Parties and convene meetings of the Parties. In addition, the Expert Reviewer will mediate disputes which may arise between the Parties.

6. The Agreement provides that the Court will retain jurisdiction over this action until the State has complied with all provisions of the Agreement and maintained compliance for a period of one year. The Agreement provides that the Court shall have the power to enforce the Agreement, and to issue further orders as needed to ensure compliance. This Agreement shall take full force and effect following an order of the Court and may not be modified without Court approval.

7. The Agreement also includes dispute resolution procedures, settlement of attorneys' fees and costs, and mechanisms for enforcing compliance if necessary.

8. The Agreement recognizes and acknowledges that the Defendants do not and cannot bind the New Hampshire General Court, which has the authority under the New Hampshire Constitution and New Hampshire statutes to appropriate funds for the State's mental health system and to pass laws concerning the State's mental health system. In the event the New Hampshire General Court fails to appropriate the requested funds and precludes the Defendants from substantially complying with one or more provisions of the Agreement, the Plaintiffs and/or the United States may withdraw their consent to the Agreement, and revive any claims otherwise barred by operation of the Agreement. Plaintiffs or the United States may move to enforce those provisions of the Agreement that have been adequately funded by the General Court, but with which the Defendants are nevertheless not in compliance.

9. The Parties have drafted a proposed Notice of Proposed Class Action Settlement, submitted as Attachment B, that incorporates the above description of the Agreement.

10. The Parties propose that the Notice of Proposed Class Action Settlement be posted: in each community mental health center (“CMHC”) in each region of the State; on each unit at New Hampshire Hospital and on each unit at the Glencliff Home; and on the New Hampshire Department of Health and Human Services, Bureau of Behavioral Health website. Copies of the Notice will be made available to individuals who request a copy at the CMHCs, the Bureau of Behavioral Health, the New Hampshire Hospital, the Glencliff Home, or from Plaintiffs’ Counsel. Copies of the Notice will also be provided by the State to the Peer Support Centers and to the New Hampshire Chapter of the National Alliance on Mental Illness (“NAMI”).

11. In accordance with Local Rule 23.1, the Parties propose the following schedule for notice and a fairness hearing. In order to comport with the Rule’s requirement that the Joint Motion for Final Approval be filed 30 days prior to the scheduled fairness hearing, while at the same time accommodating the Parties’ desire to move forward as expeditiously as possible to address this critical matter and to formally begin implementation of the Agreement, the Parties propose that the Joint Motion for Final Approval and the Proposed Order be filed 30 days prior to the fairness hearing, but that the memoranda in support be due approximately two weeks prior to the hearing to allow the Parties to address any comments or objections. The Parties propose the following schedule:

- a. January 3, 2014 - Hearing on the Joint Motion for Preliminary Approval of Proposed Class Action Settlement, if desired by the Court;
- b. January 6, 2014 - Notice of Proposed Class Action Settlement shall be posted and offered at the locations above; the Notice shall be posted and offered through January 31, 2014;

- c. January 17, 2014 – Due date for filing the Joint Motion for Final Approval of Proposed Class Action Settlement Agreement and Proposed Order;
- d. January 31, 2014 – Due date for filing any objections or comments to the Proposed Class Action Settlement Agreement;
- e. February 7, 2014 – Due date for filing any Memorandum in Support of Joint Motion for Final Approval of Proposed Class Action Settlement and Proposed Order;
- f. February 17, 2014 or first available date thereafter - Fairness Hearing will be held.

12. Consistent with the requirements set forth in Local Rule 23.1(b)(2), the Parties have drafted a Proposed Class Notice Order for the Court's approval, submitted as Attachment C.

13. No separate memorandum of law is filed in support of this motion as the requested relief has been agreed to by the Parties, and supporting authorities will be provided in memoranda supporting the Motion for Final Approval.

WHEREFORE the Parties respectfully request that the Court grant the Parties' Joint Motion for Preliminary Approval of Proposed Class Action Settlement, and approve the Proposed Class Notice Order.

Dated: December 19, 2013

FOR THE PLAINTIFFS:

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was filed electronically and served on all parties of record by operation of the Court's electronic filing system.

December 19, 2013

/s/ Amy Messer