

Amanda D., et al. v. Hassan, et al.; United States v. New Hampshire
Civil Action No. 1:12-cv-53-SM

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

I. Purpose

This notice is to inform you of a Proposed Class Action Settlement Agreement (“Settlement Agreement”), in the case of *Amanda D., et al. v. Hassan, et al.; United States v. New Hampshire*, Civ. No. 1:12-cv-53-SM. As a class member, you are entitled to notice and an opportunity to object to or comment upon the proposed Settlement Agreement. The Court has preliminarily approved the Settlement Agreement and scheduled a **hearing for February 12, 2014 at 2:00 p.m.**, to determine whether it is fair, reasonable, and in the best interests of the class.

II. Background

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, the Rehabilitation Act, and the Nursing Home Reform Act, by failing to provide individuals with sufficient community-based services to avoid unnecessary institutionalization at New Hampshire Hospital and the Glencliff Home.

In March, 2012, the United States moved to intervene in the matter as Plaintiff-Intervenor, and the Court granted this request in April, 2012.

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.

Individuals “at risk of institutionalization” are 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.

After several months of negotiations, the Parties have reached a comprehensive proposed Settlement Agreement. This Agreement will expand and enhance the community-based mental health services available to eligible class members at New Hampshire Hospital and Glencliff, as well as those living in the community.

III. Provisions of the Proposed Class Action Settlement Agreement

The Settlement Agreement expands and enhances community-based services for individuals with serious mental illness by enhancing and increasing the availability of crisis services, Assertive Community Treatment, supported housing, and supported employment. Specifically, this agreement will provide:

- A. *Mobile Crisis Services.* The State will develop and implement a mobile crisis system, 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 apartment beds. Mobile crisis teams will be implemented over the next four years in three regions within the State.
- B. *Assertive Community Treatment.* The State will expand and enhance Assertive Community Treatment ("ACT"). ACT services 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 community settings; including case management, initial and ongoing assessments, psychiatric services, assistance with employment and housing, family support and education, substance abuse services, and crisis services. Over the next four years the State will develop and implement ACT Teams with the capacity to serve at least 1,500 individuals at any given time.
- C. *Housing.* The State will expand its supported housing to individuals with serious mental illness. All new supported housing will be integrated, scattered-site housing 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 additional supported housing, if necessary, in accordance with negotiated parameters designed to minimize time spent on a waitlist. Within an agreed budget, the State will also identify and develop community settings for 16 individuals with serious 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.
- D. *Supported Employment.* Over the next four years, the State will provide opportunities for substantially more individuals to obtain supported employment services, increasing the percentage of individuals with serious mental illness receiving supported employment services from approximately 12% to 18.6%. The State will deliver 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 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. These employment services will include individualized assistance in identifying, obtaining and maintaining integrated, paid, competitive employment.

- E. *Family and Peer Supports.* 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.
- F. *Transition Planning.* The State will develop and implement a transition planning process for individuals with serious mental illness at New Hampshire Hospital and the Glencliff Home and create a central team to assist in addressing and overcoming any barriers to discharge identified during the transition planning process. The State will reach out to individuals in these settings to inform them about options for community living.
- G. *Quality Assurance, Performance Improvement and Quality Service Reviews.* The State will develop and implement a quality assurance and performance improvement system. The goal of the system to ensure that community services described in the Settlement 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. Quality Service Reviews (“QSR”) will be conducted at least annually, and data will be collected and analyzed to identify strengths and areas for improvement, and to develop and implement prompt and effective measures to utilize services and supports to ensure individuals have the opportunity to receive services in the most integrated setting.

The Settlement Agreement further provides that an independent Expert Reviewer will be assigned to evaluate and issue public reports on implementation of the Settlement Agreement. The Court will retain jurisdiction of this matter until compliance has been fully achieved. The State’s responsibilities under this Settlement Agreement are subject to funding by the Legislature. If the Legislature does not provide sufficient funding to implement the terms of this agreement, the agreement may become void and litigation may resume.

The Settlement Agreement includes attorneys’ fees and costs to be paid to the Disabilities Rights Center, Center for Public Representation, Judge David L. Bazelon Center for Mental Health Law, and Devine Millimet, for costs and fees associated with their representation of the Plaintiff Class and for future monitoring expenses.

IV. Approval Process

This notice is only a summary. You can read and obtain a copy of the full Proposed Settlement Agreement by contacting the Disabilities Rights Center, 18 Low Avenue, Concord, NH 03301; phone 1-800-834-1721. If you have questions, you can ask to speak with Attorneys Amy Messer, Adrienne Mallinson, or Aaron Ginsberg. Copies of the Proposed Settlement Agreement may also be obtained from any community mental health center or by contacting the Bureau of Behavioral Health, Office of Client and Legal Services at (603) 271-6991.

After reviewing the Parties' Proposed Settlement Agreement, the Court has **preliminarily** approved the Proposed Settlement Agreement and has scheduled a full hearing to determine whether it is fair, reasonable, and in the best interests of the class. The Proposed Settlement Agreement is still subject to the Court's **final** approval. Any class member who wants to object to or comment on this Agreement must file a written objection or comments by **January 31, 2014**, with the Clerk, U.S. District Court, 55 Pleasant Street, Concord, NH 03301. Copies of objections or comments also should be sent to:

Plaintiffs' Counsel: Amy Messer, Legal Director, Disabilities Rights Center, Inc.,
18 Low Avenue, Concord, NH 03301.

Counsel for the United States: Richard Farano, United States Department of
Justice, Civil Rights Division, Special Litigation Section, 950 Pennsylvania
Avenue, NW, Patrick Henry Building, Washington, DC 20530.

Defendants' Counsel: Anne M. Edwards, Associate Attorney General at 33
Capitol Street, Concord, NH 03301.

The Court has scheduled a fairness hearing for February 12, 2014 at 2:00 p.m., before Judge Steven J. McAuliffe. This hearing will be held at the United States District Court for the District of New Hampshire at 55 Pleasant Street, Concord, NH 03301. You are welcome to attend.