

**Advocacy, Inc's Suggested Amendments to the
State of Texas, Texas Department of Aging and Disability Services
("DADS"), & DOJ's Proposed Settlement Agreement**

Civil Rights/Guardianship Issue

Rationale: The DOJ Proposed Settlement Agreement (SA) raises concerns over protecting individuals from unnecessary guardianships or inappropriate guardians.

RECOMMENDATIONS:

- Public and volunteer guardians of state school residents must complete competency based training regarding the right to services in the most integrated setting.
- Family member guardians must be offered similar training.
- The court compliance monitor must identify individual and systemic problems in guardianship matters and include recommendations in written reports (e.g., interfering with the ward's progress or participation in programs in the community.)
- The least restrictive substitute or supported decision making and alternatives to guardianship must be implemented.
- Residents and staff must receive skill training regarding how to make choices and be supported in making choices in their daily lives and in using person directed planning to express their preferences and plan for their individual services.

Access to Most Integrated Setting in the Community and Discharge Planning

While the settlement does require that a discharge plan be developed and then reviewed with the individual, and as appropriate, the LAR, the settlement does not require including the individual in the placement efforts.

RECOMMENDATIONS:

Principal Requirement

- In accordance with Title II of the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12132, implementing regulation 28 C.F.R. § 35.130(d), and consistent with the State's promoting independence plan, the State shall ensure that each Texas State School resident is served in the most integrated setting appropriate to meet each person's individualized needs. To this end, the State shall actively pursue the appropriate discharge of Texas State School residents from Texas State Schools and provide them with adequate and appropriate protections, supports, and services, consistent with each person's individualized needs, in the most integrated setting in which they can be reasonably accommodated, and where the individual does not object.

Resident Involvement and Choice

- Throughout, each resident shall be involved in the team evaluation, decision-making, and planning process to the maximum extent practicable, using whatever communication method he or she prefers.
- To foster each resident's self-determination and independence, the State shall use person centered planning principles at every stage of the process. This shall facilitate the identification of the resident's specific interests, goals, likes and dislikes, abilities and strengths, as well as deficits and support needs.
- Each resident shall be given the opportunity to express a choice regarding placement. The State shall provide residents with choice counseling to help each resident make an informed choice; the State will provide enhanced counseling to those residents who have lived at Texas State Schools for more than ten (10) years.
- Require that other participants in IDT meetings *shall* include:
 - (i) persons the individual and/or LAR designate to be included;
 - a. the MRA must inform the individual and LAR that they may request a volunteer advocate;
 - (ii) For individuals who do not have a LAR and who have been determined by the State School to lack capacity the Mental Retardation Authority must attempt to designate a volunteer advocate to assist in permanency planning who is, in order of preference:
 - (1) A volunteer advocate is a person who:
 - i. an adult relative who is actively involved with the individual;
 - ii. a person who is part of the individual's natural support network; or
 - iii. a person or a state-wide advocacy organization representative.
 - (2) All volunteer advocates must receive training and be knowledgeable about community services and supports; and with the permanency planning philosophy and processes.
- If any resident opposes placement, the State will document the steps taken to ensure that any individual objection is an informed one. The State shall set forth and implement individualized strategies to address concerns and objections to placement.
- Throughout the process, the State shall regularly educate residents about the community and the various community options open to them. Any written materials or presentations shall be easy for residents to understand.
- The State shall provide each resident with several viable placement alternatives to consider whenever possible. The State shall provide field trips to these viable community sites and facilitate overnight stays at certain of the community residences, where appropriate.
- Where family members and/or guardians have reservations about community placement, the State shall provide ongoing educational opportunities to such family members and/or guardians with regard to placement and programming alternatives and options. These educational opportunities shall include information about how the individual may have viable options other than living with the family members and/or guardians once discharged from Texas State

Schools. The State shall identify and address the concerns of family members and/or guardians with regard to community placement. The State shall encourage family members and/or guardians to participate, whenever possible, in residents' on-site, community home field trips.

Transition Plans

Each transition plan shall be developed using person-centered planning principles. Each transition plan shall specify with particularity the individualized protections, supports, and services needed to meet the needs and preferences of the resident in the alternative community setting, including their scope, frequency, and duration. Each transition plan shall include all individually-necessary protections, supports, and services, including but not limited to: housing and residential services; transportation; staffing; health care and other professional services; specialty health care services; therapy services; psychological, behavioral, and psychiatric services; communication and mobility supports; programming, vocational, and employment supports; and assistance with activities of daily living. Each plan shall include specific details about which particular community providers, including residential, health care, and program providers, can furnish needed protections, services, and supports.

- The State will continue to emphasize the placement of residents into smaller community homes. In developing these plans, the State will avoid placing residents into nursing homes or other institutional settings whenever possible.
- The parties recognize that nursing homes are often not well-suited to provide needed habilitation to persons with developmental disabilities. The State will develop and implement a systemic plan to develop, through the Home and Community-Based Waiver or otherwise, integrated community alternatives to nursing homes for all residents with unique or more intense and complex health care needs including (a) those whose active treatment needs can be better met in a less restrictive placement options and (b) those whose complex medical needs are better served either at home or other community-based alternative.
- In developing the transition plans, the State shall attempt to locate community alternatives in regions based upon the presence of persons significant to the resident, including parents, siblings, other relatives, or close friends, where such efforts are consistent with the individual's desires.
- The State agrees to provide as many individual on-site and overnight visits to various proposed residential placement sites in the community as are appropriate and needed to ensure that the placement ultimately selected is, and will be, adequate and appropriate to meet the needs of each resident. The State shall modify the transition plans, as needed, based on these community visits.

Community Placement Rates

The Texas DOJ Settlement does not require an increase in the rate of community placements. It merely requires new policies, procedures and practices related to transition and discharge processes, and a timeline in which (pursuant to the new policies, practices and procedures) each facility shall assess 50% (and subsequently 100%) of individuals for placement.

RECOMMENDATIONS:

- Increase the rate of community placements (as required in the NJ New Lisbon Settlement) from each facility with specific targets for numbers of community placements or an increase of a percentage of placements at each facility.
- Ensure that all placements are completed as soon as feasible and according to a well developed and available person directed Individual Support Plan.
- Transitions must occur within a maximum of 180 days and community based services programmatic enrollment freezes do not apply to state school residents seeking to transition.
- Each facility must comply with all applicable state and federal Permanency Planning policies, practices and programs for children and young adults.

Children

- There are no specific requirements that address the developmental and unique behavioral support needs of children in state schools and the family and individual services they require to ensure a successful transition back into the community.
- There are no specific requirements or monitoring that address the relationship between and quality of state school services, children's educational services, and family and community involvement during each school age child's state school placement.

Monitoring and Enforcement

The SA requires that no later than fourteen calendar days before each visit, the state school must provide the Monitor and DOJ with a Facility Report regarding the facility's compliance with the Settlement Agreement (page 36, I), which would require that Monitoring Visits be announced.

RECOMMENDATIONS:

- Require that 50% of the Monitoring Team Visits be unannounced and that each facility have an unannounced visit prior to being released from the Settlement Agreement.
- Require that each Monitor's Report be posted on DADS website.

Physical Environment

SA fails to address health, safety and quality of life issues surrounding the physical environment.

RECOMMENDATIONS:

- The Monitor should evaluate facilities' physical environment for:
 - o Homelike, personalized living environment with pleasing external stimuli.

- Environmental hazards such as, leaving storage room doors open; failure to properly store non-eatable items, or objects that could cause harm.
- Cleanliness.
- Failure to have shower curtains, safety mats and other safety devices in private bathtubs.
- Accessibility of personal items to individuals to permit them to make choices.

Protection from Harm – Chemical for Dental or Medical Services

Although pre-sedation concerns are addressed in the SA, concern for the health and safety of a post-sedated individual were not identified.

RECOMMENDATIONS:

- The practice of bringing clients to the Infirmary to recover from post-sedation procedures should be further investigated. Consideration should be given to the health, comfort, and safety of maintaining sedated individuals in a wheelchair while recovering. Individuals who are sedated have potential risk of aspiration and injury. Risk is further compounded if they have been identified as “at risk” for aspiration. Therefore, proper positioning is crucial to preventing aspiration.

Restraints

The (SA) fails to address appropriate restraint devices and instead leaves it to DADS to determine approved restraints. Currently, the State of Texas allows as “approved restraints:” papoose boards, straight jackets, restraining nets, and Chair restraints.

RECOMMENDATIONS:

- The Monitor should assess DADS policy on approved restraint devices and restraint training requirements to ensure they meet Generally Accepted Professional Standards of Care “GAPS”

SA, J., Psychiatric Care and Services,

This is a concern because this was an area that DOJ identified as being severely deficient, yet the SA only requires that “no individual shall receive psychotropic medication without having been evaluated and diagnosed, in a clinically justifiable manner, by a board-certified or board-eligible psychiatrist.” This is not a change from business as usual and that which caused health and safety risks.

RECOMMENDATIONS:

- The SA should require that all psychiatrists be board-certified in psychiatry and have training or expertise in providing services for individuals with developmental disabilities. For any individual younger than 18 years of age, the SA should require that they be assessed by a board certified child psychiatrist.

- The Monitor should require advanced competency-base training for all staff related to medications unique to individuals in the DD population, particularly antipsychotics and anticonvulsants. Since most nurses are accustomed to working with the general public, they may not be as familiar with the medications. Training should ensure that nurses are knowledgeable of the medications: classification, purpose, dosing (adult and children), adverse reactions (serious and common), safety monitoring (therapeutic drug levels and monitoring parameters), contraindications/cautions, drug interactions (drug-to-drug and food-to- drug) and pharmacology–mechanism of action.
- The SA does not address the requirement for a Medication Error Review Committee. Typically, the committee is comprised of, at minimum, the Director of Nursing or designee, physicians or nurse practitioner and pharmacist.
- The SA should require that for those individuals who are believed to be incompetent to make medical decision but for whom no guardian is appointed, that prior to receiving medications the substituted decision maker (the person who is making informed consent to medications on behalf of the resident) be someone who does not have a conflict of interest (i.e. not the Superintendent as is currently the law in Texas).

At-Risk Individuals

The (SA), I., At-Risk Individuals, #1 states “. . . Facilities shall implement a regular risk screening, assessment and management system to identify individuals whose health or well-being is at risk.” The concern is that it does not specify a nationally accepted standardized screening instrument, as specified in J., Psychiatric Care and Services #7, that states “. . . each Facility shall use the Reiss Screen for Maladaptive Behavior . . . ”

RECOMMENDATIONS:

- Suggest the Monitor should require a nationally accepted standardized risk-screening tool be used, such as the Health Risk Screening Tool (HRST).
- Each individual should have a Risk Assessment completed upon admission, initially as a baseline, then, annually and when there is a change in the individual’s health status.
- In addition to rating the individual’s risk factor, the system prepares reports both by individual and facility for purposes for tracking and trending outcomes.

Medical Care

The (SA), L., Medical Care, #1, addresses “emergency medical care” only as it relates to services for an individual. Systemic Emergency Management practices for the Facilities are not included.

RECOMMENDATIONS:

- The Monitor should thoroughly evaluate the Facilities’ Emergency Management Policies and Procedures along with Emergency Response Drill Reports in an effort to ensure the safety of clients during an emergency.

- The Monitor should evaluate Facilities for failure to send individuals out to local hospitals when they require medical care that is beyond the scope of medical services that can be safely and effectively managed/provided in an ICF/MR Facility as opposed to sending individuals for treatment in a local hospital.
- Check-off sheets are required to be completed with dates and initials every 24 hour period verifying that all required emergency equipment items are present and properly stored in accordance with professional standards of practice.
- The Automatic External Defibulator (AED) are stored in the same place as other emergency equipment and oxygen tanks to ensure that all equipment can be accessed quickly in an emergency.

Nursing Care

RECOMMENDATIONS:

- (SA) should specify that nursing assessment should be completed upon admission and annually.
- (SA) should require establishment and maintenance of nursing review system that consists of non-Facility nursing case review and assistance to facilitate quality of nursing care and performance improvement. This is required for medical care and is important for nursing care.

Staffing Ratio's

The SA fails to address Facilities staff ratios. One of the areas identified as a major concern by DOJ was the inadequate direct care staffing ratios. Yet, the only place where staff ratios are required is for psychological care.

RECOMMENDATIONS:

- Direct Care Staff: Require that DADS hire an identified number of direct care staff per facility within a certain time frame.
- Require DADS to develop a policy on how to retain direct care staff and begin implementation of that policy within 6 months.
- Require RN and LVN staff ratios as it relates to the number and acuity level of individuals served in the each of the Facilities.

Minimum Common Elements of Physical and Nutritional Management

RECOMMENDATIONS:

- The Monitor should consider requiring the use of a nationally accepted standardized Aspiration Assessment Tool.
- The Monitor should require Monitoring Plans for use at mealtime that includes “triggers”, i.e., repetitive coughing while eating, coughing with struggle, tearing, watery speech, change in breathing and/or color, indicating the individual may be aspirating or who are at risk for aspirating.

- The Monitor should ensure that nurses who are not apart of the Physical and Nutritional Management Team receive competency based Physical and Nutritional Training.
- The Monitor should ensure that skin integrity risks are addressed. If not in use, a nationally accepted standardized skin integrity assessment tool should be used, such as the BRADEN. Nursing staff should receive advanced competency based training in understanding, assessing and managing skin integrity issues.
- The Monitor should ensure a nationally accepted standardized Fall Risk Assessment Tool, including fall risks associated with medications.
- The Monitor should evaluate the reason for prolong stays and frequent admission to Facilities Infirmaries for purposes of regulating enteral infusion rates.
- The Monitor should require Facilities' Physical and Nutritional Management Team or other designated staff to routinely monitor positioning programs to ensure that position changes are followed as prescribed and documented timely when positions are changed.
- The Monitor should require the Facilities' Physical and Nutritional Management Team to evaluate time spent in bed in the Infirmaries.
- The Monitor should evaluate the use of bibs during mealtime or at any other time and make recommendations for use of alternate food protectors such as large napkins.