

Announcement

Benjamin Settlement Approved Protecting Freedom of Choice for Individuals in ICFs/ID

ODP Communication Number: Announcement 081-14

The mission of the Office of Developmental Programs is to support Pennsylvanians with developmental disabilities to achieve greater independence, choice and opportunity in their lives.

AUDIENCE: State-operated intermediate care facilities for individuals with intellectual disabilities (ICFs/ID), Home and community-based waiver providers, Administrative Entities (AEs), Supports Coordination Organizations (SCO), advocates, individuals, and other interested parties.

PURPOSE: The purpose of this document is to announce the United States District Court's approval of the settlement in the class-action lawsuit *Franklin Benjamin, et al. and Craig Springstead, et. al. v. Department of Public Welfare* ("Benjamin") and to highlight certain settlement requirements related to protecting individual choice.

BACKGROUND:

In April 2009, the Department of Public Welfare (DPW) was subject to the Benjamin lawsuit, which alleged that individuals with an intellectual disability were unnecessarily segregated in state-operated ICFs/ID in violation of the Americans with Disabilities Act. The nature of the alleged segregation was that the Department failed to offer ICF/ID residents placement in a community setting. The court found for the Plaintiffs and a settlement agreement on the remedy was reached in June 2011. The settlement agreement was subsequently vacated by the Third Circuit Court in December 2012 in response to a legal challenge from a group of ICF/ID residents who claimed that the settlement requirements were contrary to their wishes. A new settlement agreement developed by and agreed upon by all parties was signed in June 2014. The court approved the settlement agreement in September 2014.

SETTLEMENT OVERVIEW

The settlement requires that the Department's Office of Developmental Programs (ODP) take measures to protect individual choice and facilitate transition to community residence for those who so choose. Some of these measures include:

- Ensuring that each individual residing in a state-operated ICF/ID who has the capacity to make an informed choice and expresses a preference for community living will move to the community;
- Ensuring that everyone who is capable of making a choice about where he or she lives may make a choice at any time;
- Committing to respecting the wishes of individuals, legal guardians, and substitute decision makers who decide to continue residency at a state-operated ICF/ID and honoring their choice of living arrangement;
- Committing to maintain the level of care currently provided to individuals residing in a state-operated ICFs/ID, and assure that the state ICFs/ID continue to meet the criteria needed to protect the health, welfare, and safety of individuals, and to provide them with active treatment;
- Transitioning at least...
 - 80 individuals to the community by June 30, 2015,
 - 50 individuals to the community between July 2015 and June 2016,
 - 50 individuals to the community between July 2016 and June 2017, and
 - 50 individuals to the community between July 2017 and June 2018

If at any time there are fewer individuals on the planning list than the number of individuals slated to move in the agreement, the Department will work to move only the number of individuals remaining on the list.

- Creating a website that allows providers to view information about individuals who chose to transition to the community and to notify ICF/ID staff of their potential interest in serving an individual; and
- Monitoring community transition to ensure positive outcomes, including prevention of arrests or unnecessary readmissions to ICFs/ID.

NEXT STEPS

As of the date of this announcement, many individuals have successfully transitioned to community settings. ODP has developed the Benjamin website and has posted information for other individuals who have expressed a desire to live in the community. ODP will be sending additional communications to providers and AEs about the Benjamin website and general transition activities.

CONTACT

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