Congress of the United States

Washington, DC 20515

March 27, 2012

The Honorable Eric H. Holder, Jr.
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Dear Mr. Attorney General:

We write today to object to the January 26, 2012 Department of Justice's proposed legal settlement with the Commonwealth of Virginia concerning the residential placement of people with intellectual disabilities. The agreement, if approved by the court, will place more than 1,000 Virginians with profound intellectual disabilities at grave risk of abuse, neglect and even death.

We urge you to reconsider and withdraw the agreement until the Administration and the Congress have time to review the ongoing evidence of massive abuse and neglect leading to the deaths of people with profound intellectual disabilities (ID) in communities unprepared to take care of them and devise safeguards to prevent a repetition of such outrages.

The Settlement Agreement calls for the closure of four of Virginia's five Medicaid-certified Intermediate Care Facilities for Persons with Mental Retardation (ICFs/MR or "Training Centers"). These training centers provide life-sustaining supports to their residents with profound intellectual and developmental disabilities, the vast majority of whom also experience complex physical disabilities, chronic medical conditions, or behavioral challenges. The Agreement calls for "integration, self-determination, and quality services" for affected residents and cites the Americans with Disabilities Act (ADA), as interpreted by the Supreme Court in the *Olmstead* case, as its authority. Yet, the Agreement does not permit the affected individuals to choose whether or not to move from their training center home, a key component of both the ADA and the *Olmstead* decision. *Olmstead v. L.C.*, 527 U.S. 581, 598 (1999) (One of the three *Olmstead* tests is that "the transfer from institutional care to a less restrictive setting is not opposed by the affected individual" and Justice Ginsburg noted, "We emphasize that nothing in the ADA or its implementing regulations condones termination of institutional settings for persons unable to handle or benefit from community settings"); *see also* See, also, the ADA regulations, 28 CFR §35.130(e)(1) (1998): "Nothing in this part shall be construed to require an individual with a disability to accept an accommodation . . . which such individual chooses not to accept.")

Moreover, the family groups at the four training centers have told us that they know of no family or legal representative of the affected residents that support this decision. Indeed, families met with Justice Department attorneys and Virginia officials prior to the agreement to urge against any resolution that would force the transition of their family members from their specialized homes.

In another recent case, a federal judge in Arkansas overturned a similar effort by the Department of Justice to move people from an ICF/MR against the wishes of the residents or their families:

> "Most lawsuits are brought by persons who believe their rights have been violated. Not this one . . . All or nearly all of those residents have parents or guardians who have the power to assert the legal rights of their children or wards. Those parents and guardians, so far as the record shows, oppose the claims of the United States. Thus, the United States [Department of Justice] is in the odd position of asserting that certain persons' rights have been and are being violated while those persons – through their parents and guardians disagree." *U.S. v. Arkansas* (June 8, 2011); see also at *Arc of Virginia v. Kaine*, at 22 (E.D. Va., 2009) (". . . the argument made by Arc and the United States [Department of Justice] regarding the risk of institutionalization fails to account for a key principle in the *Olmstead* decision: personal choice.")

We are also gravely concerned about the potential harm affected residents will endure. Recent *New York Times* articles, which include reports of 1,200 deaths of "unknown or unnatural" causes in group homes, and similar reports from across the country point to an unprepared and woefully under-inspected community system of care for Americans with intellectual and developmental disabilities. *New York Times*, "In State Care, 1,200 Deaths and Few Answers" (November 5, 2011); *see also*, VOR, "Media coverage highlighting the increasing need for more effective federal and state protections in the ever-expanding community system of care for people with mental retardation," (rev. November 2011; http://www.vor.net/images/AbuseandNeglect.pdf). Let us be clear. We support community living options for people with ID but only for those who wish to live there and only when the community is able to provide safe, quality care.

Given the potential for enormous human tragedy and the disregard for individual and family decision-making and choice, we urge you to –

(1) Withdraw the Settlement Agreement;

(2) Suspend all Department of Justice activities aimed at displacing fragile Americans from licensed ICFs/MR; and

(3) Investigate the causes for the unspeakable number of deaths in New York and elsewhere and make recommendations for changes in policy to prevent further such deaths.

Attorney General Holder, thank you for your compassionate leadership in responding to these issues.

Sincerely,

James P. Moran

Robert W. Goodlatte