

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

STANLEY LIGAS, et al.,	)	
	)	
Plaintiffs,	)	No. 05 C 4331
	)	
vs.	)	Chief Judge Holderman
	)	Magistrate Judge Ashman
BARRY S. MARAM, et al.,	)	
	)	
Defendants.	)	

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**CONSENT DECREE**

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## INTRODUCTION AND BACKGROUND

Plaintiffs<sup>1</sup>, who are Illinois residents with Developmental Disabilities, filed this class action lawsuit on July 28, 2005, seeking declaratory and injunctive relief to redress violations of the community integration mandates of Title II of the Americans with Disabilities Act, 42 U.S.C. § 12132; Section 504 of the Rehabilitation Act, 29 U.S.C. § 794(a); and Title XIX of the Social Security Act, 42 U.S.C. §§ 1396-1396v. Plaintiffs allege that those federal statutes require Defendants to: (a) provide services, programs and activities in the most integrated setting appropriate to the needs of Individuals with Developmental Disabilities; (b) implement procedures to avoid unjustified institutional isolation of Individuals with Developmental Disabilities; and (c) offer Individuals with Developmental Disabilities a choice between institutional-based services, supports and programs, and services, supports and programs that are integrated into the community. Defendants have denied liability.

In the interest of compromise and settlement, Plaintiffs and Defendants have entered into a Stipulation agreeing to the form, and jointly moved for preliminary and final approval, of a proposed consent decree. On November \_\_\_\_, 2008, the Court entered an Order preliminarily approving the Decree set forth below in accordance with Parties' proposal. (Doc. No. \_\_\_\_.) Thereafter, pursuant to that Order, the Parties provided notice in accordance therewith, which the Court previously found, and hereby affirms, constitutes reasonable notice under the circumstances, and is in full compliance with the requirements of due process and governing law.

On \_\_\_\_\_, 20\_\_\_, the Court conducted a fairness hearing, at which it considered the written submissions of all interested persons and the presentations made in open court; and assessed the fairness and reasonableness of the Decree set forth below, taking into account the benefits of litigation to the Plaintiffs as compared with the benefits offered by the Decree. As set

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<sup>1</sup> Certain capitalized terms set forth herein are defined in Section III, below.

forth in its Order dated \_\_\_\_\_, 20\_\_ (Doc. No. \_\_), the Court is of the opinion that the Decree set forth below represents a fair resolution of the competing interests of Plaintiffs and Defendants; that it is fair, reasonable and adequate; and that it should be and is approved pursuant to Rule 23 of the Federal Rules of Civil Procedure.

Therefore, upon all of the foregoing, and the Court being otherwise fully advised, the Court hereby ORDERS, ADJUDGES and DECREES as follows:

### **DECREE**

#### **I. JURISDICTION**

1. The Court has jurisdiction over this Litigation pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1343.

#### **II. CLASS DEFINITION**

2. The Class is defined as:

All persons in Illinois 18 years of age or older who:

- (a) have mental retardation and/or other Developmental Disabilities and who are eligible for Medicaid ICF/MR services;
- (b) with appropriate supports and services, could live in the community; and
- (c) either: (i) are, or will in the future be, institutionalized in private ICF-DDs with nine or more residents or (ii) are, or will in the future be, living in a home-based setting and are at risk of institutionalization because of their need for services.

#### **III. DEFINITION OF TERMS**

3. As used herein, the following terms have the following meanings:

- a) “Approval of the Decree” means the date defined in Paragraph 38, below.

- b) “Class Counsel” means all of the attorneys that have appearances on behalf of Plaintiffs in effect as of the Approval of the Decree, and each of the following organizations: Equip for Equality; Sonnenschein Nath & Rosenthal LLP; Access Living of Metropolitan Chicago; Roger Baldwin Foundation of ACLU, Inc.; and Public Interest Law Center of Philadelphia.
- c) “Class” and “Class Members” means the persons who meet the definition set forth in Section II, above.
- d) “Community Based Services” means those services (other than a placement in a Community Based Setting) available under the Waiver.
- e) “Community Based Setting” means the most integrated residential setting appropriate for an Individual with Developmental Disabilities, where the setting is designed to promote independence in daily living, community integration, and economic self-sufficiency and enables the Individual to interact with non-disabled persons to the fullest extent possible.
- f) “Community Service Provider” means a provider of Waiver-funded services, but does not include ICF-DDs or State Operated Developmental Centers.
- g) “Court” means the United States District Court for the Northern District of Illinois, Eastern Division.
- h) “Crisis” has the meaning set forth in Paragraph 15, below.
- i) “Decree” means this Consent Decree.

- j) “Defendants” means the Director of the Illinois Department of Healthcare and Family Services; the Secretary of the Illinois Department of Human Services, and any of their successors.
- k) “Developmental Disability” means a disability that is attributable to a diagnosis of mental retardation (mild, moderate, severe, profound), or a related condition. A related condition is attributable to: cerebral palsy or epilepsy, or any other condition, other than mental illness, found to be closely related to mental retardation because this condition results in impairment of general intellectual functioning or adaptive behavior similar to that of persons with mental retardation, and requires treatment or services similar to those required for persons with mental retardation. In addition, this condition is manifested before the age of 22; is likely to continue indefinitely; and results in substantial functional limitations in three or more of the following areas of major life activity: self-care; understanding and use of language; learning; mobility; self-direction; capacity for independent living.
- l) “Emerging Crisis” has the meaning set forth in Paragraph 16, below.
- m) “Evaluation” means an Initial Evaluation and an Updated Evaluation, collectively.
- n) “ICF-DD” means any privately-owned long term care facility licensed by the Illinois Department of Public Health as an Intermediate Care Facility for the Developmentally Disabled, as defined at 77 Ill. Adm. Code §300.330.

- o) “ICF-DD System” means the aggregate bed capacity of all ICF-DDs in operation as of the Approval of the Decree.
- p) “ICF/MR services” has the meaning set forth in 42 C.F.R. § 440.150.
- q) “Implementation Plan” has the meaning set forth in Section IX, below.
- r) “Individual” or “Individual with Developmental Disabilities” means a person in Illinois 18 years of age or older who has one or more Developmental Disabilities and who is Medicaid-eligible.
- s) “Initial Evaluation” has the meaning set forth in Paragraph 7(a), below.
- t) “Litigation” means the matter *Ligas v. Maram*, Case No. 05-4331, filed in the United States District Court for the Northern District of Illinois, Eastern Division.
- u) “Monitor” means the person or entity appointed by the Court pursuant to Section X, below, to perform the functions more fully described therein.
- v) “Named Plaintiffs” means the following people, each of whom the Court certified as a class representative in the Litigation: Lorene Bierman, David Cicarelli, Isaiah Fair, Adam Kulig, Stanley Ligas, Jamie McElroy, and Jennifer Wilson.
- w) “Parties” means Plaintiffs and Defendants, collectively.
- x) “Plaintiffs” means the Named Plaintiffs and Class Members, collectively.
- y) “Protective Order” means the Protective Order entered by the Court in the Litigation on May 15, 2006 (CM/ECF Doc. No. 98).
- z) “Qualified Professional” has the meaning set forth in Paragraph 7(c), below.

- aa) “Service Plan” has the meaning set forth in Paragraph 8, below.
- bb) “Single Point of Entry” has the meaning set forth in Paragraph 6, below.
- cc) “State Plan” means the plan that was submitted by the State of Illinois to the United States Department of Health and Human Services, Centers for Medicare and Medicaid Services, in accordance with Title XIX of the Social Security Act, 42 U.S.C. §§ 1396-1396v, in effect as of the date of Approval of the Decree, including any amendments thereto, but only to the extent such amendments expand the range and/or amount of services available to Individuals with Developmental Disabilities, or their families or caregivers.
- dd) “Updated Evaluations” has the meaning set forth in Paragraph 7(b), below.
- ee) “Waiver” means the Illinois Home and Community Based Services Waiver for Adults with Developmental Disabilities, as approved by the United States Department of Health and Human Services, Centers for Medicare and Medicaid Services, in effect as of the date of Approval of the Decree, or any amendments thereto or similar waivers subsequently approved by the United States Department of Health and Human Services, Centers for Medicare and Medicaid Services, but only to the extent such amendments or subsequent waivers expand the range and/or amount of services available to Individuals with Developmental Disabilities.

#### **IV. THE DEVELOPMENTAL DISABILITY SERVICES SYSTEM**

4. **Development of Community Capacity.** Defendants shall ensure the availability of services, supports and other resources of sufficient quality, scope and variety to meet their

obligations under the Decree and the Implementation Plan. Defendants shall implement sufficient measures, consistent with the choices of Individuals with Developmental Disabilities, to provide Community Based Settings and Community Based Services pursuant to the Decree.

5. **Resources and Budget Requests.** Annual budgets submitted by Defendants on behalf of their agencies shall request sufficient funds necessary to develop and maintain the services, supports and structures described in the Decree. Defendants shall take steps sufficient to implement funding mechanisms that facilitate transition among service settings, including but not limited to combining appropriations. Nothing contained in this Paragraph 5 shall be deemed to create or operate as (i) a condition or contingency upon which any term of the Decree depends; or (ii) a circumstance entitling Defendants to alter, amend or modify the implementation or timing of Defendants' obligations under the Decree.

6. **Single Point of Entry.**

- a) Defendants shall develop and implement a "Single Point of Entry" system, which means a coordinated administrative system that receives applications and assesses eligibility for all forms of supports and services for Individuals with Developmental Disabilities; develops plans that are consistent with the Individual's choice for appropriate supports and services; and identifies and locates appropriate service providers.
- b) Within three (3) years of Approval of the Decree, Defendants shall coordinate all Evaluations through a Single Point of Entry system.
- c) Within three (3) years of Approval of the Decree, no Individual with a Developmental Disability shall be admitted to an ICF-DD or enrolled in a Waiver-funded program without an Evaluation having first been

conducted through the Single Point of Entry system and a Service Plan completed, except where exigent circumstances require otherwise.

**V. INDIVIDUALIZED EVALUATION AND PLANNING FOR INDIVIDUALS RESIDING IN ICF-DDs**

**7. Evaluations.**

- a) Within two (2) years of Approval of the Decree, all Individuals with Developmental Disabilities living in ICF-DDs will receive independent, professionally appropriate and person-centered evaluations of their strengths and needs in order to determine the supports and services required to live in a Community Based Setting (“Initial Evaluations”).
- b) Each year thereafter, for those Individuals living in ICF-DDs who oppose placement in a Community Based Setting, Initial Evaluations will be reviewed and updated as part of that Individual’s annual service planning (“Updated Evaluations”).
- c) Evaluations shall be conducted by appropriately trained and qualified professionals who are independent of the ICF-DD in which the Individuals live (the “Qualified Professional” or “Qualified Professionals”).  
Evaluations shall include, among other materials, all documents used to determine eligibility for services.
- d) The Evaluation process must address the Individual’s own vision of, and desires for, the future, and his or her medical, behavioral, vocational and social needs. Evaluations must draw upon communications with the Individual; discussions with family members, guardians, friends, support

staff and professionals familiar with the Individual; and the history and experience of the Individual.

- e) Before an Evaluation is completed, a Qualified Professional must offer to show (and, upon request, show) the Individual, the Individual's guardian, and/or any interested family members or others requested by the Individual, an example of a Community Based Setting in or around a locale desired by the Individual.
- f) Evaluations shall identify the types of Community Based Settings and/or Community Based Services that would best fulfill the preferences and serve the needs of the Individual.
- g) If an Evaluation indicates that the Individual will remain in an ICF-DD placement, such Evaluation must either (i) explain why the Individual cannot benefit from a Community Based Setting, or (ii) indicate that the Individual opposes placement in a Community Based Setting.
- h) After an Evaluation is completed, an Individual currently residing in an ICF-DD may (i) indicate that he or she desires to move or does not oppose moving to a Community Based Setting, or (ii) oppose placement in a Community Based Setting, opting to remain in the ICF-DD.

**8. Service Plans.**

- a) When, pursuant to Paragraph 7(h), an Individual residing in an ICF-DD indicates that he or she desires to move to, or does not oppose moving to, a Community Based Setting, Defendants shall develop a Service Plan specific to, and centered on, that Individual.

- b) The Service Plan shall be dated as of the date completed and, at a minimum, describe the services the Individual requires in a Community Based Setting; where and how such services can be developed and obtained; the supports and services the Individual will need during his or her transition to a Community Based Setting; and a timetable for promptly completing that transition.
- c) The Service Plan shall be developed by a Qualified Professional in conjunction with the Individual and the Individual's family members, guardians, friends and support staff who are familiar with the Individual.
- d) The process for developing a Service Plan shall focus on the Individual's personal vision, preferences, strengths and needs in home, community and work environments and shall reflect the value of supporting the Individual with relationships, productive work, participation in community life, and personal decision-making.
- e) All services and supports in the Service Plan must be integrated into the community to the maximum extent possible.
- f) The Service Plan shall not be limited by the current availability of services, provided, however, that nothing in this sub-paragraph obligates Defendants to provide the types of services beyond those included in the Waiver and/or the State Plan.
- g) The Service Plan shall be completed within sufficient time to provide appropriate and sufficient transitions for Individuals in accordance with the deadlines set forth in the Decree.

9. Individuals shall be entitled to their choice of Community Service Providers, as required by the Social Security Act, 42 U.S.C. 1396a(a)(23).

10. **ICF-DD Capacity.** Within six (6) years of Approval of the Decree, Defendants shall, to the extent consistent with governing law, reduce the use or aggregate licensed capacity of the ICF-DD System by an amount equivalent to the number of Individuals who, in aggregate and consistent with their Evaluations, Service Plans and choices, have transitioned to Community Based Settings from ICF-DDs. Nothing contained in this Paragraph 10 shall be deemed to create or operate as (i) a condition or contingency upon which any term of the Decree depends; or (ii) a circumstance entitling Defendants to alter, amend or modify the implementation or timing of Defendants' obligations under the Decree.

11. **Benchmarks for Evaluation and Planning for Individuals Residing in ICF-DDs.**

- a) Subject to the interim requirements set forth below, within six (6) years of Approval of the Decree, all Class Members residing in ICF-DDs at the time of Approval of the Decree who do not oppose placement in Community Based Settings will transition to Community Based Settings consistent with their Service Plans.
- b) Not less than one-third of the total number of Class Members residing in ICF-DDs at the time of Approval of the Decree who do not oppose placements in Community Based Settings will receive appropriate services in Community Based Settings consistent with their Service Plans within two (2) years of Approval of the Decree.

- c) Not less than two-thirds of the total number of Class Members residing in ICF-DDs at the time of Approval of the Decree who do not oppose placements in Community Based Settings will receive appropriate services in Community Based Settings consistent with their Service Plans within four (4) years of Approval of the Decree.
- d) Individuals residing in ICF-DDs who have Service Plans prepared after the end of the sixth year following Approval of the Decree, which Service Plans provide for placement in a Community Based Setting, shall receive appropriate services consistent with their Service Plans within ninety (90) days of the date of the Service Plan.
- e) Within three (3) years of Approval of the Decree, no Individual shall be placed in an ICF-DD without an Evaluation having first been conducted through the Single Point of Entry system.

**VI. INDIVIDUALIZED EVALUATION AND PLANNING FOR INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES WHO ARE CURRENTLY RESIDING AT HOME**

12. Within two (2) years of Approval of the Decree, Defendants shall maintain a statewide database in which all Individuals with Developmental Disabilities who reside at home and have been identified as in need of Community Based Services or placement in a Community Based Setting are enrolled. Enrollment shall be done through the Single Point of Entry system.

13. Defendants must screen all Individuals enrolled pursuant to Paragraph 12 regarding the Individual's potential eligibility and need for developmental disabilities services, including a determination of whether such Individual meets the Crisis or Emerging Crisis criteria set forth in Paragraphs 15 and 16. For Individuals who are already, as of the date of the

Approval of the Decree, enrolled in such database, Defendants must complete screenings in accordance with this Paragraph 13 within one year of Approval of the Decree. For Individuals who were not, as of the date of the Approval of the Decree, enrolled in such database, Defendants must complete screenings in accordance with this Paragraph 13 within thirty (30) days of enrollment. Defendants must update all screenings conducted pursuant to this Paragraph 13 on an annual basis.

14. Individuals who are determined to be in a situation of Crisis or Emerging Crisis will receive an Initial Evaluation and a Service Plan promptly. Initial Evaluations and Service Plans for these Individuals shall be conducted and completed as set forth in Paragraphs 7 and 8, above.

15. For purposes of the Decree, an Individual is in a situation of “Crisis” if he or she is at imminent risk of abuse, neglect, or homelessness. Some examples of circumstances that constitute Crisis include, but are not limited to circumstances:

- a) where the Individual’s caregiver(s) are deceased;
- b) where the Individual’s caregiver is unable to address the support needs of the Individual, thereby jeopardizing the Individual’s health, well-being, and/or safety;
- c) where physical and/or mental injury and/or sexual abuse is being inflicted on the Individual;
- d) where the Individual is homeless or without domicile; or
- e) where the Individual’s behaviors (e.g., verbal and /or physical aggression, bodily harm to self and/or others) put the Individual and/or family member(s) at risk of serious harm.

16. For purposes of the Decree, an Individual is in a situation of “Emerging Crisis” if he or she has not yet reached a stage of “Crisis” but, without interventions, is likely to be in Crisis within a year. Emerging Crisis includes situations where the Individual is expected to continue to deteriorate, require long-term supports, or is in a temporary situation unlikely to be resolved, including, for example:

- a) where the Individual has an ill caregiver who will be unable to continue providing care within the coming year; or
- b) where the Individual’s personal care or medical needs cannot be met by the current caregiver(s) within the coming year.

17. If, following an Evaluation, the Individual who is determined to be in Crisis or Emerging Crisis indicates that he or she wishes to remain in the family home with appropriate Community Based Services or seeks placement in a Community Based Setting, Defendants will develop, in conjunction with the Individual, a Service Plan. Service Plans for such Individuals shall be conducted as set forth in Paragraph 8, above.

18. Defendants shall ensure that all Individuals who are determined to be in a situation of Crisis receive necessary and appropriate Community Based Services and/or placement in a Community Based Setting expeditiously. There is no limit to, or cap upon, the number of Individuals in Crisis who shall be served pursuant to the Decree.

19. Defendants shall ensure that all Individuals who are determined to be in a situation of Emerging Crisis receive necessary and appropriate Community Based Services and/or placement in a Community Based Setting within ninety (90) days of the issuance of a Service Plan, subject to limitations described in Paragraph 20, below.

20. Within two (2) years of Approval of the Decree, Defendants must provide necessary and appropriate Community Based Services and/or placement in Community Based Settings for at least 1,000 Individuals who meet the Emerging Crisis criteria. In each of the third, fourth, fifth and sixth years following Approval of the Decree, Defendants shall serve at least 500 additional Individuals who meet the Emerging Crisis criteria each year. The obligations set forth in this Paragraph 20 do not obligate Defendants to serve more than 500 additional Individuals who meet the Emerging Crisis criteria each year.

## **VII. DISPUTE RESOLUTION**

21. Any Individual who disputes a decision by Defendants or a Community Service Provider regarding eligibility for, or delivery of, Community Based Services or placement in a Community Based Setting shall, pursuant to governing law, have the right to appeal or seek administrative or judicial review of such decisions through Defendants' existing Fair Hearings process (as set forth in 89 Ill. Adm. Code Part 120) or as otherwise provided by law. Individuals also may avail themselves of any informal appeal process that currently exists.

## **VIII. OUTREACH**

22. Defendants shall ensure that Individuals with Developmental Disabilities, and their guardians and/or families, receive complete and accurate information regarding the rights of those Individuals to live in Community Based Settings and/or to receive Community Based Services, and available options and opportunities for doing so. The Implementation Plan shall describe the methods and mechanisms by which such information will be disseminated. All costs for outreach shall be borne by Defendants.

## **IX. IMPLEMENTATION**

23. **Overview and Contents of the Implementation Plan.** Defendants, with the input of the Monitor, Plaintiffs and Class Counsel, shall create and implement an Implementation Plan to accomplish the obligations and objectives set forth in the Decree. The Implementation Plan must, at a minimum:

- a) establish specific tasks, timetables, goals, programs, plans, strategies and protocols to assure that Defendants fulfill the requirements of each provision of the Decree;
- b) describe the hiring, training and supervision of the personnel necessary to implement the Decree;
- c) describe necessary resource development activities, including actions, inter-agency agreements, requests for proposals and the development of other resources necessary to implement the Decree;
- d) identify, based on information known at the time the Implementation Plan is prepared, any services or supports required in Service Plans formulated pursuant to the Decree that are not currently available in the appropriate quantity, quality or geographic location; and
- e) identify, based on information known at the time the Implementation Plan is prepared, any services and supports which, based on demographic or other data, are expected to be required in the following six months to meet the obligations of the Decree.

24. Within ninety (90) days of Approval of the Decree, Defendants shall provide the Monitor, Plaintiffs and Class Counsel with a draft Implementation Plan. The Monitor, Plaintiffs and Class Counsel will participate in developing and finalizing the Implementation Plan, which

shall be finalized within six (6) months following Approval of the Decree. In the event the Monitor or Plaintiffs disagree with the Defendants' proposed Implementation Plan, the matter shall be submitted to the Court for resolution.

25. The Implementation Plan shall be updated and amended annually, or at such earlier intervals as Defendants deem necessary or appropriate. The Monitor, Plaintiffs and Class Counsel may review and comment upon any such updates or amendments. In the event the Monitor or Plaintiffs disagree with the Defendants' proposed updates or amendments, the matter may be submitted to the Court for resolution.

26. The Implementation Plan, and all amendments or updates thereto, shall be incorporated into, and become enforceable as part of the Decree.

## **X. MONITORING AND COMPLIANCE**

27. **Appointment of a Monitor.** The Court shall appoint an independent and impartial Monitor who is knowledgeable concerning the management and oversight of programs serving Individuals with Developmental Disabilities. Within twenty-one (21) days of Approval of the Decree, the Parties shall submit to the Court their joint recommendation or separate nominations for a Monitor. The Parties shall endeavor to agree on a single candidate for Monitor. If the Parties cannot agree, Plaintiffs and Defendants shall each submit to the Court the names of no more than two qualified professionals or organizations who are experienced in the design and development of community programs for Individuals with Developmental Disabilities, and experienced in the administration and monitoring of specialized services for Individuals with Developmental Disabilities. Each Party will have seven (7) days to comment on the qualifications of the other Party's candidate(s), following which the Court shall then select the Monitor from the names submitted by the Parties. In the event the Monitor resigns or

otherwise becomes unavailable, and the Parties cannot agree on a replacement Monitor to recommend to the Court, the process described above will be used to select a replacement Monitor.

28. **Role of the Monitor.** The duties of the Monitor shall include gauging Defendants' compliance with the Decree, identifying actual and potential areas of non-compliance with the Decree, facilitating the resolution of compliance issues without Court intervention, and recommending appropriate action by the Court in the event an issue cannot be resolved by discussion and negotiation among the Monitor and the Parties. The Monitor may retain such staff and/or consultants as appropriate to assist in the performance of his or her duties.

29. **Development of Measurable Standards for Evaluation.**

- a) Within 90 days of the Monitor's appointment, the Monitor shall submit to the Parties a set of objective standards to guide the Monitor in evaluating Defendants' compliance with the Decree. In the event any of the Parties believe that such standards are insufficient or inappropriate, they shall first meet and confer with the Monitor in an effort to revise the standards in a manner acceptable to the Monitor and the Parties. In the event that the Monitor and the Parties are unable to agree on such standards, they may seek appropriate relief from the Court.
- b) Appropriate standards by which the Monitor evaluates Defendants' compliance with the Decree shall include, but are not limited to, the following:

- i) whether the Defendants are operating a Single Point of Entry system pursuant to the guidelines set forth in Paragraph 6;
- ii) whether person-centered Evaluations have been completed for all Class Members living in ICF-DDs within two years of Approval of the Decree;
- iii) whether Evaluations are being conducted by Qualified Professionals and whether Evaluations contain appropriate documentation;
- iv) whether Service Plans meet the criteria set forth in Paragraph 9;
- v) whether the benchmarks set forth in Paragraph 11 have been satisfied;
- vi) whether Individuals who are determined to be in Crisis receive services expeditiously in accordance with Paragraph 18;
- vii) whether Individuals who are determined to be in Emerging Crisis are being served in accordance with Paragraph 19;
- viii) whether the benchmarks set forth in Paragraph 20 have been satisfied;
- ix) the extent to which, at periodic intervals, Individuals are being placed in Community Based Settings; and

- x) the extent to which, at periodic intervals, Individuals are receiving Community Based Services.
- c) None of the standards adopted by the Monitor pursuant to this Paragraph 29 shall in any way modify, change or otherwise abrogate any of the terms of the Decree or Defendants' obligations under the Decree.

30. **Review and Evaluation of Data and Information.** The Monitor shall review and evaluate Defendants' compliance with the terms of the Decree. Not less than every six (6) months, Defendants shall provide the Monitor, Plaintiffs and Class Counsel with a detailed report containing data and information sufficient to evaluate Defendants' compliance with the Decree and Defendants' progress towards achieving compliance, with the Parties and Monitor agreeing in advance of the first report of the data and information that must be included in such report. Defendants will not refuse any request by the Monitor for documents or other information that are reasonably related to the Monitor's review and evaluation of Defendants' compliance with the Decree, and Defendants will, upon reasonable notice, permit confidential interviews of Defendants' staff or consultants, except their attorneys. The Monitor will have access to all Class Members and their records and files, as well as to those service providers, facilities, buildings and premises that serve, or are otherwise pertinent to, Class Members, where such access is reasonably related to the Monitor's review and evaluation of Defendants' compliance with the Decree. The Defendants shall comply with Plaintiffs' requests for information that are reasonably related to Defendants' compliance with the Decree, including without limitation requests for records and other relevant documents pertinent to implementation of the Decree or to Class Members. Plaintiffs and Class Counsel also shall be permitted to

review the information provided to the Monitor. All information provided to the Monitor and/or Plaintiffs pursuant to the Decree shall be subject to the Protective Order.

31. **Reporting.** The Monitor shall file annual reports with the Court. Such reports shall include the information necessary, in the Monitor's professional judgment, for the Court and Plaintiffs to evaluate Defendants' compliance or non-compliance with the terms of the Decree. The Monitor may file additional reports as necessary. Reports of the Monitor shall be served on all Parties.

32. **Compliance.** In the event the Monitor finds Defendants not in compliance with the Decree, the Monitor shall promptly meet and confer with the Parties in an effort to agree on steps necessary to achieve compliance. In the event that Plaintiffs believe that Defendants are not complying with the terms of the Decree, Plaintiffs shall notify the Monitor and Defendants of Defendants' potential non-compliance. The Monitor then shall review Plaintiffs' claims of actual or potential non-compliance and, as the Monitor deems appropriate in its professional judgment, meet and confer with Defendants and Plaintiffs in an effort to agree on steps necessary to achieve compliance with the Decree. If the Monitor and Parties agree, such steps shall be memorialized in writing and incorporated into, and become enforceable as part of, the Decree. In the event that the Monitor is unable to reach agreement with Defendants and Plaintiffs, the Monitor may seek appropriate relief from the Court. In the event that Plaintiffs believe that Defendants are not in compliance with the Decree and that the Monitor refuses or fails to act, Plaintiffs may seek appropriate relief from the Court. The Monitor will not communicate with the Court without advance notice to the Parties.

33. **Compensation of the Monitor.** Defendants shall compensate the Monitor and his or her staff and consultants at their usual and customary rate. Defendants shall reimburse all

reasonable expenses of the Monitor and the Monitor's staff, consistent with the guidelines set forth in the "Governor's Travel Control Board Travel Guide for State Employees." Defendants reserve their right to seek relief from the Court if Defendants believe that any of the Monitor's charges is inappropriate or unreasonable.

#### **XI. NAMED PLAINTIFFS**

34. As part of the settlement of the Litigation, within sixty (60) days of Approval of the Decree, Defendants shall offer each of the Named Plaintiffs the opportunity to receive appropriate Community Based Services or placement in a Community Based Setting. Provision of services to the Named Plaintiffs pursuant to this provision shall not be used to determine any other particular Individual's eligibility for services under the terms of the Decree.

#### **XII. ATTORNEYS' FEES AND COSTS**

35. In full settlement of all attorneys' fees incurred in connection with the Litigation, Defendants shall pay \$1,990,000.00 to Class Counsel. In full settlement of all out-of-pocket costs and expenses (not to include attorneys' fees) incurred by Class Counsel, Defendants shall pay to Class Counsel such costs and expenses incurred by Class Counsel through and including the Approval of the Decree and any appeal thereof. Such amounts shall be distributed to Class Counsel in the manner set forth in written instructions provided by Class Counsel. Furthermore, such amounts shall be set forth in a Judgment Order to be entered by the Court within fourteen (14) days of Approval of the Decree. Defendants shall complete and submit all paperwork necessary for payment of such amounts, plus applicable statutory post-judgment interest, within five (5) business days after expiration of the time to appeal the Decree without the filing of a Notice to Appeal or after the issuance of the mandate by the highest reviewing court, whichever is later.

36. Current Class Counsel agree not to seek fees and expenses beyond the amounts described in Paragraph 35, above.

37. Nothing herein shall preclude the Court from imposing sanctions or other relief for non-compliance with the Decree.

### **XIII. MISCELLANEOUS PROVISIONS**

38. **Approval of the Decree.** “Approval of the Decree” shall be deemed to occur on the date the Court enters the Decree.

39. **Costs of Notices.** The cost of all notices hereunder or otherwise ordered by the Court shall be borne by Defendants.

40. **Signatories.** Each undersigned representative of a Defendant to this Litigation and the Attorney General for the State of Illinois certifies that he or she is authorized to enter into the terms and conditions of the Decree and to execute and bind legally such Defendant to this document. Each undersigned representative of Plaintiffs and Class Counsel certifies that he or she is authorized to enter into the terms and conditions of the Decree and to execute and bind legally the Plaintiffs and Class Counsel to this document.

41. **Delivery of Notices or Mailings.**

- a) Delivery of notices or mailings to Plaintiffs shall be made to: Equip for Equality, Attn.: Barry Taylor (or his successor), 20 North Michigan Avenue, Suite 300, Chicago, Illinois 60602; and Sonnenschein Nath & Rosenthal LLP, Attn.: John Grossbart, 7800 Sears Tower, Chicago, Illinois 60606.
- b) Delivery of notices or mailings to Defendants shall be made to:  
Office of the Illinois Attorney General, Attn: Brent D. Stratton, 100 W.

Randolph Street, Chicago, Illinois 60601 and Office of the Illinois Attorney General, Attn: Karen Konieczny, 160 N. LaSalle St., Suite N-1000, Chicago, Illinois 60601.

- c) The Parties may modify the instructions for delivery of notices or mailings contained in this Paragraph 41 without Court approval.

42. **Waiver.** Defendants have waived their right to oppose entry of the Decree by this Court or to challenge any provision of the Decree. Defendants have waived their right to appeal the Decree or any other matter that has occurred to date in connection with the Litigation.

#### **XIV. TERMINATION**

43. The Court shall retain exclusive jurisdiction to fully oversee, supervise, modify and enforce the terms of the Decree. The Court shall retain such jurisdiction for at least nine (9) years following the Approval of the Decree.

44. The Parties, jointly or separately, may request termination of the monitoring process described in Section X at any time after nine (9) years from Approval of the Decree. If, after nine years from Approval of the Decree or any time thereafter, Defendants and the Monitor agree that Defendants have substantially complied with the terms of the Decree, Defendants shall notify Plaintiffs in writing of their desire to terminate the monitoring process (“Termination Request”). Plaintiffs shall have not less than 120 days from receipt of the Termination Request to respond. During those 120 days, Plaintiffs shall have the opportunity to conduct reasonable discovery concerning factual issues relevant to the determination of compliance. If Plaintiffs oppose the Termination Request, Plaintiffs must file a motion within 120 days from the date Plaintiffs received Defendants’ Termination Request.

45. The Court will grant Defendants' Termination Request and terminate the monitoring process if the Court finds that Defendants have substantially complied with the terms of the Decree and the Court determines that Defendants have implemented and are maintaining a system that complies with the Decree.

46. Termination of the Court's jurisdiction over the Decree may occur only in the event of a successful request to terminate the monitoring process pursuant to Section XIV. The Decree shall remain in effect, and the Court shall retain its jurisdiction over the Decree, until a final order is entered granting the Termination Request and all appellate rights and/or appeals have been exhausted.

SO ORDERED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 20 \_\_\_\_.

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United States District Judge

EACH UNDERSIGNED PARTY enters into this Consent Decree in the matter of *Ligas v. Maram*, Case No. 05-4331, pending in the United States District Court for the Northern District of Illinois, Eastern Division.

**FOR THE PLAINTIFF CLASS:**

**Date:** \_\_\_\_\_

**FOR CLASS COUNSEL:**

**Date:** \_\_\_\_\_

**FOR DEFENDANT, SECRETARY OF ILLINOIS DEPARTMENT OF HUMAN SERVICES:**

**Date:** \_\_\_\_\_

**FOR DEFENDANT, DIRECTOR OF ILLINOIS DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES:**

**Date:** \_\_\_\_\_

**AS ATTORNEY FOR DEFENDANTS**

**Date:** \_\_\_\_\_