

UNITED STATES v. GEORGIA: SETTLEMENT OVERVIEW

*PRESENTATION TO THE 27TH BIENNIAL INSTITUTE FOR
GEORGIA LEGISLATORS
MONDAY, DECEMBER 13, 2010*

By: Josh Belinfante, RobbinsFreed

United States v. Georgia

2

- Pathway to Litigation
- The 2009 Settlement
- The 2010 Lawsuits
- The 2010 Settlement Agreement

Pathway to Litigation: DBHDD

3

- Clients:
 - ▣ Developmentally Disabled
 - ▣ Mentally Ill
 - ▣ Substance Abuse
- Operations:
 - ▣ State Psychiatric Hospitals
 - ▣ Oversight and Operation of Community Resources
- Funding
 - ▣ State Funds
 - ▣ Medicaid

Pathway to Litigation: 2008

Investigations

4

- CRIPA: Civil Rights for Institutionalized Persons Act (42 U.S.C. § 1997a).
 - ▣ Deprivation of rights of persons residing in or confined to a state institution.

- Rights at issue:
 - ▣ Constitutional right to due process
 - ▣ ADA: Americans With Disabilities Act
 - ▣ Rehabilitation Act

The 2009 Settlement Timeline

5

- April 2007: Georgia notified of DOJ concerns.
- 2007 – 2008: DOJ tours State Hospitals
- September 2008: Negotiations
- January 15, 2009: CRIPA Settlement Signed
- September 2010: Court enters Settlement Agreement.

SETTLEMENT AGREEMENT REMAINS IN PLACE

6

United States v. Georgia

2009 CRIPA Settlement Agreement

The 2009 Settlement

7

- Focus on State Psychiatric Hospitals
- Areas of Focus
 - ▣ Protection from Harm (assault)
 - ▣ Mental Health Care
 - Assessments and Diagnoses
 - Treatment Planning
 - ▣ Seclusion or Restraint
 - ▣ Medical and Nursing Care
 - ▣ Educational Services
 - ▣ Discharge Planning

The 2009 Settlement

8

- General rule: 5 year time to be in compliance.
- Exception: January 2010: “substantial compliance” with
 - ▣ Choking and aspiration risk assessment and prevention
 - ▣ Suicide risk assessment and prevention
 - ▣ Prevention of patient on patient assault
 - ▣ Implementation of emergency management codes

The 2009 Settlement

9

- “Substantial compliance: violations are **minor or occasional** and are not systematic. On a systemic level, substantial compliance is achieved, when evaluating the State’s compliance with this Agreement as a whole, any noted **deviations from specific requirements** does not bring the level of care and treatment below care **consistent with generally accepted professional standards**. Noncompliance with mere technicalities will not constitute failure to achieve substantial compliance.”

10

United States v. Georgia

The 2010 Litigation

The 2010 Lawsuits - Timeline

11

- January 2009:
 - ▣ US and Georgia file settlement.
 - ▣ Wainscott letter
- July 1, 2009: DBHDD created
- Summer 2009: New Leadership at Department of Justice
- October 2009: Dr. Nirbay Singh hired

The 2010 Lawsuits - Timeline

12

- January 8: Governor Perdue meets with DOJ
- January 22: Proposed Consent Decree with five days to accept.
- January 23: State asks for time to evaluate.
- January 28: new and revived lawsuits.
 - ▣ 2009 Lawsuit: CRIPA, ADA, IDEA, Rehabilitation Act
 - ▣ 2010 Lawsuit: ADA

The 2010 Lawsuits - Applicable Law

13

- The ADA: No qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, **or be subjected to discrimination by any such entity.**
- The Regulation: A public entity shall administer services, programs, and activities in **the most integrated setting** appropriate to the needs of qualified individuals with disabilities.

The 2010 Lawsuits - Applicable Law

14

- *Olmstead v. Zimring* (1999)
 - “Unjustified isolation ... is properly regarded as discrimination based on disability.”
 - Question:
 - Can the person appropriately receive services in the community?
 - Does the person want to receives services in the community?

The 2010 Lawsuits - Applicable Law

15

□ Defenses

- Moving qualified persons at a reasonable pace.
- Fundamental alteration not required.

The 2010 Lawsuits - Timeline

16

- February: Litigation
- March through June: Settlement Discussions
- July – September: Litigation, Tours of Hospitals, Depositions
- October:
 - ▣ Department Presents Budget to Board
 - ▣ Depositions and Settlement
- Settlement Date: October 19, 2010

The 2010 Settlement Agreement

17

- Developmental Disabilities
- Mental Illness
- Quality Management
- Implementation
- Independent Reviewer
- Conclusion

18

United States v. Georgia

2010 Settlement: Developmental Disabilities

The 2010 Settlement Agreement – Developmental Disabilities

19

- FY 2011
 - Cease TIC admissions to State Hospitals.
 - 150 waivers for persons in hospitals.
 - 400 family supports.
- FY 2012
 - 150 waivers for persons in hospitals.
 - 100 waivers for persons in community.
 - 450 additional family supports.
 - 6 mobile crisis teams.
 - 5 crisis respite homes (4 beds per home).

The 2010 Settlement Agreement – Developmental Disabilities

20

- FY 2013
 - 150 waivers for persons in hospitals.
 - 100 waivers for persons in community.
 - 500 additional family supports.
 - 4 additional crisis respite homes.
 - Program to educate judges about community placements.
- FY 2014
 - 150 waivers for persons in hospitals.
 - 100 waivers for persons in community.
 - 500 additional family supports.
 - 3 additional crisis respite homes.

The 2010 Settlement Agreement – Developmental Disabilities

21

- FY 2015
 - 150 waivers for persons in hospitals.
 - 100 waivers for persons in community.
 - 500 additional family supports.
 - DD persons remaining in hospitals to be placed in a setting most appropriate to their needs.

22

United States v. Georgia

2010 Settlement: Mental Illness

The 2010 Settlement Agreement – Mental Illness

23

- Target population: 9,000 people with Serious and Persistent Mental Illness (“SPMI”) by July 1, 2015

- Housing
 - July 1, 2015: capacity for 9,000.
 - 60%: two-bedroom apartment.
 - 50% scattered site housing (no more than 20%).
 - Must be a DBHDD and DCA collaboration.

The 2010 Settlement Agreement – Mental Illness: FY 2011

24

- 18 ACT Teams (up 2 from status quo)
- 1 Intensive Case Management Team
- 100 persons receiving state funded housing assistance
- 90 persons receiving bridge funding
- 70 persons receiving supported employment

The 2010 Settlement Agreement – Mental Illness: FY 2012

25

- 20 ACT Teams (+2)
- 2 Community Support Teams (new)
- 2 Intensive Case Management Teams (+1)
- 5 Case Management Services (new)
- 1 additional crisis stabilization program
- 500 state-funded assisted housing (+400)
- 360 bridge funding (+270)
- 170 supported employment (+100)
- 235 persons receiving peer supports (new)
- 35 community beds funded (new)
- Statewide network analysis

The 2010 Settlement Agreement – Mental Illness: FY 2013

26

- 22 ACT Teams (+2)
- 4 Community Support Teams (+2)
- 4 Intensive Case Management Teams (+2)
- 15 Case Management Services (+10)
- 2 new crisis stabilization programs (+1)
- 1 additional crisis service center (new)
- 800 state-funded assisted housing (+300)
- 270 bridge funding (-90)
- 440 supported employment (+270)
- 535 persons receiving peer supports (+300)
- 6 crisis apartments (new)
- 91 counties with mobile crisis service coverage (new)

The 2010 Settlement Agreement – Mental Illness: FY 2014

27

- 8 Community Support Teams (+4)
- 8 Intensive Case Management Teams (+4)
- 25 Case Management Services (+10)
- 3 new crisis stabilization programs (+1)
- 3 additional crisis service center (+2)
- 1,400 state-funded assisted housing (+600)
- 540 bridge funding (+270)
- 500 supported employment (+60)
- 835 persons receiving peer supports
- 12 crisis apartments (+6)
- 126 counties with mobile crisis service coverage (+35)

The 2010 Settlement Agreement – Mental Illness: FY 2015

28

- 14 Intensive Case Management Teams (+6)
- 45 Case Management Services (+20)
- 6 new crisis service centers (+3)
- 2,000 state-funded assisted housing (+600)
- 540 bridge funding (+0)
- 550 supported employment (+50)
- 18 crisis apartments (+6)
- 159 counties with mobile crisis service coverage (+33)

The 2010 Settlement Agreement – Mental Illness: Miscellaneous

29

- DBHDD to establish responsibilities of CSBs and community providers through contracting.
- Conduct a cost rate study of provider reimbursement rates.
- Require and/or provide training to CSBs and other community providers.
- Quality management plan and implementation.
- Enhanced coordination for transition planning.

The 2010 Settlement Agreement – Independent Reviewer

30

- Dr. Elizabeth Jones, Washington DC
- No authority of the court
- Issue annual report of compliance
- Must confer with parties before filing reports or budget with the court
- FY 2012 budget: expected at \$250,000

The 2010 Settlement Agreement - Termination

31

- July 1, 2015: anticipated date of compliance
- 45 day notice-and-cure provision
- Lack of funds defense
- Non-compliance → relitigate

United States v. Georgia

32

Questions?

Josh Belinfante

ROBBINSFREED

999 Peachtree Street

Suite 1120

(678) 701-9381 (T)

(404) 856-3250 (F)

josh.belinfante@robbinsfreed.com