

Hutchinson v. Patrick
Civil Action No. 07-CV-30084-MAP

NOTICE REGARDING COMPREHENSIVE SETTLEMENT AGREEMENT

I. Purpose

The purpose of this notice is to inform you of a proposed comprehensive settlement, as contained in the Comprehensive Settlement Agreement (“Settlement Agreement”), in the case of *Hutchinson v. Patrick*, C.A. No. 07-CV-30084. As a class member you are entitled to notice and the opportunity to comment upon or object to the proposed settlement. The Court has preliminarily approved the Comprehensive Settlement Agreement and scheduled a hearing for July 25, 2008, to determine whether it is fair and reasonable.

II. Background

On May 17, 2007, five individuals and the Brain Injury Association of Massachusetts filed a class action lawsuit in the Western Division of the United States District Court for Massachusetts against the Governor and various executive officials. On June 18, 2007, in an amended complaint, an additional individual and another organization were added as plaintiffs to the lawsuit. The case was brought on behalf of all persons with an acquired brain injury who were in nursing facilities and rehabilitation hospitals, or who might be admitted to these facilities. The suit claimed that the Commonwealth was violating the Americans with Disabilities Act (ADA) and the Medicaid Act by failing to provide adequate community alternatives so persons with an acquired brain injury could leave these facilities and live in the community, or even avoid admission to these facilities in the first place.

On October 4, 2007, the District Court certified a class comprised of:

All Massachusetts residents who now, or at any time during this litigation: (1) are Medicaid eligible; (2) have suffered a brain injury after the age of 22; and (3) reside in a nursing or rehabilitation facility or are eligible for admission to such a facility.

Shortly thereafter, the parties to the case began to explore the possibility of settling this lawsuit without additional litigation. Over the next six months, they met regularly and negotiated a detailed settlement agreement in order to resolve all claims in the plaintiffs’ Amended Complaint.

The provisions of that Agreement, and the process for finally approving that Agreement, are set forth below.

III. Provisions of the Comprehensive Settlement Agreement

The Settlement Agreement enhances community-based services for Medicaid-eligible individuals with an acquired brain injury¹ in a number of ways and over a period of years, by offering two new programs for brain-injured individuals who seek to transition from nursing facilities to the community and by monitoring the participation of brain-injured individuals in programs that provide those services. Among other things, the Settlement Agreement provides that:

1. The defendants will create a new home and community-based program (the ABI Waiver) that will be managed by the Massachusetts Rehabilitation Commission (MRC). Through the ABI Waiver, the defendants will offer community residential and nonresidential services for up to 300 persons with an acquired brain injury who are currently in nursing facilities and rehabilitation hospitals. The ABI Waiver will begin accepting applications within nine months of federal approval, and will serve up to 300 persons with an acquired brain injury within three years following federal approval.
2. The defendants are also in the process of creating another new program, the Community First Demonstration Project (Community First). Following federal approval, this program will make available certain transitional services, designed to help persons transition to community settings, to MassHealth eligible residents of nursing facilities. The defendants' application for federal approval of Community First proposes that up to 1000 persons in nursing facilities each year may receive transitional services as participants in the Community First "Transition Group." Under the terms of the Settlement Agreement, the defendants will monitor applications to the Transition Group for at least five and up to eight years to ensure that 20% of the participants are persons with an acquired brain injury. If this monitoring process discloses that less than 20% of the participants are persons with an acquired brain injury, the defendants will take various corrective actions.
3. The defendants will establish and implement policies and procedures applicable to these new programs concerning application, eligibility, appeals, needs assessment, service provision, and quality management.
4. Persons who are offered residential habilitation will be offered the choice to receive services in the most integrated setting appropriate to their needs, such as their own homes or apartments, shared living arrangements such as group homes, or with their families.

¹ When used in the Settlement Agreement, "acquired brain injury" refers to all forms of brain injuries that occur after age 22, including without limitation brain injuries caused by external force, which are often referred to as "traumatic brain injuries" or "TBI," but not including Alzheimer's Disease and similar neuro-degenerative diseases the primary manifestation of which is dementia.

5. The defendants will create an education and outreach plan to inform persons with an acquired brain injury, their families, providers, and other persons about the new programs.
6. Plaintiffs' counsel will have an opportunity to review and comment on specific policies and procedures applicable to the new programs and their education and outreach plan.
7. The defendants will provide reports and data about the requirements of the Agreement to the plaintiffs' counsel so that they can monitor its implementation.

The defendants' responsibilities under the Agreement are subject to funding by the Legislature as well as to approval by the federal government. If the federal agency (CMS) does not approve the ABI Waiver and Community First, or if the Legislature does not fund them, then the Agreement may have to be vacated.

In addition, the ABI Waiver is subject to certain cost limitations. If these limits are exceeded, the defendants may not be able to provide ABI Waiver services to all 300 individuals, as planned.

IV. Approval Process

On June 13, 2008, after reviewing the parties' proposed Settlement Agreement and hearing from counsel, the Court made a **preliminary** finding that the proposed settlement appears reasonable under the circumstances and should proceed to a full hearing on whether it is fair and reasonable. **The Court has scheduled a fairness hearing for Friday, July 25, 2008, at 3:30 a.m.**, before Judge Michael A. Ponsor in Courtroom 2, United States District Court, 1550 Main Street, Springfield. You are welcome to attend this hearing.

The Comprehensive Settlement Agreement is subject to the Court's **final** approval. Any class member who wants to object to or comment on this Agreement must file a written objection or comments by **July 11, 2008**, with the Clerk, U.S. District Court, 1550 Main Street, Springfield, MA 01103-1422. Copies of objections or comments should be sent to both:

Plaintiffs' Counsel: Steven Schwartz, Center for Public Representation
22 Green Street, Northampton, MA 01060, and

Defendants' Counsel: Jennifer Miller, Assistant Attorney General
One Ashburton Place, Boston, MA 02108.

If you have questions regarding this notice, you may contact Mr. Schwartz at 413-586-6024, or Ms. Miller at 617-727-2200 ext 2078. If you would like to obtain a copy of the Settlement Agreement, please contact the Center for Public Representation at 413-586-6024. **Please do not contact the Court directly about this notice.**