

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Civ. No. 99 - 1435 (GAG/MEL)
)	
THE COMMONWEALTH OF PUERTO RICO,)	
<i>et al.</i> ,)	
)	
Defendants.)	
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**ORDER TO CLARIFY THAT THE COURT’S ORDERS PROTECT
ALL PERSONS WITH DEVELOPMENTAL DISABILITIES
SERVED BY THE IDP IN THE COMMONWEALTH’S SYSTEM**

At the Public Hearing on August 12, 2016, the Commonwealth Secretary of Health, Ana C. Rius Armendariz, M.D., informed the Court that the Commonwealth agrees that *all* persons with developmental disabilities (“DD”) served in the Commonwealth’s Intellectual Disabilities Program (“IDP”)¹ are protected by the Court orders in this case. Secretary Rius stressed that all of these individuals are to be treated the same and that every one of them is entitled to the equal protection of the Court’s orders in this case. At the hearing, the United States agreed with Secretary Rius’ representations.

The parties have since filed a joint motion that memorialized the parties’ agreement on the proper scope of coverage and asked the Court to clarify that the Court orders in this case extend to, and protect, all persons with DD served by the IDP, or successor, in the Commonwealth’s system at any given time.

The Court grants the parties’ joint motion and issues the following clarifying order:

¹ The Commonwealth’s Intellectual Disabilities Program within the Department of Health is currently known as: Division of Services for Adult People with Intellectual Disabilities.

1. All of the existing and future Court orders in this case extend to, and protect, all persons with DD served by the IDP, or successor, in the Commonwealth's system at any given time. These persons shall hereinafter be referred to as "participants." The existing Court orders include, but are not limited to: the Interim Settlement Agreement (initially adopted by the Court on May 4, 1999, and formally entered by the Court on July 21, 2000, ECF No. 28), the Supplemental Interim Settlement Agreement (entered by the Court in 2000), the Community-Based Service Plan (entered by the Court in September 2001), the Joint Compliance Action Plan ("JCAP") (Oct. 19, 2011, ECF No. 1185), the three Transition Orders (Dec. 10, 2008, ECF No. 794; Nov. 12, 2012, ECF No. 1299; Mar. 22, 2016, ECF No. 1795), and the recent Remedial Order to Ensure Timely Prospective Payments to Providers Serving People with DD (May 11, 2016, ECF No. 1838).
2. The Court-ordered protections in this case extend to participants with DD served by the IDP and are not limited to just those with Intellectual Disabilities ("ID") (formerly known as Mental Retardation). The category of those with DD includes those with ID, as well as those with Down syndrome, autism spectrum disorder, and/or other disabilities, served by the IDP. From the inception of this case, the parties and the Court have expressly included those with DD and not limited the scope of coverage to merely the sub-group of those with ID. *See, e.g.*, Interim Settlement Agreement, Apr. 1999, at 1, 12 (filed along with the Complaint in April 1999, requiring the Commonwealth to establish "a community-based service system [plan] for individuals with developmental disabilities").
3. The Court-ordered protections in this case extend to all participants and are not limited to the sub-group within the Commonwealth's IDP system who at one time lived in a Commonwealth institution. This is consistent with previous Court orders. *See, e.g.*, Second Supplemental Transition Order, Mar. 22, 2016, ECF No. 1795, at 5 (stressing that beneficiaries of this and earlier orders "include *all* persons with developmental disabilities in the Commonwealth's service-delivery system; there [is] no language limiting coverage to a select group within the system who at one time lived in a Commonwealth institution") (emphasis in original). *See also* Order Adopting Joint Compliance Action Plan ("JCAP"), Oct. 19, 2011, ECF No. 1185, at 1 (noting that "in the JCAP the Commonwealth has voluntarily assumed additional obligations which benefit *all* the [MRP/IDP] population") (emphasis added). As the Court referenced in its most recent Transition Order, this "scope is appropriate and consistent with Commonwealth practice, as for years now, the Commonwealth has represented to the Court, the JCC, and the United States, that it does not run a bifurcated DD system where a select few individuals receive greater protections, services, and supports than others with similar conditions." Second Supplemental Transition Order, Mar. 22, 2016, ECF No. 1795, at 5. The Court added that "there is but one" Commonwealth Intellectual Disabilities Program ("IDP") and "one unitary IDP budget" and that the "interests of justice" mandate including within Court protections all persons with DD receiving services in the Commonwealth's DD system. *Id.*

4. Consistent with the parameters above, the Commonwealth henceforth shall provide the Court, the JCC, and the United States with documents, data, and information about all participants. The Commonwealth shall no longer designate or withhold documents, data, or information with regard to individuals formerly categorized as “non-MRP.” In short, the “non-MRP” designation shall cease to exist.
5. Consistent with past practice, the parties and the office of the JCC shall continue to safeguard, protect, and appropriately limit the public use of any personally identifiable information related to participants. By December 15, 2016, the parties shall file with the Court a joint Confidentiality Agreement to further specify the contours of the confidentiality protections that are to be afforded to all participants.
6. The Commonwealth is no longer obligated to report to the Court, the JCC, or the United States on those participants who have moved permanently outside of Puerto Rico, to the United States or elsewhere. Nonetheless, if any of those individuals permanently move back to Puerto Rico, they will be entitled to receive needed services and supports in the Commonwealth’s system and once again they will be covered by the protections of all existing and future Court orders in this case. Upon reintegration into the Commonwealth’s system, the participant(s) will be evaluated per the regular assessment process of the IDP (or successor) and will then be provided services according to their individualized needs, but participant(s) are not necessarily entitled to placement in their former residence.
7. The Commonwealth shall henceforth provide the Court, the JCC, and the United States, on a quarterly basis, with an updated list of all participants. The list shall include appropriate details, including but not limited to: the person’s name, age, diagnosis/es, address, provider name, and type of home. If possible, the list shall be generated from the Commonwealth’s Therap database.
8. Finally, the United States shall work with the JCC and the Commonwealth to develop reasonable and measurable compliance benchmark guidelines with achievable deadlines to further clarify how the Commonwealth may come into full compliance with existing Court orders in this case. The United States shall finalize these benchmark guidelines by December 15, 2016.

SO ORDERED.

In San Juan, Puerto Rico, on this 31st day of October, 2016.

/s Gustavo A. Gelpi

HON. GUSTAVO A. GELPI
United States District Court Judge