

**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,)
et al.,)
)
Defendants.)
)

**JOINT INFORMATIVE MOTION ON THE POSSIBLE
IMPOSITION OF RESTRICTIONS ON COMMUNITY HOUSING**

In mid-January, the office of the Joint Compliance Coordinator (JCC) informed the Court and the parties that the Puerto Rico Fire Fighters Bureau had determined that certain community homes serving our participants with developmental disabilities (DD), served by the Division of Services for People with Intellectual Disabilities (DSPDI, per the Spanish acronym), were now required to install a costly water sprinkler system to comply with local regulations. JCC Informative Motion, Jan. 16, 2018, ECF No. 2178. The next morning, the Court ordered the parties to discuss this matter and to then file a joint informative motion by January 24, 2018. Order, Jan. 17, 2018, ECF No. 2180. On January 22, 2018, the Court granted the United States' unopposed motion for an extension of time – until February 1, 2018 – to file the joint motion given the lapse in funding that impacted operations throughout the federal government, including the United States Department of Justice, for an indefinite period of time. Order, Jan. 22, 2018, ECF No. 2185.

In lieu of submitting the joint motion, the United States filed a preliminary statement that: (1) opposed the imposition of these housing restrictions; (2) agreed with the JCC that requiring

new sprinkler systems could prompt the closure of dozens of community homes and that this could have catastrophic consequences for our participants; (3) noted that the overwhelming majority of community group homes in the United States operate absent mandatory requirements for costly sprinkler systems; and (4) referenced that federal courts have found such housing restrictions impermissible when they are required for people with disabilities but not for other people, when they are not individualized to the needs or abilities of particular kinds of disabilities, and/or when they are so costly as to impose an onerous burden or limit on the ability of people with disabilities to live in housing of their choice. United States' Prelim. Statement on the Possible Imposition of Restrictions on Cmtys. Hous., Jan. 22, 2018, ECF No. 2182. Later that day, the Court noted that the concerns of the United States are consistent with those of the JCC and then directed the Commonwealth to meet with the JCC and attempt to "immediately resolve the matter." Order, Jan. 22, 2018, ECF No. 2184.

The parties now submit this joint informative motion, in compliance with the Court's orders, to update the Court with regard to the instant matter.

We are pleased to report that the Commonwealth agrees with both the JCC and the United States that requiring the installation of an automatic sprinkler system in certain DD group homes would be too costly for the home providers and would be discriminatory given that the sprinklers would be required only for DD homes, but not for other family homes in the community. The Commonwealth also asserts that requiring sprinkler systems in the DD homes is unwarranted given that the homes already meet alternate and sufficient fire safety standards.

The Commonwealth has already met with representatives from the Puerto Rico Fire Fighters Bureau in an attempt to resolve the matter collaboratively without any adverse impact on the community DD system. The Commonwealth asserts that even before the office of the

JCC filed the initial motion regarding the sprinkler issue, officials from the Puerto Rico Departments of Justice and Health had already scheduled a meeting with the Bureau to address the matter. The Commonwealth discussed a possible resolution of the sprinkler issue with officials from the Bureau on January 19, 2018. Upcoming discussions are scheduled for February 6, 2018, and will continue until there is a successful resolution of outstanding issues.

The Commonwealth represents that talks with the Bureau thus far have been productive and that it expects there to be an agreed-upon resolution in the near future. The Commonwealth asserts that it is currently in the process of reaching a Memorandum of Understanding (MOU) agreement between the Bureau and the Department of Health on the sprinkler issue to have system-wide effect across the community system. The Commonwealth represents that its goal is to ensure that proper fire and safety standards are met in the community homes without the need to impose costly sprinkler or other systems that would severely hinder the operation and future expansion of the Commonwealth's community home program for people with DD served by the DSPDI. The United States supports the Commonwealth in its pursuit of this worthy goal.

During these talks, the Bureau represented that its demand for the automatic sprinkler system in the community homes was prompted not by any mandates in the Puerto Rico Fire Code, but rather as a result of a regulation adopted by the Permit Management Office (OGPe per the Spanish acronym) pursuant to the Puerto Rico Uniform Code of Construction, which had adopted several provisions of the International Fire Code. We understand that the Bureau has some discretion with regard to enforcing the provisions of the Code of Construction as it relates to fire safety (and the adopted provisions of the International Fire Code), especially if the homes are in compliance with fire and safety requirements in the Puerto Rico Fire Code. This discretion may give the Bureau certain additional latitude and flexibility with regard to the fire

safety issue and the need for sprinkler systems in the DD homes. The Commonwealth is currently engaged in discussions with the Bureau to provide assurances that the homes already meet adequate fire and safety standards without the need for additional extensive and onerous automatic sprinkler systems.

The Commonwealth asserts that, unfortunately, some officials within the Bureau harbor the inaccurate notion that all people with DD, simply because of their disability, are incapable of self-preservation, and therefore must live in a home with a sprinkler system. As the United States referenced in its preliminary statement, federal courts have been rejecting this archaic notion for over 25 years now. For example, in 1992, the Sixth Circuit rejected application of a local zoning ordinance that would have mandated installation of a costly sprinkler system in a home for people with DD, concluding that such application was based on “false [and] overprotective assumptions about the needs of handicapped people, as well as unfounded fears of difficulties about the problems that their tenancies may impose.” *Marbrunak v. City of Stow*, 974 F.2d 43, 47 (6th Cir. 1992). The court added that imposition of these fire and safety restrictions to the DD home unreasonably limited the residents’ opportunity to live in the community of their choice, a right guaranteed them by the Fair Housing Act.

Imposition of the instant sprinkler requirements in Puerto Rico would similarly infringe the rights of our DD participants – rights set out in numerous consent decrees and Court orders that enable them to live in integrated community settings consistent with the Americans with Disabilities Act and other federal laws.

In order to counter the false and overprotective assumptions about our DD group, the Commonwealth represents that it is working to inform Bureau decision-makers about the abilities and capabilities of DD individuals in the homes such that the Bureau may agree that

blanket imposition of fire safety housing restrictions would be inappropriate. The Commonwealth asserts that these education efforts, combined with assurances that fire and safety standards are being met in the homes in alternative and sufficient ways, outside the context of a sprinkler system, are likely to be successful in resolving the issue.

The Commonwealth represents that, fortunately, no community DD homes have yet been negatively impacted by any Bureau initiative on the sprinkler issue. We understand that the Bureau has yet to implement even phase one of its multi-phase process towards imposition of a sprinkler system in any of the homes. More importantly, no community home providers have quit the system or threatened to quit the system as a result of even the prospect of having to comply with sprinkler system mandates from the Bureau. The Commonwealth asserts that it has maintained good communication with its community providers and has provided them with updated information on the status of things and to allay any fears. The Commonwealth represents that it will continue these outreach efforts until the MOU with the Bureau is executed.

The Commonwealth represents that although talks with the Bureau have been productive thus far, no MOU has yet been agreed upon. The Commonwealth asserts that it fully expects to have a final, signed MOU with the Bureau within 20 days of the filing of this joint submission. The Commonwealth, therefore, asks the Court to take note that it intends to inform the Court, the JCC, and the United States, by February 20, 2018, that a final, signed MOU has been executed with the Bureau and that the Commonwealth expects that this MOU will spare the Commonwealth's community DD providers from having to comply with costly sprinkler requirements.

The parties respectfully request that the Court take note of the foregoing.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on February 1, 2018, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which sent notification of such filing to all counsel of record.

/s/ Richard J. Farano
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