

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

THE ARC OF DELAWARE,  
HOMES FOR LIFE FOUNDATION,  
DELAWARE PEOPLE FIRST,  
KIRK VAN ALSTINE, by his parents and  
next friends, Robert and Rose Van Alstine,  
GWEN VAN ALSTINE, by her parents and  
next friends, Robert and Rose Van Alstine,  
TERRY HAGAN, by his mother and legal  
guardian, Norma Hagan,  
KENNETH F. SCHROEDER, by his father  
and legal guardian, Kenneth H. Schroeder,  
JANE DOE,  
GARRY PRYOR, by his brother and sister-in-law,  
and next friends, Barry and Connie Pryor,  
DIANA ROE, by her parents and next  
friends, John and Martha Roe,  
BRENDA SIMMS, by her brother and legal  
guardian Morris Simms,  
JULIE DESMOND, by her mother and  
legal guardian Marcy Desmond,  
Plaintiffs,

v.

VINCENT MECONI, Secretary, Delaware  
Department of Health & Social Services, in  
his official capacity,  
MARIANNE SMITH, Director, Division of  
Developmental Disabilities Services, in her  
official capacity,  
DELAWARE DEPARTMENT OF HEALTH  
AND SOCIAL SERVICES, and  
DIVISION OF DEVELOPMENTAL  
DISABILITY SERVICES, DELAWARE  
DEPARTMENT OF HEALTH AND SOCIAL  
SERVICES,  
Defendants.

NO.

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CLERK U.S. DISTRICT COURT  
DISTRICT OF DELAWARE  
2012 APR -8 PM 12:47

CLASS ACTION

COMPLAINT  
PRELIMINARY STATEMENT

1. This action is brought by citizens of Delaware, who are in need of residential placement, training, treatment, day services, therapies and other home and community-based

services for which they are eligible and entitled to receive under Title XIX of the Social Security Act. The individual plaintiffs bring this action on their own behalf and on behalf of all other persons similarly situated. In addition, this action is filed by The Arc of Delaware on its own behalf and on behalf of its members, by The Homes for Life Foundation on its own behalf, and by People First of Delaware on behalf of its members.

2. Plaintiff class members are residents of the State of Delaware. They bring this action to address systemic violations of Federal law. The plaintiffs bring this action seeking declaratory, injunctive, and class relief to remedy those violations.

3. By this action, plaintiffs seek to enforce the statutory and regulatory rights of citizens with developmental disabilities to receive Medicaid services with reasonable promptness, including those services available under Delaware's approved home and community-based services (HCBS) waiver. Plaintiffs seek to enforce the right of qualified individuals with disabilities to receive these federally assisted services in integrated settings, in accordance with professional standards, and in conformity with due process of law.

4. The defendants have denied plaintiffs and the class the right to receive the home and community-based health and rehabilitative services to which they are entitled under Title XIX of the Social Security Act, 42 U.S.C. § 1936 et seq., and the right to receive services in the most integrated setting appropriate under Title II of the Americans with Disabilities Act.

5. The defendants' violations, under color of law, of plaintiffs' rights secured by the Constitution and laws of the United States have resulted in denial of necessary care and services, inappropriate placement in state institutions, restraint of liberty without due process, unnecessary

and needless deterioration and regression in health status, the loss of opportunities to maximize self-determination and independence, and the loss of opportunities to live in integrated settings and to receive programs and services developed in accordance with professional standards.

### **JURISDICTION AND VENUE**

6. This Court has jurisdiction to decide plaintiffs' claims pursuant to 28 U.S.C. §§ 1331, 1343(a)(3) and 1343(a)(4).

7. Plaintiffs' claims are authorized by 42 U.S.C. §§ 1396 et seq., 29 U.S.C. § 794(a), 42 U.S.C. §§ 1983 and 1988, 42 U.S.C. §§ 12101 et seq. Declaratory relief is authorized under 28 U.S.C. §§ 2201 and 2202.

8. Venue in this District is proper under 28 U.S.C. § 1391(b)(2), because a substantial number of the offenses that gave rise to this Complaint occurred in this District, and the defendants are resident in this district.

### **PLAINTIFFS**

#### **THE ORGANIZATIONAL PLAINTIFFS**

9. **The Arc of Delaware** is a statewide advocacy organization governed by a Board of Directors operating under established by-laws. It was founded and incorporated in 1953 as a nonprofit corporation under the laws of the State of Delaware. The Arc of Delaware has more than 800 members, most of who are families with at least one family member with a developmental disability. Approximately 100 of the members are persons with disabilities.

10. The purposes of The Arc of Delaware, for which it expends its resources, are as follows:

- a) To promote the philosophy that all persons with mental retardation, no matter how severe, have the same basic civil rights as other citizens;
- b) To advocate for and defend the rights of persons with mental retardation in the areas of employment, education, housing, public benefits, and transportation;
- c) To provide a way for persons with mental retardation to express and remedy their concerns and enhance their well being;
- d) To improve and enhance the quality of life for individuals with mental retardation and their families; and
- e) To provide services and supports for individuals with mental retardation including employment services, housing and family support services.

11. To advance these goals, the Arc of Delaware and its members advocate for legislation, policies, and practices that enable Delaware's citizens with disabilities to live more independently. Members travel around the State to teach people with disabilities about their legal rights and responsibilities. They provide leadership development training and foster community awareness through community volunteer service. They represent Delawareans with disabilities by serving on state and national councils, including the following: Governor's Advisory Council to the Division of Developmental Disabilities Services (Title 29 Del. C. § 7910); State Council for Persons with Disabilities (Title 29 Del. C. § 8813), and Delaware Developmental Disabilities Council (42 U.S.C. § 6024). They sponsor local and statewide conferences, meetings and training programs. They participate in legislative committee hearings

and state agency hearings concerning, inter alia, employment and vocational opportunities, residential options, educational services, family support services, public benefits, and the state budget.

12. **The Homes for Life Foundation** ("Homes for Life"), with its principal place of business at 1106 Berkley Road, Wilmington, Delaware 19807, is a non-profit corporation within the purview of Sec. 501 (c) (3) of the IRS Code, incorporated under the laws of the State of Delaware.

13. The purposes of Homes for Life, for which it expends its resources, are:

- a) To build and furnish homes that will enable Delaware's citizens with disabilities to have adequate community placements. Homes for Life has raised more than six million dollars (\$6,000,000.00) from private contributors and foundations to carry out its mission; and
- b) To provide opportunities for persons with disabilities to live lives fully-integrated into the community.

14. Homes for Life entered into a private-public partnership with the Arc of Delaware and Department of Health & Social Services by which Homes for Life agreed to and did raise the funds needed to build sufficient community placements to accommodate many clients of the Division of Developmental Disabilities Services ("DDDS") in need of a community placement. However, DDDS failed to place enough persons waiting for services to fill the homes built and furnished by Homes for Life, and these homes now lie vacant. Thus, the actions and inactions of the defendants have frustrated the purposes of Homes for Life, and of the Arc of Delaware,

which must pay to maintain the vacant homes.

15. **Delaware People First** is a statewide self-advocacy organization governed by an Advisory Council which consists of members with disabilities and at-large representatives. The membership elects the officers who govern the organization under established by-laws. The President and Vice-President of Delaware People First are also members of the Board of Directors of the Arc of Delaware.

16. The purposes of Delaware People First, for which it expends its resources, are as follows:

- a) to identify gaps in service for people with disabilities;
- b) to talk about the problems, such as housing, jobs, and transportation, etc., for people with disabilities;
- c) to assist individuals in finding services;
- d) to actively advocate for more resources, better services, and options for people with disabilities;
- e) to coordinate with other groups and organizations;
- f) to monitor services at Stockley Center and residential placements; and
- g) to educate groups and people on disability issues.

#### **THE INDIVIDUAL PLAINTIFFS**

17. Plaintiffs **Kirk Van Alstine** and **Gwen Van Alstine** are forty-two and forty-six years old respectively and live with their parents, Robert and Rose Van Alstine, in Houston,

Delaware. Both Kirk and Gwen Van Alstine have cognitive and communication disabilities, experience seizures and respiratory problems associated with microcephalia, and have diabetes.

18. Kirk and Gwen Van Alstine are clients of the defendant Division of Developmental Disability Services ("DDDS") and have been so since approximately 1989 when the family moved to Delaware. Both are eligible for and receive Medicaid and Medicare benefits. Both meet the eligibility requirements to receive community-based developmental disability services provided by the State of Delaware defendants.

19. Both Van Alstines have been on the waiting list for community residential placement for many years. Their parents have not been told when they can expect to be placed.

20. About seven years ago, Mr. Van Alstine and Ms. Van Alstine were placed in an apartment with another DDDS client. However, proper staff support was not provided, and frequently, no staff at all were present during meals and chores. Ms. Van Alstine began to experience seizures, Mr. Van Alstine frequently strayed from the apartment, and the police would call his father to pick him up and take him back to his apartment. Because of the lack of proper staff supervision and because they feared for their safety and health, the Van Alstines removed their son and daughter from the apartment.

21. Robert and Rose Van Alstine are sixty-eight and seventy-six years old respectively. Both have serious health problems. Mr. and Mrs. Van Alstine want their son and daughter placed in an appropriate community setting because they will soon be unable to care for them. Even now, the full-time care that they are required to provide their son and daughter poses a tremendous hardship for them.

22. Kirk and Gwen Van Alstine are at risk of placement in a more restrictive setting, such as a nursing home or institution, if their parents become unable to care for them. With appropriate supports and services, they could continue to live in the community. The community is the most integrated setting appropriate to their needs. They are entitled to receive home and community-based services with reasonable promptness so that they may live as independently as possible in a community setting close to home and thereby avoid unnecessary institutionalization.

23. Plaintiff **Terry Hagan** is thirty-five years old and lives with his mother and legal guardian, Norma Hagan, in Wilmington, Delaware.

24. Mr. Hagan has Down Syndrome and moderate retardation. He can speak, but his speech can be difficult to understand. After his father's death in 1989, Mr. Hagan became depressed and developed obsessive-compulsive disorder.

25. Mr. Hagan is a DDDS client and is eligible for and receives Medicaid benefits. He meets the eligibility requirements to receive community-based developmental disability services provided by the State of Delaware defendants.

26. Mr. Hagan's mother, Norma, is sixty-nine years old. She first applied to obtain a community residential placement for Mr. Hagan through DDDS after his father's death in 1989. At that time, Mr. Hagan was placed on the waiting list, where he has remained for the last thirteen years.

27. Caring for Mr. Hagan is increasingly difficult for his mother. The responsibility of helping him get up and ready in the morning is challenging, especially when she is not feeling well. She lacks the same energy to take Mr. Hagan to social activities as she had when she was

younger.

28. Terry Hagan is at risk of placement in a more restrictive setting, such as a nursing home or institution, if his mother becomes unable to care for him. With appropriate supports and services, Mr. Hagan could continue to live in the community. The community is the most integrated setting appropriate to his needs. He is entitled to receive home and community-based services with reasonable promptness so that he may live as independently as possible in a community setting close to home and thereby avoid unnecessary institutionalization.

29. Plaintiff **Kenneth F. Schroeder** is fifty-two years old and lives with his father and legal guardian, Kenneth H. Schroeder, in Wilmington, Delaware. Kenneth's mother died in 1997.

30. Mr. Schroeder experienced brain damage at birth. He cannot read or communicate verbally, and he needs personal assistance with activities of daily living.

31. Mr. Schroeder is a DDDS client and is eligible for and receives Medicare and Medicaid benefits. He meets the eligibility requirements to receive community-based developmental disability services provided by the State of Delaware defendants.

32. Mr. Schroeder's father, Kenneth H. Schroeder, is eighty years old. He recently was diagnosed with cancer and will soon begin treatment. He has applied to obtain a community residential placement for his son through DDDS and has been on the waiting list for at least a year. He does not know when a placement will become available. He is concerned that his health will prevent him from being able to care for his son's daily needs.

33. Kenneth F. Schroeder is at risk of placement in a more restrictive setting, such as

a nursing home or an institution, if his father becomes unable to care for him. With appropriate supports and services, Mr. Schroeder could continue to live in the community. The community is the most integrated setting appropriate to his needs. He is entitled to receive home and community-based services with reasonable promptness so that he may live as independently as possible in a community setting close to home and thereby avoid unnecessary institutionalization.

34. Plaintiff **Jane Doe** is forty-three years old and is institutionalized at the Stockley Center, a state institution for persons with developmental disabilities. She has cerebral palsy. Her receptive language skills are excellent, but because of her physical disability, she responds primarily in yes/no answers or forms a simple sentence with the aid of an augmentative communication device.

35. Because of her health care needs -- Ms. Doe has a tracheotomy tube and a gastrostomy tube and experiences seizures and osteoporosis -- she requires skilled nursing care. She has a powered wheelchair with accessories and can go on excursions with the support of a nurse. She would like to work, but the only activity available to her is a day program at Easter Seals that she attends twice a week.

36. Ms. Doe is a DDDS client and is eligible for and receives Medicaid and Medicare benefits. She meets the eligibility requirements to receive community-based developmental disability services provided by the State of Delaware defendants.

37. Ms. Doe's parents kept her at home until she was five years old, and her mother's health made it impossible for the family to care for her at home. At that time, Ms. Doe moved to Stockley.

38. After she had lived at Stockley for many years, Ms. Doe moved into a group home. However, when a tracheotomy tube became necessary for Ms. Doe because of her health needs, the group home could no longer support her. Ms. Doe was then moved to a nursing facility. She was extremely unhappy in the nursing home, where she felt she was not being supported to live with dignity and was not getting appropriate attention. The nursing facility reported that Ms. Doe was suicidal.

39. On Christmas Eve, 1997, Ms. Doe returned to Stockley. She would like to live with a family or in her own apartment; she has no desire to return to a group home, nursing home or other congregate living situation.

40. About two years ago, Ms. Doe received an e-mail from the state saying that she was on "the priority list" for community placement. However, she has not been offered a community placement since that time.

41. With appropriate supports and services, Ms. Doe could live in the community. The community is the most integrated setting appropriate to her needs. She is entitled to receive home and community-based services with reasonable promptness so that she may live as independently as possible in a community setting and thereby avoid unnecessary institutionalization.

42. Plaintiff **Garry Pryor** is forty-five years old and is institutionalized at the Stockley Center. He has cerebral palsy, uses a wheelchair and needs personal assistance to care for himself. He understands language, although his speech can be difficult to understand. He loves life and people and greatly enjoys going on community excursions. His brother and sister-

in-law, Barry and Connie Pryor, report that Mr. Pryor says he wants to go home every time they visit him.

43. Mr. Pryor lived at home until 1969, when his father died suddenly and his mother could not care for him and his four siblings on her own. He was then institutionalized at Stockley. After his siblings grew up and moved out, Mr. Pryor's mother took him back home to live with her, where he lived until her death in 1986. Mr. Pryor moved back to Stockley at the end of 1986.

44. Mr. Pryor is a DDDS client and is eligible for and receives Medicaid benefits. He meets the eligibility requirements to receive community-based developmental disability services provided by the State of Delaware defendants.

45. Mr. Pryor has been recommended for community placement since 1987, just after he was reinstitutionalized at Stockley, and his brother and sister-in-law have received letters every year to that effect. The family has been promised every year that Mr. Pryor will be placed in a group home. At every annual meeting about Mr. Pryor, the staff says that he is "recommended for community placement," but he is still at Stockley.

46. In the summer of 2001, Mr. Pryor's brother and sister-in-law were told that he shortly would be moving to a group home in Milton. When they visited Mr. Pryor around that time, they told him all about the home and talked about what they would purchase for his room. In August, however, they received a message on their answering machine from a state caseworker that said, in essence, that the placement was not going to work out. Mr. Pryor was deeply disappointed.

47. With appropriate supports and services, Mr. Pryor could live in the community. The community is the most integrated setting appropriate to his needs. He is entitled to receive home and community-based services with reasonable promptness so that he may live as independently as possible in a community setting and thereby avoid unnecessary institutionalization.

48. Plaintiff **Diana Roe** is thirty-one years old and lives with her parents in Bear, Delaware. Ms. Roe's mother is sixty-seven years old, and her father is seventy-one. Ms. Roe has retardation and needs supervision and assistance with tasks such as managing her money, but she has learned many daily living skills.

49. Ms. Roe is a DDDS client and is eligible for and receives Medicaid and Medicare benefits. She meets the eligibility requirements to receive community-based developmental disability services provided by the State of Delaware defendants.

50. Ms. Roe attends a day program through which she works at a uniform rental company where she sorts out hangers several days per week. She receives between \$2.75 and \$41 for this work every two weeks. Ms. Roe also spends one day per week volunteering at the Victory Church where she helps set up the church for Sunday services. She participates in the Special Olympics in bocce and basketball. She also enjoys cross-country skiing, but this year, she was unable to participate in this event, because it is increasingly difficult for her mother to get around in cold weather.

51. The Roe family has been waiting for a residential placement for Ms. Roe for at least seven years. Ms. Roe has told her mother that she wants very much to live in a place of her

own. When her mother first placed Ms. Roe's name on the waiting list, she was told by DDDS that they would have to wait a few years and might not receive a placement for as long as five years. Ms. Roe's DDDS caseworker now tells her mother that there are other clients on her caseload who have much higher priority than Ms. Roe because Ms. Roe still has both of her parents.

52. Ms. Roe's mother has a degenerative bone disease that as time passes, will render her increasingly unable to care for Ms. Roe. She wants to find a placement for Ms. Roe now so that she can help her with the transition and is very anxious that Ms. Roe may not receive a placement before she and her husband die. She would like Ms. Roe to be placed in a supervised apartment or a group home.

53. Ms. Roe is at risk of placement in a more restrictive setting, such as a nursing home or an institution, if her parents become unable to care for her. With appropriate supports and services, Ms. Roe could continue to live in the community. The community is the most integrated setting appropriate to her needs. She is entitled to receive home and community-based services with reasonable promptness so that she may live as independently as possible in a community setting close to home and thereby avoid unnecessary institutionalization.

54. Plaintiff **Brenda Simms** is fifty-one years old and lives with her brother and legal guardian, Morris Simms, in Wilmington, Delaware. Mr. Simms has been Ms. Simms' caretaker for the past six or seven years because none of his siblings were available to care for her. Before that, Ms. Simms' mother cared for her, but her mother developed serious health problems and has since died.

55. Ms. Simms needs supervision with activities of daily living. She speaks and walks, but cannot read or count. She takes medication for a seizure disorder.

56. Ms. Simms is a DDDS client and is eligible for and receives Medicaid benefits. She meets the eligibility requirements to receive community-based developmental disability services provided by the State of Delaware defendants. She attends a DDDS day program in Claymont, where she participates in recreational activities and makes boxes for which she is paid \$38 every two weeks.

57. Ms. Simms has been on the waiting list for a community residential placement for about three years. Her brother is sixty-eight years old, and his health is poor. In November 2001, he was unconscious for eight days, and he has had serious back problems since a car accident in April 2001. He had back surgery in February 2002, and expects to have additional surgeries and therapies as part of his recovery. Because of his age and health problems, Mr. Simms is increasingly unable to care for his sister.

58. Mr. Simms has received some respite care for Ms. Simms, but it has been difficult for DDDS to find a caretaker for her. Usually, other family members must step in to help out. For example, during his recovery from his recent surgery, he did not receive respite care.

59. Ms. Simms is at risk of placement in a more restrictive setting, such as a nursing home or an institution, if her brother becomes unable to care for her. With appropriate supports and services, Ms. Simms could continue to live in the community. The community is the most integrated setting appropriate to her needs. She is entitled to receive home and community-based services with reasonable promptness so that she may live as independently as possible in a

community setting close to home and thereby avoid unnecessary institutionalization.

60. Plaintiff **Julie Desmond** is 26 years old and has moderate retardation and some of the manifestations of autism. She lives with her parents, John and Marcy Desmond, in Wilmington, Delaware. Ms. Desmond can walk and speak, but will talk only to herself. She needs supervision with activities of daily living.

61. Ms. Desmond has lived with her parents all her life. Her mother and legal guardian is her primary caretaker. Marcy Desmond is 58 years old and has multiple sclerosis. She must avoid activities that risk exacerbating this condition. She also has impaired vision.

62. Ms. Desmond is a DDDS client and is eligible for and receives Medicaid and Medicare benefits. She meets the eligibility requirements to receive community-based developmental disability services provided by the State of Delaware defendants.

63. Ms. Desmond works at Kutz Retirement Home as a volunteer in the laundry room. She has worked there for many years.

64. Ms. Desmond's parents requested residential placement for her at least five years ago. She is on a waiting list for community placement, but the services she needs have not been offered or provided. The only services Ms. Desmond receives are monthly visits to her volunteer workplace by a caseworker, and respite services from DDDS about three times per year. However, Ms. Desmond's mother has been warned that respite is available only on a very limited basis, and that she must request those services at least four months in advance.

65. Ms. Desmond is at risk of placement in a more restrictive setting, such as a nursing home or an institution, if her parents become unable to care for her. With appropriate

supports and services, Ms. Desmond could continue to live in the community. The community is the most integrated setting appropriate to her needs. She is entitled to receive home and community-based services with reasonable promptness so that she may live as independently as possible in a community setting close to home and thereby avoid unnecessary institutionalization.

### **CLASS ACTION ALLEGATIONS**

66. The class consists of: 1) all persons who are presently on the Delaware Division of Developmental Disabilities Services ("DDDS") waiting list for community residential services; 2) all DDDS clients and similarly situated persons with developmental disabilities eligible for the Department of Health & Social Services ("DHSS") Medicaid waiver services and/or ICF/MR services in the State of Delaware; and 3) all DDDS clients residing in institutions who qualify for residential services in the community. The representative plaintiffs bring this action on their own behalf and on behalf of all other similarly situated persons pursuant to Federal Rules of Civil Procedure 23 (a) and (b) (2).

67. The members of the class have all been denied rights under Federal law as a result of the actions, policies and practices of the defendants. The plaintiffs seek for themselves and for all members of the class declaratory and injunctive relief to eliminate these actions, policies, and practices and to require defendants to establish standards and procedures that do not arbitrarily deny to plaintiffs and the class their rights guaranteed by Federal law.

68. There are substantial questions of law and fact common to the entire class, including the following:

- a) Do the defendants illegally deny or delay access to home and community-

based waiver or other Title XIX services for eligible individuals?

- b) Have the defendants failed to provide services reasonably necessary for rehabilitation because of their failure to provide home and community-based waiver or other residential services?
- c) Have the defendants failed to provide reasonable modifications in their programs as required by the Americans with Disabilities Act?
- d) Do the defendants unnecessarily detain and segregate DDDS clients in institutions and otherwise fail to provide services to class members in the most integrated setting appropriate?
- e) Do the defendants deny due process of law to persons who are eligible for community services through their failure to provide adequate notice of rights, right of appeal, and concomitant procedural safeguards?

69. At present, the class consists of more than 1,180 individuals from all areas of the State that have been denied access to home and community based waiver services or placed on the waiting lists for community residential services. It is estimated that a substantial number of other persons will need these services in the future and that a substantial number of persons have, upon consideration, not placed their names on the waiting list because of the perceived futility and inability to get services even if they do so.

70. The claims of the plaintiffs are typical of the class. The named plaintiffs will adequately and fairly represent the interests of the class. Defendants have acted on grounds generally applicable to the class, thereby making appropriate final injunctive and declaratory

relief with respect to the class as a whole. The plaintiffs' attorneys have the resources and experience to adequately represent all members of the class and have been found competent to represent class representatives in similar litigation in the Northern District of California, the District of Connecticut, the Northern District of Illinois, the District of New Mexico, the Northern District of Oklahoma, the Eastern District of Pennsylvania and the Western and Middle Districts of Tennessee. The representative plaintiffs are represented by legal counsel who are skilled, knowledgeable and experienced with regard to the Medicaid program, civil rights litigation, civil procedure, class actions, and the representation of persons with developmental disabilities.

71. By filing this action, the representative plaintiffs, individually and through their guardians and next friends or their corporate structures, have displayed an interest in vindicating their rights, as well as the claims of others that are similarly situated.

72. The relief sought by the representative plaintiffs will inure to the benefit of the class generally.

#### **DEFENDANTS**

73. The Delaware Department of Health and Social Services ("the Department") is the state Title XIX agency and is responsible for implementing the Medicaid program in the state of Delaware.

74. The Division of Developmental Disabilities Services of the Department of Health and Social Services ("the Division") is charged by law with executing the primary functions of the State of Delaware pertaining to persons with retardation and developmental disabilities. The

Division's statutory charge is to "provide services and supports to individuals with developmental disabilities and their families which enable them to make informed choices that lead to an improved quality of life and meaningful participation in their communities." Title 29 Del. C. § 7909A (b). The Division's statutory power and duties include, inter alia, the provision of community-based services, including neighborhood homes and supported living, and the provision of intermediate care facilities for the mentally retarded (ICFs/MR). Title 29 Del. C. § 7909A (c) (1) (4).

75. Defendant Vincent Meconi, the Secretary of the Department, is responsible for promulgating rules and regulations implementing the federal law that governs the programs operated by the Department. Title 31 Del. C. § 107. The Secretary is the State official specifically responsible for the operation of the Department and the State's public assistance program. Title 29 Del. C. §§ 7902-7903; Title 31 Del. C. §§ 104 and 503. His executive office is located at DHSS, Administration Building, Holloway Campus, 1901 N. Dupont Hwy, New Castle, DE 19720. He is sued in his official capacity.

76. The Division of Developmental Disabilities Services has the following duties:

- a) assuring implementation of the Bill of Rights of Persons with Mental Retardation and Developmental Disabilities, Title 16 Del. C. §§ 5501-5507 and 29 Del. C. § 7909A;
- b) providing community-based services, including family supports, habilitation services, foster care placements, neighborhood homes, and ICF/MR services, Title 16 Del. C. § 5525 and 29 Del. C. § 7909A;

c) authorizing the involuntary detention of reside

Title 16 Del. C. § 5522; and

d) administering and implementing the DDDS M

community-based services ("HCBS") waiver

77. Defendant Marianne Smith, Director of the Division,

administration and operation of the Division. Title 29 Del. C. §§ 79

104 and 106. Her executive office is located at DDDS, Jesse Cooper

Box 637, Dover, DE 19903. She is sued in her official capacity.

#### FACTUAL ALLEGATIONS

78. In Delaware, the defendants provide residential and d  
developmental disabilities through State operated services and/or thr  
non-profit or for-profit community service providers. The principal  
support for these services comes through the Medicaid program, Titl  
Act, 42 U.S.C. § 1396 et seq.

79. Medicaid is a cooperative Federal-State program that  
medical assistance to individuals who are unable to meet the costs n  
services. The Federal and State governments share the costs of the  
participates in and receives federal financial participation through th  
of Federal contribution to the Delaware program is 50%.

80. A State is not obligated to participate in the Medicaid  
to participate, however, it must operate its program in compliance w

- c) authorizing the involuntary detention of residents in the Stockley Center, Title 16 Del. C. § 5522; and
- d) administering and implementing the DDDS Medicaid home and community-based services ("HCBS") waiver program.

77. Defendant Marianne Smith, Director of the Division, is responsible for the administration and operation of the Division. Title 29 Del. C. §§ 7902-7903; Title 31 Del. C. §§ 104 and 106. Her executive office is located at DDDS, Jesse Cooper Bldg., Federal Street, P.O. Box 637, Dover, DE 19903. She is sued in her official capacity.

#### FACTUAL ALLEGATIONS

78. In Delaware, the defendants provide residential and day services to persons with developmental disabilities through State operated services and/or through contracts with private, non-profit or for-profit community service providers. The principal source of federal financial support for these services comes through the Medicaid program, Title XIX of the Social Security Act, 42 U.S.C. § 1396 et seq.

79. Medicaid is a cooperative Federal-State program that enables states to furnish medical assistance to individuals who are unable to meet the costs necessary for medical services. The Federal and State governments share the costs of the program. Delaware participates in and receives federal financial participation through this program. The proportion of Federal contribution to the Delaware program is 50%.

80. A State is not obligated to participate in the Medicaid program. If a State chooses to participate, however, it must operate its program in compliance with Federal statutory and

regulatory requirements. 42 U.S.C. § 1396a. One of those requirements is that all Medicaid services must be provided with reasonable promptness. 42 U.S.C. § 1396a(a)(8). All states, including Delaware, have chosen to participate in the Medicaid program.

81. Medicaid provides core services that are mandatory for any state participating in the Medicaid program. In addition to the mandatory services, states may choose to cover federally authorized optional services. If, however, a state does choose to provide an optional service, the provision of that service is subject to the same requirements as mandatory core services. These requirements include the right to apply for services, the right to notice and a fair hearing when application is denied, the right to have services provided with reasonable promptness, and the right to services of adequate amount, duration and scope.

82. The Intermediate Care Facility for the Mentally Retarded ("ICF/MR") program is an optional Medicaid service. The purpose of an ICF/MR is to provide health and rehabilitative services for individuals with mental retardation. See 42 U.S.C. § 1396d(d). The individual entitled to ICF/MR services must receive a continuous active treatment program, which includes aggressive, consistent implementation of a program with specialized training, treatment, health services and related services. The goal of these services is to increase functional performance and prevent loss of self-determination or independence. See 42 CFR § 483.440(a). ICFs/MR may be large facilities like the Stockley Center, or small community homes for as few as four residents. Delaware has chosen to provide ICF/MR services; however, most ICFs/MR in Delaware are large, congregate facilities.

83. As an alternative to ICF/MR care, a State may offer, provide and receive Federal

reimbursement for home and community-based services (“HCBS”) for persons with mental retardation and developmental disabilities if the State obtains a “waiver” from the Secretary of the U.S. Department of Health and Human Services. 42 U.S.C. § 1396n(c)(1). The Department has operated approved waiver programs continuously since at least the 1980s.

84. Congress adopted the HCBS waiver program in order to allow individuals who otherwise qualify for care in a nursing home, ICF/MR, or similar facility to receive needed services in their own homes or home-like settings. See 42 U.S.C. § 1396n. This statute permits states to offer an array of home and community-based services that an individual needs to avoid institutionalization. See 42 CFR § 442.300. Services available in Delaware under the waiver program include, among others, case management, residential habilitation, day habilitation, supported employment, pre-vocational services, respite, environmental accessibility adaptation, transportation, and clinical support services. Delaware’s HCBS waiver slots are approved by the Centers for Medicaid & Medicare Services (“CMS”) of the U.S. Department of Health and Human Services. Delaware can apply to CMS for more waiver slots at any time if it so desires; such increases are readily granted.

85. As explained by the regulations, § 1915 (c), 42 U.S.C. § 1396n, permits states to offer, under a waiver of statutory requirements, an array of home and community-based services to obviate institutionalization of individuals. 42 CFR §441.300. Under Federal law, the only limitation on the number of persons served and the intensity of the services offered is that the waiver must be cost-neutral, meaning that the average costs of providing services to individuals in the community must not exceed the average costs for the same level of services in facilities or

institutions. 42 U.S.C. § 1396n (c) (2) (D). The cost of providing services through the HCBS waiver, however, is typically much less than providing services in an ICF/MR.

86. Under the regulations, in order to participate in the HCBS program, states must provide assurances that when a recipient is determined to be likely to require the level of care provided in an ICF/MR, the recipient or legal guardian will be informed of any feasible alternative available under the waiver, and given the choice of either institutional or home and community-based services. 42 CFR § 441.302 (d) (1)-(2); see also 42 U.S.C. § 1396n (c) (2) (C). Delaware is required to provide this assurance in its waiver application. Each plaintiff is categorically eligible for Medicaid and meets the ICF/MR eligibility criteria. Despite its assurance that Delaware would provide eligible Medicaid recipients a choice of either ICF/MR or HCBS waiver services, defendants did not provide plaintiffs with such a choice.

87. The State of Delaware operates a Medicaid home and community-based waiver program that allows a limited number of persons with developmental disabilities to receive an ICF/MR level of care while living at home or in home-like settings.

88. Despite the availability of waiver slots, the State discourages eligible individuals from applying for the waiver. In practice, the State offers waiver slots almost exclusively to clients in its licensed, contract facilities. The vast majority of eligible individuals are placed on a waiting list for residential services. The current DDDS residential services waiting list is in excess of 1,000 clients and is increasing rather than decreasing. Further, it is believed that a substantial additional number of persons with developmental disabilities have simply chosen not to apply for residential services because the waiting list is so long that inclusion on the list is

perceived to be futile.

89. Some plaintiffs and members of the class are detained in institutions such as the DDDS-operated Stockley Center. State law and practice authorizes involuntary detention and restraint of liberty without hearing, judicial review, or other procedural safeguards. Title 16 Del. C. § 5522. On information and belief, defendants have identified over 100 Stockley residents who could reside in community-based ICF/MR or equivalent home settings. All these individuals would be eligible for Medicaid waiver services if living outside an institution. State law contemplates placement in the least restrictive setting. Title 16 Del. C. § 5161 and Ch. 55. Nevertheless, Delaware ranks 40<sup>th</sup> among the states and District of Columbia in fiscal effort on community services (the amount spent for developmental disabilities community-based services per \$1,000 of total personal income). Delaware ranks 49<sup>th</sup> among the states and the District of Columbia in the proportion of its Medicaid funds that are spent on services in small community settings. And, in the percentage of citizens with developmental disabilities whom it serves who are confined in state institutions, Delaware ranks 47<sup>th</sup>. DAVID BRADDOCK ET AL., THE STATE OF THE STATES IN DEVELOPMENTAL DISABILITIES (2000).

90. The defendants have adopted and implemented procedures, practices and policies that result in the denial of any meaningful choice of services (either ICF/MR or waiver services) to persons eligible for residential services.

91. There is no formalized outreach process that advertises the availability of waiver services or the application procedure. Most members of the plaintiff class are unaware of their eligibility for waiver services or the application procedure. Eligible persons placed on the

waiting lists should be sent notice advising them of procedural rights and providing an opportunity to appeal, but the defendants fail to provide such notice.

92. The defendants have adopted a residential eligibility priority system that effectively limits approved applications to clients in crisis. Historically, such "critical need" individuals on a DDDS waiting list are the only persons to be offered residential services through the waiver or otherwise. As a result, members of the plaintiff class can languish on the waiting list for decades. Examples of "critical need" include clients subject to abuse/neglect, homelessness, or immediate risk due to the death of a caretaker. The DDDS estimates that between 30-115 clients will meet the "critical need" standard on an annual basis.

93. This crisis-based approach is destructive of families and clients since there is negligible prospect of obtaining waiver or residential services until an emergency develops. Many individuals who are waiting for services are over 40 years old, and many of the parents who now care for them are elderly and becoming progressively less able to care for them. Other DDDS clients are currently placed in special education-funded residential placements as "rare or complex" students in conformity with Title 14 Del. C. § 3124. These individuals are "aging out" of special education eligibility upon attainment of age 21 and have no available, appropriate placement.

94. This problematic system is expected to worsen in 2002-2003 since the proposed FY 2003 budget contains zero funds for new DDDS residential services, even for clients in crisis. This system causes the treatment needs of persons with developmental disabilities to be neglected and ignored.

95. Private ICFs/MR also have long waiting lists for residential/comprehensive services. These waiting lists have become lengthy and almost meaningless.

96. ICF/MR and home and community-based waiver services must be provided with "reasonable promptness." Case law defines "reasonable promptness" as ninety (90) days or less. See Doe v. Children, 136 F.3d 709, 720-21 (11th Cir. 1998); Benjamin H. v. Oil, Civil Action No. 3:99-0338 (S.D.W. Va. Mar. 15, 2000); Lewis v. New Mexico Dep't of Health, 94 F. Supp.2d 1217, 1235-36 (D.N.M. 2000); Roland v. Cellucci, 52 F. Supp.2d 231 (D. Mass. 1999). However, the statewide average for people to be on Delaware's waiting list for waiver services is measured in years, and some persons have been waiting for decades.

97. All plaintiffs are eligible for services in an ICF/MR, which, consistent with Federal and State integration mandates, must be provided in the most integrated setting appropriate to plaintiffs' needs.

98. But for the provision of home or community-based services, plaintiffs require the level of care provided in a hospital or a nursing facility or an intermediate care facility for the mentally retarded. See 20 U.S.C. § 1396n (c) (1).

99. Defendants have denied class members the choice of ICF/MR services or waiver services.

100. Defendants have adopted and implemented a policy and practice of denying required services and procedural protections to plaintiffs.

101. The effect of these actions by the State of Delaware is to severely limit services that provide an ICF/MR level of care to such a point that these services are not available to the

extent, in the manner, and within the time frames required by Federal law.

102. As a direct result of defendants' actions, practices, policies and procedures, plaintiffs have been denied necessary care and services.

### **IRREPARABLE HARM**

103. Plaintiffs have no adequate remedy at law. Plaintiffs are suffering and will continue to suffer imminent, irreparable injury as alleged above without an award of injunctive relief. Plaintiffs require residential and other related services ("active treatment") in the least restrictive environment. Individuals with developmental disabilities must endure impossible burdens, including the risks of a crisis, which will force unplanned, out of home placement into an unnecessarily restrictive, destructive and inappropriate setting, while trying to cope with the loss of a parent or other loved care giver. Right now, hundreds, if not thousands, of Delawareans with developmental disabilities are in danger. They are left at home, unsupervised, and without proper care and treatment because their parents must work to support the family and because the defendants will not provide the services that they need and to which they have a legal right. Other DDDS clients are unnecessarily detained in institutions such as the Stockley Center. Plaintiffs incorporate by reference the individual descriptions of the plaintiffs set forth above which demonstrate irreparable harm.

104. Because of the State's failure to provide services to all members of the class, including specifically those persons on the waiting list for waiver services and those persons who have opted not to seek waiver services because of futility, the plaintiff class has suffered and continues to suffer serious harm, including but not limited to the following:

- a) They have failed to make reasonable progress in developing skills and behaviors necessary to function with appropriate self-determination and independence;
- b) They have suffered needless regression in skills previously attained and are threatened with further regression;
- c) They have lingered on lengthy waiting lists for years, waiting for necessary community-based residential or specialized in-home services and other support services;
- d) They have been forced into permanent dependence status, including seeking assistance almost entirely from relatives who lack training and whose emotional, physical and financial resources are insufficient for their needs; and
- e) They have been detained in institutions or are “at risk” of institutional placement or detention.

105. The defendants are ultimately responsible for carrying out Delaware’s legislative policy and for complying with Federal laws regarding services to persons with developmental disabilities, and have extensive authority to do so.

106. Persons who are denied Medicaid services, or for whom services are not provided with reasonable promptness, are entitled to a notice and hearing on the State’s failure to provide needed services. 42 U.S.C. § 1396a (a) (3); 42 CFR §§ 431.200 and 431.246. Members of the plaintiff class have in many instances been on the waiting list for services for years, yet have not

been provided proper notice and meaningful opportunity to be heard on the failure to provide these services, nor have they been reasonably and adequately advised of the availability of, or their eligibility for, ICF/MR and waiver services.

107. For many class members who are receiving services, those services are seriously deficient or provided on a sporadic basis. As a result, individuals regress and are disproportionately subject to abuse, neglect, mistreatment and exploitation. The incidence of such harm would be reduced by the provision of appropriate ICF/MR or waiver services.

108. By failing to offer and provide the plaintiff class with needed services in the most integrated appropriate setting, the defendants have violated Title II of the Americans with Disabilities Act, Section 504 of the Rehabilitation Act of 1973, and their implementing regulations.

109. By providing plaintiffs services that are not as effective in affording equal opportunity to reach the same level of achievement as is provided to those who enjoy ICF/MR level services and/or waiver services, and by denying plaintiffs the opportunity to participate in waiver services or ICF/MR level services while maintaining a permissible, separate ICF/MR program, the defendants have violated Title II of the Americans with Disabilities Act, Section 504 of the Rehabilitation Act of 1973, and their implementing regulations.

**CLAIMS FOR RELIEF**  
**COUNT I - Failure to Provide Services**  
**With Reasonable Promptness**  
**In Violation of Title XIX of the**  
**Social Security Act.**

110. Plaintiffs incorporate by reference paragraphs 1-109 above.

111. Plaintiffs bring this claim pursuant to 42 U.S.C. § 1983 to redress claims under Title XIX of the Social Security Act which requires states that participate in the Medicaid program to make medical assistance benefits available. 42 U.S.C. § 1396a (a) (10) (A). Medical assistance benefits include, at the option of the State, ICF/MR services. 42 U.S.C. § 1396d (a) (15). Delaware has chosen to provide ICF/MR services for eligible persons as a Medicaid benefit. Once a State has chosen to provide ICF/MR services, it must allow all eligible persons to apply for them and then provide them to all eligible persons with reasonable promptness. 42 U.S.C. § 1396a (a) (8). Services must be furnished promptly without any delay caused by the agencies' administrative procedures. 42 CFR § 435.930 (a). Plaintiffs are eligible for ICF/MR services. The defendants have failed to inform plaintiffs of the availability of ICF/MR services and have failed to allow plaintiffs, who are eligible for these services, to apply for or to receive them. Defendants have received approval from the federal government to provide home and community-based waiver services to persons as an alternative to services in an ICF/MR, but have failed to provide those services with reasonable promptness in violation of Title XIX of the Social Security Act. As a result, plaintiffs are entitled to declaratory, injunctive, and other class wide relief.

**COUNT II - Failure to Provide Appropriate  
Services in The Most Integrated  
Setting And Denial of Opportunity  
To Participate in Non-segregated  
Services in Violation of Title II of the  
Americans with Disabilities Act and  
Section 504 of the Rehabilitation Act.**

112. Plaintiffs incorporate by reference paragraphs 1-109 above.

113. Defendants receive Federal financial assistance, pursuant to the voluntary election of the State of Delaware to participate in the Medicaid program, including the optional ICF/MR program and the HCBS waiver program. Defendants are public entities or State officials with direct supervisory responsibility for public entities. Plaintiffs need and are entitled to receive home and community-based waiver or ICF/MR level services. In Delaware, almost all ICF/MR services are provided in large, congregate, segregated settings. Such placements entail loss of liberty and segregation. Delaware has additional programs that provide the services that plaintiffs need in the community, including services provided pursuant to an HCBS waiver of the Federal Medicaid Act. See 42 U.S.C. § 1396n (c). Such services, however, are not available with "reasonable promptness." Due to a lack of reasonable and timely alternatives, plaintiffs are either detained or placed at risk of detention in institutional, segregated settings, including the Stockley Center, psychiatric hospitals, and correctional facilities. Defendants' failure to provide services in community-based ICFs/MR or home and community based waiver services result in regression and instability that enhances the likelihood of placement in such restrictive settings.

114. The Defendants do not have a comprehensive effectively working plan for placing qualified persons with developmental disabilities in less restrictive settings nor for maintaining

waiting lists so that they move at a reasonable pace.

115. Plaintiffs can benefit from ICF/MR or waiver services in community settings and without unnecessary segregation. The Defendants are required to “reasonably modify” (28 CFR § 35.130 (b) (7)) the ICF/MR and HCBS waiver programs and to provide “reasonable accommodations” (28 CFR § 41.53) to plaintiffs, as necessary to avoid discrimination on the basis of their disability.

116. Defendants’ failure to reasonably provide services in community settings to avoid excessive waiting for services and needless risk of institutionalization and segregation, including their failure to make reasonable modifications or accommodations in existing programs, denies plaintiffs the right to receive services in the most integrated setting appropriate and to receive services that are not “separate or different,” and violates regulations promulgated by the Attorney General of the United States under Section 504 of the Rehabilitation Act, 29 U.S.C. § 794 and the Americans with Disabilities Act, 42 U.S.C. § 12134(b), 28 CFR §§ 35.130(b) and 41.53(d).; see 28 CFR., Part 31, Appendix A.

**COUNT III - Failure to Provide Medicaid  
Services in Adequate Amount,  
Duration And Scope, in  
Violation of Title XIX of the  
Social Security Act.**

117. Plaintiffs incorporate by reference paragraphs 1-109 above.

118. Defendants’ failure to provide community-based ICF/MR and other Medicaid services in adequate amount, duration and scope violates 42 U.S.C. § 1396a (a) (10) and its implementing regulations and thereby violates 42 U.S.C. § 1983.

119. Title XIX requires that categorically needy recipients, such as plaintiffs, receive mandatory services and any designated optional services, such as ICF/MR services and waiver services, in an amount, duration or scope that is no less than those services that are available to other categorically needy recipients. 42 U.S.C. § 1396a (a) (10) (B) (I) (ii); 42 CFR § 440.240. The defendants provide ICF/MR services to other categorically needy recipients, while failing to make ICF/MR and/or waiver services available to the plaintiff class.

120. The defendants' failure to make ICF/MR and waiver services available to the plaintiff class, who are eligible for these services, while providing such services to other Medicaid recipients violates 42 U.S.C. § 1396a (a) (10) (B).

**COUNT IV - Denial of the Opportunity  
To Apply for Services, in  
Violation of Title XIX of the  
Social Security Act.**

121. Plaintiffs incorporate by reference paragraphs 1-109 above.

122. Defendants' failure to advise ICF/MR and waiver applicants of the pre-admission evaluation process and to make potential applicants generally aware of the availability of services denies these applicants the opportunity to apply for medical assistance in violation of 42 U.S.C. § 1396a (a) (8) and its implementing regulations.

**COUNT V - Failure to Afford Plaintiffs an  
Equal Opportunity to Benefit  
From Public Services, in Violation  
Of Title II of the Americans with  
Disabilities Act and Section 504 of  
The Rehabilitation Act.**

123. Plaintiffs incorporate by reference paragraphs 1-109 above.

124. The lack of timely and appropriate services has caused and will cause plaintiffs and class members to:

- a) Suffer regression in learned skills;
- b) Substantially, and in some cases, permanently, impair the opportunities for plaintiffs to acquire new skills that are both valued in themselves as well as appropriate to community living;
- c) Substantially, and in some cases, permanently, impair vocational opportunities; and
- d) Substantially, and in some cases, permanently, impair family relationships.

125. Despite Delaware's election to participate in the ICF/MR and HCBS waiver programs, defendants have denied eligible plaintiffs the opportunity to enroll in and benefit from these programs. Defendants also have failed to make reasonable modifications or accommodations to ensure that plaintiffs could benefit from such programs. Program services include the development and maintenance of skills material to personal, social, and vocational domains. The defendants' actions violate regulations promulgated by the Attorney General, which define invidious disability discrimination under Section 504 of the Rehabilitation Act and the Americans with Disabilities Act as the deprivation of the opportunity to obtain the same result, gain the same the benefit, or reach the same level of achievement as that provided to others in the Delaware Medicaid, ICF/MR and/or HCBS waiver programs. 28 CFR §§ 35.130 (b) (1) (iii) and 41.51 (a) (iii).

**COUNT VI - Deprivation of a Protected  
Property Interest in Violation  
Of the Due Process Clause.**

126. Plaintiffs incorporate by reference paragraphs 1- 109 above.

127. Plaintiffs have a protected property interest in services under the Medicaid Act. 42 U.S.C. § 1396a (a) (3), 42 CFR §§ 431.200 - 431.246. Consistent with the Due Process Clause of the Fourteenth Amendment to the Constitution and 42 U.S.C. § 1983, this property interest may not be impaired without the provision of written notice and the opportunity to be heard if eligibility is denied or not acted upon with reasonable promptness.

128. Plaintiffs are eligible for Medicaid services and have not been provided them with reasonable promptness. Plaintiffs have not been given notice of their right to services, and have been denied freedom of choice and placement. The defendants have failed to provide appropriate written notice and the opportunity to be heard upon denial of plaintiffs' eligibility for Medicaid services or upon failure to act on their claims for Medicaid services with reasonable promptness, in violation of law. Plaintiffs have been effectively determined to be ineligible for services at the ICF/MR level of care, whether in an ICF/MR or through HCBS waiver, often based on whether or not they are in crisis. Concomitantly, plaintiffs have not:

- a) Consistently been provided with notice of ineligibility in any form; nor
- b) Been provided with notices of ineligibility that accurately and fully reflect the reasons for denial and opportunity, if any, to contest such denial; nor
- c) Been provided with notices that accurately and fully identify service alternatives to which they are entitled or choices they are or by law should

be able to make.

**COUNT VII - Failure to Provide Freedom of  
Choice In Violation of Title XIX  
of the Social Security Act.**

129. Plaintiffs incorporate by reference paragraphs 1- 109 above.

130. Plaintiffs require the level of care provided in an ICF/MR. The Medicaid Act requires that when plaintiffs are determined to be likely to require the level of care provided in an ICF/MR, they must be informed of feasible alternatives under the HCBS waiver program and be given a choice of either ICF/MR or home and community-based waiver services. 42 U.S.C. § 1396n (c) (2) (C).

131. This "freedom of choice" is required under 42 CFR 441.302 (d). Despite this requirement, defendants have not given plaintiffs the choice of either ICF/MR services or feasible alternatives services available under the HCBS waiver.

**COUNT VIII - Deprivation of Liberty in Violation  
of the Due Process Clause.**

132. Plaintiffs incorporate by reference paragraphs 1-109 above.

133. Defendants detain many members of the plaintiff class in the institution known as the Stockley Center without adequate standards, with no initial or periodic judicial review, with inadequate procedural safeguards, and in violation of the professional judgment of plaintiffs' interdisciplinary teams who have recommended community placement.

134. Plaintiffs have a liberty interest protected by the Fourteenth Amendment of the

Constitution enforceable through 42 U.S.C. § 1983. This interest includes the right to services that are consistent with professional judgment.

135. Defendants' actions impair plaintiffs' liberty interest without due process of law.

### **PRAYER FOR RELIEF**

**WHEREFORE**, plaintiffs respectfully request that the Court:

1. Certify the class pursuant to Federal Rules of Civil Procedure 23 (a) and (b) (2).
2. Find and declare that the defendants' action and inaction, including the failure to offer each plaintiff an ICF/MR placement with reasonable promptness, to provide them with services comparable to other categorically needed individuals who are receiving ICF/MR services, and to give them the choice of either ICF/MR or home and community-based waiver services violate Title XIX of the Social Security Act and 42 U.S.C. § 1983.
3. Find and declare the defendants' action and inaction by failing to provide plaintiffs with waiver services or ICF/MR services in the most integrated setting appropriate to their needs violates Title II of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973.
4. Find and declare the defendants' action and inaction in failing to provide plaintiffs with adequate notice for a hearing violates Title XIX of the Social Security Act, 42 U.S.C. § 1983 and the Due Process Clause of the Fourteenth Amendment of the United States Constitution.

5. Find and declare the defendants' detention of plaintiffs in the Stockley Center based on inadequate standards, no judicial review, and inadequate procedural safeguards, violates the Due Process Clause of the Fourteenth Amendment of the United States Constitution as enforced through 42 U.S.C. § 1983.

6. Issue a preliminary and permanent injunction enjoining defendants from continuing to violate Title XIX of the Social Security Act, Title II of the American with Disabilities Act, Section 504 of the Rehabilitation Act of 1973, and the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

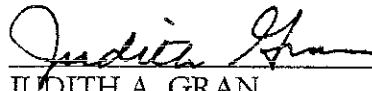
7. Issue a mandatory preliminary and permanent injunction requiring the defendants to:

- a) Provide adequate notice and hearing rights to plaintiffs and the plaintiffs class in accordance with Title XIX of the Social Security Act and the Due Process Clause of the Fourteenth Amendment to the United States Constitution;
- b) Establish prompt time frames within which defendants must come into compliance with Federal laws; and
- c) Retain jurisdiction over this case during implementation of any relief;

8. Award plaintiffs their reasonable attorney's fees and costs; and

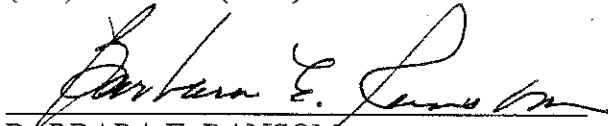
9. Award plaintiffs such other and further relief as the Court deems proper and just.

Respectfully submitted,



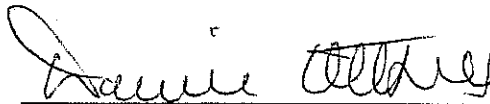
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COUNSEL FOR PLAINTIFFS

Date: 4/8/02

## CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## I. (a) PLAINTIFFS

The Arc of Delaware, Home for Life Foundation, et. al.

(b) County of Residence of First Listed Plaintiff New Castle  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

See Attachment

## DEFENDANTS

Vincent P. Meconi, Secretary Delaware Department of Health and Social Services, in his official capacity, et. al.

County of Residence of First Listed New Castle  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

Jane Brady, Attorney General of the State of Delaware

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State ☐ 1 ☐ DEF 1 Incorporated or Principal Place of Business in This State ☐ 4 ☐ DEF 4
- Citizen of Another State ☐ 2 ☐ 2 Incorporated and Principal Place of Business in Another State ☐ 5 ☐ 5
- Citizen or Subject of a Foreign Country ☐ 3 ☐ 3 Foreign Nation ☐ 6 ☐ 6

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 362 Personal Injury—Med. Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/TCC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input checked="" type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

## V. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

## VI. CAUSE OF ACTION

(Cite the U.S. Civil Statute under which you are filing and write brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

42 U.S.C. 1983, 42 U.S.C. 1396, 42 U.S.C. 12134, and the U.S. Constitution. This is a case alleging that the State of Delaware has violated civil rights under the Constitution, Medicaid Act, and ADA, and 504 of the Rehab A

## VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

## DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No

## VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

04/08/02

SIGNATURE OF ATTORNEY OF RECORD

*David A. [Signature]*

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

**ATTACHMENT FOR PLAINTIFFS' ATTORNEYS**

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Del. Bar Id. #2970

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# UNITED STATES DISTRICT COURT

District of Delaware

NOTICE, CONSENT, AND ORDER OF REFERENCE —  
EXERCISE OF JURISDICTION BY A UNITED STATES  
MAGISTRATE JUDGE

Plaintiff

V.

Case Number:

02 - 255

Defendant

## NOTICE OF AVAILABILITY OF A UNITED STATES MAGISTRATE JUDGE TO EXERCISE JURISDICTION

In accordance with the provisions of 28 U.S.C. § 636(c), and Fed.R.Civ.P. 73, you are notified that a United States magistrate judge of this district court is available to conduct any or all proceedings in this case including a jury or nonjury trial, and to order the entry of a final judgment. Exercise of this jurisdiction by a magistrate judge is, however, permitted only if all parties voluntarily consent.

You may, without adverse substantive consequences, withhold your consent, but this will prevent the court's jurisdiction from being exercised by a magistrate judge. If any party withholds consent, the identity of the parties consenting or withholding consent will not be communicated to any magistrate judge or to the district judge to whom the case has been assigned.

An appeal from a judgment entered by a magistrate judge shall be taken directly to the United States court of appeals for this judicial circuit in the same manner as an appeal from any other judgment of this district court.

## CONSENT TO THE EXERCISE OF JURISDICTION BY A UNITED STATES MAGISTRATE JUDGE

In accordance with provisions of 28 U.S.C. § 636(c) and Fed.R.Civ.P. 73, the parties in this case consent to have a United States magistrate judge conduct any and all proceedings in this case, including the trial, order the entry of a final judgment, and conduct all post-judgment proceedings.

Party Represented	Signatures	Date
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

## ORDER OF REFERENCE

IT IS ORDERED that this case be referred to \_\_\_\_\_  
United States Magistrate Judge, to conduct all proceedings and order the entry of judgment in accordance with 28 U.S.C.  
§ 636(c) and Fed.R.Civ.P. 73.

\_\_\_\_\_  
Date

\_\_\_\_\_  
United States District Judge

NOTE: RETURN THIS FORM TO THE CLERK OF THE COURT ONLY IF ALL PARTIES HAVE CONSENTED  
ON THIS FORM TO THE EXERCISE OF JURISDICTION BY A UNITED STATES MAGISTRATE JUDGE.