

EXHIBIT A

to the

**JOINT NOTICE OF SETTLEMENT AGREEMENT and
MOTION TO ESTABLISH A TIMETABLE FOR REVIEW**

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS
WESTERN SECTION

_____)	
LORETTA ROLLAND, et al.,)	
)	
Plaintiffs)	
)	
v.)	Civil Action No.
)	98-30208-KPN
DEVAL PATRICK, et al.,)	
)	
Defendants)	
_____)	

SETTLEMENT AGREEMENT ON ACTIVE TREATMENT

I. Purpose and Principles

A. Purpose

1. The purpose of this Settlement Agreement is to comply with and implement the Court’s active treatment orders, including its April 10, May 15, June 13, and August 2, 2007 Orders. This Agreement describes the actions that the defendants will take to satisfy their obligations under the federal law and orders of the Court to provide active treatment to all class members by transitioning the majority of individuals who are in nursing facilities to the community, by providing active treatment transition services to those awaiting community placement, and by ensuring that those who remain in nursing facilities promptly receive active treatment consistent with the Court’s orders. The Agreement sets forth specific timelines so that all class members, whether they are moving to a community setting or remaining in a nursing facility, will receive enhanced services as soon as possible.

2. This Agreement also provides specific dates by which all actions must be completed and criteria for terminating the litigation. This Agreement supersedes and replaces the original Settlement Agreement approved by the Court on January 10, 2000.

B. Principles

3. The following principles form the foundation of this Agreement but do not create independently enforceable rights, only apply to this case, and shall not constitute precedent with respect to any other matter:

a. The most effective method for providing appropriate habilitation and supports to class members is through integrated community services and supports.

b. The provision of services in the community is the preferred method for meeting the needs of most class members. As a result, the provision of appropriate services to most class members who currently are in nursing facilities is best accomplished through their transition to the community and the expansion of community services.

c. The transition to the community of class members who are in nursing facilities, together with the provision of appropriate transition services while they await community placement and the provision of appropriate community supports as set forth in their transition plans, satisfies the defendants' obligation to provide active treatment to those individuals under the prior Settlement Agreement, dated January 10, 2000 and subsequent orders of this Court.

d. Class members with developmental disabilities will also be provided equal access to community living opportunities and support services.

II. Community Transition and Services

A. Community Placement List

4. The defendants immediately will create a Rolland Community Placement List. Class members in nursing facilities will be included on this List if, in DMR's professional judgment and subject to review by the Court Monitor, DMR determines that the individual can benefit from community living. The factors to be considered in making this determination include: (1) opportunities to interact with family and friends; (2) accessibility to appropriate work or day supports; (3) opportunity for meaningful participation in aspects of community life; (4) the presence or absence of an advanced medical condition that would have a significant adverse effect on the individual's safety; (5) the presence or absence of fragile health condition such that the main supports are nursing services for medical and basic needs; (6) the presence or absence of a substantial risk of substantial transfer trauma which cannot be mitigated by individual clinical intervention; and (7) adequate levels of support in the community system to ensure safety. This standard only applies in determining which individuals will be identified for inclusion on the "Rolland Community Placement List."

B. Identification of Class Members for Community Transition

5. With respect to individuals living in nursing facilities as of November 1, 2007, DMR has identified 666 class members who are recommended for community placement. These individuals will immediately be placed upon the Rolland Community Placement List.

6. DMR has identified an additional 53 individuals living in nursing facilities as of November 1, 2007 who have been preliminarily found to have personal circumstances that preclude transition to a community setting at this time. By July 1, 2008, the Court Monitor will conduct a review of these individuals, using the criteria set forth in ¶ 4 above, to determine if any of these individuals should be added to the Rolland Community Placement List.

7. DMR has identified an additional 39 individuals living in nursing facilities as of

November 1, 2007 who are inappropriate for community placement due to their medical condition and “end-of-life” status, as set forth ¶ 4, criteria #4 above. By July 1, 2008, the Court Monitor will conduct a review of these individuals, using the criteria set forth in ¶ 4 above, to determine if any of these individuals should be added to the Rolland Community Placement List.

8. For all class members who are admitted to a nursing facility after November 1, 2007 and who remain in a nursing facility for longer than ninety days, the relevant DMR Area Director will conduct a review within 120 days of their admission to determine what supports and services are needed to safely transition each of these individuals to a community setting.

9. In FY 2010 and 2011, based upon this review and consistent with the criteria set forth in ¶ 4 above, DMR will identify those class members who have remained in a nursing facility for longer than ninety days and who DMR determines should be added to the Rolland Community Placement List. DMR may place in the community any of these specific class members as substitutes for deceased class members already on the Rolland Community Placement List.

10. In FY 2012, based upon this review and consistent with the criteria set forth in ¶ 4 above, DMR will identify class members who have remained in a nursing facility for longer than ninety days and who DMR determines should be added to the Rolland Community Placement List. DMR may place in the community these newly listed class members to satisfy its FY 2012 placement obligation under this Agreement, provided that the total number of substitutions in FY 2010 and 2011, as referenced in ¶ 9, and additions in FY 2012 as set forth in this paragraph do not exceed 160. If in FY 2010, 2011, and FY 2012 the defendants wish to exceed the number of substituted and/or newly listed placements due to exceptional circumstances, defendants will confer with plaintiffs and obtain approval before proceeding with the placements.

11. DMR shall review the Rolland Community Placement List at least annually,

beginning in Fiscal Year 2008. If, because of changed circumstances, DMR determines, based upon the criteria set forth in ¶ 4 above, that a class member would no longer benefit from community living, DMR may remove the individual from the List. DMR will notify the Court Monitor within thirty days of such removal, so that the Monitor can promptly review the class member and indicate if she concurs in this decision.

12. If the Court Monitor disagrees with DMR's decision not to include, or to remove, an individual from the Rolland Community Placement List, the Court Monitor first will meet with the relevant Area Office staff and the Assistant Commissioner to discuss the issue and determine whether the individual should be included on the List. If agreement is not reached, the Court Monitor will then meet with the Commissioner to attempt to resolve the issue. The Court Monitor and/or DMR may involve an independent consultant to advise them on the appropriateness of transitioning the individual to the community. If the Court Monitor and the Commissioner continue to disagree, the plaintiffs may seek review by an independent professional selected jointly by the Commissioner and the Court Monitor. The independent professional will determine whether DMR properly applied the placement standard in ¶ 4.

C. Expansion of Community Living Options

13. During the next four fiscal years, FY 2009 – FY 2012, the defendants will place a total of 640 class members from the Rolland Community Placement List into the community with appropriate residential and supports, through a combination of new, base resources or enhanced base resources. If, in any year, defendants wish to exceed the number of enhanced base service placements due to exceptional circumstances, defendants will confer with plaintiffs and obtain approval before proceeding with the placement.

14. In FY 2009, the defendants will develop and provide residential and other

supports for at least 160 class members who are on the Rolland Community Placement List. No more than 25 class members will be placed through current or base resources, and no more than 10 class members will be placed through enhanced base resources.

15. In FY 2010, the defendants will develop and provide residential and other supports for at least 160 class members who are on the Rolland Community Placement List. No more than 25 class members will be placed through current or base resources, and no more than 10 class members will be placed through enhanced base resources.

16. In FY 2011, the defendants will develop and provide residential and other supports for at least 160 class members who are on the Rolland Community Placement List. No more than 25 class members will be placed through current or base resources, and no more than 10 class members will be placed through enhanced base resources.

17. In FY 2012, the defendants will develop and provide residential and other supports for at least 160 class members who are on the Rolland Community Placement List. No more than 25 class members will be placed through current or base resources, and no more than 10 class members will be placed through enhanced base resources.

18. Prior to the beginning of Fiscal Years 2009 - 2012, DMR will identify those class members on the Rolland Community Placement List who will be transitioned to the community during that year.

19. When the defendants have completed the community expansion and transition requirements described above, including the placement of at least 640 individuals from the Rolland Community Placement List, they shall have no further obligation under this Agreement to provide additional residential supports. In any year in which the defendants are obligated to provide residential supports, if a placement or placements are planned but not completed within

the fiscal year due to a change in the individual's medical condition, unanticipated housing development delays, or extended necessary transition time for clinical reasons such a temporary delay in placement that does not extend beyond September 30th of the next fiscal year, will not be considered noncompliance with this Agreement. Should exceptional circumstances exist which would delay a particular placement longer than this period, the defendants will confer with plaintiffs to seek their approval to extend the time for the placement.

D. Actions to Accomplish Community Transition

20. In order to accomplish the transition of class members to the community, DMR will take the following actions:

a. The DMR Commissioner will send letters to all class members, guardians and involved families within thirty days of the Court's preliminary approval of this Agreement, informing them of the Court's April 10, 2007 decision and subsequent decisions on active treatment, the provisions of this Agreement, and DMR's commitment to provide community services and supports to class members. The plaintiffs will communicate with class members, guardians and involved families within thirty days of the Court's preliminary approval of this Agreement, to inform them of this Agreement and the actions that will follow to implement the Agreement. Class Counsel or their agents will engage in various activities to encourage individuals on the Rolland Community Placement List or their guardians to accept community placement such as: 1) conducting educational forums for families and guardians on community placement; 2) advising class members in writing to consider community placement; 3) meeting with class members or their guardians who have refused community placement to advise them as to their rights under the Agreement to a community placement between FY 2009-2012.

b. DMR service coordinators and UMass case managers will undertake additional efforts to assist each class member and guardian to understand the advantages of community living. These actions will include, but not be limited to, enhanced exposure to community opportunities and living arrangements, information concerning DMR's intention to offer class members who are determined to be able to benefit from placement a community living arrangement with appropriate supports, and an explanation of the PASARR review process.

c. Defendants, including DMR area directors, nursing facility liaisons, DMR service coordinators and UMass case managers, will inform nursing facility social workers and administrative staff about the Court's active treatment decisions, the provisions of this Agreement, the expanded community living options, and the PASARR review process and its consequences. DMR will take all reasonable actions to enlist the social workers' support for promoting transition to the community and facilitating the prompt and full implementation of this Agreement.

d. In consultation with the organizational plaintiffs, the defendants will contract with a nonprofit organization to develop and implement a family-to-family project that educates class members, guardians and involved families about community placement and introduces them to community programs and real options in their communities. Funding for this initiative shall be no more than \$200,000 in any Fiscal Year.

e. The defendants will educate and inform class members' corporate guardians about community living and DMR's commitment to provide residential services and other supports to class members in the community.

f. DMR will develop an initiative for class members with developmental disabilities. This initiative will include an educational strategy focused on guardians who have expressed resistance to transition to the community. DMR will lead this initiative and ensure that these class members have the same opportunity to experience the types of relevant services available in the community.

21. DMR, under its PASARR authority, may conduct reviews for class members whose circumstances have changed, including the availability of a community placement, consistent with its existing authority under federal law and the provisions of the PASARR regulations, 42 C.F.R. § 483.102 et seq. If DMR determines, through the PASARR process, that a class member who is on the Rolland Community Placement List can be safely served in the community, and that appropriate community services and supports are, or will soon be, available for that individual, the individual will be assisted in moving to the community.

III. Provision of Active Treatment to Residents of Nursing Facilities

22. By May 1, 2008, the defendants shall submit an updated Rolland Community Placement List to the Court Monitor that includes all class members in nursing facilities who have been identified for transition to the community. The defendants simultaneously shall submit a list to the Court Monitor of all other class members in nursing facilities who currently are not identified for transition to the community.

23. By May 1, 2008, the defendants will inform nursing facilities that serve class members who are not on the Rolland Community Placement List that these individuals must be provided with active treatment, in accordance with the Active Treatment Standards that will be measured by the Active Treatment Protocol.

24. By June 1, 2008, the defendants shall ensure that all class members who are in

nursing facilities and who are not on the Rolland Community Placement List are provided with active treatment, in accordance with the Active Treatment Standards that will be measured by the Active Treatment Protocol.

25. If the Court Monitor's Active Treatment Reviews indicate a pattern of deficiencies in specific nursing facilities' provision of active treatment to their residents, DMR, through its PASARR process, will not authorize the admission of additional persons who are recommended for specialized services to those facilities. DMR will encourage and support class members in those facilities to move to the community or to another facility that is providing active treatment to class members.

26. By September 30, 2009, DMR will generate a list of those nursing facilities found by the Court Monitor to be consistently providing active treatment, and will distribute such a list to acute hospital discharge planners, Aging Service Access Points, and DMR staff. The defendants will encourage these entities to consider the identified nursing facilities when an admission to a nursing facility for a class member is considered. DMR will encourage new admissions to, and continued stays in, these facilities for persons who need specialized services. DMR will encourage and support class members who will not be placed in the community by FY 2012 to transfer to one of these facilities.

27. If at any time a class member is removed from the Rolland Community Placement List, as provided in ¶ 11 above, or if the class member will not be transitioned to the community during Fiscal Year 2012, the defendants shall ensure that that individual promptly is provided with active treatment, in accordance with the Active Treatment Standards and Protocol.

28. Class members who are on the Rolland Community Placement List as of March 1, 2008 will be provided at least the same level of specialized services that they currently receive or

as modified by the RISP Team based upon a change in circumstances. In addition, in order to ensure that class members on the List are provided with active treatment transition services relevant to their projected placement, DMR will undertake the following actions for each individual on the List:

a. DMR will develop a transition plan for each individual, based upon the principles of person-centered planning. DMR will develop a standard format for the transition plan after discussion with the parties and input from the Court Monitor. In order to facilitate a successful transition, the transition plan will identify the needs that must be addressed and the transition services that must be provided to meet those needs while the person is still in the nursing facility. The transition plan will be integrated into the RISP. These transition services, together with enhanced specialized services described in the remaining subsections of the paragraph, constitute active treatment transition services for these individuals.

b. DMR will substantially intensify the involvement of the service coordinator or case manager, so that they are actively engaged with the class member and directly responsible for ensuring the implementation of the RISP, including the transition plan.

c. DMR will expand opportunities for specialized services that are provided in the community, and make their best efforts to reduce reliance upon mobile day habilitation services offered directly at the nursing facility. Service coordinators and case managers will actively encourage class members to participate in specialized services programs in the community.

d. DMR will expand transition services, as a form of specialized services, which offer class members the opportunity to participate in community activities during the

evening and weekend hours. These transition services will be consistent with each individual's transition plan. These transition services will be delivered by community residential, individual support, and other community providers, in order to facilitate the person's transition to the community and to allow these services to continue in the community, to the extent appropriate for the individual.

IV. Diversion from Admission to Nursing Facilities

29. DMR will continue to implement its current policies and practices to prevent inappropriate admissions of persons with mental retardation or other developmental disabilities into nursing facilities and will continue to effectuate the prompt and timely discharge of newly admitted persons with mental retardation or developmental disabilities within ninety days. These policies and practices shall include:

a. initial PASSAR approval for new admissions limited to a nursing facility stay of ninety days or less;

b. review of the status of all new admissions every ninety days, with the exception of those class members categorically approved for long term stay pursuant to 42 CFR § 483.130;

c. application of the "community rule out" standard and implementation of the "community rule out" process for all new admissions;

d. continued development of community supports and diversionary services;
and

e. continued training related to diversion for all staff involved in the admission process.

30. The defendants will use their best efforts to maintain the current rate of diversions

for all class members, including the percentage of class members who are admitted and discharged within ninety days. If data contained in diversion reports, as described in ¶ 36 below, indicates a significant decrease in the number or rate of diversions, the defendants will assess the reasons for this change, and in conjunction with the plaintiffs, develop a corrective action plan to determine a practicable way to promptly and effectively address its causes, to the extent such causes are within the defendants' control. The plan may consider the addition or targeting of resources to provide diversionary services to class members, such as temporary homes or special programs designed to facilitate diversion from nursing facilities. The corrective action plan described in this paragraph shall not be enforceable by the Court.

V. Monitoring

31. The parties agree to stay the Court Monitor's Active Treatment Review, as required by the Court's April 10, 2007 and subsequent active treatment orders, until June 1, 2008.

32. All class members who are on the Rolland Community Placement List will not be included in the Court Monitor's Active Treatment Review as long as they remain on the List. All class members not on the List will be included in the Active Treatment Review.

33. During Fiscal Years 2009, 2010, and 2011, the Court Monitor will conduct the Active Treatment Review using the Court's Active Treatment Protocol for those individuals not on the Rolland Community Placement List. In at least the third year of her reviews (Fiscal Year 2011), the Court Monitor will make specific findings and recommendations for each class member in the review with respect to any active treatment deficiencies, and promptly report the findings and recommendations to DMR. The class member's RISP team will have the opportunity to respond to such findings and recommendations. In Fiscal Year 2012, absent a

change in circumstances for an individual class member, the Court Monitor will focus her review on whether her recommendations for each individual have been implemented.

34. During Fiscal Years 2009, 2010, and 2011, the Court Monitor will conduct a special review of a sample of those individuals who are on the Rolland Community Placement List, using a sample methodology agreed upon by the parties, in order to determine whether they are receiving transition planning, transition services, intensified service coordination, and other specialized services as described in ¶ 28.

35. The Court Monitor will conduct a review of those class members who are refusing specialized services to determine if their refusal is knowing and informed.

VI. Reporting and Collaboration

36. In addition to the reporting requirements of the Court's April 10, 2007 Order, the defendants will prepare semi-annual reports for the Court Monitor and plaintiffs' counsel with respect to:

- a. class members on the Rolland Community Placement List, including individuals who have been added to or deleted from the List;
- b. individuals admitted to nursing facilities after November 1, 2007 who have stayed longer than 90 days;
- c. class members who have been transitioned to the community in each semi-annual period, including their name, discharge date, identity of the service provider, and the service model;
- d. class members who have been discharged from a nursing facility other than through DMR's transition process or who have died; and
- e. diversion data, including data on the current nursing facility class member

census, progress on diversion for the previous three months, and the number of persons seeking admission, number of persons admitted, and number of persons discharged within ninety days. The initial diversion report shall also set forth any other information the defendants believe relevant to establishing a baseline diversion rate and understanding the diversion rate for future reporting periods.

37. DMR will conduct meetings every three months with the Court Monitor and plaintiffs' counsel for the purpose of informing them about the progress of defendants' compliance with this Agreement.

VII. Funding

38. The defendants will submit annual budget requests to the Legislature to support the community placement and active treatment requirements of this Agreement.

39. The defendants' obligations under this Agreement are subject to appropriations by the Legislature. The defendants will seek as a priority the necessary funding to implement this Agreement, including the submission of annual House 1 budget requests from the Governor. Notwithstanding the foregoing, the defendants will pay for Medicaid-covered services to the extent that such services are included under the Commonwealth's Title XIX State Plan, to class members who are Massachusetts Medicaid recipients, subject to appropriations by the Legislature, unless Title XIX of the Social Security Act requires the Commonwealth to pay for the same notwithstanding any limitations in state appropriations.

VIII. Implementation

40. Any class member who is adversely affected by the Commonwealth's determination of his or her need for specialized services may seek administrative review of that determination

pursuant to 130 CMR § 610.000 *et seq.* Any class member who is adversely affected by DMR's determination to exclude the individual from the Rolland Community Placement List may seek administrative review of that determination pursuant to 115 CMR § 6.30 *et seq.*

41. DMR will be the lead agency responsible for designing, developing, and monitoring community services for all remaining class members who reside in nursing facilities.

42. The Commonwealth will amend its DMR adult home and community-based waiver (HCBW) waiver, and/or adjust its HCBS waiver capacity, as necessary, to meet its obligations under this Agreement, subject to Federal regulatory approvals.

43. In implementing this Agreement, the defendants will regard class members with mental retardation and class members with other developmental disabilities in the same manner consistent with the service development schedule contained in ¶¶ 13-17, above.

IX. Enforcement

44. This Agreement shall be subject to the approval of the Court, and, if so approved, shall be entered as a court order. The Agreement is not enforceable by contempt but shall be enforceable pursuant to all of the court's other equitable authority. Any further order of the court is enforceable by all of its remedial authorities including contempt.

45. No less than thirty days prior to filing any noncompliance motion, the plaintiffs shall notify the defendants of any alleged noncompliance with this Agreement and request a meeting for the purpose of attempting to resolve the problems identified by the plaintiffs regarding the defendants' alleged noncompliance.

46. Should the parties fail to resolve the problems identified by the plaintiffs, the parties shall engage in mediation with a mutually acceptable mediator for no less than two days, unless the parties reach agreement sooner.

47. Should the parties fail to resolve, through mediation, any problems identified by the plaintiffs, the plaintiffs may file a motion with the Court seeking a judicial determination that the defendants are not substantially complying with the Agreement.

48. These enforcement provisions are in addition to the provisions regarding court monitoring and individual appeals contained in section V and ¶ 40 of this Agreement.

49. No later than September 30, 2012, the defendants will submit a report to the Court that addresses the number of class members who have been transitioned to a community living arrangement with appropriate supports since the approval of this Agreement and the active treatment status of all class members who remain in nursing facilities. No later than September 30, 2012, the Court Monitor will file a report with the Court indicating whether her individual recommendations concerning active treatment for all remaining class members have been implemented, as set forth in ¶ 33, above.

50. The parties will have ninety days to challenge the defendants' report and the Court Monitor's findings. If the Court determines that 640 class members have been transitioned from nursing facilities to the community, with appropriate supports, and that the Monitor's individual recommendations for active treatment have been implemented, this case shall be dismissed.

X. Miscellaneous

51. This Agreement is the entire agreement among the parties with respect to the subject matter hereof and supersedes all prior oral and written discussions and all agreements. Each part represents that it has not relied upon any statement of the other party except those statements set forth in this Agreement.

52. By mutual agreement, the parties may change the terms of this Agreement, including, but not limited to, the timetables for taking specific actions, provided that such mutual

agreement be memorialized in writing and signed by the parties and approved by the Court. In the event that one party disagrees as to the appropriateness of any change proposed by the other party, the parties shall meet to attempt to resolve such dispute. Should the parties fail to reach agreement, the parties shall engage in mediation with a mutually acceptable mediator paid for by the Defendants.

53. By entering into and complying with this Agreement, no party makes any concession as to the merits of the opposing party's claims or defenses.

54. Neither this Agreement, nor any provision hereof, is intended nor shall it be construed, to constitute any formal or informal policy or procedure of the Commonwealth or its agencies or any reversal, change, or amendment to any formal or informal policy or procedure of such agencies.

55. If the Court determines that court approval of this Agreement is subject to a fairness hearing pursuant to Fed. R. Civ. P. 23(e), the parties will jointly prepare a notice of this Settlement which describes the process for filing written objections and includes the date for the fairness hearing. The notice shall be sent by the Defendants to all class members and their guardians, if any. The parties will cooperate in presenting this Agreement to the Court at the fairness hearing.

56. Nothing contained in this Agreement shall preclude the Defendants from promulgating or amending regulations as they deem appropriate. This provision will not relieve the Defendants of their obligations contained in this Agreement.

57. The parties represent that each of them has cooperated in drafting this Agreement. Hence, no ambiguity in this Agreement shall be construed against any of them.

58. Nothing in this Agreement is intended to affect any rights of any party or non-party, other than those rights specifically addressed herein.

59. Notwithstanding any provision of the Agreement, the defendants shall not exercise their discretion or professional judgment in a manner that unlawfully discriminates against any class member. The plaintiffs may challenge any unlawful pattern or discriminatory practice of removing class members from the Rolland Community Placement List.

60. Further proceedings in Civil Action No. 98-30208-KPN, other than any enforcement proceedings under this Settlement Agreement, will remain stayed.

61. Compliance with the terms of this Settlement Agreement shall constitute compliance with all outstanding orders of the Court.

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