

**ROLLAND v. PATRICK**  
Civil Action No. 98-30208-KPN

**NOTICE REGARDING SETTLEMENT ON ACTIVE TREATMENT**

**I. Purpose**

The purpose of this notice is to inform you of a proposed further settlement in the case of *Rolland v. Patrick*, C.A. No. 98-30208. As a class member you are entitled to notice and the opportunity to comment upon or object to the proposed settlement. The Court has scheduled a hearing for May 22, 2008, to determine whether the settlement is fair and reasonable.

**II. Background**

On January 10, 2000, the District Court approved the original Settlement Agreement between a class of over sixteen hundred nursing home residents with mental retardation and developmental disabilities and the Governor and several Massachusetts state agencies. This initial Settlement Agreement required the Commonwealth of Massachusetts to place one thousand nursing facility residents into community residential settings with appropriate supports, to divert to community settings persons with mental retardation or other developmental disabilities who otherwise would be admitted to nursing facilities, and to provide those class members who remained in nursing facilities with specialized services. The Court subsequently held that the specialized services provided by the defendants must comply with federal standards for providing active treatment.

The Commonwealth implemented the community placement and diversion provisions of the Settlement Agreement in a timely way, but there have been ongoing disputes about compliance with the Court's various active treatment orders. In April 2007, the Court reiterated that active treatment in nursing facilities must conform to the federal standard of active treatment in Intermediate Care Facilities for Persons with Mental Retardation, and appointed a Court Monitor to assess the services provided to an estimated 800 persons with mental retardation and developmental disabilities who remained in nursing facilities throughout the State.

**III. Provisions of the Settlement Agreement on Active Treatment**

Against this history, the parties have entered into a second settlement agreement. The purpose of this new settlement agreement is to address the Court's active treatment orders. This Agreement describes the actions the defendants will take to satisfy their obligations under 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 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.

The Settlement Agreement is based upon the principles that the most effective method for providing appropriate habilitation and supports to class members is through integrated community services and supports, and that the provision of appropriate services to class members currently in nursing facilities is best accomplished through their transition to the community and the expansion of community services. The Settlement Agreement on Active Treatment supersedes and replaces the original Settlement Agreement.

The Settlement Agreement on Active Treatment requires the defendants to:

1. Place a total of 640 class members in the community with appropriate residential services and supports during the next four fiscal years (FY 2009 – FY 2012), beginning July 1, 2008. At least 160 class members will be placed in the community each year.
2. Provide transition planning and transition services, including intensified service coordination and integrated community opportunities, to all class members who are expected to move to the community during the next four years.
3. Inform class members and their guardians of the benefits of community living and encourage them to accept community placement.
4. Ensure that by December 31, 2008 all class members in nursing facilities who are not likely to move to the community are provided with active treatment, in accordance with the Active Treatment Standards and measured by the Active Treatment Protocol.
5. Continue current policies and practices to prevent the inappropriate admission of persons with mental retardation or other developmental disabilities into nursing facilities, and continue to effectuate the prompt discharge of newly-admitted persons within ninety days.
6. Ensure ongoing reviews of transition services for class members expected to move to the community and active treatment for all other class members by the Court Monitor.

Any class member who is adversely affected by the Commonwealth's determination of his or her need for specialized services, or by a decision to exclude him or her from community placement, may seek administrative review of that determination.

#### **IV. Approval Process**

On April 14, 2008, after reviewing the parties' proposed Settlement Agreement on Active Treatment and hearing from counsel, the Court made a **preliminary** finding that the proposed settlement appears reasonable under the circumstances and should proceed to a full hearing on whether it is fair and adequate. **The Court has scheduled a fairness hearing for Thursday, May 22, 2008, at 10:00 a.m.**, before Magistrate Judge Kenneth P. Neiman in Courtroom 1, United States District Court, 1550 Main Street, Springfield. You are welcome to attend this hearing.

The Settlement Agreement on Active Treatment is subject to the Court's **final** approval. Any class member who wants to object to or comment on this Agreement must file a written objection or comments by **May 12, 2008**, with the Clerk, U.S. District Court, 1550 Main Street, Springfield, MA 01103-1422. Copies of objections or comments should be sent to both:

Plaintiffs' Counsel: Cathy E. Costanzo, Center for Public Representation,  
22 Green Street, Northampton, MA 01060, and

Defendants' Counsel: Kenneth Salinger, Assistant Attorney General,  
One Ashburton Place, Boston, MA 02108.

If you have questions regarding this notice, you may contact Ms. Costanzo at 413-586-6024, or Barbara Green Whitbeck of the Department of Mental Retardation at 617-624-7702. If you would like to obtain a copy of the Settlement Agreement, please contact the Center for Public Representation at 413-586-6024. **Please do not contact the Court directly about this notice.**