

STATE OF MISSISSIPPI



JIM HOOD
ATTORNEY GENERAL

August 29, 2014

Jonathan Smith
Chief, Special Litigation Section
Civil Rights Division
United States Department of Justice
905 Pennsylvania Ave. NW
Washington, DC 20530

Dear Mr. Smith:

The State of Mississippi and the United States share a mutual goal of ensuring that persons with disabilities live in the most integrated setting. Since the release of your investigative findings, we have been engaged in productive discussions and the State of Mississippi has taken steps to expand community services to support community integration. We have appropriated \$10 million in FY14, and \$16.1 million in FY15 to the Department of Mental Health. We have expanded the ID/DD waiver slots by 250, and have enrolled 643 individuals in the ID/DD waiver program since July 1, 2011. We have retained TAC to study permanent supported housing (study to be completed by August), and we are about to retain TAC to review *Troupe* issues. In addition, Medicaid has restarted the Mississippi Access to Care ("MAC") process and is moving forward on spending grant funds in a manner consistent with DOJ's informal recommendations. We recognize that additional efforts will be necessary to resolve your concerns. This letter is designed to provide a framework for moving forward by setting specific goals for the next year and creating a process for us to reach a resolution on all issues.

We agree that this letter does not constitute an admission or concession by either party regarding the factual or legal allegations in your letter of findings dated December 22, 2011. We also recognize that this letter does not waive any claim or defense a party may have.

Under this agreed-upon process, the parties will undertake the following actions, described more fully below:

1. The State will provide expanded services for adults with mental illness and people with developmental and intellectual disabilities;
 2. The State will engage national experts to provide technical assistance regarding implementation of expanded services;
 3. The State will facilitate Department of Justice oversight of the State's compliance with the commitments in this letter;
 4. The parties will engage in comprehensive settlement negotiations, to be conducted in two stages.
- I. **Expanded Services for Adults with Mental Illness and People with Intellectual and Developmental Disabilities in State Fiscal Year (FY) 2015.**
- a. The State will maintain or exceed its FY 2014 level of investment in mobile crisis and Assertive Community Treatment.
 - b. The State will seek legislative approval during the 2015 legislative session for the creation of a dedicated permanent supported housing fund during fiscal year 2016. If legislative approval is secured, the State will:
 - i. Establish procedures that allow the dedicated fund to provide startup funds and tenant-based rental subsidies to ensure that supported housing apartments are affordable to individuals with disabilities with limited incomes.
 - ii. Engage partners in the State and work with them to identify funding streams to ensure that the dedicated supported housing fund is sustainable.
 - c. If legislative approval is secured, the State will provide permanent supported housing to 50 individuals with serious mental illness during FY 2015 using the dedicated permanent supported housing fund.
 - i. Permanent supported housing for this population will be scattered site with no more than 20% of the units in any building occupied by individuals with disabilities known to the State and be provided in accordance with the "Key Elements" described on Page 2-5 of the "Building Your Program" section of SAMHSA's Permanent Supportive Housing Toolkit.

- ii. Permanent supported housing will be targeted to individuals in need who:
 - 1. Are being discharged from a State psychiatric hospital after a stay of more than 90 days; or
 - 2. Have been discharged from a State psychiatric hospital within the last two years and:
 - (a) had multiple hospital visits in the last year due to mental illness;
 - (b) are known to the mental health or state housing agency to have been arrested or incarcerated in the last year due to conduct related to mental illness; or
 - (c) are known to the mental health or state housing agency to have been homeless for one full year or have had four or more episodes of homelessness in the last three years.

- d. The State will maintain its existing ID/DD waiver slots and create 250 additional ID/DD waiver slots to prevent the institutionalization of individuals with intellectual disabilities and developmental disabilities and to enable those already institutionalized to transition to the community by July 1, 2015.
 - i. Priority for these waiver slots will go to individuals who wish to transition out of an institutional setting.
 - ii. The State shall provide the additional waiver slots in the most integrated setting appropriate to each individual's need. Consistent with individuals' informed choice, the new waiver slots should only be used for individuals who live in their own home or rented apartment, at home with their family, or in a group home of no more than four individuals receiving support in the same home.

II. Technical Assistance and Oversight

- a. The State will engage Technical Assistance Collaborative ("TAC") to provide technical assistance to the State with an annual budget not to exceed \$300,000 without the consent of the State. All reasonable fees, costs, and expenses of TAC, including the cost of any consultants or staff, shall be borne by the State up to the amount of this annual budget and paid pursuant to State law. TAC shall provide a monthly accounting justifying the fees, costs, and expenses. This technical assistance, to be provided at the State's direction and in collaboration with the Department of Justice, will include assessments of existing services, guidance on program

development, and recommendations related to program improvement. TAC will focus its technical assistance on:

- i. The development of permanent supportive housing and the dedicated permanent supported housing fund;
 - ii. The transition of individuals with serious mental illness from institutions to the community using permanent supported housing; and
 - iii. The implementation of intensive supports for individuals with serious mental illness in permanent supported housing, including Assertive Community Treatment.
- a. The State and the United States are committed to working together to find a resolution of this dispute. The State and the United States contemplate that TAC will provide assistance to both parties during negotiations to find a global resolution. TAC's assistance will include an evaluation of the ID/DD waiver program, recommendations regarding the transition to the ID/DD waiver from institutional settings, and recommendations on the most cost effective strategies to achieve the parties' goals. TAC may provide other assistance at the request of the parties.
 - b. If, in the course of providing technical assistance, TAC makes recommendations that conflict with the commitments in this letter, the parties will meet and seek to address the issues raised by TAC. Further, the State and the Department of Justice recognize that concepts and specific details in this letter are the starting points for in-depth and detailed negotiations and are subject to change during the course of the extensive negotiations.
 - c. The State will facilitate Department of Justice oversight of the State's implementation of the obligations contained in this letter, including timely providing the Department of Justice with requested information and data.

III. Engage in Intensive Negotiations

- a. The State and the United States will engage in intensive negotiations for the purpose of reaching a comprehensive settlement agreement to resolve the United States' claims relating to services for children with mental health conditions. The State and the United States will include counsel for the *Troupe* plaintiffs in negotiations and attempt to resolve the *Troupe* claims within the agreement.

Within 45 days, the State will contract with an independent consultant from TAC with system expertise in successfully serving children with significant mental health needs in community settings. The consultant will assist the parties during settlement discussions by assessing the State's existing service array, quality, and availability, and make recommendations for necessary improvements in order to address the issues raised in the *Troupe* litigation. While the precise terms will be negotiated pursuant to the procedure outlined in this letter, the parties agree that any final settlement will contain provisions that address at least the following issues:

- i. Wraparound facilitation implemented in fidelity to the national model;
 - ii. Flexible, intensive home and community-based services per national models;
 - iii. Mobile crisis intervention and stabilization for all children who are at serious risk of institutionalization, including those who are receiving intensive home and community-based services;
 - iv. A process through which the State will identify all children who are institutionalized or at serious risk of institutionalization and ensure the availability of these service for the children who need them; and
 - v. Provisions to expand and improve provider capacity.
- b. The State and the United States will engage in intensive negotiations in an effort to achieve a comprehensive settlement agreement to resolve the United States' claims relating to services for adults with mental illness and individuals with intellectual and developmental disabilities identified in the December 22, 2011 Findings Letter.

If we are successful in collaborating over the next year, we will address all issues related to your investigation regarding Mississippi's compliance with the Americans with Disabilities Act ("the ADA"), 42 U.S.C. § 12101 and related laws including, the Medicaid Act, and its Early and Periodic Screening, Diagnostic, and Treatment ("EPSDT") provisions, 42 U.S.C. §§ 1396 et seq, and the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. §§ 1400 et seq., as well as their implementing regulations.

The United States agrees to forgo litigation of claims related to services for children with mental health conditions until March 21, 2015, unless: (1) the parties reach an impasse in negotiations related to those claims before that date, or (2) the parties are engaged in productive negotiations on March 21, 2015, and agree to continue efforts to reach an agreement. The United States agrees to forgo litigation of claims related to adults with mental illness and individuals with intellectual and developmental disabilities until July 1, 2015, unless: (1) the parties reach an impasse in negotiations related to those claims before that date,

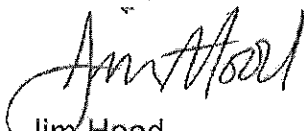
(2) the State does not receive adequate legislative approval, does not fund, or does not take the necessary steps to implement, the commitments described in this letter, or (3) the parties are engaged in productive negotiations on July 1, 2015, and agree to continue efforts to reach an agreement.

The terms of this letter and the commitments herein are made as a good faith showing as part of the parties' on-going settlement negotiations and are not court enforceable. Documents created for use in the parties' negotiations, including reports provided by or to TAC, and statements made between the parties and/or TAC regarding this matter are not admissible as evidence because they are confidential and protected by Rule 408 of the Federal Rules of Evidence unless the State and the Department of Justice agree otherwise. In order to ensure that the parties may work candidly with TAC, neither party will call TAC as a witness or seek discovery from TAC in the event that litigation is necessary.

The parties intend to work collaboratively and in a problem-solving manner to resolve any issues that may emerge during this agreed-upon process.

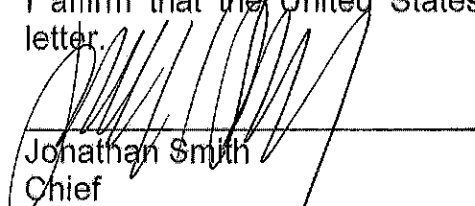
We appreciate the commitment the United States has shown to the continuing negotiations in this matter.

Sincerely,



Jim Hood
Attorney General

I affirm that the United States will complete the commitments outlined in this letter.



Jonathan Smith
Chief
Special Litigation Section
United States Department of Justice