

Katrina Hotrum
Deputy SecretaryJessica Sutin
Deputy SecretaryMichael Mulligan
Acting Deputy SecretaryKaren Armitage, MD
Chief Medical Officer

June 4, 2010

Representative Miguel P. Garcia
1118 La Font Road SW
Albuquerque, NM 87105

Dear Representative Garcia:

I am writing to you regarding House Memorial 97 (HM97), which requests the Department of Health (DOH) and the New Mexico Protection and Advocacy System, now called Disability Rights New Mexico, collaborate and take the necessary steps to bring an end to the Jackson lawsuit.

In 1987, the *Jackson v. Ft. Stanton Hospital and Training School*, et. al., 757 F. Supp. 1243 (D.N.M. 1990) was filed. This civil rights class action lawsuit was filed by Protection & Advocacy, on behalf of 43 specific individuals and the class of residents residing at Los Lunas Hospital and Training School (LLH&TS) and Fort Stanton Hospital and Training School. The Plaintiffs alleged both statutory (Rehabilitation Act and Americans with Disabilities Act) and constitutional (14th Amendment due process) violations. The lawsuit was litigated in Federal District Court before Judge James A. Parker.

The Plan of Action (POA), Appendix A, the 1998 Audit, and the Joint Stipulation on Disengagement (JSD) each represent one of four main legal areas of obligation for the Department, which entail 123 specific obligation sets of which approximately 70% are disengaged. The remaining areas will be the hardest to disengage, as these continue to be the controversial items between the parties. Only the Plan of Action and the Joint Stipulation on disengagement include a process for disengagement, a fault which has seriously hampered the Department efforts in achieving disengagement. However, the Department continues to move forward in a number of areas to conclude the lawsuit, including.

1. DOH Counsel has carefully reviewed all existing obligations to identify and target completed activities in the Plan of Action that may be disengaged.
2. Over the last year, DOH has disengaged Behavior E, Behavior I and Sexuality Plan of Action.
3. In addition, the litigation team successfully negotiated an agreement with Plaintiffs and Interveners permitting, for the first time, a process for disengagement of Appendix A.

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4. That agreement resulted in the disengagement of Behavior App A and Sexuality A.
5. There are five additional areas under negotiation with plaintiffs for disengagement.
6. The Department engages in many activities that are not required by any of the Orders, such as the Aspiration Risk Management Initiative, the Significant Events Workgroup, the Money Management Workgroup, the Health Issues Workgroup, just to name a few. While the Department has willingly entered into these activities at the invitation or direction of the 706 expert, the Department is not credited with completing any existing activity, nor are antiquated activities removed. These activities are resource intensive.
7. The Department has been under a hiring freeze since November 2008. While some critical positions can be replaced, in general the Department must administer a service-intensive program for aging and medically fragile individuals with fewer and fewer employees.
8. The Department continues to meet with all experts, plaintiffs and interveners and makes every effort to address their concerns to achieve unopposed motions for disengagement.

While the Disability Rights New Mexico representative stressed the need for the Department to provide for the larger health issues of our consumers. It was agreed by the parties that we are doing everything in our power, respectively, to bring the litigation to the best and most expedient closure.

It was also agreed that the original POA and JSD were created to establish a community system of services for people with developmental disabilities. However, because of the length of the case, the service delivery system nationally and in New Mexico continues to change far surpassing the original intent of the lawsuit. It was agreed that the parties will continue to meet at least quarterly to address relevant service issues, while the lawyers need to proceed to formalize any and all areas disengagement.

I would be happy to meet with you to discuss this and other information regarding the Department's disengagement efforts for the *Jackson* lawsuit.

Sincerely,

A handwritten signature in black ink, appearing to read "Alfredo Vigil". The signature is stylized and cursive.

Alfredo Vigil, M.D.
Secretary