

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

STANLEY LIGAS, et al.,)	
)	
Plaintiffs,)	No. 05 C 4331
)	
vs.)	Chief Judge Holderman
)	Magistrate Judge Ashman
BARRY S. MARAM, et al.,)	
)	
Defendants.)	

PROPOSED CONSENT DECREE

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INTRODUCTION AND BACKGROUND

Plaintiffs¹, who are Illinois residents with Developmental Disabilities, filed this class action lawsuit on July 28, 2005, seeking declaratory and injunctive relief to redress violations of the community integration mandates of Title II of the Americans with Disabilities Act, 42 U.S.C. § 12132; Section 504 of the Rehabilitation Act, 29 U.S.C. § 794(a); and Title XIX of the Social Security Act, 42 U.S.C. §§ 1396-1396v. Plaintiffs allege that those federal statutes require Defendants to: (a) provide services, programs and activities in the most integrated setting appropriate to the needs of Individuals with Developmental Disabilities; (b) implement procedures to provide such services, programs and activities; and (c) offer Individuals with Developmental Disabilities a choice between services, supports and programs provided in ICF-DDs, and services, supports and programs that are integrated into the community. Defendants have denied liability.

In the interest of compromise and settlement, Plaintiffs and Defendants have entered into a Stipulation agreeing to the form, and jointly moved for preliminary and final approval, of a proposed consent decree. On _____, 20__, the Court entered an Order preliminarily approving the Decree set forth below in accordance with Parties' proposal. (Doc. No. ____.) Thereafter, pursuant to that Order, the Parties provided notice in accordance therewith, which the Court previously found, and hereby affirms, constitutes reasonable notice under the circumstances, and is in full compliance with the requirements of due process and governing law.

On _____, 20__, the Court conducted a fairness hearing, at which it considered the written submissions of all interested persons and the presentations made in open court; and assessed the fairness and reasonableness of the Decree set forth below, taking into account the

¹ Certain capitalized terms set forth herein are defined in Section III, below.

benefits of litigation to the Plaintiffs as compared with the benefits offered by the Decree. As set forth in its Order dated _____, 20__ (Doc. No. __), the Court is of the opinion that the Decree set forth below represents a fair resolution of the competing interests of Plaintiffs and Defendants; that it is fair, reasonable and adequate; and that it should be and is approved pursuant to Rule 23 of the Federal Rules of Civil Procedure.

Therefore, upon all of the foregoing, and the Court being otherwise fully advised, the Court hereby ORDERS, ADJUDGES and DECREES as follows:

DECREE

I. JURISDICTION

1. The Court has jurisdiction over this Litigation pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1343.

II. CLASS DEFINITION

2. The Class is defined as those individuals in one of two sub-classes:

(a) adult individuals in Illinois:

- (i) who have mental retardation and/or other developmental disabilities within the meaning of the ADA, 42 U.S.C. § 12131(2) and the Rehabilitation Act, 29 U.S.C. § 794(a), and who qualify for Medicaid Waiver services;
- (ii) who reside in private ICF-DDs with nine or more residents; and
- (iii) for whom Defendants (including Defendants' agencies, employees, contractors and agents, and those acting in concert with them) have a Current Record reflecting that the individual has affirmatively requested to receive Community-Based Services or placement in a Community-Based Setting; or

- (b) adult individuals in Illinois:
 - (i) who have mental retardation and/or other developmental disabilities within the meaning of the ADA, 42 U.S.C. § 12131(2) and the Rehabilitation Act, 29 U.S.C. § 794(a), and who qualify for Medicaid Waiver services;
 - (ii) who reside in a Family Home and are at risk of placement in a publicly or privately-owned long term care facility licensed by the Illinois Department of Public Health as an Intermediate Care Facility for the Developmentally Disabled, as defined at 77 Ill.Adm.Code §300.300; and
 - (iii) for whom Defendants (including Defendants’ agencies, employees, contractors and agents, and those acting in concert with them) have a Current Record reflecting that the individual has affirmatively requested to receive Community-Based Services or placement in a Community-Based Setting.

III. DEFINITION OF TERMS

- 3. As used herein, the following terms have the following meanings:
 - (a) “Approval of the Decree” means the date defined in Paragraph 40, below.
 - (b) “Class Counsel” means all of the attorneys that have appearances on behalf of the Named Plaintiffs in effect as of the Approval of the Decree, and each of the following organizations: Equip for Equality; Sonnenschein Nath & Rosenthal LLP; Access Living of Metropolitan Chicago; and Roger Baldwin Foundation of ACLU, Inc.

- (c) “Class” and “Class Members” mean the persons who meet the definition set forth in Section II, above.
- (d) “Community-Based Services” means those services (other than a placement in a Community-Based Setting) available under the Waiver.
- (e) “Community-Based Setting” means a residential setting with a maximum of eight (8) beds that is the most integrated residential setting appropriate for an Individual, where the setting is designed to promote independence in daily living, community integration, and economic self-sufficiency and enables the Individual to interact with non-disabled persons to the fullest extent possible.
- (f) “Community Service Provider” means a provider of Waiver-funded services, but does not include ICF-DDs or State Operated Developmental Centers.
- (g) “Court” means the United States District Court for the Northern District of Illinois, Eastern Division.
- (h) “Crisis” has the meaning set forth in Paragraph 19(a), below.
- (i) “Current Record” means an accurate record reflecting that the Individual, or the Individual’s legal guardian, has affirmatively requested to receive Community-Based Services or placement in a Community-Based Setting, and, to the best of Defendants’ knowledge, that record has not been withdrawn or retracted by the Individual or the Individual’s legal guardian. All Individuals who objected (either personally, or through the Individual’s legal guardian) to the Proposed Consent Decree that was the subject of the July 1, 2009 Fairness Hearing in this Litigation, on the

grounds that they do not wish to receive Community-Based Services or placement in a Community-Based Setting shall be deemed to have retracted any record reflecting that, prior to such objection, he or she had affirmatively indicated that he or she seeks to receive Community-Based Services or placement in a Community-Based Setting.

- (j) “Decree” means this Consent Decree.
- (k) “Defendants” means the Director of the Illinois Department of Healthcare and Family Services; the Secretary of the Illinois Department of Human Services; and any of their successors.
- (l) “Developmental Disability” means a disability that is attributable to a diagnosis of mental retardation (mild, moderate, severe, profound), or a related condition. A related condition is attributable to: cerebral palsy or epilepsy, or any other condition, other than mental illness, found to be closely related to mental retardation because this condition results in impairment of general intellectual functioning or adaptive behavior similar to that of persons with mental retardation, and requires treatment or services similar to those required for persons with mental retardation. In addition, this condition is manifested before the age of 22; is likely to continue indefinitely; and results in substantial functional limitations in three or more of the following areas of major life activity: self-care; understanding and use of language; learning; mobility; self-direction; capacity for independent living.

- (m) Family Home means a family home and does not include a Community-Integrated Living Arrangement, as defined at 210 ILCS §135/3(d), or an ICF-DD.
- (n) “ICF-DD” means any privately-owned long term care facility licensed by the Illinois Department of Public Health as an Intermediate Care Facility for the Developmentally Disabled, as defined at 77 Ill.Adm.Code §300.330.
- (o) “ICF/MR services” shall have the meaning set forth in 42 C.F.R. § 440.150.
- (p) “Implementation Plan” has the meaning set forth in Section XII, below.
- (q) “Individual” means a person in Illinois 18 years of age or older who has one or more Developmental Disabilities and who is Medicaid-eligible.
- (r) “Litigation” means the matter *Ligas v. Maram*, Case No. 05-4331, filed in the United States District Court for the Northern District of Illinois, Eastern Division.
- (s) “Monitor” means the person or entity appointed by the Court pursuant to Section XIII, below, to perform the functions more fully described therein.
- (t) “Named Plaintiffs” means the following people, each of whom the Court certified as a class representative in the Litigation: David Cicarelli, Isaiah Fair, Stanley Ligas, Jamie McElroy, and Jennifer Wilson.
- (u) “Parties” means Plaintiffs and Defendants, collectively.
- (v) “Plaintiffs” means the Named Plaintiffs and Class Members, collectively.
- (w) “Protective Order” means the Protective Order entered by the Court in the Litigation on May 15, 2006 (CM/ECF Doc. No. 98).

- (x) “Qualified Professional” means an appropriately trained and qualified professional.
- (y) “State Plan” means the plan that was submitted by the State of Illinois to the United States Department of Health and Human Services, Centers for Medicare and Medicaid Services, in accordance with Title XIX of the Social Security Act, 42 U.S.C. §§ 1396-1396v, in effect as of the date of Approval of the Decree, including any amendments thereto.
- (z) “Transition Service Plan” has the meaning set forth in Section VI, below.
- (aa) “Waiting List” has the meaning set forth in Paragraph 7, below.
- (bb) “Waiting List Class Members” has the meaning set forth in Paragraph 20(c), below.
- (cc) “Waiver” means the Illinois Home and Community-Based Services Waiver for Adults with Developmental Disabilities, as approved by the United States Department of Health and Human Services, Centers for Medicare and Medicaid Services, in effect as of the date of Approval of the Decree, or any amendments thereto or similar waivers subsequently approved by the United States Department of Health and Human Services, Centers for Medicare and Medicaid Services, but only to the extent such amendments or subsequent waivers expand the range and/or amount of services available to Individuals with Developmental Disabilities.

IV. THE DEVELOPMENTAL DISABILITY SERVICES SYSTEM

4. **Development of Community Capacity.** Defendants shall ensure the availability of services, supports and other resources of sufficient quality, scope and variety to meet their obligations under the Decree and the Implementation Plan. Defendants shall implement

sufficient measures, consistent with the choices of Class Members, to provide Community-Based Settings and Community-Based Services pursuant to the Decree.

5. **Resources and Budget Requests.** Annual budgets submitted by Defendants on behalf of their agencies shall request sufficient funds necessary to develop and maintain the services, supports and structures described in the Decree, consistent with the choices of Class Members. Defendants shall take steps sufficient to implement funding mechanisms that facilitate transition among service settings. Nothing contained in this Paragraph 5 shall be deemed to create or operate as (i) a condition or contingency upon which any term of the Decree depends; or (ii) a circumstance entitling Defendants to alter, amend or modify the implementation or timing of Defendants' obligations under the Decree.

V. STATEWIDE DATABASE AND WAITING LIST

6. Defendants shall maintain a statewide database in which all Class Members are enrolled. Defendants must promptly and regularly add Individuals to this database as they become Class Members. Defendants must update all enrollment information on an annual basis.

7. Class Members not residing in ICF-DDs as of the date of Approval of the Decree who are enrolled in the statewide database described in Paragraph 6 above shall be placed on a Waiting List with selection prioritized by the Class Member's urgency of need for Community-Based Services or placement in a Community-Based Setting, the length of time that has passed since the Class Member enrolled, geographical considerations and other factors. Defendants must promptly and regularly update the Waiting List as Class Members are added to the database described in paragraph 6, above.

VI. TRANSITION SERVICE PLANS

8. Defendants shall develop a Transition Service Plan specific to, and centered on, each Class Member as each Class Member is selected to receive Community-Based Services or

placement in Community-Based Settings under this Decree. Prior to the development of a Transition Service Plan, Defendants shall present to the Class Member, in an objective manner, his or her service alternatives and determine whether the Class Member continues to request Community-Based Services or placement in a Community-Based Setting.

9. If the Class Member affirmatively continues to request Community-Based Services or placement in a Community-Based Setting, the Transition Service Plan shall describe the services the Class Member requires in a Community-Based Setting or through Community-Based Services; where and how such services can be developed and obtained; the supports and services the Class Member will need during his or her transition to a Community-Based Setting; and a timetable for completing that transition.

10. The Transition Service Plan shall be developed by a Qualified Professional in conjunction with the Class Member and, where one has been appointed, the Class Member's legal guardian, and, where appropriate, the Class Member's family members, friends and support staff who are familiar with the Class Member.

11. The process for developing a Transition Service Plan shall focus on the Class Member's personal vision, preferences, strengths and needs in home, community and work environments and shall reflect the value of supporting the Class Member with relationships, productive work, participation in community life, and personal decision-making.

12. All services and supports in the Transition Service Plan must be integrated into the community to the maximum extent possible, consistent with the choices of the Class Member and the Class Member's legal guardian.

13. The Transition Service Plan shall not be limited by the current availability of services, provided, however, that nothing in this sub-paragraph obligates Defendants to provide the types of services beyond those included in the Waiver and/or the State Plan.

14. The Transition Service Plan shall be completed within sufficient time to provide appropriate and sufficient transitions of Class Members in accordance with the deadlines set forth in the Decree.

VII. BENCHMARKS FOR TRANSITIONS OF CLASS MEMBERS RESIDING IN ICF-DDs AS OF THE DATE OF APPROVAL OF THE DECREE

15. Subject to the interim requirements set forth below, within six (6) years after Approval of the Decree, all Class Members residing in ICF-DDs as of the date of Approval of the Decree (regardless of when in this timeframe the Class Member affirmatively requested placement in a Community-Based Setting) will transition to Community-Based Settings consistent with their Transition Service Plans, if, at the time of transition, the Class Member continues to request placement in a Community-Based Setting.

16. Within two and a half years after Approval of the Decree: not less than one-third of the total number of those Class Members residing in ICF-DDs as of the date of Approval of the Decree who have, within two (2) years after the date of Approval of the Decree, affirmatively requested placement in a Community-Based Setting will be transitioned to Community-Based Settings consistent with their Transition Service Plans.

17. Within four and a half years after Approval of the Decree: not less than two-thirds of the total number of those Class Members residing in ICF-DDs as of the date of Approval of the Decree who have, within four (4) years after the date of Approval of the Decree, affirmatively requested placement in a Community-Based Setting will be transitioned to Community-Based Settings consistent with their Transition Service Plans.

VIII. CLASS MEMBERS NOT RESIDING IN ICF-DDs AS OF THE DATE OF APPROVAL OF THE DECREE

18. Within one (1) year after Approval of the Decree, Defendants shall screen all Class Members residing in a Family Home who are enrolled in the database described in

Paragraph 6 as of the date of Approval of the Decree regarding the Class Members' potential eligibility and need for developmental disabilities services, including a determination of whether such Class Members meets the Crisis criteria set forth in Paragraph 19(a) and, after an objective presentation of alternative service options, a determination of whether such Class Member continues to request to receive Community-Based Services or placement in a Community-Based Setting.

19. Class Members Who Reside in a Family Home and Are Determined to be in a Situation of Crisis.

- (a) For purposes of the Decree, an Individual is in a situation of "Crisis" if he or she is at imminent risk of abuse, neglect, or homelessness. The provision of interim emergency services (including interim placement in an ICF-DD where no placement in a Community-Based Setting was immediately available) will not necessarily exclude the Individual from being deemed to be in a situation of Crisis. Some examples of circumstances that constitute Crisis include, but are not limited to circumstances:
- (i) where the Individual's caregiver(s) are deceased;
 - (ii) where the Individual's caregiver is unable to address the support needs of the Individual, thereby jeopardizing the Individual's health, well-being, and/or safety;
 - (iii) where physical and/or mental injury and/or sexual abuse is being inflicted on the Individual;
 - (iv) where the Individual is homeless or without domicile; or

- (v) where the Individual's behaviors (e.g., verbal and /or physical aggression, bodily harm to self and/or others) put the Individual and/or family member(s) at risk of serious harm.
- (b) If, following a screening, the Individual who is determined to be in Crisis requests appropriate Community-Based Services to be provided in the Family Home or requests placement in a Community-Based Setting, Defendants will promptly develop, in conjunction with the Class Member, a Transition Service Plan. Transition Service Plans for such Class Members shall be developed as set forth in Section VI, above.
- (c) Defendants shall ensure that all Class Members who are determined to be in a situation of Crisis, and who continue to request to receive Community-Based Services and/or placement in a Community-Based Setting, receive such services and/or placement in such setting expeditiously. If a Class Member is determined to be in Crisis and then moves into an ICF-DD before Defendants are able to provide a placement in a Community-Based Setting, that change in the Class Member's residential status will not in itself change the determination of Crisis or change the Defendants' obligation to place the Class Member in a Community-Based Setting expeditiously, provided that the Class Member continues to request such placement at the point when they are to be transitioned to a Community-Based Setting. There is no limit to, or cap upon, the number of Class Members in Crisis who shall be served pursuant to the Decree.

20. **Benchmarks for Transitions of “Waiting List Class Members”**

- (a) Class Members who become residents of ICF-DDs after the date of Approval of the Decree, but who did not reside in ICF-DDs as of the date of Approval of the Decree, shall be enrolled in the database described in Paragraph 6, placed on the Waiting List described in Paragraph 7 and served in accordance with this Paragraph 20, provided that the Class Member continues to request Community-Based Services or placement in a Community-Based Setting.
- (b) Class Members residing at a Family Home who, a result of the screening described in Paragraph 19(a), are not determined to be in a situation of Crisis but who have requested and been identified as appropriate for Community-Based Services or placement in a Community-Based Setting will be placed on the Waiting List described in Paragraph 7 and served in accordance with this Paragraph 20, provided that the Class Member continues to request Community-Based Services or placement in a Community-Based Setting.
- (c) Collectively, the Class Members identified in sub-Paragraphs 20(a) and 20(b), above, shall be referred to as “Waiting List Class Members.”
- (d) Within two (2) years after Approval of the Decree, Defendants shall provide, in accordance with the Class Members’ Transition Service Plans, appropriate Community-Based Services and/or placement in Community-Based Settings for at least 1,000 Waiting List Class Members who are selected from the Waiting List described in Paragraph 7 above, with these Class Members served in order of priority. In each of the third, fourth,

fifth and sixth years following Approval of the Decree, Defendants shall serve at least 500 additional Waiting List Class Members who are selected from the Waiting List, again in order of priority. The obligations set forth in this Paragraph 20(d) do not obligate Defendants to serve more than 500 additional Waiting List Class Members who are selected from the Waiting List in each of the third, fourth, fifth, and sixth years following Approval of the Decree.

- (e) Before any Class Member is placed in a Community-Based Setting, Defendants shall determine whether the Class Member continues to request such placement, after the Class Member and his or her legal guardian has been provided with objective information regarding the Class Member's residential options.

IX. PROVISION OF SERVICES AFTER THE END OF THE SIXTH YEAR FOLLOWING APPROVAL OF THE DECREE

21. All Class Members who are on the Waiting List after the end of the sixth year following Approval of the Decree shall receive appropriate Community-Based Services and/or placement in a Community-Based Setting, such that they move off the Waiting List at a reasonable pace, provided that the Class Members continue to request such services and/or settings at the point when they are to move off the Waiting List.

X. DISPUTE RESOLUTION

22. Any Class Member who disputes a decision by Defendants or a Community Service Provider regarding eligibility for, or delivery of, Community-Based Services or placement in a Community-Based Setting shall, pursuant to governing law, have the right to appeal or seek administrative or judicial review of such decisions through Defendants' existing

Fair Hearings process (as set forth in 89 Ill. Adm. Code Part 120) or as otherwise provided by law. Class Members also may avail themselves of any informal appeal process that currently exists.

XI. OUTREACH

23. Defendants shall maintain a fair and accessible process by which Individuals with Developmental Disabilities or their legal guardians can affirmatively request to receive Community-Based Services and/or placement in a Community-Based Setting, and Defendants shall maintain up-to-date records of those requests. Defendants, in conjunction with Class Counsel, also shall ensure that Individuals with Developmental Disabilities, and their guardians and/or families, have the opportunity to receive complete and accurate information regarding the rights of those Individuals to live in Community-Based Settings and/or to receive Community-Based Services and available options and opportunities for doing so. Nothing in this Paragraph, or any other provision of this Decree, requires Defendants to provide this information to Individuals or their guardians or families who are not interested in changing their current placement. All costs for outreach shall be borne by Defendants. Details about how Defendants shall conduct the obligations set forth in this Paragraph 23 will be set forth in the Implementation Plan described below.

XII. IMPLEMENTATION

24. **Overview and Contents of the Implementation Plan.** Defendants, with the input of the Monitor, Plaintiffs and Class Counsel, shall create and implement an Implementation Plan to accomplish the obligations and objectives set forth in the Decree. The Implementation Plan must, at a minimum:

- (a) establish specific tasks, timetables, goals, programs, plans, strategies and protocols to assure that Defendants fulfill the requirements of each provision of the Decree;

- (b) describe the hiring, training and supervision of the personnel necessary to implement the Decree;
- (c) describe necessary resource development activities, including actions, inter-agency agreements, requests for proposals and the development of other resources necessary to implement the Decree;
- (d) describe the methods and mechanisms by which Defendants shall comply with the obligations set forth in Paragraph 23, above;
- (e) identify, based on information known at the time the Implementation Plan is prepared, any services or supports required in Transition Service Plans formulated pursuant to the Decree that are not currently available in the appropriate quantity, quality or geographic location; and
- (f) identify, based on information known at the time the Implementation Plan is prepared, any services and supports which, based on demographic or other data, are expected to be required in the following six months to meet the obligations of the Decree.

25. Within ninety (90) days after Approval of the Decree, Defendants shall provide the Monitor, Plaintiffs and Class Counsel with a draft Implementation Plan. The Monitor, Plaintiffs and Class Counsel will participate in developing and finalizing the Implementation Plan, which shall be finalized within six (6) months following Approval of the Decree. In the event the Monitor or Plaintiffs disagree with the Defendants' proposed Implementation Plan, the matter shall be submitted to the Court for resolution.

26. The Implementation Plan shall be updated and amended annually, or at such earlier intervals as Defendants deem necessary or appropriate. The Monitor, Plaintiffs and Class Counsel may review and comment upon any such updates or amendments. In the event the

Monitor or Plaintiffs disagree with the Defendants' proposed updates or amendments, the matter may be submitted to the Court for resolution.

27. The Implementation Plan, and all amendments or updates thereto, shall be incorporated into, and become enforceable as part of the Decree.

XIII. MONITORING AND COMPLIANCE

28. **Appointment of a Monitor.** The Court shall appoint an independent and impartial Monitor who is knowledgeable concerning the management and oversight of programs serving Individuals with Developmental Disabilities. The Parties shall endeavor to agree on a single candidate for Monitor, after obtaining input from Class Members. Within twenty-one (21) days after Approval of the Decree, the Parties shall submit to the Court their joint recommendation or separate nominations for a Monitor. If the Parties cannot agree, Plaintiffs and Defendants shall each submit to the Court the names of no more than two qualified professionals or organizations who are experienced in the design and development of community programs for Individuals with Developmental Disabilities, and experienced in the administration and monitoring of specialized services for Individuals with Developmental Disabilities. Each Party will have seven (7) days to comment on the qualifications of the other Party's candidate(s), following which the Court shall then select the Monitor from the names submitted by the Parties. In the event the Monitor resigns or otherwise becomes unavailable, and the Parties cannot agree on a replacement Monitor to recommend to the Court, the process described above will be used to select a replacement Monitor.

29. **Role of the Monitor.** The duties of the Monitor shall include gauging Defendants' compliance with the Decree, identifying actual and potential areas of non-compliance with the Decree, facilitating the resolution of compliance issues without Court intervention, and recommending appropriate action by the Court in the event an issue cannot be

resolved by discussion and negotiation among the Monitor and the Parties. The Monitor may retain such staff and/or consultants as appropriate to assist in the performance of his or her duties.

30. **Development of Measurable Standards for Evaluation.**

- (a) Within 90 days after the Monitor's appointment, the Monitor shall submit to the Parties a set of objective standards to guide the Monitor in evaluating Defendants' compliance with the Decree. In the event any of the Parties believe that such standards are insufficient or inappropriate, they shall first meet and confer with the Monitor in an effort to revise the standards in a manner acceptable to the Monitor and the Parties. In the event that the Monitor and the Parties are unable to agree on such standards, they may seek appropriate relief from the Court. Once finalized, the objective standards will be made publicly available.
- (b) Appropriate standards by which the Monitor evaluates Defendants' compliance with the Decree shall include, but are not limited to, the following:
 - (i) whether Transition Service Plans meet the criteria set forth in Section VI;
 - (ii) whether the benchmarks set forth in Sections VII and VIII and IX have been satisfied;
 - (iii) whether Class Members who are determined to be in Crisis receive services expeditiously in accordance with Paragraph 19;
 - (iv) the extent to which, at periodic intervals, Class Members are being placed in Community-Based Settings; and

(v) the extent to which, at periodic intervals, Class Members are receiving Community-Based Services.

(c) None of the standards adopted by the Monitor pursuant to this Paragraph 30 shall in any way modify, change or otherwise abrogate any of the terms of the Decree or Defendants' obligations under the Decree.

31. **Review and Evaluation of Data and Information.** The Monitor shall review and evaluate Defendants' compliance with the terms of the Decree. Not less than every six (6) months, Defendants shall provide to the Monitor, Plaintiffs and Class Counsel, and make publicly available, a detailed report containing data and information sufficient to evaluate Defendants' compliance with the Decree and Defendants' progress towards achieving compliance. Prior to the first report, the Parties and Monitor will agree on the data and information that must be included in such reports. Defendants will not refuse any request by the Monitor for documents or other information that are reasonably related to the Monitor's review and evaluation of Defendants' compliance with the Decree, and Defendants will, upon reasonable notice, permit confidential interviews of Defendants' staff or consultants, except their attorneys. The Monitor will have access to all Class Members and their records and files, as well as to those service providers, facilities, buildings and premises that serve, or are otherwise pertinent to, Class Members, where such access is reasonably related to the Monitor's review and evaluation of Defendants' compliance with the Decree. The Defendants shall comply with Plaintiffs' requests for information that are reasonably related to Defendants' compliance with the Decree, including without limitation requests for records and other relevant documents pertinent to implementation of the Decree or to Class Members. Plaintiffs and Class Counsel also shall be permitted to review the information provided to the Monitor. All information

provided to the Monitor and/or Plaintiffs pursuant to the Decree shall be subject to the Protective Order.

32. **Reporting.** The Monitor shall file annual reports with the Court, which shall be served on all Parties and be made publicly available. Such reports shall include the information necessary, in the Monitor's professional judgment, for the Court and Plaintiffs to evaluate Defendants' compliance or non-compliance with the terms of the Decree. The Monitor may file additional reports as necessary.

33. **Compliance.** In the event the Monitor finds Defendants not in compliance with the Decree, the Monitor shall promptly meet and confer with the Parties in an effort to agree on steps necessary to achieve compliance. In the event that Plaintiffs believe that Defendants are not complying with the terms of the Decree, Plaintiffs shall notify the Monitor and Defendants of Defendants' potential non-compliance. The Monitor then shall review Plaintiffs' claims of actual or potential non-compliance and, as the Monitor deems appropriate in his or her professional judgment, meet and confer with Defendants and Plaintiffs in an effort to agree on steps necessary to achieve compliance with the Decree. If the Monitor and Parties agree, such steps shall be memorialized in writing and incorporated into, and become enforceable as part of, the Decree. In the event that the Monitor is unable to reach agreement with Defendants and Plaintiffs, the Monitor may seek appropriate relief from the Court. In the event that Plaintiffs believe that Defendants are not in compliance with the Decree and that the Monitor refuses or fails to act, Plaintiffs may seek appropriate relief from the Court. The Monitor will not communicate with the Court without advance notice to the Parties.

34. **Compensation of the Monitor.** Defendants shall compensate the Monitor and his or her staff and consultants at their usual and customary rate. Defendants shall reimburse all reasonable expenses of the Monitor and the Monitor's staff, consistent with the guidelines set

forth in the “Governor’s Travel Control Board Travel Guide for State Employees.” Defendants reserve their right to seek relief from the Court if Defendants believe that any of the Monitor’s charges are inappropriate or unreasonable.

XIV. NAMED PLAINTIFFS

35. As part of the settlement of the Litigation, within sixty (60) days after Approval of the Decree, Defendants shall offer each of the Named Plaintiffs the opportunity to receive appropriate Community-Based Services or placement in a Community-Based Setting. Provision of services to the Named Plaintiffs pursuant to this provision shall not be used to determine any other particular Class Member’s eligibility for services under the terms of the Decree.

XV. ATTORNEYS’ FEES AND COSTS

36. In full settlement of all attorneys’ fees incurred in connection with the Litigation, Defendants shall pay \$1,990,000 to Class Counsel. In full settlement of all out-of-pocket costs and expenses (not to include attorneys’ fees) incurred by Class Counsel, Defendants shall pay to Class Counsel such costs and expenses incurred by Class Counsel through and including the Approval of the Decree and any appeal thereof. Such amounts shall be distributed to Class Counsel in the manner set forth in written instructions provided by Class Counsel. Furthermore, such amounts shall be set forth in a Judgment Order to be entered by the Court within fourteen (14) days after Approval of the Decree. Defendants shall complete and submit all paperwork necessary for payment of such amounts, plus applicable statutory post-judgment interest, within five (5) business days after expiration of the time to appeal the Decree without the filing of a Notice to Appeal or after the issuance of the mandate by the highest reviewing court, whichever is later.

37. Nothing herein shall preclude the Court from imposing sanctions or other relief for non-compliance with the Decree.

XVI. MISCELLANEOUS PROVISIONS

38. **Approval of the Decree.** “Approval of the Decree” shall be deemed to occur on the date the Court enters the Decree.

39. **Costs of Notices.** The cost of all notices hereunder or otherwise ordered by the Court shall be borne by Defendants.

40. **Signatories.** Each undersigned representative of a Defendant to this Litigation and the Attorney General for the State of Illinois certifies that he or she is authorized to enter into the terms and conditions of the Decree and to execute and bind legally such Defendant to this document. Each undersigned representative of Plaintiffs and Class Counsel certifies that he or she is authorized to enter into the terms and conditions of the Decree and to execute and bind legally the Plaintiffs and Class Counsel to this document.

41. **Delivery of Notices or Mailings.**

- (a) Delivery of notices or mailings to Plaintiffs shall be made to: Equip for Equality, Attn.: Barry Taylor (or his successor), 20 North Michigan Avenue, Suite 300, Chicago, Illinois 60602; and Sonnenschein Nath & Rosenthal LLP, Attn.: John Grossbart, 233 South Wacker Drive, Suite 7800, Chicago, Illinois 60606.
- (b) Delivery of notices or mailings to Defendants shall be made to: Office of the Illinois Attorney General, Attn: Brent D. Stratton, 100 W. Randolph Street, Chicago, Illinois 60601 and Office of the Illinois Attorney General, Attn: Karen Konieczny, 160 N. LaSalle St., Suite N-1000, Chicago, Illinois 60601.
- (c) The Parties may modify the instructions for delivery of notices or mailings contained in this Paragraph 42 without Court approval.

42. **Waiver.** Defendants have waived their right to oppose entry of the Decree by this Court or to challenge any provision of the Decree. Defendants have waived their right to appeal the Decree or any other matter that has occurred to date in connection with the Litigation.

43. Nothing in this Decree alters the legal rights that Class Members otherwise may have to choose to receive ICF/MR services.

44. Nothing in this Decree alters the legal rights, authority, or responsibilities of the legal guardian(s) of any Class Member under state or federal law or regulations.

XVII. TERMINATION

45. The Court shall retain exclusive jurisdiction to fully oversee, supervise, modify and enforce the terms of the Decree. The Court shall retain such jurisdiction for at least nine (9) years following the Approval of the Decree.

46. The Parties, jointly or separately, may request termination of the monitoring process described in Section XIII at any time after nine (9) years from Approval of the Decree. If, after nine years from Approval of the Decree or any time thereafter, Defendants and the Monitor agree that Defendants have substantially complied with the terms of the Decree, Defendants shall notify Plaintiffs in writing of their desire to terminate the monitoring process (“Termination Request”). Plaintiffs shall have not less than 120 days from receipt of the Termination Request to respond. During those 120 days, Plaintiffs shall have the opportunity to conduct reasonable discovery concerning factual issues relevant to the determination of compliance. If Plaintiffs oppose the Termination Request, Plaintiffs must file a motion within 120 days from the date Plaintiffs received Defendants’ Termination Request.

47. The Court will grant Defendants’ Termination Request and terminate the monitoring process if the Court finds that Defendants have substantially complied with the terms

of the Decree and the Court determines that Defendants have implemented and are maintaining a system that complies with the Decree.

48. Termination of the Court’s jurisdiction over the Decree may occur only in the event of a successful request to terminate the monitoring process pursuant to Section XVII. The Decree shall remain in effect, and the Court shall retain its jurisdiction over the Decree, until a final order is entered granting the Termination Request and all appellate rights and/or appeals have been exhausted.

SO ORDERED THIS ____ DAY OF _____, 20____.

United States District Judge

[SIGNATURE PAGE FOLLOWS]

EACH UNDERSIGNED PARTY enters into this Consent Decree in the matter of *Ligas v. Maram*, Case No. 05-4331, pending in the United States District Court for the Northern District of Illinois, Eastern Division.

FOR THE PLAINTIFF CLASS:

Date: _____

FOR CLASS COUNSEL:

Date: _____

FOR DEFENDANT, SECRETARY OF ILLINOIS DEPARTMENT OF HUMAN SERVICES:

Date: _____

FOR DEFENDANT, DIRECTOR OF ILLINOIS DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES:

Date: _____

AS ATTORNEY FOR DEFENDANTS:

Date: _____