

## **Summary of Settlement Agreement in *Marsters v. Healey***

The Settlement Agreement provides a comprehensive set of actions that the Commonwealth will undertake over an eight-year period to provide informed choice, case management services, specialized services, and residential services and supports necessary to transition no fewer than 2,400 class members from nursing facilities to the community.

Specifically, as set forth in the Agreement, the Commonwealth will:

- a. Provide all people with disabilities in nursing facilities with in-reach, information, opportunities, and support to assist them in making an informed choice about whether to transition from a facility to the community, which will be provided through the Commonwealth's Community Transition Liaison Program operated by the Executive Office of Elder Affairs (Sec. II.A, ¶¶3-16); the Money Follows the Person program operated by the Executive Office of Health and Human Services' Office of MassHealth (Sec. II.B, ¶¶17-24); and an expanded case management program operated by the Department of Mental Health (Sec. II.C, ¶¶25-35);
- b. Provide transition planning and assistance to all people with disabilities in nursing facilities who are interested in living in the community through these same programs (*Id*);
- c. Provide specialized and other behavioral health services, and service coordination, to people with serious mental illness (Sec. III ¶¶36-45);
- d. Provide residential services, and/or non-residential services with housing supports, and/or home modifications so that no fewer than 2,400 class members in nursing facilities can transition to the community over an eight-year period (Sec. IV, ¶¶46-54; VI, ¶¶58-64);
- e. Provide services in nursing facilities to assist people with disabilities to transition to the community (Sec. V, ¶¶55-57);

f. Collect and share data concerning the provisions and implementation of the Agreement (Sec. VII.A, ¶¶65-68); and

g. Condition obligations under the Agreement to appropriations by the Legislature (Sec. VIII, ¶69).

The Settlement Agreement also includes provisions for approval of the Agreement (Sec. IX.A, ¶¶70-78), payments of attorneys' fees (Sec. IX.A, ¶75), voluntary dismissal of the Complaint (Sec. IX.B, ¶¶79-81), implementation of the Agreement (Sec. IX.C, ¶¶82-85), a dispute resolution process and ongoing jurisdiction of the Court to consider proposed modifications and enforcement of the Agreement in accordance with the dispute resolution requirements (Sec. IX.D & E, ¶¶86-95), and termination of the Agreement (Sec. IX.E, ¶¶94-95). Finally, it includes a provision on release of claims (Sec. X, ¶¶96-99) and various miscellaneous terms (Sec. XI, ¶¶100-09).

The Settlement Agreement proposes that the Court certify a class for settlement purposes, pursuant to Fed. R. Civ. P. 23(e), that includes:

“All present or future Medicaid-eligible persons who: (i) are Massachusetts residents, (ii) have attained age 22, (iii) reside (at any time before the Termination Date) in a nursing facility within the Commonwealth for 60 days or more, and (iv) either (a) have a “disability” as defined in the ADA and are qualified for and would not oppose transition to a community-based setting, or (b) have PASRR SMI as determined pursuant to a Level II PASRR evaluation.”