

To: Health Advocates
From: Sarah Somers
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Q & A: Recent Medicaid Settlements in Washington and Florida

On December 20, 2006, the Federal District Court for the Western District of Washington gave final approval to a far-reaching settlement agreement in a Medicaid home and community based waiver case. *Boyle v. Braddock* was filed in 2001 on behalf of a class of current and future participants in Washington's Medicaid Home and Community Based Waiver programs for people with developmental disabilities. The plaintiffs claimed that Washington's Division of Developmental Disabilities (DD) had violated Medicaid law by failing to advise waiver participants about the range of Medicaid services available; failing to provide services with reasonable promptness and denying waiver participants free choice of service alternatives available under the waiver. In addition, the plaintiffs claimed that they were not given due process when services were reduced, terminated or denied.

After several years of litigation, extensive discovery, appeal to the Ninth Circuit, and two separate formal mediation processes, the parties entered into the settlement agreement that was ultimately approved by the district court. The settlement provides that:

- All waiver participants will have annual comprehensive needs assessments;
- All waiver participants will have the opportunity to apply for enrollment on another waiver that provides different services;
- All waiver participants will have necessary services documented in an individual support plan and those services will be provided with reasonable promptness;
- Defendants will make reasonable efforts to provide the services within 90 days of the date needs are identified and incorporated into the plan;
- All services will be provided in accordance with Medicaid's freedom of choice requirements and be available statewide;
- Defendants will implement a quality management strategy.

The settlement provides for monitoring by plaintiffs' counsel, including access to data, documents and random samples of waiver participants' cases. Reports on items such as delivery of services, quality assurance reports and assessments will be provided by the defendants to plaintiffs' counsel every six months.

If plaintiffs' counsel identifies specific items of non-compliance, the parties will use a dispute resolution process. The process begins with informal negotiations, followed by formal mediation if negotiations are unsuccessful. If mediation does not result in resolution, plaintiffs' counsel may file a motion for contempt with the district court. The settlement agreement terminates three years after the first report is provided the plaintiffs' counsel.

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Columbia Legal Services, the Washington Protection and Advocacy System, the private Seattle firm of Sirianni, Youtz, Meier and Spoonemore and the National Health Law Program represented the plaintiff class.

On January 4, the Federal District Court approved a settlement in the case of *DuBois v. Calamas*. *DuBois* was filed on behalf of a class of individuals who were eligible for Florida's home and community-based waiver for individuals with brain or spinal cord injuries. The plaintiffs alleged a number of Medicaid violations, including failure to provide services and determine eligibility with reasonable promptness, failure to provide individuals with a choice between institutional care and home and community based services, and denial of due process.

After the court certified a class and denied the defendant's motion to dismiss, the parties participated in formal mediation. The resulting settlement, which was approved by the court, provided that:

- All applicants for waiver services would receive a written determination of eligibility within 90 days of application;
- For each of the next three fiscal years, the Medicaid agency will pursue appropriations in order to expand the waiver by a specified number of slots each year;
- The waiver procedures be revised to comply with federal due process and freedom of choice requirements;
- In the event a breach of the agreement is alleged, the parties may resort to a dispute resolution procedure that includes mediation.

Southern Legal Counsel, of Gainesville and the National Health Law Program were counsel for the plaintiff class.