

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Civ. No. 99 - 1435 (GAG)
)	
THE COMMONWEALTH OF PUERTO RICO,)	
<i>et al.</i> ,)	
)	
Defendants.)	
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SUPPLEMENTAL TRANSITION ORDER

I. Background

Since the inception of this case, the Court has issued a number of different orders to ensure that the Commonwealth of Puerto Rico provides effective protections, services, and supports to meet the individualized needs of persons with developmental disabilities in the Commonwealth's service-delivery system. The Court has appointed a Joint Compliance Coordinator ("JCC"), and an assistant, to monitor the Commonwealth's compliance with the terms of the various orders, to work with the parties to minimize disputes, and to keep the focus on the Commonwealth developing and implementing measures to ensure the health, safety, and welfare of persons with developmental disabilities.

In recent years, in collaboration with the Court, the JCC, and the United States, the Commonwealth has taken steps to shift from an institutional model to a more integrated community-based model of service-delivery. These integration efforts are not only required by certain orders in this case, they are also consistent with the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12132, which prohibits discrimination on the basis of disability by public

entities, as well as the Supreme Court's ADA decision in Olmstead v. L.C., 527 U.S. 581, 597 (1999), where the Court held that "[u]njustified isolation ... is properly regarded as discrimination based on disability."

For a more complete summary and description of the existing legal framework in this case, see the background section of the parties' Joint Compliance Action Plan, entered as an order of the Court on October 19, 2011 (Docket No. 1185-1).

II. Need for Transition Order Protections

Around the time of the last gubernatorial election in 2008, the Court issued a Transition Order, with specific language intended to minimize or eliminate the potential adverse impact the government administration change could have on the ongoing and future operations of the Commonwealth's Mental Retardation Program ("MRP") and other pertinent Commonwealth agencies, and on the essential services provided to persons with developmental disabilities through them. Transition Order, Dec. 10, 2008 (Docket No. 794). Specifically, the Court's 2008 Transition Order contained provisions that, among other things, prevented the automatic termination of contract personnel that provided needed protections, services, and supports to persons with developmental disabilities.

The Court remains concerned that, pursuant to local law, when there is a change in gubernatorial administrations, Commonwealth contracts automatically terminate at the end of the calendar year before the inauguration of the newly-elected Governor. Without a properly crafted Transition Order to ensure continuity, key contractors in the instant case would be terminated without sufficient, or any, consideration of the potentially dire consequences to the persons with developmental disabilities who need the protections, services, and supports these contractors provide. Moreover, it could be weeks or months before officials in the new administration are

able to contract with and/or hire replacement personnel; in the interim, persons with developmental disabilities would be vulnerable to not having their needs met and this could violate existing orders in this case. The Court notes that this is typically not a money issue – in 2008, for example, there were sufficient budgeted funds to pay these contractors beyond the end of the calendar year and through the end of the fiscal year, which was six months into the administration of the new Governor.

III. Supplemental Transition Order

The 2012 gubernatorial election results in Puerto Rico have produced a change in administrations that will prompt the automatic termination of contract employees as referenced above. As in 2008, the Court has a similar interest in mitigating circumstances associated with the gubernatorial election that might impede the uninterrupted delivery of needed protections, services, and supports to persons with developmental disabilities in the Commonwealth's service-delivery system. Therefore, the Court is issuing today a Supplemental Transition Order, set forth below, to reinforce the importance of the safeguards set forth in the initial Transition Order and to update certain provisions, as appropriate.

- A. The Court's 2008 Transition Order (Docket No. 794) shall remain in full force and effect to protect persons with developmental disabilities in the Commonwealth's system from destabilizing influences that could imperil their health, safety, and welfare.
- B. Consistent with the 2008 Transition Order and subsequent Court orders related to maintaining the MRP budget, the Commonwealth shall: ensure the continuity and integrity of the protections, services, and supports provided to persons with developmental disabilities in the Commonwealth's service-delivery system; ensure that these protections, services, and supports are not interrupted or diminished; and ensure that any progress and momentum toward meeting the needs of these persons with developmental disabilities will not be lost.
- C. The Commonwealth presently engages a significant number of contract personnel to provide needed protections, services, and supports to persons with developmental

disabilities in the Commonwealth's service-delivery system. As in 2008, the Court continues to have a strong interest in ensuring that the continuity and integrity of needed protections, services, and supports not be compromised by the automatic termination of these contract personnel after the election and before the inauguration of a new Governor.

- D. Given the essential function of these contractors, the Court hereby orders the Commonwealth Department of Health to retain the services of all contract employees that provide protections, services, and supports to persons with developmental disabilities within the Commonwealth's service-delivery system, until further order of the Court.
- E. The Commonwealth shall ensure that there are sufficient funds to pay these contractors beyond the end of the 2012 calendar year and through the end of the current fiscal year, which ends on June 30, 2013.
- F. The provisions of this order should not be interpreted as creating any vested interest for the incumbents in any of the positions within the Commonwealth Department of Health. To the contrary, the Court recognizes that the incoming administration must be allowed to exercise its widest discretion, so long as the incoming administration complies with existing orders of the Court to provide needed protections, services, and supports to ensure the health, safety, and welfare of persons with developmental disabilities in the Commonwealth's service-delivery system.
- G. Upon motion by the Commonwealth, filed after the inauguration of the new Governor on January 02, 2013, the Court will consider any request to modify, amend, or vacate pertinent provisions, as appropriate.
- H. The Commonwealth Secretary of Health is hereby ordered to deliver a copy of this order to the members of the transition committee for the incoming administration during the Department of Health transition meetings.

Prior to the next status hearing in this case on December 5, 2012, the JCC and the parties shall collaborate, and then inform the Court if necessary, on the need for additional provisions to better ensure the continuity and integrity of the protections, services, and supports provided to persons with developmental disabilities during and after the time of transition.

So ordered.

In San Juan, Puerto Rico, on this 12th day of November, 2012.

s/Gustavo A. Gelpí
Gustavo A. Gelpí
U. S. District Judge