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4-25-00 [Resource Network on Home and Community Based Services] [1999-2000]

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From:

Stephen F. Gold, Esq.
125 South 9th Street
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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

LEE BARTHELEMY, AARON LILLER, CLAUDE CALLAGAN, DEBORAH DELPIT, and DARLENE WILLIAMSON, on behalf of themselves and all others similarly situated, and RESOURCES FOR INDEPENDENT LIVING,	*	CIVIL ACTION NO._____
Plaintiffs,	*	SECTION _____
VS.	*	JUDGE _____
LOUISIANA DEPARTMENT OF HEALTH AND HOSPITALS, and DAVID HOOD, Secretary, Louisiana Department of Health and Hospitals,	*	MAGISTRATE JUDGE ____
Defendants	*	CLASS ACTION

COMPLAINT

I. Introduction

1. Plaintiffs are persons with disabilities who are unnecessarily segregated and isolated in nursing homes in order to receive long-term health care services, in violation of the Americans with Disabilities Act ("ADA"), 42 U.S.C. §12101 et seq., and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §794(a) ("Section 504"), or who are at imminent risk for such segregation. Plaintiff Resources for Independent Living is a service organization representing such individuals. Plaintiffs allege that Defendants, who fund their services, unnecessarily segregate and isolate individuals in nursing homes in order to provide long-term health care services, all in violation of the ADA and Section 504.

2. Ten years ago, when enacting the ADA, Congress expressly recognized that "historically, society has tended to isolate and segregate individuals with disabilities, and despite some

improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem." 42 U.S.C. §12101(a)(2). Accordingly, the Supreme Court expressly has recognized that "unjustified institutional isolation of persons with disabilities is a form of discrimination." Olmstead v. L.C., ex rel. Zimring, 119 S.Ct. 2176, 2187 (1999).

3. Defendants discriminate against Plaintiffs by violating the "integration mandate" of the ADA and Section 504, 42 U.S.C. §12132 and 29 U.S.C. §794, as implemented in 28 C.F.R. §35.130(d) and 28 C.F.R. §41.51(d), which require that "a public entity shall administer services, programs and activities in the most integrated setting appropriate to the needs" of the person with a disability.

4. The most integrated setting for the Plaintiffs is in their homes and communities. With appropriate community-based, long-term care and services, Plaintiffs could live in their own homes and communities. Rather than provide such services in the community, however, Defendants continue to provide Plaintiffs with services only in nursing facilities, which are unnecessarily segregated settings.

5. Whether the services Plaintiffs need are provided in nursing homes or the community, they are reimbursed under the federally financed Medicaid program, Title XIX of the Social Security Act, 42 U.S.C. §1396 et seq. ("Title XIX"). Defendants annually receive more than $900 million in federal Medicaid financial assistance for long-term care. Yet as recently as 1998, 90% of Louisiana's long-term care Medicaid funds were spent to institutionalize persons with disabilities, with only 10% going to community based, non-institutional services. Defendants persist with such unnecessary segregation, even though cost-effective home and community-based services exist that are on the average less expensive than institutional care.

6. Defendants already administer programs that could provide needed services to Plaintiffs

outside of institutions. To serve some persons with disabilities outside institutions, Defendants use federally-approved Medicaid programs called "home and community based services waivers," also known as "Medicaid waivers." Similar waiver programs are used in 49 states. Louisiana is ranked close to the bottom of the participating states in the number of recipients served in its Medicaid waiver programs (per 1,000 in the population).

7. In 1998, Louisiana had approximately 34,400 Medicaid participants living in nursing homes, compared with fewer than 1,000 participating in community-based Medicaid waiver programs for elderly and disabled adults.

8. In 1998, Defendants recognized that there were hundreds of persons in Medicaid-funded nursing homes (or who were at risk of such institutionalization), who had applied for and were on Defendants' waiting lists for Medicaid home and community-based waiver services, but did not receive community services. Defendants have acknowledged that Louisiana's home and community-based waiver programs are not adequate for persons with disabilities.

9. The United States Department of Health and Human Services, Health Care Financing Agency, the federal agency that funds Medicaid and sets Medicaid policy, with which states must comply, has instructed Defendants that "no one should have to live in an institution or a nursing home if they can live in the community with the right support."

10. Plaintiffs could appropriately receive services in the community and could live in their own homes if Defendants took full advantage of the Medicaid community-based waiver programs.

11. Plaintiffs bring this lawsuit to end Defendants' discrimination and to challenge Defendants' failure to provide them with appropriate, community based, long-term care Medicaid services. Defendants' requirement that Plaintiffs be confined in segregated nursing facilities in order for them

to receive needed long-term care services, and its concomitant failure to provide Plaintiffs with these services in the community, violates the integration mandate of the ADA, 42 U.S.C. §12132, and Section 504, 29 U.S.C. §794, and their implementing regulations, 28 C.F.R. § 35.130(d) and 28 C.F.R. §41.51(d).

II. Jurisdiction and Venue

12. This Court has jurisdiction to decide Plaintiffs' claims pursuant to 28 U.S.C. §§1331 and 1343.

13. Plaintiffs' claims are authorized by 28 U.S.C. §§2201 and 2202; 42 U.S.C. §§1983 and 12133; and 29 U.S.C. §794a.

III. Parties

A. Plaintiffs

14. Lee Barthelemy is a 73 year old resident of New Orleans, Louisiana, who requires dialysis three times weekly and has had heart problems, all of which causes him to have disability as defined in Section 12102(2)(A) of the ADA and a "handicap" as defined in Section 504.

15. Aaron Liller is a 21 year old resident of New Orleans, Louisiana, who has quadriplegia from a spinal cord injury, which causes him to have a disability as defined in §12102(2)(A) of the ADA and a "handicap" as defined in Section 504.

16. Claude Callagan is a 54 year old resident of New Orleans, Louisiana, who is diabetic and uses a wheelchair due to an amputation, all of which causes him to have disability as defined in §12102(2)(A) of the ADA and a "handicap" as defined in Section 504.

17. Deborah Delpit is a 43 year old resident of New Orleans, Louisiana, who has cerebral palsy, which causes her to have a disability as defined in §12102(2)(A) of the ADA and a "handicap" as

defined in Section 504.

18. Darlene Williams is a 37 year old resident of New Orleans, Louisiana, whose muscles are deteriorating progressively, which causes her to have a disability as defined in §12102(2)(A) of the ADA and a "handicap" as defined in Section 504.

19. (a) Resources for Independent Living is a center for independent living funded through the Rehabilitation Act, 29 U.S.C. §796f, to serve and represent people with disabilities in the New Orleans area. As a center for independent living, its mandated mission is to work for "equal access of individuals with significant disabilities to society and to all services, programs, activities, resources, and facilities, whether public or private and regardless of the funding source." 29 U.S.C. §796f-4(v)(1)(D). Resources for Independent Living works toward the full equality, inclusion, and empowerment of people with all types of disabilities, including physical, cognitive, sensory, psychiatric and neurological disabilities. The purposes and goals of Resources for Independent Living include: to work to remove attitudinal and programmatic barriers that interfere with the civil rights of people with disabilities to live independently in the communities of their choice; to take such actions as may be necessary to effect changes in rules, practices or policies of government and private entities that are unlawful or inequitable as they relate to people with disabilities; and to provide advocacy for people with disabilities regarding access to integrated services.

(b) Resources for Independent Living provides counseling, independent living skills training, advocacy, and information and referral services to people with disabilities, many of whom are unnecessarily institutionalized, or at imminent risk of being unnecessarily institutionalized, in nursing facilities.

(c) Congress requires Resources for Independent Living "to increase the availability and improve

the quality of community options for independent living" and "to provide independent living core services," for persons with disabilities, which includes "individual and systems advocacy." 29 U.S.C. §§796f-4(b)(4) and (5) (incorporating 29 U.S.C. §705(17)(D) and 18(A)). These "community options" and "core services" include the basic and most fundamental option of living in one's own home and community, instead of an institution, and the "systems advocacy" includes eradication of discrimination against people with disabilities, including discrimination by unnecessary segregation and isolation.

20. As a result of Defendants' actions, Resources for Independent Living's ability to meet its statutory and regulatory obligations is directly and concretely injured. Resources for Independent Living is forced to spend time, in the past and present, and divert its resources to the task of assisting persons with disabilities to obtain services in the community, rather than in institutions. Defendants' actions require Resources for Independent Living to advocate for the development and improvement of nondiscriminatory Medicaid services, instead of spending its time and resources assisting persons with disabilities with other issues, including accessible and affordable housing, equal employment opportunities, and access to places of public accommodation.

B. Defendants

21. Defendant Louisiana Department of Health and Hospitals is the agency responsible for administering the Louisiana Medicaid Program. See 42 U.S.C. ¤1396a(a)(5). It is a public entity as defined by the ADA, 42 U.S.C. §12131(f), and is a recipient of federal financial assistance.

22. Defendant David Hood is the Secretary of the Louisiana Department of Health and Hospitals. Pursuant to L.R.S. § 36:254, he is responsible for the functions and programs vested in the Department, including the Medicaid program and the home and community based waiver programs.

Defendant Hood is sued in his official capacity for his actions and failure to act under color of state law.

IV. Class Action Allegations

23. Plaintiffs Lee Barthelemy, Aaron Liller, Claude Callagan, Deborah Delpit, and Darlene Williams bring this action on their own behalf and on behalf of all other persons similarly situated, pursuant to Rule 23(a) and (b)(2) of the Federal Rules of Civil Procedure. The class consists of all persons with disabilities who are Medicaid recipients and who are either unnecessarily segregated in a Medicaid-funded nursing facility, or who are eligible for Defendants' home and community based waiver programs and are at imminent risk of nursing home placement, due to Defendants' failure to provide them with appropriate, community-based, long-term Medicaid-funded services and supports.

24. The exact size of the class is unknown to the Plaintiffs, but it is believed to be well over 679 persons, the number of individuals in 1997 on waiting lists for home and community-based services for the elderly or adults with disabilities. The actual class is much larger than this, both because, on information and belief, the waiting lists for these programs have lengthened since 1997, and because many class members have not been informed about long-term care services in their homes and communities, and have thus not applied for or been placed on waiting lists for such services. Joinder of all members is impracticable.

25. The questions of law or fact common to the class and any subclass are whether Defendants violate the ADA and Section 504, by requiring Plaintiffs to be segregated and confined unnecessarily in institutional settings in order to receive long-term services, rather than providing those services in Plaintiffs' homes and communities.

26. The claims of the named Plaintiffs -- that Defendants violated their rights under the ADA and Section 504 by failing to provide appropriate, community-based long-term services, but instead offered only unnecessarily segregated and isolated services in nursing facilities -- are typical of the class members' claims.

27. The named Plaintiffs will fairly and adequately protect the interests of the class and any subclass. They have no interests which conflict with other class members. Plaintiffs' counsel are experienced in litigating class actions, including enforcement of the civil rights of people with disabilities.

28. Defendants have acted or refused to act on grounds generally applicable to the class and any subclass, thereby making appropriate injunctive and declaratory relief with respect to the class as a whole.

V. Facts

A. Plaintiffs' Need for Community-Based Services

29. Plaintiff Lee Barthelemy is a 73 year old former seaman, a grandfather of three who has lived in a nursing home for 3 1/2 years. He had a heart attack in 1995. He requires kidney dialysis three times weekly and suffers from intermittent congestive heart failure.

30. Plaintiff Barthelemy is a recipient of Medicaid and is nursing home eligible.

31. Plaintiff Barthelemy wants to live in the community. Prior to hospitalization and subsequent institutionalization in the nursing home, he lived alone in his own home. When first admitted to the nursing home years ago, he used a wheelchair, had gangrene and end-stage renal disease, and required skilled care. Now, however, he is fully ambulatory and competently performs most activities of daily living, but he does not drive and needs reliable transportation to dialysis. He is

visited in the nursing home by his brother and sister, with whom he could reside if transportation to dialysis and personal care services at home were available.

32. Plaintiff Barthelemy was only recently placed on the waiting list for Defendants' Elderly and Disabled Adult Waiver program, because previously he was not informed that community based services were offered.

33. Plaintiff Aaron Liller is a 21-year-old man with quadriplegia, who suffered a spinal cord injury at age 19. He has lived in a nursing home since March, 1999.

34. Plaintiff Liller is a recipient of Medicaid and is nursing home eligible.

35. Plaintiff Liller frequently travels by city bus alone to visit friends and participate in typical young-adult activities. He likes to draw, and would like training in computer-assisted drafting; however, he cannot receive the educational services he needs while in a nursing home. Being confined to a nursing home impairs him educationally, vocationally, and socially.

36. Plaintiff Liller wants to move to his mother's home, and could so do with home accessibility modifications and personal care assistance services. Eventually, he wants to live on his own and hold a job, but he cannot do so without appropriate, community-based services.

37. Plaintiff Liller is on Defendants' waiting list for the Personal Care Attendant Waiver and the Mental Retardation/Developmental Disability Waiver.

38. Plaintiff Deborah Delpit is a 43-year-old woman who has cerebral palsy and has had multiple surgeries. She uses a wheelchair for mobility.

39. Plaintiff Delpit is a recipient of Medicaid and is nursing home eligible.

40. Plaintiff Delpit has lived in a nursing facility since 1997, when her mother had a disabling stroke and the family home was lost to creditors. She and her mother now reside in the same nursing

home.

41. Plaintiff Delpit lives in the nursing home because she needs some assistance with activities of daily living, such as meal preparation, shopping, laundry, cleaning, transferring, dressing, personal hygiene and transportation; and with taking medication.

42. Plaintiff Delpit has close personal relationships in the community and takes a lift bus to church. She wants to live in the community and have her independence restored. She would like to support herself and manage her own money. She wants the privacy that is lacking in a nursing home setting, where other residents frequently enter her room without permission. Plaintiff Delpit has no medical needs that would require her to live in a nursing home, if adequate community services were available to her. She could live independently with appropriate personal care assistance services .

43. Plaintiff Delpit has been on Defendants' Mental Retardation/Developmental Disability Waiver waiting list since 1996, and on DefendantsÕ Personal Care Attendant Waiver waiting list since 1997.

44. Plaintiff Claude Callagan is a 54-year-old diabetic and single amputee who uses a wheelchair for mobility.

45. Plaintiff Callagan is a recipient of Medicaid and is nursing home eligible.

46. Prior to institutionalization in a nursing home in June, 1999, Plaintiff Callagan lived with a roommate and his younger brother, all with no home health care assistance. At that time, he performed many activities of daily living, including cooking, cleaning, washing, and transferring to and from his wheelchair, with minimal assistance. Since acquiring his disability, he has worked in a doughnut shop, cemetery, and grocery.

47. Plaintiff Callagan very much desires a life in the community. He feels he has no privacy in the nursing home, in his person or property; is not able to independently control his own schedule; and is much younger than many of the other residents.

48. Plaintiff Callagan is on the waiting lists for Defendants' Personal Care Attendant and Elderly and Disabled Adult waivers. He was only recently placed on these waiting lists because he was not informed and did not know that such community based services were offered.

49. Plaintiff Darlene Williams is a 37-year-old widow with Charcot Marie Tooth disease, a rare, progressive paralysis disorder first diagnosed in 1988. She is now quadriplegic.

50. Plaintiff Williams is a recipient of Medicaid and is nursing home eligible.

51. Plaintiff Williams wants to reside in the community, as she has been able to do in the past with the help of a home health aide. She has been institutionalized in a nursing home since October, 1999. She requires assistance with personal care, dressing, meal preparation, and transferring to and from her wheelchair. She wishes to live in her family home with personal care assistance, with the eventual goal of living in her own apartment and working as a telephone receptionist. She considers herself a still-young woman who has no real life in a nursing home.

52. Plaintiff Williams is on the waiting lists for the Personal Care Attendant Waiver (since April 21, 1998), and the Elderly and Disabled Adult Waiver (since April 1, 1999).

53. Persons who have the same or similar disabilities as Plaintiffs Barthelemy, Liller, Callagan, Delpit, and Williams, but who receive long-term, appropriate services in the community, are able to reside in their own apartments and homes, and to be integrated into community life.

B. The Medicaid Program and Home and Community-Based Waivers

54. The Medicaid program, authorized by Title XIX of the Social Security Act, 42 U.S.C. §1396

et seq., is a joint federal-state program. Medicaid is a cost-sharing arrangement under which the federal government reimburses a portion of the expenditures incurred by states that elect to furnish medical assistance to individuals whose income and resources are insufficient to cover the costs of their medical care.

55. States are not required to participate in the Medicaid program, but, if they choose to do so, they must operate their programs within federal statutory and regulatory provisions. They must adopt a State Plan that delineates the standards for determining eligibility and identifies the extent of Medicaid benefits. Louisiana has chosen to participate in the Medicaid program and has adopted a State Plan.

56. For each three dollars that Louisiana puts into the Medicaid program, the federal government provides approximately seven dollars toward health care services for eligible Louisiana recipients.

57. Each participating state must designate a single state agency responsible for administering the Medicaid program. The State of Louisiana has so designated the Louisiana Department of Health and Hospitals.

58. Title XIX mandates that a State Plan must provide certain specified services that are included in its definition of "medical assistance." See 42 U.S.C. §1396a(a)(10)(A) (incorporating 42 U.S.C. §§1396d(a)(1)-(5), (17), and (21)). These mandatory services include, inter alia, inpatient hospital services, outpatient services, nursing facility services, and physician's services.

59. In addition to these mandatory services, Title XIX also permits (but does not require) a State Plan to provide other specified "optional" services identified as "medical assistance" in 42 U.S.C. §1396d(a). However, if a state chooses to provide such optional services, it must provide those services to all persons throughout the state who need them. Louisiana has chosen not to provide

certain optional services relating specifically to long-term care, including personal care services.

60. As an alternative to institutional care, Title XIX permits a state, as an exception to some of the above requirements, to obtain a "home or community-based services" waiver from the federal Health Care Financing Administration ("HCFA"). 42 U.S.C. §1396n(c)(1).

61. The Home and Community-Based Service Waiver program allows a State to provide, and receive federal financial reimbursement for, specified home or community-based services to individuals who, without such care, might require institutionalization. Id. Some of these services could not otherwise be reimbursed under Title XIX.

62. To receive federal reimbursement under a "home or community-based services" waiver, a state must demonstrate that the average per capita cost of home care will not exceed the average per capita cost of institutional care, i.e., that provision of waiver services will be "cost-neutral." 42 U.S.C. §1396n(c)(2)(D).

63. Under a waiver, a state can provide an array of home or community-based services, including some services not identified in 42 U.S.C. §1396d(a) as "medical assistance." 42 U.S.C. §1396n(c)(4)(B); 42 C.F.R. §440.180. Thus, a state can provide attendant care services in the community for persons with impairments, as well as other appropriate services to assist persons to reside in their homes and communities.

64. As its name implies, a state can request a waiver of certain Title XIX requirements in a waiver program. Specifically, a "home or community-based services" waiver may eliminate Title XIX's requirements of statewide application and comparability for the waiver program, 42 U.S.C. §§1396a(a)(1) and (10)(B); may alter the income and resource rules for eligibility, 42 U.S.C. §§1396a(a)(10)(C)(i)(III); and may impose a cap upon the number of persons eligible for services

under the waiver (although it may not limit the number of persons eligible under a waiver to fewer than 200). 42 U.S.C. §1396n(c)(3) and (9)-(10).

65. Under the Medicaid statute and regulations, in order to participate in the waiver program, states must provide: "Assurance that when a recipient is determined to be likely to require the level of care provided in ... [a] skilled nursing facility..., the recipient ... will be (1) Informed of any feasible alternatives available under the waiver; and (2) Given the choice of either institutional or home and community-based services." 42 C.F.R. §441.302(d)(1)-(2), 42 U.S.C. §1396n(c)(2)(C).

66. Despite its assurance that it would provide eligible Medicaid recipients a choice of either institutional or home and community based waiver services, Defendants did not inform persons of such alternatives, nor provide Plaintiffs with such a choice, and many Plaintiffs were only recently informed of the existence of home and community based long-term care services.

67. The purpose of Title XIX's home and community-based waivers is to encourage states to provide services to assist individuals with disabilities to avoid institutionalization.

68. Louisiana has control over the development and provision of home and community based waiver services.

69. For several years, Defendants have been aware of a substantial waiting list for community residential services for persons in nursing facilities or at risk of unnecessary institutionalization, who are eligible for existing home and community-based waiver services.

70. Many class members on waiting lists have been on waiting lists for years to obtain the waiver services they required.

C. Louisiana's Long-Term Care Medicaid Program

71. Louisiana has a home and community based services waiver for "elderly and disabled" adults,

one for personal care assistance, and one for individuals with mental retardation or developmental disabilities.

72. Individuals are eligible under Defendants' waivers if: (1) they are over age 65 or are disabled as specified in each waiver program, (2) they meet the standards of care for nursing home (or ICF-MR) services, and (3) they are eligible for Medicaid.

73. Approximately 90% of Louisiana's expenditures for long-term care services go to institutional, rather than home and community-based services. Well over half of these institutional expenditures go to nursing homes.

74. While Louisiana ranks near the bottom of all the states both in the percentage of its population that receives home and community-based waiver services, and in its per capita expenditures on such services, it ranks near the top in the percentage of its population that is institutionalized in order to receive long-term health care.

75. Louisiana's supply of nursing facility beds far outnumbers that of most states. In 1998, Louisiana had 34,400 Medicaid recipients living in nursing homes.

76. In contrast, less than 1,000 Medicaid recipients in Louisiana received home and community-based services under its Elderly and Disabled Adult and Personal Care Attendant waivers.

77. Defendants' Elderly and Disabled Adult and Personal Care Attendant waiver programs provide a broad range of services, including case management, homemaker services, personal care services, environmental accessibility modifications, personal emergency response systems, and companion services.

78. Long-term care is assistance given over a sustained period of time to people who are experiencing long-term inabilities or difficulties in functioning because of a disability. Long-term

care services are designed either to compensate for the individualÕs functional impairments, or to restore or improve functional abilities. Five basic Medicaid services (whether mandatory, optional or waiver services) comprise its long-term care services: Medicaid's long-term "institutional" reimbursements for (1) nursing home facilities and (2) intermediate care facilities for the mentally retarded (ICF-MR); and Medicaid's long-term "community services" reimbursements for (3) personal care, (4) home health, and (5) home and community based services waivers.

79. Many class members on waiting lists have been waiting for years to obtain the community-based long-term care services they require. During the time that these waiting lists were being compiled, Defendants began providing nursing facility services to thousands of individuals without determining if they were appropriate candidates for community services, or offering such services to persons who could reside in the community with appropriate services and supports. Defendants have failed to expand their waiver programs to the extent necessary to avoid unjustified institutionalization and segregation of the class members in nursing facilities.

80. The Plaintiffs and class members are appropriate and willing candidates for receiving services in the community. Defendants have failed and continue to fail to provide them with appropriate, community-based long-term care services. Instead, Defendants continue to require Plaintiffs and class members, as a condition of receiving services, to be unnecessarily segregated and isolated in nursing homes that cost more than Defendants would have to spend for the same or similar services in the community.

81. Plaintiffs and class members suffer severe and irreparable harm or are at risk of suffering imminent, irreparable injury and harm due to Defendants' actions, absent an award of injunctive relief.

V. Claims

A. Count I -- The Americans with Disabilities Act

82. Defendants' requirement that Plaintiffs and class members be confined in unnecessarily segregated environments (i.e. nursing facilities), rather than in the community, in order to obtain long-term care and services, violates the ADA's integration mandate, which requires that a "public entity shall administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities."

83. Plaintiffs and class members can receive and are appropriate candidates for receipt of long-term health-related services in the community, and the community is the most integrated setting appropriate to meet their needs. Nevertheless, Defendants have denied them access to the array of community-based services they need and instead have offered them services only if they are confined in segregated facilities.

84. It would not fundamentally alter the programs, services or activities of the Louisiana Department of Health and Hospitals to provide Plaintiffs and class members with community-based, integrated long-term health services. Defendants offer such services in both institutional and community settings and would not have to create any new types of programs to serve Plaintiffs. Defendant Louisiana Department of Health and Hospitals has sufficient funding to provide such services.

B. Count II - Section 504 of the Rehabilitation Act

85. Plaintiffs are qualified individuals with disabilities protected by Section 504 of the Rehabilitation Act, 29 U.S.C. §794(a), who are subjected to discrimination under Title XIX.

86. Defendants' requirement that Plaintiffs and class members be confined in unnecessarily

segregated environments (i.e., nursing facilities) rather than in the community, in order to obtain long-term care and services, violates Section 504's "integration mandate."

87. Plaintiffs and class members can receive and are appropriate candidates for receipt of long-term health related services in the community, and the community is the most integrated setting appropriate to meet their needs. Nevertheless, Defendants have denied them access to the array of community-based services they need and, instead, have offered them services only if they are confined in segregated facilities.

88. It would not fundamentally alter Defendants' programs, services or activities to provide Plaintiffs and class members with community-based, integrated long-term health services. Defendants offers such services in both institutional and community settings and would not have to create any new types of programs to serve Plaintiffs. Defendants have sufficient funding to provide such services.

VI. Prayer for Relief

WHEREFORE, Plaintiffs request:

a. That this Court exercise jurisdiction over this action;

b. That this Court declare that Defendant Louisiana Department of Health and Hospitals' and Defendant Hood's actions and failures to act violate the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973;

c. That this Court issue preliminary and permanent injunctions to enjoin Defendant from continuing to violate both the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973, and to require Defendants to immediately offer its long-term care services to Plaintiffs and class members in their homes and communities, rather than only in unnecessarily segregated

institutional facilities.

d. That this Court issue such other relief as may be just, equitable and appropriate, including an award of reasonable attorneys' fees, litigation expenses and costs pursuant to 42 U.S.C. §§1988 and 12205, and 29 U.S.C. §794a(b).

Respectfully submitted,

/s/

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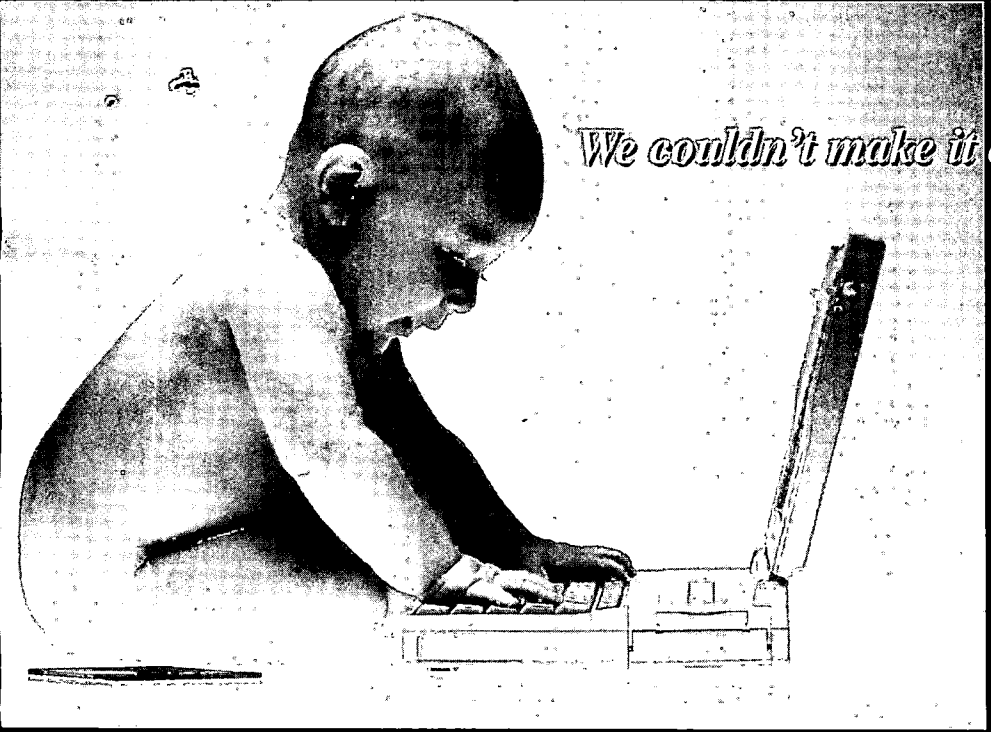
4/12/2000



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Friday, April 14, 2000

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3/9/00

Dear Hex,

It was good talking with you last week. Here are some materials about Clarium Consulting which I hope will be helpful for the grant. As I said, Daniel & I would be happy to help in any way we can. Please give us a call.

Sincerely,

Michael

Resource Network on Home and Community Based Services

Mission Statement and Specific Objectives

Draft

Mission

The mission of the Home and Community-Based Services Resource Network is to bring the federal government, States, and the disability and aging communities together to identify ways to expand access to high-quality, consumer-directed services in a cost-effective manner. The Resource Network will support state efforts to engage in collaborative planning and policy development with people with disabilities. It will focus on identifying practical and immediate next steps which can be taken to expand access to personal assistance and supports in ways that are realistic, equitable and affordable. The Resource Network is also expected to serve as a model for collaborative problem solving, priority setting, and styles of working between government agencies and persons with disabilities that is fundamental to continued progress in HCBS systems development.

Specific Project Objectives

1. To create a project infrastructure (sponsors, Project Board, federal staff, contractors, etc.) that serves as an effective vehicle for bringing "all the stakeholders" of HCBS system development to the table to highlight and address key HCBS policy issues in a neutral, nonpolitical setting.

2. To support increased collaboration between state/federal purchasers of HCBS services, and the disability community/aging network regarding the future direction of HCBS system change.

3. To collect, synthesize and effectively disseminate useful data and information products regarding HCBS system development to all stakeholders.

4. To collect and disseminate *new* information about HCBS systems where existing data and information are lacking, incomplete or outdated.

5. To identify key policy and programmatic issues that serve as barriers to HCBS system development and innovation and to support policy analyses that identify federal and state options for addressing these barriers.

6. To identify and support models for involving consumers in the development, management and oversight of HCBS programs at the federal, state and local level. This will include the

identification and dissemination of "best practice" models that are currently being used to involve consumers in HCBS service systems.

7. To sponsor state and/or regional forums that address key policy and programmatic issues in HCBS system development.

8. To support a variety of direct technical assistance activities to state agencies, HCBS service providers, state legislatures and consumer organizations that serve to promote HCBS system improvements.

9. To support educational activities directed at state legislatures and state legislative staff on HCBS policies and programs, and to assess effective mechanisms for securing support for HCBS system expansions within the legislative branch of state governments.

10. To conduct an assessment of the experience of the Resource Network over the two years of its operation and to evaluate the feasibility and utility of continuing the operation of the Resource Network beyond its initial pilot period.

Resource Network on Home and Community Based Services
Program Overview
April 2000

In recent years, states have made significant investments in home and community-based service (HCBS) systems for persons with long term care needs. The Federal government has been a partner in this expansion, largely through policy changes that have expanded financing options under the Medicaid program. However, the development and management of cost-effective, high quality, home and community-based service systems remains a significant policy challenge for both states and the Federal government. Consumers of home and community-based services are becoming increasingly vocal about deficiencies of state HCBS service systems in regard to access, responsiveness to individualized needs, and the quality of services provided.

The Resource Network on Home and Community Based Services is a partnership between the Assistant Secretary for Planning and Evaluation (ASPE), the Health Care Financing Administration (HCFA), state agencies which purchase and manage HCBS services, and consumers. The mission of the Resource Network is to work with states, the disability and aging communities, and other stakeholders who are committed to high quality consumer-directed services in integrated settings through cost-effective delivery models.

The Resource Network is governed by a 12-member Project Board, equally comprised of representatives of state HCBS agencies, and consumers of HCBS services. The Board is co-chaired by Lex Frieden, Senior Vice President of the Institute for Rehabilition and Research in Houston, Texas, and Lee Bezanson, Medicaid Director of New Hampshire. The specific activities of the Resource Network are managed under a contract to The MEDSTAT Group, in collaboration with the Boston College School of Social Work.

The Resource Network will engage in a variety of activities and projects including:

Forums: The Network will sponsor national and community forums on issues related to home and community based care. The forums will be a vehicle through which the federal government, state officials and consumers can explore how to make community based services more accessible to persons with disabilities and more affordable to states.

State Collaboration: The Resource Network will collaborate with states on HCBS system changes. These initiatives will generally begin with a process of eliciting stakeholder input. Once completed, the Network will provide resources for implementing system improvements, including consulting expertise, data analysis, technology transfer among states, and direct support for consumer involvement in program development activities.

Web Site and Resource Inventory: The Network will develop a web site and resource inventory that will serve as a comprehensive resource for the development of HCBS service systems. The resource inventory will be part of a broader dissemination effort that links the resources of centers of expertise in states and communities with those of advocacy and consumer groups.

Study of Information Needs: The Network will conduct a special study of the information needs of elected state officials regarding long-term care and develop materials that respond to their needs.

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CLARION

Consulting Group

The Foundations of Our Practice

January 1999

Foundations of the Practice

What is an organization?

Foundations of Our Practice

One View Organization

- Employee/physician
- Unit/practice
- Function/department
- Job description
- Accountability
- Individual behavior
- Performance review

Foundations of the Practice

Another View of Organization

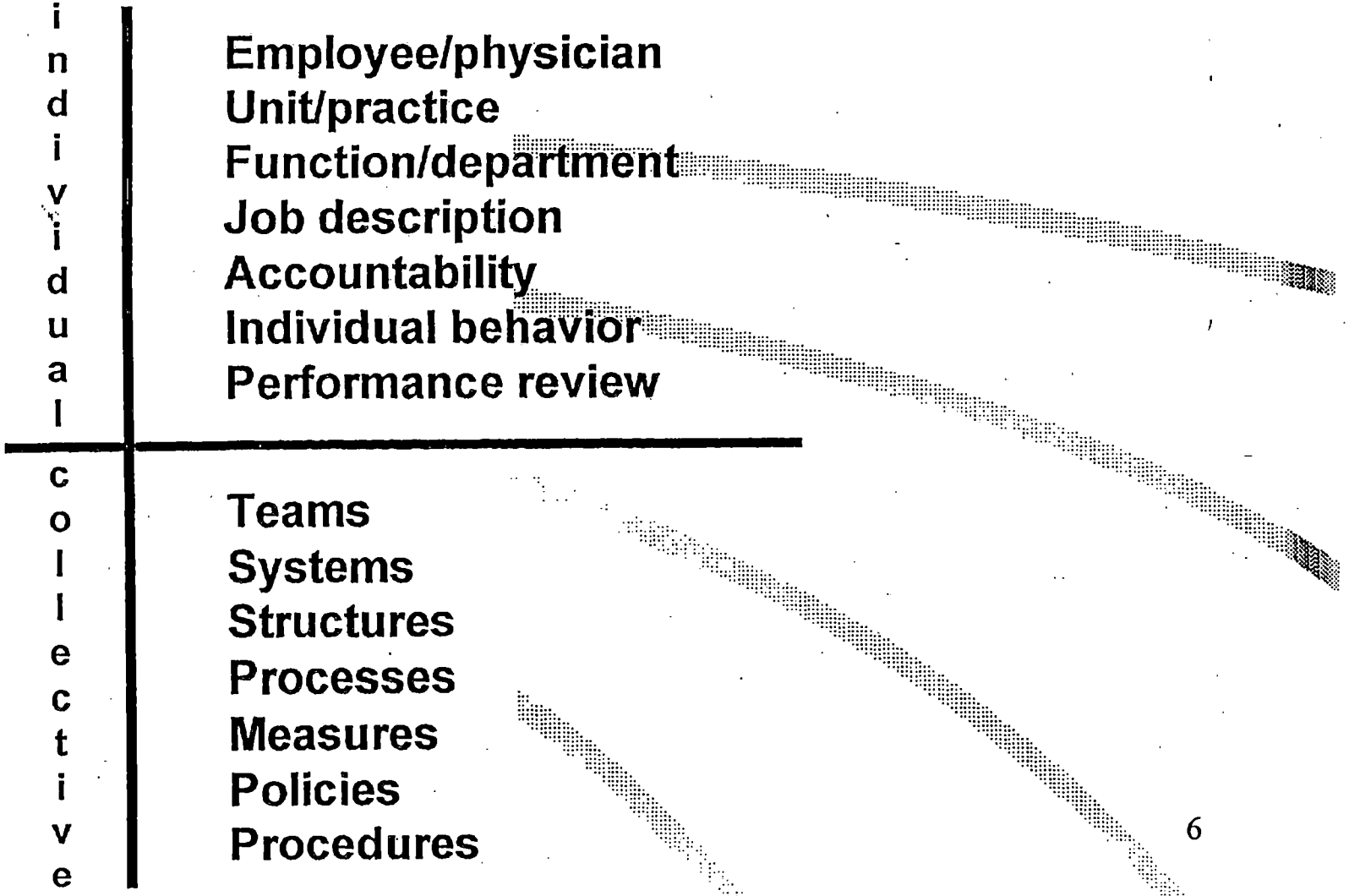
- Teams
- Systems
- Structures
- Processes
- Measures
- Policies
- Procedures

Foundations of the Practice

What are the characteristics of these two views?

Foundations of the Practice

A Combined View



Foundations of the Practice

What is missing?

Foundations of the Practice

What is missing for the individual is -

- Meaning
- Intention
- Value
- Motivation
- Interpretation
- Emotion
- Belonging

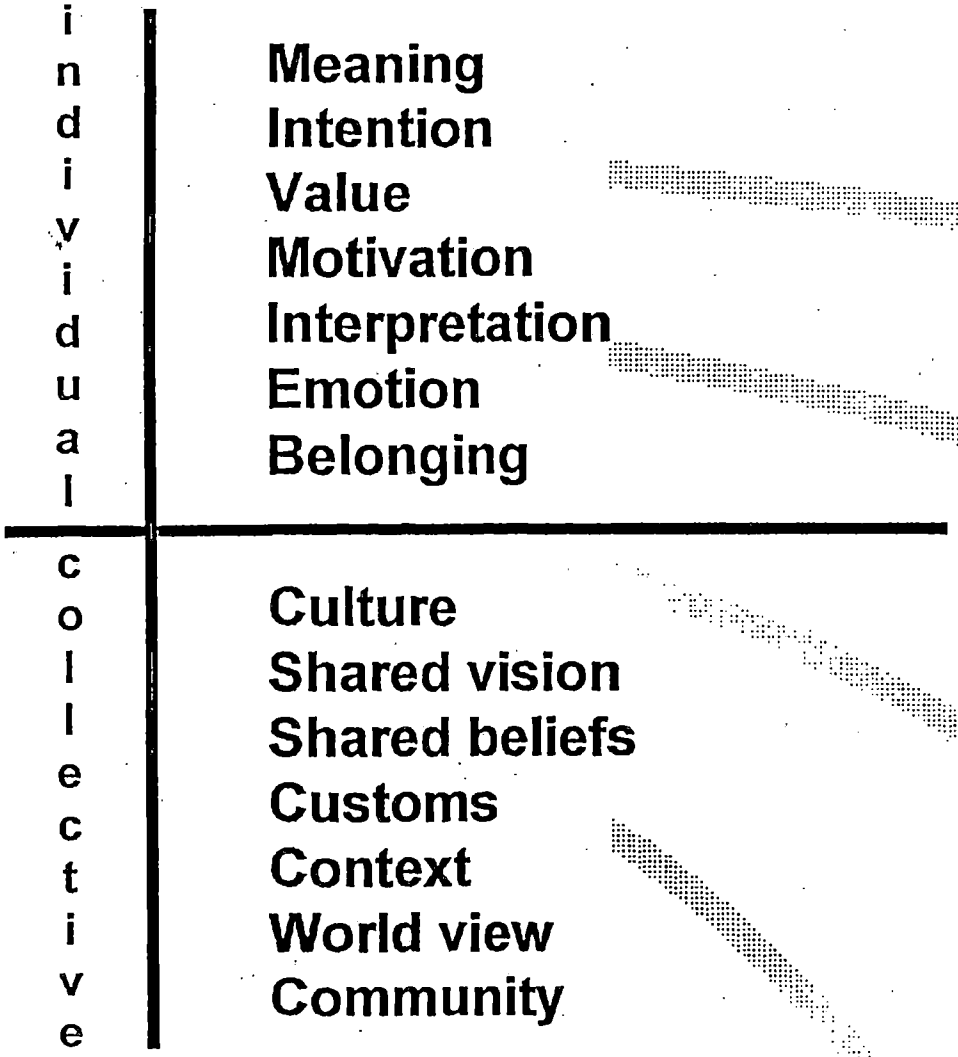
Foundations of the Practice

What is missing for the collective is -

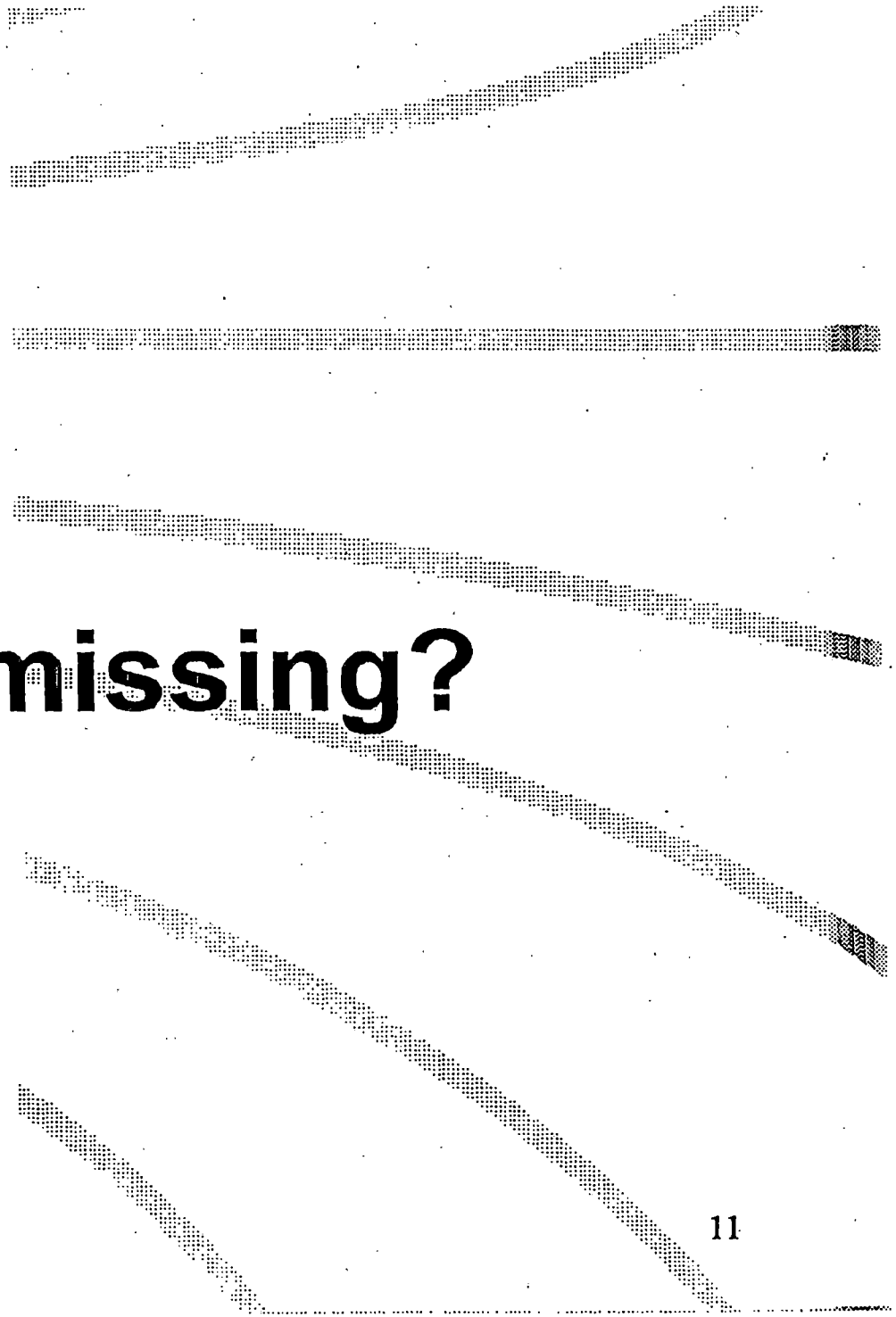
- Culture
- Shared vision
- Shared beliefs
- Customs
- Context
- World view
- Community

Foundations of the Practice

A Combined View of the Interior



Foundations of the Practice



What is missing?

Foundations of the Practice

A Fully Integrated Perspective

	interior	exterior
individual	Meaning Intention Value Motivation Interpretation Emotion Belonging	Employee/physician Unit/practice Function/department Job description Accountability Individual behavior Performance review
collective	Culture Shared vision Shared beliefs Customs Context World view Community	Teams Systems Structures Processes Measures Policies Procedures

Foundations of the Practice

Some observations -

- The right side is "mono-logic"; it is accessed through monologue, with charts and diagrams.
- The left side is "dia-logic"; it is accessed through dialogue and inquiry.
- Ten monologues, even simultaneously, do not equal a dialogue!

Foundations of the Practice

More observations -

- Most organizations are out of balance; they are right-side dominant.
- Working on the right side is easier and safer.
- Each of the four domains is an intrinsic aspect of organizational life.
- Sustainable organizational change programs address all four "quadrants".

Foundations of the Practice

Most change programs focus on the right side

- Reengineering
- Work process redesign
- Systems thinking
- TQM/CQI
- Patient-focused care
- Information technology
- Financial incentives

Foundations of the Practice

"Organizational transformation" is a two-step process -

- Differentiate the left side from the right.
- Integrate the two sides into a new whole.

Foundations of the Practice

Some observations -

- Differentiation is integral to development.
- Integration cannot happen without differentiation happening first.
- In most healthcare organizations, the left side is fused with the right.
- Solutions to right side problems are not appropriate for left side problems.

Foundations of the Practice

The core precept of our practice -

Successful healthcare organizations of the future will be those whose leaders and affiliated stakeholders (1) develop the capacity and competencies to tap the dormant subjective and cultural potentialities of their organizations, and (2) integrate these inner capabilities with the organizations more objective, systemic components.

CLARION
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The ***soul*** *of an* ***organization...***

...can be found in the ***heart*** *of its* ***people***

To cause a fundamental change in the way an organization operates, you must change its very nature. And to change its nature, you must touch its soul. This is just another way of saying what you already know: that your people are the key to your success.

Imagine what would happen if you could catalyze a fundamental shift in the way your people operate — not merely in what they do, but in the way the are. Imagine if there was a real alteration in the way they communicated with one another, a deepening of their sense of ownership and responsibility and a new recognition that they had a personal stake in the success of the entire enterprise.

In other words, imagine what would happen within your organization — in terms of performance, service, and profitability — if your people truly grasped their place in its larger vision and had the skills to work together to make that vision a reality.

This is the mission of Clarion Consulting Group: to bring about a fundamental transformation in the delivery of healthcare in America.

A challenge we understand

A modern healthcare organization is one of the most complex systems on earth — an overlapping interplay of complicated technology and human beings of differing agendas and allegiances all focused on meeting the deepest needs of individuals (and their families) at the most stressful time in their lives.

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imagine

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depth

Few people fathom the depth of personal commitment and professional competence required to run a successful healthcare organization in today's world. We do. Because, it's all we do.

Clarion Consulting Group works to unleash the leadership capacity within healthcare organizations by providing the tools and expertise to create an organizational culture that fosters ongoing sustainable positive change. With such a culture in place, permanent breakthroughs in areas like service quality, strategic partnering, cycle time reduction, and managed care contracting are easily attained.

Our aim is not to provide technical solutions, quick fixes, or merely to enable gradual improvement, but to ignite a profound shift in the operating base of your people, so that every change initiative you undertake not only produces the immediate results you seek, but does so on a long-term sustainable basis.

community

We take business personally

When you work with Clarion Consulting Group, you become part of a learning community — a cooperative, supportive ensemble of peers both inside and outside your organization that provides many benefits. Among them:

- You'll gain continuing access to training and coaching that will help deepen new skill sets and build greater capacity within your people.
- You'll have a shoulder-to-shoulder partner who will work with you to design and develop mission-specific programs tailored to your unique organizational needs.

- You'll have access to colleagues from other healthcare organizations who have encountered and resolved strategic issues similar to those which you are now facing.

In short, we will work with you to reinvent your organization in such practical areas as managing breakthrough projects, renewing the passion and purpose of physicians and caregivers, and building a strategic community of leaders and coaches. Beyond acting as your advisor, we will strengthen your ability to continuously invent new possibilities and sustainable solutions.

partnership

The most powerful force for change

We invite you to engage with us in a truly fresh and original approach to meeting the challenges facing today's fragmented healthcare organizations. Join us in a work that reaches beyond the latest mechanistic fixes, which often produce only short term results at the expense of long term human relationships and real sustained organizational growth.

Become partners with us in a work that can and will alter the fundamental nature of your organization by unleashing the most powerful force for change in all of healthcare: the skill, the dedication, the commitment — in short, the heart — of your people.

If you have questions or want more information about Clarion Consulting Group, we would be happy to discuss our work in detail, and, if appropriate, arrange a confidential conversation with a fellow senior executive who has worked with us.

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