FAX TRANSMISSION

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TOTAL PAGES: 7 **DATE:** April 27, 1999
(With Cover)

REMARKS:

Hi Rob and Devorah,

Please find attached what Florida sent us in reference to their waiting list for all levels, the private ICF/DD breakdown, the State's summaries of their lawsuits and the criteria for the levels of need.

Thanks.

Liz

If there is a problem with the receipt of this document, please call Liz at (410) 786-1282.

1. Waiting List

Level of Need	Non-waiver	Waiver
1	4,546	2,632
2	1,399	810
3	2,332	1,350
4	1,632	945
5	1,749	1,013
Total	**11,658**	**6,750**

1.

2. ICF/DD breakdowns:

NOTE: Public ICFs/DD Levels of Need not yet available in the process of gathering information

Level of Need	**Private ICF/DD**
1	55
2	120
3	249
4	256
5	1,228
Level not yet determined	340
Total	**2,248**

Attorney/Client Privileged Information 04/14/99

Developmental Services Lawsuits

John/Jane Does 1-13 v. Chiles, et al.

- Filed March 17, 1992 by Steven Weinger. Plaintiffs were Does 1-13, FARF and UCP. FARF and UCP were removed by district court as plaintiffs December 1992.

- Final Judgement from US District Court issued August 28, 1996: "State must establish within the State's Medicaid plan a reasonable waiting list time period, not to exceed 90 days, for individuals who are eligible for placement in ICF/DD institutional care facilities".

- Appealed to US Court of Appeals: 11th circuit. Decision rendered February 26, 1998 upholding lower courts decision.

- State plan amendment for ICFs/DD approved by HCFA April 1998.

- November 10, 1998 Judge Ferguson ordered the state to:
  - Comply with February 1998 decision within 30 days for the named plaintiffs
  - Within 60 days submit a plan which identifies, locates and provides for the immediate delivery of services to 600 persons identified by the state
  - By February 12, 1999 to fully comply with order for the numbered class

- Plan of compliance submitted to court January 11, 1999. Plan was based upon the state's position that ICFs/DD should be utilized for individuals who require that level of care (individuals with a level of need score of 4 or 5 on the Florida Status Tracking System or FSTS). Hearing held February 12: Judge found state neither to be in compliance or out of compliance with judgement. **Judge Ferguson has scheduled an evidentiary hearing for May 17th, 9:00 AM.**

Cramer v. Bush

- Originally filed in June 1996 by Advocacy Center - now also includes Marvin Gutter (counsel for Cramer) with 7 named plaintiffs and a certified class of all persons residing in private ICFs/DD (more than 2,000).

- Preliminary injunction issued August 1996.

- Judgement issued January 1998: Permanent injunction from conversion of ICFs/DD to HCBS providers without due process and in a manner that violates the federal-state contract for Medicaid services and the ADA. **Judge then expanded scope of lawsuit by maintaining jurisdiction to develop or approve a transition plan and ruled that the court would appoint a panel to develop a plan to transition individuals desirous of community placements.**

- ❑ At a hearing February 19th and in a written order of March 11th, the judge ordered the parties (Advocacy Center and the state) to meet before March 23, 1999 to develop a plan for the transition of the class. **The plan of compliance is to be submitted to the court by April 19th, and shall be either a unilateral plan or bi-lateral plan developed with the Advocacy Center.**
  - The plan shall identify known Medicaid-eligible individuals who wish to leave ICFs/DD
  - The parties shall include a master plan for service and support plans for these persons
  - The parties shall advise the court of the amount of legislative funding needed to accomplish the plan and the means to place such funding beyond political reach ("so that such funds shall become Medicaid entitlements").

Murray, Brown and Prado-Steinman have been consolidated for discovery purposes only. (UCP dismissed for no standing)

Murray v. Bock

- ❑ Filed by Steve Weinger with 6 named plaintiffs and a proposed certified class, identified in a memorandum on motion for class certification issued March 10th as:

  All developmentally disabled individuals participating in the home and community-based waiver who are not receiving or who have not received some services under the waiver for which they are eligible.

- ❑ Alleges inadequacy of services under the waiver
- ❑ Depositions underway.
- ❑ Could have major fiscal impact.

Prado-Steinman v. Bush

- ❑ Filed by Advocacy Center with named plaintiffs and a proposed certified class, identified in a memorandum on motion for class certification issued March 10th as:

  All persons with developmental disabilities who are presently receiving home and community-based waiver services, or who are eligible to receive these services or who would receive or be eligible for these services in the future.

- ❑ Alleges inadequacy of services under the waiver
- ❑ Pre-trial conference scheduled May 3rd, 4:15 PM.
- ❑ Could have major fiscal impact.

Attorney/Client Privileged Information 04/14/99

Brown v. Bush

- Filed March 1998 by Advocacy Center with 5 named plaintiffs and a proposed certified class, identified in a memorandum on motion for class certification issued March 10th as:

  All persons on or after January 1, 1998 residing, have resided or will reside in DSIs, including persons transferred to other settings (ICFs/DD, SNFs, Group Homes) but remain defendants responsibility, and all persons at risk of being sent to a DSI.

- Re DSIs: multiple alleged problems including abuse and neglect, lack of adequate care, etc. and calls for moving individuals to community-placements, no further admissions to DSIs and more.

Developmental Services Program
Levels of Need Description

The need for purchased supports and services is dependent on each individual's circumstances--medical conditions, functional abilities, behavioral characteristics, as well as the amount of natural supports he/she has presently available and his/her preferences. Each individual needs as a minimum, a safe place to live in a setting of his or her choice, a meaningful daily activity that may include employment and training programs and access to preventative healthcare, medical services and supplies/equipment. However, the intensity of need for services can be generally grouped and can provide a valuable tool for guiding individual planning, system planning and estimating funding needs.

Florida uses a need's identification process that includes a determination of individual level of need. The process includes a review of the current status of the individual in the areas of Functional Status, Behavioral Risk and Physical Status. This process provides an overall Level of Need score that differentiates between the individual characteristics of the person and the type and intensity of supports that may be required. These levels are:

Level of Need 1 - Limited Need

People at this level need periodic and/or ongoing supports in their place of residence and daily activities. The frequency and intensity of these supports vary according to the specific life circumstances. Without these needed supports the person could move to a higher level of need. Typically these individuals are able to take care of their own personal care needs and general daily living activities and have few adaptive equipment needs. Support is generally needed in the areas of maintenance of job skills and assistance in the areas of money management, transportation, access to needed services, and preventative health care services. Some individuals will need unique and specific training in community living skills and safety awareness.

Level of Need 2 - Minimal Need

People at this level need minimal or ongoing supports and assistance in their place of residence and daily activities in their community. Assistance is typically needed in areas of medication administration, health care access, and monitoring of health status. Individuals may need help in structuring their environment or may need intermittent verbal prompting or oversight in order to be able to function within their community with maximum independence. While no formal behavioral intervention programs may be needed, a structured program may have been designed but only requires oversight of those carrying out the program. There is generally not a need for frequent involvement of a certified behavior analyst. Caregivers or staff are able to implement the program to maintain the person's behavioral risk to a minimal level. Structured and systematic supports are needed in the areas of supported employment, supported living, personal care and in-home support, transportation and access to community supports and services.

Level of Need 3 - Moderate Need

People at this level need regular and more frequent ongoing supports and assistance in their place of residence and daily activities in their community. Assistance is needed in areas of monitoring health care status, medication administration, accessing healthcare and maintaining or acquiring ADL skills. Behavioral intervention may require consultation and consistent application of basic behavioral techniques. Adaptive equipment and environmental modifications are needed in order to ensure the person is able to function more independently. Formal and informal communication supports are likely needed in order to increase the person's ability to express their needs and preferences. These individuals have a higher need for personal care support requiring someone to be available most of the time to help them with care.

Level of Need 4 - Extensive Need

People at this level need extensive (high frequency and intensity) and ongoing supports and assistance in their place of residence and daily activities in their community. Assistance is needed in areas of frequent monitoring of health care status, medication administration, and accessing of health care. Ongoing training and skill acquisitions is required in order to assist the person in learning new skills and behavioral intervention may require consultation and consistent application of basic behavioral techniques. Formal and informal communication supports are likely needed in order to increase the person's ability to express their needs and preferences. Supervision or coordination of supports is needed around the clock. In addition, flexibility of service intensity and frequency, and ongoing monitoring is required.

Level of Need 5 – Intensive

People at this level require constant and ongoing medical and therapeutic interventions, training and oversight. Service needs include physical and occupational therapy, behavior analysis services, nutritional services, nursing services and other related services. Extensive adaptive equipment and environmental adaptations are frequently needed. Formal and information communication supports are likely needed in order to increase the person's ability to express their needs and preferences. Supervision is required around the clock to ensure the person's safety and well being or the safety of others. These individuals may be totally dependent for their personal care needs and daily routine activities.