

3/9/10 FILED
 MICHAEL K. JEANES, Clerk
 By: L. Owens, Deputy

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
 IN AND FOR THE COUNTY OF MARICOPA

CHARLES ARNOLD, MARICOPA PUBLIC
 FIDUCIARY, as guardian and next friend on
 behalf of JOHN GOSS; NANCY E. ELLISTON, as
 guardian, Maricopa County conservator and next
 friend on behalf of CLIFTON DORSETT and as next
 friend on behalf of RICHARD SCHACHTERLE and
 SUSAN SITKO; TERRY BURCH; and on behalf of
 all others similarly situated,

Plaintiffs,

v.

ARIZONA DEPARTMENT OF HEALTH
 SERVICES, ARIZONA STATE HOSPITAL,
 MARICOPA COUNTY BOARD OF
 SUPERVISORS, JANICE BREWER, GOVERNOR
 OF ARIZONA,

Defendants.

Maricopa County

No. C-432355

**ORDER REGARDING JOINT STIPULATION
 TO STAY LITIGATION DURING FISCAL
 BUDGET CRISIS**

(Honorable Karen L. O'Connor)

On March 3, 2010, Plaintiffs¹ and Defendants: Governor Janice K. Brewer; Arizona
 Department of Health Services; and Maricopa County (collectively "Defendants"), submitted
 their Joint Stipulation To Stay Litigation During Fiscal Budget Crisis ("Stipulation") which
 requested the stay of this litigation and enforcement of existing Court Orders in this case.²

The Stipulation was supported by the following facts:

I. THE STATE BUDGET CRISIS

1. The State of Arizona ("State") is currently experiencing one of the worst
 recessions in State history.

¹ For purposes of this Order, "Plaintiffs" shall hereinafter refer to all current and future Plaintiff class-members.
² The "Court Orders" refer to any and all applicable orders agreed to by the parties and/or entered by the Court.

1 2. Since this recession began in December 2007, State revenues have declined
2 for three consecutive years, and, for Fiscal Year ("FY") 2010, they are projected to be 34%
3 less than FY 2007.

4 3. Despite making over \$1.09 billion in spending cuts over the past year, State
5 government must still currently resolve a \$1.4 billion shortfall and a projected \$3.2 billion
6 shortfall for FY 2011.

7 4. Even with these devastating spending cuts, State government will have to
8 borrow and defer \$1.5 billion in payments owed for FY 2010 and FY 2011.

9 5. The Arizona Legislature has called a special election for May 18, 2010, that
10 if passed by the voters, would impose a temporary one-cent increase in the transaction
11 privilege tax for primary and secondary education, health and human services, and public
12 safety, which is projected to generate additional State tax revenues at the rate of \$1 billion
13 per year.

14 6. Even if the voters pass the temporary transaction privilege tax increase at the
15 May 18, 2010 special election, State government is still facing a multi-billion dollar deficit
16 for the FY 2011 and FY 2012.

17 7. In order to preserve State government's fiscal integrity and to ensure
18 Arizona's long-term health, Governor Brewer has made a series of recommendations to
19 reduce state spending that are contained in her FY 2011 Executive Budget (available at
20 www.azgovernor.gov/Budget2011.asp).

21 8. The Governor has recommended as part of her FY 2011 Executive Budget
22 that services for approximately 14,000 Non-Title XIX seriously mentally ill ("SMI")
23 statewide adults be reduced.³ This reduction would potentially affect approximately 8,600
24

25 ³ The Governor's FY 2011 Budget also includes a proposal for Arizona voters to reduce the size of the Title XIX program, which if passed will result in a loss of coverage for an additional 3,000 SMI adults.

1 members of the Plaintiffs in Maricopa County. Consequently, the Governor has called for
2 statutory changes that would eliminate or modify the statutory requirements for the State to
3 serve SMI individuals, including the Plaintiffs, pursuant to the Court Orders currently in
4 place in this case. *See* FY 2011 Executive Budget Summary, at p. 20.

5 **II. THE STATE BUDGET'S IMPACT ON THIS CASE**

6 9. The current budget crisis facing the State has taken its toll on State-provided
7 services, including funding of services for certain Plaintiffs.

8 10. In 1998, Human Research Consultant Stephen Leff was directed by this
9 Court to conduct an analysis to determine the amount of funding needed to comply with
10 the Court Orders. This report, which was subsequently approved by the Court, is known as
11 the "Leff Report." In the Leff Report Dr. Leff concluded approximately \$317 million was
12 needed for the Arizona Department of Health Services ("ADHS") to achieve full
13 compliance for the approximate 12,000 Plaintiffs in the system at that time. In 2008,
14 ADHS adjusted Dr. Leff's findings and, given the substantial increase in the number of
15 Plaintiffs and inflation, determined approximately \$800 million was needed to meet the
16 Leff Report. The cost to comply with the Leff Report would likely be even higher than
17 this amount given the increasing number of Plaintiffs and increasing healthcare costs. The
18 Arizona Legislature has never appropriated funding to Leff funding levels.

19 11. In FY 2009, funding for Title XIX-enrolled Plaintiffs totaled \$437.0 million
20 (\$125.6 million in State funds and \$311.4 million in federal funds). Funding for non-Title
21 XIX Plaintiffs totaled \$130.5 million. This figure includes State, Maricopa County and
22 federal funds. Even assuming that it would still cost approximately \$800 million to
23 achieve full compliance with the Leff Report, the current funding shortfall is in excess of
24 the \$232.5 million needed. The terms of the Court's orders and the statute(s) require the
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1 State to provide services, including housing and residential services, to all Plaintiffs,
2 regardless of whether or not they qualify for Title XIX funding.

3 12. In the absence of an increase in non-State funding, this additional funding
4 can only come through legislative appropriation of State funds, most likely from the State
5 General Fund.

6 13. Due, in large part, to the State budget crisis, there is limited State funding
7 available to provide services necessary to comply with the Court Orders in this case.

8 14. The funding for services for Title XIX-enrolled Plaintiffs is currently limited
9 to State and federal funding provided through the Medicaid program, and does not include
10 non-Medicaid reimbursable services for Title XIX-enrolled Plaintiffs, such as housing.
11 There will likely be little or no increases in State funding for non-Medicaid reimbursable
12 services for these Plaintiffs in FY 2011.

13 15. On January 20, 2010, counsel for ADHS notified the Court Monitor and the
14 Plaintiffs, in accordance with ¶ 52 of the Exit Stipulation, of anticipated budget cuts to
15 ADHS' budget for Fiscal Years 2010 and 2011, which may impact Plaintiffs in this case.

16 ORDER

17 The Court having had the opportunity to consider the Stipulation, which includes a
18 public hearing conducted by the Court on March 5, 2010 for the purpose of permitting the
19 parties to discuss and consider the terms of the Stipulation, there being no just reason for
20 delay, and good cause appearing therefore:

21 **IT IS HEREBY ORDERED** as follows:

22 **III. STAY OF LITIGATION**

23 16. In order to address the current budget crisis and its impact on the
24 Defendants' ability to comply with the Court Orders, the parties mutually agree to the
25 entry of a stay of the litigation and enforcement of the Court Orders through June 30, 2012.

1 This stay includes a stay of Title 9, Chapter 21, Article 3 of the Arizona Administrative
2 Code, to the extent compliance with those rules is compromised by the budget crisis. Any
3 party may request that the stay continue if the fiscal situation for the State of Arizona has
4 not substantially improved based on Joint Legislative Budget Committee forecasts. All
5 existing Court Orders, including the Appointment Order, and all enforcement, monitoring
6 and compliance activity in this case, are hereby stayed during such time.⁴ All activities of
7 the Office of the Monitor shall cease within ninety days of approval of this Stipulation.
8 The Court Monitor shall return all unspent monies, including any and all carry-forward
9 funds not included in her Court-approved annual FY 2010 budget, to ADHS and Maricopa
10 County by such date.

11 **IV. REVIEW AND REVISION OF ALL COURT ORDERS**

12 17. During the duration of this Stay, Defendants shall make their best efforts to
13 serve the Plaintiffs with all appropriated resources and resources available to the State.

14 18. The parties agree and recognize that it is desirable and appropriate to revisit
15 and revise the Court Orders to (1) redefine the requirements that the Defendants must meet
16 in order to exit the case, (2) the services, supports, and benefits that must be provided to
17 Plaintiffs, and (3) how such obligations will be measured in the future in order for the
18 Defendants to exit the case.

19 19. The parties agree to negotiate in good faith revised Court Orders that
20 consider funding and, at a minimum, address the following:

- 21 a. Terms and conditions regarding the need for the appointment of a
22 Court monitor, including the selection process, funding and responsibilities of the
23 monitor;
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25 ⁴ ADHS will continue to oversee the performance of the Maricopa County Regional Behavioral Health Authority to ensure compliance with contractual obligations for all class members with the funds appropriated.

1 b. Aligning compliance measures with recovery principles based on
2 outcomes rather than solely on process;

3 c. Incorporating nationally recognized professional standards in public
4 sector behavioral health systems into the compliance measurements;

5 d. Vesting ADHS with the primary responsibility to conduct compliance
6 audits, with appropriate safeguards that ensure reliability and accuracy. Audits,
7 reviews, surveys or any other measure that determine compliance must be objective,
8 reliable, accurate, flexible, cost-effective and data-driven;

9 e. Requiring any compliance measurement to be consistent with ADHS'
10 operations in order to ensure sustainability;

11 f. Requiring compliance measures, to be flexible in order to address
12 system transformation, new treatment modalities, promote consumer voice,
13 recovery principles and innovations in clinical practice and service delivery;

14 g. Including a mechanism to have regular and periodic review of Court
15 orders and ability to make adjustments as needed;

16 h. Measuring compliance by system performance standards, which may
17 include a case review component;

18 i. Providing a mechanism to include member and family input in both
19 the development of revised court orders and ongoing performance; and

20 j. Evaluating the current delivery system, the current array of
21 community-based services, the eligibility criteria for those services, and the funding
22 needed to meet agreed upon compliance measures for the system and services.

23 k. Revisions to the rules for Behavioral Health Services for Persons with
24 Serious Mental Illness may be necessary as a result of new court orders in
25 accordance with A.R.S. Title 41, Chapter 6.

20. The parties commit to work diligently on proposed new court orders and/or
proposed revisions to the current Court Orders within twelve months of approval of this


1 Stipulation. If after twelve months the parties are unable to agree on proposed orders or
2 revisions to the current Court Orders, the Court shall appoint a mediator to help resolve
3 any differences. If the mediator is unable to help the parties' resolve their differences
4 within six months after appointment, any party may request that the Court issue new
5 orders or revisions to the current Court Orders. Notwithstanding the foregoing, in no
6 event shall the Stay be lifted prior to June 30, 2012, or as otherwise agreed to by the
7 parties and reflected in the revised Court orders.

8 21. In the event the SMI statutes upon which this case is based are
9 fundamentally modified to eliminate or substantially reduce Defendants' obligations
10 thereunder, either party may request the Court vacate this Stipulation. In the event the
11 mandatory obligations of the statutes upon which this case is based are repealed, this
12 Stipulation is automatically vacated.

13 22. The parties anticipate that upon submission of new court orders the Court
14 will hold a fairness hearing and provide reasonable notice to class members pursuant to
15 Rule 23(d)(2), Arizona Rules of Civil Procedure.

16 23. This is a final Order in this matter.

17 DATED this 9 day of March, 2010.

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21 HONORABLE KAREN L. O'CONNOR
22 Judge of the Superior Court
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