

**SUMMARY OF DRAFT DEPARTMENT OF JUSTICE (DOJ) SETTLEMENT
AGREEMENT**

CONFIDENTIAL AND PRIVILEGED COMMUNICATION

I. Background and SA Approval:

- A. DOJ investigations of all 13 state mental retardation facilities in Texas under CRIPA:
 - 1. LSS on-site investigation June, 2005; findings letter issued December, 2006
 - 2. DSS on-site investigation May, 2008
 - 3. DOJ notice of intent to investigate additional 11 facilities issued August, 2008
 - 4. DOJ findings letter for DSS and other 11 facilities issued December, 2008;
- B. State and DOJ have reached tentative settlement agreement (SA), with a term of five years, to resolve all 13 investigations;
- C. SA to be filed with U.S. district court for the western district, along with a complaint, joint Rule 41(a) motion and proposed order to dismiss the underlying complaint, with court retaining jurisdiction to enforce terms of SA;
- D. Chapter 111, Civil Practice and Remedies Code, requires legislative approval;

II. SA Summary:

- A. Part II contains remedial measures in the areas of protection from harm; quality assurance, integrated services; clinical services (medicine, nursing, psychology, psychiatry, pharmacy, physical therapy, speech therapy, dietary, and occupational therapy); habilitation; serving persons in the most integrated setting; consent (attempting to obtain LARs for persons in need), and recordkeeping.
- B. Part II themes: comprehensive assessments, coordination and integration of services; competency-based training of staff; development and implementation of policies and procedures and quality assurance procedures.
- C. Part III contains the provisions regarding monitoring and enforcement of the SA. Key provisions include:

Monitor (Section E) and Monitoring Team (Section F) – The Monitor(s) will be jointly agreed to by Parties; each monitor will have a monitoring team; State pays costs;

Monitoring Team Visits (Section H) – Monitoring teams must conduct baseline reviews of all assigned facilities; status reviews must be conducted every 6 months thereafter;

Monitoring Exit Criteria (Section J) – When a Facility achieves substantial compliance with a substantive provision of the Agreement for one year, no further monitoring or reporting of that Facility is required;

Consistency of Monitoring (Section O) – Monitoring Panel shall resolve inconsistencies in methodologies used to assess compliance;

Dispute Resolution and Enforcement (Section P) – Procedures for resolving disputes without seeking court intervention:

- if a dispute arises regarding the meaning of a provision of the SA or an alleged failure to comply, the parties agree first to attempt to resolve the dispute by discussion;
- Thereafter, a party may seek judicial determination upon 30-days' written notice of intent to do so;

Termination (Section Q) – For each Facility, the Agreement terminates in 5 years except with respect to any substantive provisions with which the Facility has not achieved sustained substantial compliance for one year. After substantial compliance with all substantive provisions of the Agreement for one year, DOJ and the State will file a joint motion to terminate the Agreement.

Early termination (Section R) – With respect to each Facility, the Agreement may be terminated upon achieving substantial compliance with all substantive provisions for one year;