

THE *BOYLE* PROPOSED SETTLEMENT AGREEMENT

The Washington Protection and Advocacy System (“WPAS”) is pleased to announce that a proposed Settlement Agreement has been reached and submitted to the court for approval in *Boyle, et al., v. Robin Arnold-Williams, in her official capacity as the Secretary of the Washington Department of Social and Health Services (DSHS)*, No. C-01-5687 JKA.

Boyle v. Arnold-Williams is a lawsuit brought by Columbia Legal Services (“CLS”) and WPAS, and others against the State of Washington Department of Social and Health Services (DSHS) Division of Developmental Disabilities (“DDD”). WPAS and CLS sued DSHS to make sure that the clients of DDD were treated fairly under its “waiver” programs. If the proposed Settlement Agreement is approved by the Court, you may have additional rights and may be able to get services you could not get before.

History of This Class Action Lawsuit

The *Boyle* case was filed on December 6, 2001 by CLS. In November 2005, WPAS joined the lawsuit on behalf of its constituents who are people with developmental disabilities in the State of Washington.

The action claimed that the State of Washington’s DDD had not advised people who were enrolled in its Medicaid funded Home and Community Based Services (“HCBS”) waiver program, (formerly the “CAP” Program) about the range and availability of Medicaid services to which they were entitled. It was also alleged that DSHS did not provide services with reasonable promptness and denied waiver participants freedom of choice as to their providers. Finally, the lawsuit claimed that DSHS denied due process when Medicaid services were reduced, terminated, or denied. The lawsuit was amended in September 2005 to reflect the change from the CAP waiver to the four new DDD waivers. In November of 2005, the plaintiffs amended the lawsuit again to add WPAS as party to the lawsuit. The lawsuit asked for declaratory and injunctive relief requiring DSHS to comply with federal Medicaid law and the due process requirements of the Fourteenth Amendment of the United States Constitution.

What is a “waiver” program?

Most of DDD’s services are paid for by money from the federal government’s Medicaid program. These programs are called “waivers”. Currently, DDD has four Medicaid waiver programs. They are Basic, Basic Plus, Core, and Community Protection. Each of the waiver programs offers a different level of service. To get a service that you need, you must be on the waiver that offers that service. If DDD changes its waivers in the future during the settlement period, the proposed Settlement Agreement, if approved by the Court will still be in effect.

Summary of the Proposed Settlement:

A. The Proposed Settlement Class

The parties are asking the Court to certify a settlement class in this case. A class action is a lawsuit that helps many people who have the same interests and the same rights. As a requirement of the proposed Settlement Agreement, a settlement class must be certified. If it is not, this Settlement Agreement will not go into effect.

If the court certifies the settlement class and approves the proposed Settlement Agreement, it will be implemented by DSHS. This means that the terms of the Settlement Agreement will be binding on and will benefit the settlement class which consists of all current and future participants in Washington State's Medicaid Home and Community Based Services (HCBS) program for people with developmental disabilities. There are currently about 10,200 people in the proposed class.

If approved, the class counsel will be CLS and WPAS.

B. What are the changes that will happen as a result of the settlement of the *Boyle* case?

As a result of the *Boyle* settlement, DSHS will have to take a number of steps including, but not limited to the following:

1. Assessment – All waiver participants must have an annual comprehensive needs assessment to determine their current health and welfare needs. At a minimum, this assessment must evaluate each participant's needs regardless of the specific waiver they are enrolled in. DSHS will implement a new automated assessment tool on April 1, 2007 or shortly thereafter. All waiver participants will be assessed using this new comprehensive needs assessment tool at their next assessment following implementation.

2. Opportunity to Request Change of Waiver Placement – All waiver participants have the right to request placement on a different waiver, and DSHS will use a defined process for handling these requests.

3. Individual Support Plan Provision – All HCBS DDD waiver and non waiver services authorized to meet an individual's assessed needs of each waiver participant shall be documented in their individual service plan. All HCBS and shall be provided with reasonable promptness. DSHS must make reasonable efforts to provide these services within 90 days of authorization.

4. Administrative Appeals – DDD will change its policies to give DDD waiver clients more rights to appeal when they disagree with decisions made by DDD. Some of the changes include:

- Notice to class members prior to disenrollment from their current waiver

- If a class member receives a notice saying that he or she is being disenrolled from his or her current waiver, he or she can appeal the decision in an administrative appeal
- If an administrative law judge determines that a person needs a particular service that is only available on the person's current waiver, waiver participants cannot be moved to an alternative waiver

5. Response for Request for Services – DSHS must respond to all requests for waiver services from waiver participants in writing and in a timely fashion. DSHS agrees to adopt rules to ensure that these responses are provided.

6. Revision of DDD Forms re: Due Process – DSHS will change its rules, forms and policies to ensure that due process requirements are met with regard to the provision of Medicaid HCBS waiver services to class members.

7. Freedom of Choice – all waiver services for waiver participants must comply with federal Medicaid law regarding freedom of choice including requirements for access to the full range of the particular HCBS waiver services

8. Statewide Availability– DSHS must take steps so that all waiver participants have access to the full range of services offered under their assigned waiver and for which they have a current health and welfare need.

9. Quality Assurance – The settlement identifies specific areas that must be addressed by DSHS as part of its quality management strategy for the HCBS waiver programs.

10. Responses to Requests for Services – DSHS will issue timely written responses to all requests for service, and those who are denied services will be advised of their appeal rights.

11. Dispute Resolution – Members of the settlement class who have concerns regarding the allegations made in this lawsuit must address those concerns through Plaintiffs' counsel according to the terms of this proposed Settlement Agreement.

12. Plaintiffs Input to Proposed Change to DDD Regulations, Policies, and/or Management Bulletins – Under the proposed Settlement Agreement, WPAS and CLS will have an opportunity to review and comment on any proposed changes to DDD WACs, policies, and/or management bulletins before the changes are made.

13. Attorneys' Fees – DSHS agreed to pay Class Counsel \$350,000 in attorneys' fees. \$300,000 of this amount will be divided between WPAS and CLS in order to pay for the monitoring of the proposed Settlement Agreement.

14. Report and Time of Settlement Period – DSHS will provide a report on the implementation of the settlement to Class Counsel at six-month intervals. Class Counsel will also review the files of randomly selected waiver participants seven times during the term of the proposed Settlement Agreement. The time period of the

proposed Settlement Agreement shall start with the entry of the settlement order, and will end three years after the DSHS issues its first report on the implementation of the settlement. It is expected that DSHS will issue its first report on or about November 1, 2007; if so, the lawsuit may terminate on November 1, 2010. WPAS and CLS will jointly monitor the DSHS's implementation of the settlement.

Other Provisions of the Proposed Settlement Agreement

- **Will people who are members of the *Boyle* class get money because of this lawsuit?**

No. This lawsuit is only about making the DDD waivers work better. There won't be any money for the members of the class. However, because of this settlement some DDD clients will be able to get services they could not get before.

- **Can I still bring a lawsuit after the settlement?**

If you think that you have been hurt as a result of the way DDD handled your request for waiver services, you can still bring a lawsuit for money damages of your own. The settlement also makes it clear that you can go to a "fair hearing" where you want to challenge a decision made by DDD. If, however, you have a problem that related to the lawsuit that affects you as well as other people, CLS or WPAS must be contacted.

Notice of Fairness Hearing and Class Members May File Written Comments or Objections

A settlement is when the two sides of a lawsuit make an agreement so they don't have to go to trial. It is a compromise. Because the parties are requesting that the *Boyle* lawsuit be a class action, the judge must decide whether or not the settlement is good one for the members of the class. To do this, the judge will have a "fairness hearing" where he will listen to what the lawyers and other people say about the settlement. He will then decide whether or not to allow the settlement. The judge in this case is Judge Arnold.

If the Court approves the settlement class, there will be a "fairness hearing" at the United States District Court, Western District of Washington at Tacoma, Union Station Courthouse, 1717 Pacific Avenue, Tacoma, WA 98402. The date and time of the hearing will be announced soon. Any person who wishes to attend that hearing may do so.

Anyone who wishes to comment on or object to the settlement, either for or against it, may do so by filing a written statement with the Clerk's Office of the United States District Court, Western District of Washington at Tacoma, Union Station Courthouse, 1717 Pacific Avenue, Room 3100, Tacoma, WA 98402-3200 by 4:30 p.m.

How can I find out more about the *Boyle* lawsuit?

The foregoing is only a summary of the proposed Settlement Agreement. If you are a member of the class, you may learn about your rights under the proposed Settlement Agreement by calling **WPAS at 1-800-562-2702 or 1-206-324-1521 (you may call collect); TTY: 1-800-905-0209**. WPAS will also be providing in-person trainings in the regional offices of DDD at a time to be announced. Soon you will also be able to get information about the proposed Settlement Agreement at www.wpas-rights.org. Click on “Boyle Settlement.”

WPAS and CLS will also explain the proposed Settlement Agreement to anyone who wants to hear about it at a series of trainings. These trainings will be held in each of the DSHS regions around the state before the fairness hearing. WPAS and CLS will soon announce the dates and the specific locations of each training.