

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

**ILLINOIS LEAGUE OF ADVOCATES FOR  
THE DEVELOPMENTALLY DISABLED, et al.**

**Plaintiffs,**

vs.

**ILLINOIS DEPARTMENT OF HUMAN  
SERVICES, et al.,**

**Defendants.**

Case No. 13 C 01300

Hon. Marvin E. Aspen

**STATEMENT OF FACTS**

**I. THE ILLINOIS DEPARTMENT OF HUMAN SERVICE’S (“DHS”) STATE OPERATED DEVELOPMENTAL CENTERS PROGRAM.**

Defendant DHS operates seven Illinois facilities known as State Operated Developmental Centers (“SODCs”), which “are residential programs serving people with developmental disabilities who have severe and/or behavioral needs.” Stip. ¶ 8.<sup>1</sup> Murray Developmental Center (“Murray”) is one of the Illinois SODCs. *Id.* ¶ 9.

**II. DHS’ MEDICAID PROGRAM.**

SODCs are certified long-term “intermediate-care facilities for the mentally retarded (“ICF-MRs”) under the Medicaid Act. Docket (“Doc” or “Dkt”) No. 40 p. 2. Illinois participates in the Medicaid program, which is a joint federal-state initiative designed to provide medical assistance to qualified individuals. *Id.* p. 4. The federal government shares the cost of medical assistance with states that elect to participate in the Medicaid program. *Id.* In turn, participating states must adopt medical assistance plans that meet the federal Medicaid law requirements. *Id.*

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<sup>1</sup> “Stip.” as used herein refers to the Stipulation of Facts jointly entered by the parties. Dkt. No. 348.

### **III. THE CONDITION OF PLAINTIFF RESIDENTS AT MURRAY.<sup>2</sup>**

As of August 31, 2013, 233 individuals lived at Murray. *Id.* ¶ 10. Eighty-four percent of Murray Plaintiff-Residents had severe or profound mental retardation range, sixty-eight percent had a behavior intervention program, and fifty-one percent received psychotropic medications. *Id.* Several Murray residents require 24-hour nursing care. Plaintiff's Hearing Exhibit ("Pl. Hear. Ex.") 10-B. Many SODC residents, including Murray, have a history of severe behavioral disorders and have been expelled from numerous private settings. Affidavit of Rita Burke ("Burke Aff."), Doc. 241-2, ¶ 10. For example, Plaintiff Guardian Rita Winkeler's son Mark resides at Murray and is 29 years old, but has a mental age of 9 months and an IQ of 12. Fact Affidavit of Rita Winkeler, ("Winkeler Fact Aff.") Doc. 241-1, ¶ 4. Mark is nonverbal, cries to express wants, needs to be fed, diapered, bathed, does not understand danger, cannot defend himself and needs round the clock assistance. His official diagnosis is profound mental retardation, level IV, cerebral palsy, spastic diplegia, neurogenic osteopenia, right extropia, and visual impairment. *Id.* Mark is a typical example of the profound severity of developmental delay and other conditions manifested by Murray Plaintiff Residents.

### **IV. THE SERVICES & DISCHARGE PROCESS OFFERED AT MURRAY.**

Attached to the declaration of Bill Henson, a Murray social worker, is a detailed list of Murray SODC services. Affidavit of Bill Henson, ("Henson Aff.") Doc. 241-10, Ex. A. These services include, but are not limited to, (1) dietary; (2) dental; (3) educational; (4) medical; (5) nursing; (6) pharmacy; (7) physical therapy; (8) occupational therapy; (9) psychological; (10) recreational; (11) religious; (12) social; (13) speech; (14) language and hearing; (15)

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<sup>2</sup> This group of individuals (hereinafter "Plaintiff Resident(s)") are among the profound and severe developmentally delayed named plaintiffs and the putative class members in this lawsuit, and they are the wards of legal guardians, who are also either named plaintiffs or putative plaintiff class members in this lawsuit (hereinafter "Plaintiff Guardian(s)"). When referred to collectively the term "Plaintiffs" will be used.

ophthalmological; (16) orthopedic; and (17) vocational habilitation services. *Id.* Affidavits of numerous Murray staff further detail the specific aspects of offered SODC services. *See* Staff Hearing Affidavits (“Hear. Affs.”), Doc. 241-10 through 241-23. Detailed residents’ medical and habilitation plans are also maintained at Murray, such as the Individual Service Plan. Henson Aff. ¶¶ 6-7. Murray SODC services are also implemented through an Interdisciplinary Team comprised of several disciplines, the staff of which meet regularly to discuss residents’ needs. *Id.* ¶ 8. Concerning resident discharge to the community, Murray utilizes what is known as the “SOPP 181”, “a detailed process” that “provides several safeguards to protect the resident and ensure that the resident is safely placed in an alternative setting that is suitable for the resident’s medical and habilitation needs.” *Id.* ¶ 9.

**V. ILLINOIS’ REBALANCING INITIATIVE, DECISION TO CLOSE MURRAY & CRA RETENTION.**

**A. THE REBALANCING INITIATIVE**

In February 2012, Governor Patrick Quinn introduced his Rebalancing Initiative, which slated Jacksonville Developmental Center (“Jacksonville”) and Murray for closure, among other things. Stip. ¶ 14. The Rebalancing Initiative declared that DHS “will reduce the number of residents served by [SODCs] by at least 600 by the end of FY14. This will permit DHS to close up to four facilities in the next 2.5 years.” Pl. Hear. Ex. 3. To further this goal, Governor Quinn hired Mark Doyle (“Doyle”) as the “Transition of Care Project Manager”. Stip. ¶ 15.

Doyle manages all aspects of residents’ transition care from SODCs and State psychiatric hospitals. *Id.* Pursuant to the Rebalancing Initiative, Jacksonville closed on December 3, 2012. *Id.* ¶ 16. On December 13, 2012, Doyle drafted a “Transition of Care Organizational Chart” for SODCs. Jan. 9, 2014 a.m. Transcript (“Trns.”) p. 41; Ex. 22. That Chart documented many Defendant DHS officers and agents involved in orchestrating what came to be known as the

“CRA-ACCT Process including: DHS Secretary, Michelle Saddler (“Saddler”); DHS Division of Developmental Disabilities Director, Kevin Casey (“Casey”); current Murray Director, Rick Starr (“Starr”); CRA principle, Derrick Dufresne (“Dufresne”); Michael Mayer (“Mayer”); and the “PAS” Agency “Southern Illinois Service Coordination.” *Id.*, Ex. 22; Stip. ¶¶ 4-5.

## **B. THE CRA/ACCT PROCESS**

The CRA-ACCT Process is the process created specifically by the State created process used exclusively to assess SODC residents to live in a group home CILA.<sup>3</sup> Jan 9, 2014 p.m. Trns. pp. 46-47. Defendant DHS hired Community Resource Associates (“CRA”) to implement the CRA-ACCT Process. Casey Affidavit (“Casey Aff.”) Doc. 245-1, ¶18. “ACCT” stands for “Active Community Care Transitions.” Jan. 9, 2014 a.m. Trns, p. 8. Doyle manages the CRA-ACCT Process for Jacksonville and Murray. *Id.* pp. 8-9. Under the State’s contract CRA is paid approximately \$180,000 monthly to implement the CRA-ACCT Process. *Id.* p. 18. Dufresne is CRA’s president and, along with his wife, its co-owner. Dufresne Aff. Doc. 245-3. As part of its engagement to implement the CRA-ACCT Process at Murray, CRA specifically committed to Defendant DHS it “will not transition individuals into community settings greater than four persons, with a clear preference for a maximum of 2.” Doc. No. 9-2 p. 9, Defendant Hearing Exhibit (“Def. Hear. Ex.”) 101.<sup>4</sup> CRA also represented to Defendant DHS “it will not be responsible for transitions to another SODC....” *Id.*

The Murray closure decision, implemented through the CRA-ACCT Process, centered on a belief that the Murray Plaintiff Residents will “have a better quality of life” and “enjoy” being in the community. Def. Hear. Ex. 208 pp. 9-14. Doyle has stated that the closure of Murray and

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<sup>3</sup> A “CILA” is a Community Integrated living Arrangement, defined by the State as “an ‘arrangement provided by a licensed community developmental disabilities services agency where eight or fewer individuals with a developmental disability reside under the supervision of the agency.’” Doc. No. 40, p. 8.

<sup>4</sup> See Doc. No. 9-2, p. 9 for a complete copy of this exhibit.

other SODCs “will allow the [State’s] funds to be better spent to expand home and community based services.” *Id.* p. 11; *see id.* p. 12 (“The state believes we can better use the limited state funds to care for people in the community”).

Current Murray Director Starr was promoted to that position from the Assistant Director position as of November 22, 2013. Jan. 8, 2014 p.m. Trns. p. 92. On January 13, 2013, Doyle extended Starr a dual appointment as the Murray liaison, with a 25% raise, to oversee the CRA-ACCT Process implementation and residents’ transitions to CILAs. *Id.* pp. 92-93. As a practical matter, Starr is “the person who’s on the ground at Murray for implementing the [CRA]-ACCT process.” Jan. 9, 2014 a.m. Trns. p. 41.

## **VI. IMPLEMENTATION OF THE CRA-ACCT PROCESS**

### **A. SOLE GOAL OF THE CRA-ACCT PROCESS**

The purported cost savings by Defendants’ CRA-ACCT process is actually undermined by Casey’s admissions during the Hearing, on cross-examination, that no money would be saved. In regards to cost, Casey conceded: “If we don’t save a dime, we won’t save a dime.” Jan. 8, 2014 p.m. Trns. p. 27.

Notably, on the issue of cost-savings Plaintiffs introduced testimony from Greg Shaver (“Shaver”), a local owner and operator of CILAs, 16-bed facilities, a private ICF-DD and a skills workshop that admits Murray residents for its day program. Shaver testified that he was asked by Casey, Dufresne and Starr to prepare a budget on the cost of group homes. Jan. 8, 2014 a.m. Trns. pp. 4-5, 8-10, 26-29. Eight redacted files of Murray residents with significant medical conditions were given to Shaver for purposes of making this budget. *Id.* at 31-33. One-third of Murray residents have significant medical conditions. *Id.* at 34. Shaver assembled a team to help analyze and prepare the budget, and delivered the budget to DHS. *Id.* at 32-41; Pl. Hear. Ex. 7. The budget concluded the per-resident cost for a 2-4 bed group home for these eight

residents was \$254,150.40. *Id.* After Shaver submitted the budget, he never heard again from anyone at DHS or CRA. *Id.* at 42. In significant alignment with Shaver’s budget conclusions, CRA admitted later that a larger group of individuals at Murray had full or partial accessibility needs, and that “much of the existing stock in central and southern Illinois is not currently accessible.” Pl. Hear. Ex. 19. More specifically, CRA’s March 3, 2013 “not for distribution” memorandum documented many challenges of locating housing for Murray residents, as well as funding problems for those homes. *Id.*

Doyle testified on cross examination to the following concerning the “sole goal” of the CRA-ACCT Process:

Q. . . . Is the sole goal of the ACCT process to transition people to the community?

A. Yes.

Q. And when you’re talking about these community group homes, these are two-to-four bed homes, correct?

A. They can be anywhere from one, two, up to four persons in a home.

Jan. 9, 2014 a.m. Trans. p. 17

To further exemplify the singularly focused goal of the CRA-ACCT Process to transition SODC residents to 2-4 bedroom CILAs, Plaintiffs also entered into evidence at the Hearing, without objection, a fairly recent [September 24, 2010] You-Tube published program that focused on the merits of closing SODCs. That videotape, shown at the Hearing, further shed light on CRA’s overarching philosophy, as Dufresne (discussing his meeting with Jacksonville guardians and parents) emphasized the need for “upside-down planning,” and “getting together a group of people absolutely committed, without exception, we’re going to find a place.” Video segments previously produced (copies given to the Court). Dufresne also stated, “[i]f you put

this under the rubric of choice, it is a slippery slope... and we've got to change the discussion, because the discussion is not about choice....” *Id.*

**B. CRA-ACCT ASSESSMENTS**

On cross-examination, Mayer revealed that to conduct CRA-ACCT assessments, CRA collaborates with Community Resource Alliance (“CRAlliance”). *Id.* Jan. 9, 2014 a.m. Trans. pp. 49-50. He is the self-described quality control over the CRA-ACCT assessment process. *Id.* p. 75. Importantly, Mayer admitted that he collaborates through CRAlliance with a focus on assessing Murray residents under the CRA-ACCT Process to determine what supports would be necessary for *any* individual to live in the community. *Id.* p. 51. Mayer testified that to accomplish this focused goal, CRA starts from a position of having already made the assumption the Murray residents can all live “in the community.” *Id.* pp. 49; 52. Each assessment begins with that premise, as Mayer conceded on cross examination that he and CRA effectively “reverse-engineer” the assessments to figure out how community placement will be done. *Id.* p. 49. Mayer also testified that 96-97% of the SODC residents CRA assesses are designated for the community. *Id.* p. 71. Mayer explained unequivocally that this statistic reflected “the purpose of the process.” *Id.*

**C. THE CRA-ACCT PROCESS AND THE “PERSON-CENTERED-PLAN”**

The centerpiece of the CRA-ACCT “reverse-engineered” assessment is the Person-Centered Plan, which is described by Casey as, “[a] detailed assessment of each resident” created by a team of subcontractors who work with CRA. Casey Declr., Doc. 245-1, ¶19. Casey claimed in his pre-Hearing Declaration that to be effective, the person centered planning process depends on close consultation between the State’s treatment professionals and family members or guardians who know the person. *Id.* After a person-centered planning meeting is held, a

subcontractor who attended the meeting makes up a pictorial summary of the meeting, using pictures to detail the assessment and the services needed for the resident. *Id.*

The Person-Centered Plan was examined at the Hearing by Plaintiffs' expert, Dr. Karen Kelly. *See* Pl. Hear. Ex. 4. Dr. Kelly is a university professor of nursing who has extensive administrative and teaching experience in the evaluation of providing services to persons with disabilities. She was asked by Plaintiffs to review eight to ten Person-Centered Plans prepared by CRA-ACCT evaluators. Jan. 7, 2014 p.m. Trns. pp. 203, 223. Dr. Kelly testified that she could tell from the narrative portion of the Plans that they were "just a cut and paste of the resident's ISP 'Individual Service Plan.'" *Id.* at 224. In other words, there was no evidence of independent fact-based conclusions or analyses. Dr. Kelly testified that she was also troubled by the cartoons and pictures that appeared in the Plans, which did not make the documents look very professional or serious. *See Id.* at 226. Dr. Kelly testified that, combined with the complete lack of independent fact-based conclusions or analysis, "as a guardian, and especially as a nurse, I would be insulted to get something that has cartoons in it." *Id.* at 226.

Stewart Freeman, the Clinton County public defender, was appointed by the Illinois Circuit Court of Clinton County as guardian *ad Litem* for the Office of the State Guardian ("OSG") Murray wards. Jan. 8, 2014 p.m. Trns. p. 111. In advance of the Hearing, Freeman reviewed a number of reports created after his wards' person-centered planning meetings. *Id.* Testifying at Hearing as to his official reaction to the reports, in which someone "make(s) up a picture," (*id.* 114), Freeman stated that he "didn't learn one thing hardly from the CRA [report] that I couldn't have gleaned from the ISP. *Id.* at 150. Freeman testified that, in his view as Guardian *Ad Litem*, he was concerned by the Defendants' person-centered planning process.

Many of his wards are non-verbal, and he was not sure how CRA subcontractors were able to communicate with them. *Id.* at 113-114.

Similarly, Marcia Holzhauser, a named Plaintiff Guardian, testified at Hearing that the CRA individuals coordinating the person-centered planning meeting for her son, who is also nonverbal, did not communicate with him at all, and instead she gave them all the information. Jan. 9, 2014 a.m. Trns. pp. 86-87. On cross-examination, Mayer admitted that the Plan assessment evaluator's determinations are often simply their "best guess" when interviewing a non-verbal, non-responsive person. *Id.* at 54-55. Moreover, the affidavits of numerous Murray staff resident caretakers evidence that they were excluded from the Person-Centered Plan interviews. *See* Pl. Hear. Ex. 13, 14. (showing CRA subcontractors also involved in CILA Management.)

#### **D. CRA-ACCT SELECTION OF PROVIDERS AND GROUP HOMES**

The CRA-ACCT Process also includes the selection of providers. This process is guided by Defendant DHS's document entitled, "Eight Principles & Values." Pl. Hear. Ex. 12. Principle #4 states: "Settings are preferred to be 1-2 persons and not more than four persons." *Id.* Principle #7 states: "We will seek providers who subscribe to these principles and values." *Id.* Starr, Murray Director and CRA-ACCT Process transition liaison, testified that he, along with several group home providers, received a February 5, 2013 email from Doyle (his boss) telling providers what they must do to be part of the CRA-ACCT Process. Jan. 8, 2014 p.m. Trns. pp. 100-01. Doyle *directed* providers to embrace DHS' Eight Principles and Values for supporting individualized transitions to the community. *Id.* Pl. Hear. Ex. 12. Doyle also *required* providers to sign a pledge whereby they committed to embracing each of the Eight Principles and Values. Pl. Hear. Exs. 6, 11; Jan. 8, 2014 p.m. Trns. p. 102. *See also* Dufresne Aff. ¶14, Doc. 245-3 ("DHS has a list of pre-approved community providers who are enrolled in

the ACCT process,” and CRA selects from this “pre-approved list”); *Id.* ¶ 19 (“The Pledge requires all ACCT CILA providers to support the principles of the ACCT process”).

## **VII. DEFENDANTS’ DEPRIVATION OF PROGRAMS AND SERVICES**

### **A. ALL GUARDIANS REQUIRED TO SUBMIT TO CRA-ACCT PROCESS**

During a September 9, 2012 Murray guardian meeting (“2012 Guardian Meeting”), Casey made several representations to Murray guardians about the CRA-ACCT Process. Def. Hear. Ex. 102. Concerning this meeting, Doyle stated: (1) he would not disavow Casey’s statements; (2) guardians could rely on them; and (3) it was important the State had credibility with guardians in this process. Jan. 9, 2014 a.m. Trns. pp. 9-10. At the 2012 Guardian Meeting, Casey gave Murray guardians the “direct answer” that “there’s no legal requirement to involve yourself in the CRA process” and that guardians “do not have to go through the CRA process.” Def. Hear. Ex. 102, p. 64. In response, almost 200 Murray guardians issued “no contact” letters directing DHS to not allow CRA to access records or assess their wards. Jan. 7, 2014 a.m. Trns. pp. 41-42; Jan. 8, 2014 p.m. Trns. pp. 61-62. Even though Casey was aware of these letters, he authorized CRA “subcontractors” to “look at files and go through files” against guardians’ directions. *Id.* at pp. 62-63.

On February 20, 2013, Murray guardians received a letter from Saddler informing them DHS, through CRA, “will be assessing the needs of all residents of Murray,” and that “[t]he law requires [DHS] to perform these assessments.” Pl. Hear. Ex. 17, pp. 4-5. Saddler also told guardians CRA “will be integrally involved” in these required assessments, “which will include record reviews, in-person meetings, and evaluations.” *Id.* The letter did not inform Murray guardians they could opt out of this process. *Id.* Trial Exhibit 17 also includes a March 27, 2013 email from Doyle stating: “We are fully prepared to move forward with evaluations even without guardian consents if necessary.” *Id.* Saddler’s letter was issued one month after Dufresne issued

a memo to Casey and Doyle questioning whether guardian SODC choice should stand. Pl. Hear. Ex. 25, p. 4. At the Hearing, Starr testified (after being impeached) that the CRA assessments which were done in spite of the objection of the residents' guardians began in July 2013. Jan. 8, 2014 p.m. Trns. pp. 94-95. Doyle made this decision to ignore the guardians' objection and being the assessment. *Id.* at p. 95. *See* Jan. 7, 2014 a.m. Trns. p. 44 ("Rick Starr told the parents the state can do whatever they want to do" and "Mark Doyle has told me we'll assess everyone under the CRA process whether the parents have that in the file or not").

**B. DEFENDANTS' REFUSAL TO CERTIFY SODC OPTIONS TO PARENTS**

Hearing testimony revealed Defendants refused to certify SODC care as an option to the guardians of Murray residents. Both Casey and Dufresne admitted the Pre-Admission Screening Agent ("PAS Agent") is part of the CRA-ACCT Process. Dufresne Aff., Doc. 245-3, Ex. 4 (listing PAS in process chart with duties of "presenting options to guardians" and "presenting provider options"); Casey Aff. Doc. 245-1 ¶ 22. Mayer testified that if a family or guardian does not wish to proceed with a 2-4 bed CILA, the "PAS Agent will discuss other available options (such as larger CILAs and public or private ICF/DDs) with the family or guardian, who can then proceed with a different placement." Mayer Aff., Doc. No. 245-2 ¶ 10. No testimony was submitted on such discussion actually taking place. Indeed, the declarations of Janice Kerst, Williams Fields, and Jeanine Williams make clear that even after placement is discovered to be inappropriate, securing a different placement is not so simple. Doc. 241-5, 241-6, 241-7.

The PAS Agent "is statutorily and by contract with DHS, responsible for plan development, case management and monitoring of individuals (including routine in-person visits) receiving community based DD services." Casey Aff., Doc. 245-1, ¶ 22. DHS "is responsible for overseeing the accuracy, quality, and appropriateness of services provided by PAS agencies." Yaunches Aff., Doc. No. 361-1 ¶3; Pl. Hear. Ex. 9. The PAS Agency for

Murray is Southern Illinois Case Coordination Services, and the specific PAS Agent for Murray is Anne Yaunches. Yaunches Aff., Doc. 361-1 ¶ 1. Ms. Yaunches testified (through post-hearing affidavit) the following as to her duties:

As a PAS agent, I play an integral role in the ACCT process developed by the State. When a Murray resident and/or guardian desires information on community services or elects to go through the ACCT process, I am required to make a determination as to all the services for which the individual is eligible. I make this eligibility determination using the standards provided in the DHS DDD PAS Manual. The PAS Manual requires the PAS agent to reflect eligibility determinations on a DDPAS10 form, which is entitled Determination Summary & Presentation and Selection of Service Options. An example of a completed DDPAS10 form I filled out for a former Murray resident is attached as Exhibit 1.

*Id.* ¶ 4. Dufresne testified “guardians are always provided all of their options through the PAS agency. Dufresne Aff., Doc. No. 245-3 ¶ 11. The evidence at hearing, however, showed the PAS Agent refused to certify an SODC option for any Murray resident for whom it discussed options with the guardian. Yaunches Dep., Doc. No. 373-1 ¶ 28; Pl. Hear. Ex. 8 (attaching several guardian forms marking SODC option as “no”); Yaunches Aff., Doc. No. 361-1 Ex. 4 (attaching form for Jennifer Fields, daughter of private guardians); Casey Aff., Doc. No. 245-1 Ex. 5 (attaching form denying SODC option). At her deposition Yaunches admitted she makes eligibility determinations after reviewing documents prepared by CRA. Yaunches Dep., Doc. No. 373-1 p. 26.

The PAS Agent stated she was only following DHS policies. Yaunches Aff., Doc. No. 361-1 ¶ 5 (“Because of this requirement, I have determined that none of the individuals transitioned out of Murray through the ACCT process to date has been eligible for an SODC.”). When confronted with these forms at the hearing, Casey stated the PAS Agent/DHS forms were “bad forms” and “need[] correction.” Jan. 8, 2014 p.m. Trns. pp. 53, 88.

**C. STATEMENTS TO PARENTS DENYING OPTIONS AND PUTTING BURDEN ON PARENTS TO FIND ALTERNATIVE PLACEMENT**

Several Murray guardians testified they were directly told by DHS and State of Illinois officers that an SODC option would not be available to them. Rita Winkeler testified Mark Doyle told her if she “went through the ACCT process, it would be a two to four bed home.” Jan. 7, 2014 a.m. Trns. p. 28. *See also* pp. 34, 38, 44-45 (“and I said Rick [Starr] so we will process two to four bed home is all we do. [In answering] Yes... [per] Mark Doyle, if we go through the CRA process, two to four bed homes is all we will be allowed to move into.”) Karen Kelly testified when she asked Doyle if her son was not a fit for a two to four bed CILA, Doyle looked at her “and shook his head and he said, we’re only talking about two to four bed CILAs.” Jan. 7, 2013 p.m. Trns. p. 230. When she repeated her question, Doyle repeated “we’re only talking about two to four bed CILAs.” *Id.* Marsha Holzhauser testified Doyle told her in a January 8, 2013 meeting it was just a matter of time before all SODCs closed. Jan. 9, 2014 a.m. Trns. pp. 82-83. Jeanine Williams testified she could not get any assistance to place her brother, a Jacksonville resident, in another SODC until he had failed in a CRA group home placement. Williams Aff., Doc. 241-7 ¶3.

In an email, Doyle told Rita Winkeler that if she desired an alternative placement, she should “contact the Murray social worker and begin sooner than later the process of seeking out a private ICF/DD which you indicated would be an appropriate level of care for your son.” Def. Hear. Ex. 100. (*See* Henson Aff., Doc. No. 241-10 pp. 8-10 showing Murray social workers’ exclusion from transition process.)

**D. MURRAY CLOSURE PROCESS**

At the 2012 Guardian Meeting, Casey told Murray guardians the following:

[I]ts going to take somewhere in the range of sixteen to twenty-four months to close [Murray], once we actually get started.” Casey further defined “started”:

“Started, to me, does not mean we start doing assessments. Started means we’ve actually started to move some folks to other places than, than Murray.... and [Murray] will not close until a safe, sound, reasonable place to live has been developed or found for each of the individuals who lives here.... and to the degree that you’d live me to put that commitment in writing, I will also put that commitment in writing.

Def. Hear. Ex. 102 pp. 9-10. Doyle testified the first individual transferred out of Murray under the CRA-ACCT Process occurred sometime in May-June of 2013. Jan. 9, 2014 a.m. Trns. p. 10. Doyle also testified an October 31, 2013 closure date was set for Murray. *Id.* at 13.

**E. LACK OF SODC CAPACITY**

As of June 14, 2013 (after the TRO), DHS does not have the ability to provide SODC care to Murray residents upon its closure. Doyle testified he received a letter from Greg Fenton (“Fenton”), the Director of all SODCs for DHS, whereby Fenton stated the capacity numbers for other SODCs. Pl. Hear. Ex. 18; Jan. 9, 2014 a.m. Trns. pp. 22-23. Fenton informed Doyle that five out of the seven SODCs had zero or negative capacity, one (Fox) might have a capacity for 20 residents “if we open a wing”, and another (Shapiro) had a potential capacity for 80 “predicated on an assumption that support will be provided for staffing and some renovations in order for Fox and Shapiro to operate additional level areas.” *Id.* No evidence came into the trial showing this capacity information was ever communicated to guardians. Greg Shaver testified as to the lack of availability of placement in private ICF-DDs and appropriate placement in CILAs. Jan. 8, 2014 a.m. Trns, pp. 35-38.

**F. CRA-ACCT MASS GROUP HOME TRANSFERS AT JACKSONVILLE**

“In 2012, CR[A] applied the [CRA]-ACCT process in making transition recommendations for then residents of the Jacksonville SODC.” Dufresne Aff., Doc. 245-3, pp. 3-4. There were 181 residents residing at Jacksonville prior to its closure, who were ultimately transferred to other locations. Jan. 8, 2014 p.m. Trns. p. 58. Of this number, Doyle testified only

17 individuals were transferred to other SODCs, and another 30 residents were transferred to SODCs “on a temporary basis” because the State “didn’t have sufficient time to get them assessed and develop housing.” Jan. 9, 2014 a.m. Trns. p. 26. In an email, Dufresne documented the “short term” status of at least 32 former Jacksonville residents still being submitted to the CRA-ACCT Plan. Pl. Hear. Ex. 23. Dufresne admitted in an internal memo for each resident who left Jacksonville and remains at an SODC, “another individual needs to be identified for transition to the community. This obviously would require a member or members of the CRA team to go to that SODC and complete a person centered plan and individual assessments and then work to target a provider.” Pl. Hear. Ex. 25. In a May 09, 2013 memorandum to Doyle, Dufresne states “the ACCT team has, since the close of [Jacksonville].... continuing to work on individuals that were relocated to other SODC’s, from [Jacksonville], to transition them “back” to the community.” Pl. Hear. Ex. 20.

The testimony of Jeanine Williams, a guardian of a former Jacksonville resident, was not rebutted by Defendants. She testified “[i]n the fall of 2012 my brother [John Fuller] was a resident of Jacksonville Developmental Center. I learned the center would close. I wanted to get him into another SODC but I was unable to do so. I asked CRA for assistance into getting him into an SODC but they would not help me.” Williams Aff., Doc. No. 241-7 p. 35 ¶ 3. She also testified she was not offered another SODC until after her brother had failed in a group home placement. *Id.* ¶ 9. John Fuller is still labeled by Defendants as a “short term” Murray resident still in the CRA-ACCT Process. Pl. Hear. Ex. 23.

**G. THE MURRAY GUARDIAN LIAISON**

As part of his liaison duties, Starr was the “point person for communication with guardians.” Jan. 8, 2014 p.m. Trns. p. 125. Starr admitted the following: One of the biggest decisions a guardian could make is moving their child to a 2-to-4 bed home. *Id.* at 96. Doyle

gave Starr a directive to “keep CRA underneath the radar” to Murray guardians. *Id.* pp. 96-97. Starr never told guardians they had another option to be assessed other than CRA. *Id.* at 125. The CRA assessments of Murray guardians who did not consent to the CRA-ACCT Process began in the last week of July 2013, on the decision of Doyle. *Id.* at 95. Furthermore, Starr admitted the following:

- Q. Okay. Well, let me clarify that. If you are assessed by CRA, you’re going to a two to four bed CILA, correct?
- A. Correct.

*Id.* at 126.

In Doyle’s January 18, 2013 email to Rita Winkeler, Doyle stated “there is no CRA evaluation but rather a state evaluation performed by the Division on Developmental Disabilities which includes SODC personnel....” Def. Hear. Ex. 100. The affidavits of Murray Staff and guardians as well as Defendants own witnesses make clear that the evaluation and placement recommendation and decision is done only by CRA.

#### **H. STATE’S SUPPRESSION OF MURRAY SAFEGUARDS AND EMPLOYEE CONCERNS**

The affidavit testimony of several Murray employees documents various concerns as to the CRA-ACCT Process, and DHS’ response. For the sake of brevity, these lengthy discussions will not be repeated here. *See* Doc. 241-10, 241-23. These affidavits also document that Murray’s transition policy, described in SOPP 181, was not followed by CRA. *Id.* DHS and CRA decision-makers did not even know what SOPP 181 was. Pl. Hear. Ex. 16. Starr testified Defendants decided to modify the SOPP 181. Jan. 8, 2014 p.m., Trns. p. 113.

#### **VIII. HARM CAUSED BY CRA-ACCT PLAN**

In both affidavit and live testimony, several individuals familiar with CILA placements made by the CRA-ACCT plan describe their serious concerns with the physical placements. These concerns were the main focus of the testimony of Stewart Freeman.

**A. STATE'S SELECTED GROUP HOMES INADEQUATE IN CONDITIONS AND SERVICES**

Stewart Freeman has been appointed the guardian *ad litem* for 24 OSG residents of the Murray Center. Jan. 8, 2014 p.m. Trns. p. 111. It is his responsibility to investigate the conditions under which the OSG wards are living to report to the Clinton County Court whether it is an appropriate placement, and he has conducted several unannounced visits to CILAs where his wards reside. Freeman Aff., Doc. No. 241-4 ¶10. Based on his investigation, Freeman does not have a high opinion of CILAs and their ability to care for his medically fragile clients and clients with behavioral issues. *Id.* at ¶11. He has concerns about the placement and welfare of his wards that are unable to communicate and have such severe disabilities that they are vulnerable to abuse or neglect. *Id.* at ¶22.

Freeman observed many problems with the CILAs where OSG wards resided: a failure to lock doors when wards pose a flight risk (*id.* at ¶12); workers working six consecutive 12-hour shifts in a row, having no experience (*id.*); a failure to maintain adequate bed padding for a client with self-injurious-behavior (*id.*); a failure to lock cleaning supplies or medications (*id.* at ¶¶12-13); a failure to maintain an appropriate biohazard disposal receptacle (*id.*); providing little or no training to new employees (*id.*); providing employees poor working conditions, paying employees at \$9.00 / hour, allowing them to work up to 170 hours over a two week period, or working for 36 days straight in a chaotic work environment (*id.* at ¶¶12, 18-19); failing to provide any personalization or decoration (*id.* at ¶¶12-13); a failure to maintain a PICA friendly environment for his ward with PICA, for instance, leaving toilet paper out, or using regular bed sheets as opposed to PICA-friendly sheets (Jan. 7, 2014 p.m. Trns., pp. 116-117); staff taking OSG wards out at night for joy rides or to run personal errands (*id.* at p. 118); staff sleeping during their shifts (*id.*, 118); staff failing to observe the prescribed diets for OSG wards (*id.* at pp. 118–119); a failure to provide an OSG ward his prescribed seizure medication for three to

four days, resulting in the OSG ward suffering three or four seizures (*id.* at p. 120); failure to provide a large ward with sufficient clearance for his wheelchair, which could only barely fit down a hallway leading to the ward's bedroom (*id.* at p. 121), raising concerns about the ward's ability to exit the facility in case of a fire; a failure to meet basic grooming standards, such as letting OSG ward's fingernails and hair grow long (*id.* at p. 122); a failure to pack adequate lunches for OSG ward attending the Kaskaskia Workshop (*id.* at p. 123), for example, a bag of cereal or a biscuit with some jelly and a Pop-Tart; a failure of CILA staff to monitor their wards, for example at the CILA on Ridge Ave., where Mr. Freeman observed all of the staff outside the CILA taking a smoking break while their wards remained inside unsupervised. (*id.*, 125-126).

In addition, former CILA staff employees also reported concerns about the CILAs, including: mold conditions existing at the Greenview CILA. Affidavit of Rhonda Gibson ("Gibson Aff."), Doc. 241 (filed under seal and since released), ¶ 15 (see Jan. 7, 2014 a.m. Trns. granting oral motion to release Gibson Affidavit); Affidavit of Kelly Rapp ("Rapp Aff."), Doc. 241 ¶ 5-6; heavy work schedules, including working 60-80 hours per week (Gibson Aff, ¶ 9); inappropriate staffing at night (*id.* at ¶ 10-11); a lack of controls regarding medications (*id.* at ¶ 18-19); inadequate safeguards concerning wards with PICA (Rapp Aff., at ¶ 16-17) and a shortages of supplies (*id.*, ¶¶ 19-23, Gibson Aff., ¶ 23). A fight between two wards broke out on May 27, 2013, and Kelly Rapp called 911 because she was unable to break up the fight herself. Rapp Declaration, ¶¶ 9-13. Rapp was working by herself that night, even though it was ResCare's policy not to have female Direct Service Providers ("DSP") work alone with one of the residents involved in the altercation. Jan. 7, 2014 p.m. Trns. pp. 95-96. Rapp contacted her supervisor as soon as she could to tell her she was working alone, but no additional employees

arrived in time to assist Rapp with the residents. *Id.* at 108. With regard to the condition of the home, see Home Inspection Report, at Pl. Hear. Ex. 15.

Freeman has refused to allow the transfer of any of his wards away from the Murray Center. The biggest problem he has is that the CRA process is flawed in that it is predetermined to result in placement in a CILA, which is not a reasonable process. Jan. 7, 2014 p.m. Trns. p. 148. PAS agent Ann Yaunches has never determined that any Murray residents ought to be placed in any other facility than a CILA. *Id.*, 149, 171. A CRA employee, Sue Gabriel, testified at hearing in Clinton County that all of CRA's decisions regarding Murray resident would be that they were suited for placement in the community. *Id.*, 170-171. *See* Jan. 8, 2014 a.m., Trns, pp 43-44; Pl. Hear. Ex. 15 (home inspection problems); Starr, Jan. 8, 2014 p.m. Trns. p. 112.

**B. STATE'S FAILED GROUP HOME PLACEMENTS**

Freeman is aware of one ward that he believes should never have been put in the community. Doc. 241-4 ¶ 14. This ward has to wear mittens at all times due to self-injurious behavior where she attempts to induce vomiting. *Id.* She also requires all food through a feeding tube. *Id.* On one occasion, the CILA staff ran out of the ward's proscribed food, and so they went to the store to purchase Ensure, rather than the doctor proscribed nutrition. *Id.* at ¶ 18.

Another of Freeman's wards, BB, died after she was transferred to the Fox Developmental Center, in part because she did not receive the high standard of care that she was provided at Murray Center. Jan. 7, 2014 p.m. Trns, p. 126. She had required one-on-one care 24 hours a day 7 days a week at arm's length due to her epileptic seizures. *Id.* at 126-127. Freeman learned that BB was not receiving one-on-one care 24 hours a day 7 days a week at arm's length because Fox Developmental Center does not provide such care to its residents. *Id.* at 128. The cause of BB's death was a seizure. *Id.* at 127.

Janice Kerst and William Fields went through the ACCT-CRA process because they were told MDC was closing and they should pick a new home for their daughter, JF, an MDC resident for the past eleven years. Fields Affidavit (“Fields Aff.”), Doc. 241-6, ¶¶ 4-5. Fields was advised by a representative from CAIL that “failure was not an option, and that the new home had to work” *Id.* at ¶ 8. JF’s new home in Danville, Illinois, was not equipped to handle her aggressive and self-injurious behavior: she punched holes in the wall of her bedroom, broke several windows, and was taken to the hospital to be treated for injuries caused by breaking windows and banging her head against the walls or floor. Kerst Affidavit (“Kerst Aff.”), ¶¶ 6-7; Fields Aff, ¶¶ 10-11. Staff at JF’s home decided to give her prescriptions for two powerful anti-depressants, but did not get her guardian’s consent for these drugs. Kerst Aff. at ¶¶ 8-9, Fields Aff. at ¶¶ 13-14. Within a month of being transferred to this CILA via the ACCT-CRA process, JF was transferred to another SODC, but her guardians were not informed of the transfer until after it occurred. Kerst Aff. at ¶11, Fields Aff. at ¶15.