CIVIL RIGHTS OF INSTITUTIONALIZED PERSONS ACT BRIEFING

BACKGROUND

On March 17, 2005, the United States Department of Justice (DOJ) notified Governor Rick Perry of its intent to commence an investigation of the Lubbock State School, pursuant to the Civil Rights of Institutionalized Persons Act (CRIPA). CRIPA authorizes the U. S. Attorney General to conduct investigations and initiate litigation relating to conditions of confinement in state or locally operated institutions, including Intermediate Care Facilities for Persons with Mental Retardation (ICFs/MR).

The Civil Rights of Institutionalized Persons Act, enacted in 1980, authorizes DOJ to investigate facilities that come within the scope of the Act to determine whether there is a pattern or practice that prohibits residents from the free exercise of their federal constitutional or statutory rights. DOJ's work is directed at obtaining broad reform of conditions in institutions. CRIPA does not authorize DOJ to remedy problems for particular individuals or seek money on behalf of individuals.

CRIPA investigations have focused on residents' constitutional rights under the due process clause of the 14th amendment, as articulated in the 1982 U.S. Supreme Court case, *Youngberg v. Romeo*, to:

- reasonably safe conditions of confinement,
- freedom from unreasonable bodily restraints, and
- such minimally adequate training as reasonably might be required by those interests.

The court held that the proper standard for determining if the State has adequately protected an individual’s rights is whether professional judgment in fact was exercised. In determining what is “reasonable”, the Supreme Court said, courts must show deference to the judgment exercised by a qualified professional, whose decision is presumptively valid.

DOJ has made a priority of enforcing the Americans with Disabilities Act's (ADA) integration provisions, which require that placement be offered in the most integrated setting appropriate to the needs of the individual. As stated in the 1999 U.S. Supreme Court case, *Olmstead v. Zimring*, placement of persons with mental disabilities in community settings, rather than in institutions, is appropriate when:

- the State’s treatment professionals have determined that community placement is appropriate;
- the transfer from institutional care to a less restrictive setting is not opposed by the affected individual, and
- the placement can be reasonably accommodated, taking into account the resources available to the State and the needs of others with mental disabilities.

DOJ conducted the investigation of Lubbock State School the week of June 13, 2005. DOJ attorneys and two experts - a psychologist with experience in protection from harm, behavioral supports and habilitation and an LNP/PhD who examined multiple areas of medical care - conducted the investigation. DADS staff and external experts from The Columbus Organization were present during the onsite investigation.

DOJ INVESTIGATIONS, COMPLAINTS, AND SETTLEMENT AGREEMENTS

At the end of Fiscal Year 2004, DOJ was active in investigations involving more than 160 facilities in more than 30 states, Puerto Rico, the Northern Mariana Islands, Guam and the Virgin Islands. DOJ currently monitors conditions in 22 facilities for people with mental retardation that operate under
court orders or settlement agreements with the United States. The following investigative findings reports on mental retardation facility investigations are posted on the DOJ’s CRIPA website:

- Texas (Lubbock State School), report issued 12/11/06;
- California, one facility, report issued 1/4/06;
- New Jersey, two facilities, reports issued 4/8/03 and 11/04/04;
- Arkansas, one facility, report issued 4/21/04;
- Kentucky, one facility, report issued 11/07/02;
- Iowa, two facilities, report for both investigations issued 7/9/02;

Most CRIPA investigations have resulted in voluntary correction or a judicially enforceable settlement. Experiences of some states in attempting to resolve investigations of mental retardation facilities include:

- Iowa, settlement agreement for two facilities (investigation began in 1999);
- Indiana, settlement agreement for two facilities. One of the Indiana facilities, Fort Wayne State Developmental Center, is scheduled to be closed in June of this year;
- Kentucky, settlement agreement (investigation began in 2001);
- Louisiana, settlement agreement for two facilities (investigations began in 1994 and 1996);
- New Jersey, settlement agreements for two facilities (investigations began in 2002 and 2003);
- Washington, no formal agreement. DOJ investigated one facility for 7 years, and at the close of that investigation initiated an investigation of two additional facilities in 1998, which continues today;
- Wisconsin, settlement agreement for two facilities (investigation began in 1997), recently concluded.

If state or local officials fail to correct deficiencies or do not agree to a settlement, CRIPA authorizes the U. S. Attorney General to file suit. Pennsylvania is the only state to have successfully litigated a CRIPA investigation of a mental retardation facility.