

Staley Lawsuit Settlement Agreement Progress Report - 10/11/02

Below is the first of the progress reports to the Plaintiffs required by the Staley Settlement Agreement. This report provides major information points on the planning, implementation, and status of the Agreement. The period covered by this report is September 2000 to September 2002.

I. PLANNING

In November 2000, the Universal Access Planning Committee was formed. This Committee was developed to be a major arena for stakeholder input and discussion for implementing the Agreement. The Committee was initially comprised of 28 members representing seven stakeholder categories (2 primary and 2 alternate representatives per group). The stakeholder categories were: Self-Advocates, Family Members, Providers, State Government, Local Government, Advocates, and Other. The Committee format was highly structured and utilized an outside facilitator. Please note that this Committee was conceptualized and sponsored by the various stakeholder groups. The State was a participant with representation equal to the other stakeholder categories.

Many topics were addressed by the Committee, primary topics related to:

- A. Determining the features of the delivery systems through which the provisions of the Agreement would be met.
- B. Determining benefit levels and the nature of services to be provided.
- C. Reviewing and providing feedback on the proposed State administrative rules applicable to implementing the Agreement.
- D. Reviewing and providing feedback on Title XIX Home and Community Based Waiver specifically applicable to support services.
- E. Determining the order in which groups of people eligible for support services would be offered these services.
- F. Determining and approving the initial criteria for determining access to the non-crisis comprehensive services.

The minutes of the various Universal Access Planning Committee are available on the Arc of Oregon website. This site is:

<http://www.open.org/~arcoforg/>

Other significant accomplishments during the planning phase were:

- A. The permanent Oregon Administrative Rules (OAR 309-041-1750 through 309-041-1920) governing the implementation of Support Services were filed and became effective February 27, 2002. A copy of the rule is not included in this report but is available upon request.
- B. The Support Services Title XIX Home and Community Based Waiver was submitted to the Centers for Medicare and Medicaid Services (CMS) in April 2001. Approval was secured from (CMS) for an implementation date of July 2001. A copy of the Support Services Waiver is not included in this report but is available upon request.
- C. A Request For Proposals (RFP) was let May 11, 2001 to solicit parties interested in operating Support Service Brokerages. A copy of the RFP is not included in this report but is available upon request.
- D. Funding was secured from the Oregon Legislature for the 01-03 biennium to implement the Agreement.

II. IMPLEMENTATION ACTIONS

A. Support Services:

1. In July and August 2001, eleven (11) entities were selected via the RFP process as the Support Services Brokerages. Of those selected seven (7) were non-profit organizations created specifically to provide Support Service Brokerage services. Three (3) entities were affiliated with service provider organizations and one was part of a County government.
2. A schedule was created for implementing the Support Service Brokerages. These Brokerages came online and began serving individuals from the period of November 2001 to March 2002.¹

¹ A decision was made to delay the implementation of one of the 11 Brokerages until the 03-05 biennium. This decision did not compromise the targeted number of people to receive support services by the end of the current biennium.

3. A specific schedule was developed for enrolling people into Brokerages for the provision of support services. This schedule reflected a total of 2525 people to receive support services by the end of the 01-03 biennium (6/30/03). Consistent with Exhibit A of the Agreement, the initial enrollment schedule anticipated that 1505 people from the statewide wait list would receive support services during the 01-03 biennium. The remaining individuals (1020) would be people entering the Brokerages with existing services provided from the former Self-Directed Support programs.

A few months after the initial implementation of the Brokerages the enrollment projections for the 01-03 biennium were altered because the number of people entering the Brokerages from the former Self-Directed Supports programs was not as high as expected. The schedule was changed whereby people from the statewide waitlist to receive support services would increase from 1505 to 1732.

4. Service contracts were developed and entered into with each Support Service Brokerages. Among other things, these contracts specified the:
 - a). Designated start up date and geographic catchment area;
 - b). Designated program start-up funding;
 - c). Designated funding for operating and staffing expenses;
 - d). Numerical enrollment targets by month;
 - e). Required staffing ratios; and
 - f). Reporting requirements.

A copy of the contract is not included in this report but is available upon request.

5. A work group was implemented to develop the strategies and policies for enrolling people into Brokerages who currently receive funded supports by traditional County contracted service mechanisms and where these services now meet the Agreement's definition of Support Services. The primary example of these situations are adults who live at home but currently receive employment or alternatives to employment services at a contracted rate less than \$20,000 per year.

B. Non-Crisis Comprehensive Services:

1. A steering committee was formed from the Universal Access Planning Committee to address the directives contained in the Agreement for non-crisis comprehensive services.
2. The committee's mission is to significantly reduce or eliminate local community waitlists and improve the provision of services by:
 - a). Defining a statewide planning process for placements;
 - b). Procedures for implementing the placements of 300 persons in non-crisis comprehensive services over a six year period.
 - c). Continuously monitoring and evaluating the process for planning and development services through this project
3. Key committee endeavors consist of:
 - a). Defining the strategies for assuring the development of services on an equitable, statewide basis.²
 - b). Researching the necessary Medicaid requirements that must be met by each person in order to determine their eligibility for the Project.³
 - c). Working with the Department to identify individuals who the meet Medicaid and other criteria mentioned above.
 - d). Recommending the content of materials which explains the project to county personal and elderly caregivers whose sons or daughters may qualify for services; and which formalize the status of each person referred to the Project. (For example, a letter is sent to the caregiver confirming or denying their family member's eligibility for the project and any relevant timelines.)
 - e). Assuring county staff has consistent, accurate information related to the planning and implementation policies and procedures through ongoing technical assistance.

² The standard currently used by the Committee's requires each person to live with an elderly caregiver who was at least 75 years old as of June 30, 2001. The Wait List administrative rule was revised for the prioritized entry of service of people with caregivers over the 75 years of age.

³ These stipulations include the ability to: be waiver eligible; obtain a medical card (or spend down or move in order to qualify for a card) and to meet DD eligibility service requirements. The Home and Community Based waiver for comprehensive services was revised to allow for the priority entry of people with caregivers over 75 years of age.

C. Children/Family Support Services:

1. A work group was formed to design, and develop administrative rules for, a statewide system of children/family support services characterized by common entry criteria and service limits. The work group includes representatives of families with children, county DD programs, and state DD programs for children.
2. In addition to crafting the applicable administrative rules, the work group is also:
 - a). Determining the strategies for assuring the development of services on an equitable, statewide basis; and
 - b). Developing the procedures/policies associated with implementing the children/family support services.
3. County DD programs developed and implemented interim procedures for providing services to children and families under administrative rules for Self-Directed Support Services during the transition to Family Support Services.
4. A training and technical assistance contract was established to orient case managers around the state to the key technical essentials for arranging in-home support services, including person- and family-centered planning and family responsibilities associated with hiring or contracting for in-home service providers.

D. Infrastructure:

1. The Seniors and People with Disabilities (SPD) staff designated to implement the Agreement have been hired. This team has been interacting with key stakeholders to focus on the implementation of the Agreement. In addition to the staff specifically hired for this program, other SPD staff have assignments to assist in the Settlement's implementation. For example, assistance is being provided by other SPD staff in the areas of data collection/analysis and person centered planning/ISP development for the non-crisis comprehensive services.
2. Via a competitive Request For Proposal process the Oregon Health and Sciences University, Center on Self-Determination, was awarded a contract to provider training and technical assistance in support of implementing the Settlement Agreement.

3. Funds designated in the Agreement for addressing infrastructure issues such as County case management ratios were distributed.

III. CURRENT STATUS

A. Named Plaintiffs:

Each specifically named plaintiff is currently receiving comprehensive services based upon an agreed Individual Support Plan.

B. Support Services:

There are currently ten (10) Support Service Brokerages operating under contract with the State. These Brokerages provide coverage of the entire state for the purpose of eligible individuals accessing support services. All Brokerages are certified under the applicable administrative rules and are fully staffed.

As of September 1, 2002, the projected number of people enrolled in Support Services Brokerages and receiving support services was targeted to be 1611. The actual number of people enrolled in Brokerages is 1542, which is 96% of projected enrollments.

C. Comprehensive Services:

The steering committee continues to engage in activities related to items under II.B above. Additionally, the committee troubleshoots any problems related to assuring that the elderly caregivers are participating in a thoughtful process that results in the meeting the families needs through the developing comprehensive services for the son, daughter or the person in their care.

To date, 6 individuals have approved non-crisis comprehensive supports in place. Service plans for another 6 individuals meeting the project's criteria are pending approval or are in an active stage of development.

D. Children/Family Support Services:

The work group has developed an initial draft of proposed Administrative Rules. There are plans to hold a series of meetings around on the state October-December, 2002, to inform families and other stakeholders about the policy direction and contents of the proposed rule. In the meantime, all children/family support services

are currently regulated by the Self-Directed Support administrative rules (OAR 309-041-1110 through 309-041-1170).

The funds for children/family support provided in the Agreement for the 01-03 biennium have been allocated to County Developmental Disability Programs in order to meet the numerical expectations for services outlined in Exhibit A of the Agreement. County staff continue to support current recipients of service and arrange for new services as funds are available.

E. Infrastructure:

Throughout the implementation process state staff have been working with stakeholders in the formulation of key operational policies/procedures/forms, data collection strategies, and generally dealing with the details or issues associated with meeting the expectations of the Agreement.

The forums for discussing these matters vary but include the continued participation on the Universal Access Planning Committee, monthly meetings with Support Service Brokerage Directors/key staff, and monthly meetings with the County Developmental Disability Program Managers.

Training and technical assistance continues for key stakeholders. For example, each Support Brokerage has developed a specific training and technical assistance plan and is working with the state contractor to implement this plan.

An additional area of effort has been placed in working with County Developmental Disability Programs in clarifying roles and relationships with Support Service Brokerages. Particular focus has been in the areas of Individual Support Plan authorization, enrollment processes, abuse/protective services activities, and crisis/diversion service activities.

IV. REQUIRED and REQUESTED DATA

A. Support Services:

1. Numbers of people transitioning into support services who currently have some existing services.

As reported by the Support Services Brokerages, 810 individuals who had some existing service prior to their enrollment in a Brokerage. Most (793) are individuals who were receiving supports from the former Self-Directed Supports program. Seventeen (17) additional people with employment or alternatives to employment supports have entered the Brokerages for various other reasons related to enrollment priorities.

2. Number of people coming into support services with no services.

732 people are now enrolled in Support Brokerages who came in without paid services other than the case management services received from their County Developmental Disability Program.

3. The number of people receiving support services and the type and cost of the services.

From the Support Brokerages we have received expenditure information through July 2002. This information reflects an average monthly expenditure of \$442. This data does not include costs for employment or alternatives to employment services still paid to providers via County contract mechanisms for 147 people enrolled in Brokerages. The table below reflects expenditures reported to date by service category.

Service Category	% of Total Plan Expenses
Community Living Supports	37
Community Inclusion	27
Respite Care	19
Supported Employment	6
Non-Medical Transportaton	6
Specialized Supports	1
Homemaker	1
Family Training	1
Spec. Medical Equip/Supplies	0
Environmental Access/Adapt.	1
Chore Services	1
Speech/Hearing/Language	0
Personal Emerg. Response Systems	0
Special Diets	0
Total	100

4. The number of people requesting base plus funding.

Through August 2002, the Brokerages report that 75 requests for "base plus" funding have been initiated based on the initial Support Plan and associated budget.

5. The number of people who receive base plus funding.

Of the 75 "base plus" requests that have been initiated, 60 have been approved and 12 were not approved. There were 3 requests still being processed when the data was collected. The rate of approved Base Plus requests is about 5% of the people enrolled who have support plans developed.

6. The number of people who experience a reduction in funding of services.

Of the 793 individuals coming into support services with existing plans funded by the former Self-Directed Supports (SDS) program, 122 (15%) face a reduction of funding level as a result of the current rules governing Support Services. The table below indicates the number of people facing funding level reductions based on their particular benefit level defined in the support services administrative rule.

SDS Enrollment Benefit Levels			
BENEFIT LEVEL GROUP	Total # Enrolled	# Benefit Level Decrease	%
SDS Plan Only - Waiver Eligible	548	34	6%
SDS Plan Only - Gen. Fund Only Eligible	104	25	24%
Emp/ATE + SDS Plan - Waiver Eligible	115	52	45%
Emp/ATE + SDS Plan - Gen.Fund Only Eligible	15	11	73%
Prior Slot Conversion	3	N/A	
Prior Long Term Diversion	8	N/A	
Total	793	122	15%

The table below indicates the estimated benefit decrease.

Estimated Level of Decrease Per Month	# Enrolled	%
<\$100	28	23%

\$100-\$199	23	19%
\$200-\$299	13	11%
\$300-\$399	11	9%
\$400-\$499	13	11%
\$500+	34	28%
Total	122	100%

It should be noted that a reduction of funding level may not necessarily involve a reduction of services. With the person centered planning process and focus on total resource analysis, Support Plans may be crafted that do not reflect an undesirable decrease of services even though the actual availability of state/federal dollars through this particular program may be less.

7. The number of people who are DD eligible but not Medicaid eligible.

As of this writing, we have Client Progress Monitoring System (CPMS) data on 1511 people currently enrolled in the Support Service Brokerages. This data indicates that 1093 (72%) are eligible for the approved Support Services waiver.

8. Demographic data – age/disability/support needs

Based on the available CPMS data, the table below indicates the age ranges for the people enrolled in Brokerages.

Age		
18-21	330	22%
22-29	479	32%
30-39	305	21%
40-49	229	15%
50-59	129	9%
60-69	7	0%
70 plus	4	0%
Total Valid Records	1483	100%

Based on the available CPMS data, the table below indicates the disability characteristics for the people enrolled in Brokerages.

Characteristics	# indiv.	%
Cerebral Palsy	191	13%
Seizure/Epilepsy	283	19%
Mental Retardation	1392	92%
Motor Dysfunction	416	28%
Behavior Dysfunction	555	37%
Other Health Impairment	371	25%
Communication Dysfunction	736	49%
Visual Dysfunction	305	20%
Auditory Dysfunction	132	9%
Total Valid Records	1509	

Based on the available CPMS data, the table below indicates the race, ethnicity and gender information for the people enrolled in Brokerages.

Race/Ethnicity	Female		Male		Total	
White	715	94%	724	94%	1439	94%
Black	7	1%	5	1%	12	1%
American Indian	3	0%	7	1%	10	1%
Alaskan Native	1	0%	2	0%	3	0%
Asian	2	0%	5	1%	7	0%
Hispanic (Mexican)	13	2%	13	2%	26	2%
Hispanic (Cuban)	1	0%	1	0%	2	0%
Other Hispanic	18	2%	14	2%	32	2%
	760	100%	771	100%	1531	100%

9. Average case manager caseload by County.

As of this writing, there are no consistent data about case manager caseload on a by County basis. The best information available is that provided to the Legislative Emergency Board in April 2002. In general this written report states:

- a). Funding for case management provided through the Agreement was allocated to counties and the support services brokerages with a goal of reducing the overall caseload to a 1:45 ratio.
- b). The allocation included 207 FTE for Counties and 117 for Brokerages for a total caseload of 14,123 for an overall budgeted ratio of 1:44.

c). However, major factors affect actual ratios at the local (case management) level. These are:

- County caseloads remain very high. Given the transfer of people to Brokerages as support services "phase in", many individuals waiting for support services remain on targeted case management caseloads. This creates a situation where county caseloads will remain high and the Brokerage caseloads will be relatively low.
- County costs often exceed the Department's allocation, which is based on an average county cost per case manager FTE that is summarized in a model budget. Counties that have costs above the statewide average feel resource pressures, and some counties are simply not able to purchase the number of FTE expected. Additionally, counties often experience increases in costs that exceed the percentage of increases provided by the state's cost-of-living increase.
- The caseload after full implementation of the Staley Agreement seems likely to exceed the original estimates and prevent the attainment of a 1:45 ratio. The estimated caseload growth was anticipated to reach 15,500 after full implementation of "universal access". Currently caseloads are at 14,123 and given the rate of caseload growth the 15,500 will be exceeded and compromise the goal of reaching a 1:45 ratio.

B. Non-crisis Comprehensive Services:

1. Number of people identified as potentially eligible based on caregiver age over 75.

The initial group of people identified as possibly meeting the overall criteria was 187. Thus far, 94 persons have been found eligible for services; 58 individuals are ineligible and the eligibility of another 36 persons is yet to be determined.

Data for three counties: Multnomah, Linn and Yamhill was not available for this report. State personnel are currently working with each county to obtain this information.

2. Number of people who are refusing service.

From the group of individuals considered eligible, 48 caregivers are declining services at this time. Another 10 caregivers are undecided about obtaining services based on their current circumstance or a desire to take more time in making placement decisions.

3. Number of individuals requesting non-crisis comprehensive services (without regard to priority listing).

Within the priority for non-crisis comprehensive services, the records show 15 people are eligible and desiring services. An additional 20 caregivers with eligible live-ins have yet to specify their desires.

Current statewide waitlist data available through the Client Progress Monitoring System indicates that 3294 people on the statewide waitlist have requested residential services that would meet the Agreement's definition of comprehensive services.

4. Nature of services requested.

A request or an interest for services has been expressed by a small number of caregivers. The types of services appear below.

From the eligible live-in: Caregivers requests		
	Requested	To Be Yet Determined
In-home Support	3	2
Residential Support	7	3
Employment or Community Inclusion	4	2
Transportation	5	3
Rent Subsidy	0	1
Start-up	2	1

5. Number of individuals who have received non-crisis comprehensive services.

As of the writing of this report, a total of 6 people have plans approved for non-crisis comprehensive under current criteria.

6. Nature of services provided.

Six people receiving services from the project. A summary by person is listed below:

Person 1:

In-home Supports
Professional Consultation
Supported Employment
Transportation

Person 2:

In-home Supports
Professional Consultation
Supported Employment
Transportation

Person 3

Start-up
In-home Supports
Employment

Person 4

Start-up
Foster Care
Transportation

Person 5

Foster Care
Transportation

Person 6

Foster Care
Transportation

7. Demographic data – age/disability/support needs.

For the 6 people currently receiving non-crisis comprehensive services, the ages are:

Age Range	# of Individuals
18-21	0
22-29	1
30-39	0
40-49	2
50-59	3
60-69	0
70+	0

Based on CPMS information, we have disability characteristics for 4 of the people receiving non-crisis comprehensive services. The following table indicates the CPMS disability characteristic and the number of people reported as having some degree of the characteristic:

Characteristic	# of Individuals
Cerebral Palsy	1
Seizure/Epilepsy	2
Mental Retardation	4
Motor Dysfunction	1
Behavior Dysfunction	3
Other Health Impairment	0
Communication Dysfunction	2
Visual Dysfunction	1
Auditory Dysfunction	0

C. Fair Hearing:

1. Number of individuals who have utilized a grievance and outcome.

Brokerages and the Comprehensive 300 Project report no individuals enrolled have utilized their formal grievance process.

2. Number of people who have filed for a contested case hearing and outcome.

Two contested case hearing were initiated, both were ultimately withdrawn. In one situation, the issue was a dispute over disapproval of a plan to have a Brokerage develop support services in another state where the individual wanted to move. The individual withdrew the request for a hearing when they decided not to move to another state.

In the second situation centered on plan changes initiated as result services being funded by more than one Medicaid Home and Community Based waiver. This case was withdrawn when acceptable Individual Support Plan revisions were implemented. As of the date of this report, no other contested case hearings have been requested.