IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

STATE OF CONNECTICUT OFFICE OF PROTECTION AND ADVOCACY FOR PERSONS WITH DISABILITIES, SHANNON HEMMINGSEN, SAMUEL RIVERA, GALE YENCHA, NORMA JEAN DIAZ, and AGATHA JOHNSON, individually and on behalf of other similarly situated individuals, Plaintiffs, v. THE STATE OF CONNECTICUT, MICHAEL P. STARKOWSKI, in his official capacity as Commissioner of the Connecticut Department of Social Services, THOMAS A. KIRK, Jr., PhD., in his official capacity as Commissioner of the Connecticut Department of Mental Health and Addiction Services, and J. ROBERT GALVIN, M.D., M.P.H., in his official capacity as Commissioner of the Connecticut Department of Public Health, Defendants.	)	3:06 Civ. 00179 (AWT) Sept. 9, 2008

FIRST AMENDED COMPLAINT

Plaintiffs the Connecticut Office of Protection and Advocacy for Persons with Disabilities ("OPA") and Shannon Hemmingsen, Samuel Rivera, Gale Yencha, Norma Jean Diaz and Agatha Johnson (the "Individual Plaintiffs") (collectively, OPA and the Individual Plaintiffs are referred to herein as "Plaintiffs"), sue the Defendants on behalf of approximately 200 individuals with mental illness presently residing in three nursing facilities in Connecticut – Chelsea Place Care Center in Hartford ("Chelsea Place"), Bidwell Care Center in Manchester ("Bidwell"), and West Rock Health Care Center, in New Haven ("West Rock") – as well as numerous other individuals with mental illness who are at risk of entry into these facilities.

Individuals with mental illness are needlessly isolated, segregated, and institutionalized in these facilities, in violation of the Americans with Disabilities Act and the Rehabilitation Act.

Preliminary Statement

1. Title II of the Americans with Disabilities Act ("ADA"), 42 U.S.C. §§ 12131 and 12132, prohibits discrimination against individuals with disabilities. Title II requires, *inter alia*, that "a public entity shall administer services, programs, and activities *in the most integrated setting appropriate to the needs* of qualified individuals with disabilities." *See* 8 C.F.R. § 35.130(d) (emphasis added). Section 504 of the Rehabilitation Act, 29 U.S.C. § 794, imposes similar obligations.

2. In *Olmstead v. L.C.*, 527 U.S. 581 (1999), the United States Supreme Court held that the ADA is violated when a state places people with mental illness in "unjustified isolation." *Id.* at 597. The Court also held that a person with a mental illness may sue the state for failing to ensure that he or she is placed "in the most integrated setting appropriate to [his or her] needs" and that undue institutionalization of a person with a mental illness is discrimination by reason of disability under Title II of the ADA. *Id.* at 587.

3. This action is brought to enforce these mandates. Rather than comply with these laws, Defendants serve OPA's constituents and the Individual Plaintiffs in "unjustified isolation" in settings that are not integrated, namely Chelsea Place, Bidwell, and West Rock. In these nursing homes, individuals with mental illness are needlessly segregated, inappropriately warehoused, and left without safeguards to ensure that they are discharged when appropriate.

4. Chelsea Place, Bidwell, West Rock, and other similar nursing facilities in Connecticut offer residents little or no rehabilitative treatment or discharge planning to promote integration into the community. As chronicled in articles in *The New London Connecticut Day*,

Chelsea Place, Bidwell, and West Rock and other similar nursing facilities lack adequate staffing, psychiatric treatment, and activities and programming, and often fail to meet minimum health and safety standards. Kenton Robinson, *Thousands With Psychiatric Disabilities Locked Away In Nursing Homes*, THE DAY, Dec. 19, 2004, at 1; Robinson, *Many Mentally Ill in State are Housed Without Proper Care*, THE DAY, August 7, 2005, at 1.

5. Individuals with mental illness are left to languish in these facilities while equally affordable and more integrated community-based settings exist or could be made available. More integrated, community-based settings would more appropriately meet the needs of individuals with mental illness who are currently residing in these nursing facilities.

6. Individuals with mental illness are required to live in Chelsea Place, Bidwell, and West Rock solely because of the lack of community-based alternatives, such as supportive housing.[1] In administering their programs, services and activities, Defendants have chosen to fund expensive institutional care in nursing homes rather than less costly care in integrated settings that would better meet these individuals' needs. Because of Defendants' failure to develop and fund community-based alternatives, individuals with mental illness often have nowhere to go but a nursing home. Indeed, many individuals with mental illness must choose between residence in a nursing home or homelessness.

7. On May 4, 2008, the Hartford Courant reported that "Connecticut is losing out on millions of dollars in Medicaid revenue because of its continued over-reliance on nursing homes to house the mentally ill." Colin Poitras, *Mental Health Policy Costs State Medicaid Funds*, THE HARTFORD COURANT, May 4, 2008. Specifically, the article stated that "Connecticut lost

[1] "Supportive housing," as used in the Complaint, refers to programs that enable individuals with mental illness to live in their own apartments or homes. These individuals receive an array of supports and services tailored to their preferences and needs.

$1 million in federal Medicaid reimbursement in 2007 and is expected to lose as much as $6.5 million this fiscal year because the number of clients admitted for mental health reasons at several nursing homes exceeded 50 percent of the home's total population." Furthermore, "[t]he nursing homes where young mentally ill residents currently exceed 50 percent of the population are the Bidwell Care Center in Manchester and the West Rock Health Care Center in New Haven."

8. Defendants have violated Title II of the ADA and Section 504 of the Rehabilitation Act by failing to assure that their programs, activities, and services are administered to individuals with mental illness in the most integrated setting appropriate to their needs, and by failing to periodically review and reassess each individual's need for nursing home care. Instead, individuals with mental illness are isolated and institutionalized at Chelsea Place, Bidwell, and West Rock in violation of Title II of the ADA and Section 504 of the Rehabilitation Act, often for years on end.

9. Plaintiffs' claims for violation of Title II of the ADA, 42 U.S.C. §§ 12131 and 12132 are asserted against the individual Defendants only. Plaintiffs do not assert claims against the State of Connecticut for violation of Title II of the ADA.

10. Plaintiffs' claims for violation of Section 504 of the Rehabilitation Act, 29 U.S.C. § 794, are asserted against both the State of Connecticut and the individual Defendants. The only claims asserted against the State of Connecticut are claims under Section 504.

Parties

Plaintiffs

OPA

11. OPA is an authorized protection and advocacy agency under the Protection and Advocacy for Individuals with Mental Illness Act ("PAIMI"), 42 U.S.C. § 10801, *et. seq.* OPA is also responsible for providing protection and advocacy services to individuals with disabilities pursuant to Conn. Gen. Stat. § 46a-7 to 11. OPA has statutory authority to pursue legal, administrative and other appropriate remedies to ensure the protection of individuals with mental illness who are or will be receiving care and treatment in the State of Connecticut. 42 U.S.C. § 10805.

12. OPA is pursuing this action to protect and advocate for the rights and interests of residents of Chelsea Place, Bidwell, and West Rock, and those at risk of entry into these facilities, who are "individuals with mental illness" as that term is defined in 42 U.S.C. § 10802. These individuals are OPA constituents, and are the direct and primary beneficiaries of OPA's activities, including the prosecution of this litigation.

13. OPA's constituents each have a significant mental illness and reside in or are at risk of entering "facilities" rendering care and treatment for mentally ill individuals, as that term is defined in 42 U.S.C. § 10802.

14. OPA's constituents have significant mental illnesses that substantially limit their ability to perform major life activities, such as self care, working, and interaction with others. They also have a record of such mental illnesses, and are regarded by Defendants as having such mental illnesses. They are therefore individuals with disabilities for purposes of the ADA and the Rehabilitation Act. 42 U.S.C. § 12102, 29 U.S.C. § 705(20).

15. OPA's constituents have each suffered injuries, or are at risk of suffering injuries, that would allow them to bring suit against Defendants in their own right.

16. OPA's constituents possess the means to participate in, significantly influence and help guide OPA's priorities and activities. As required under 42 U.S.C. § 10805(a)(6), OPA has established a "PAIMI Advisory Council" (the "Council") which, according to the statute, "will advise the system on policies and priorities to be carried out in protecting and advocating the rights of individuals with mental illness." Pursuant to the By-laws of the Council, its purpose is to:

a. Advise PAIMI program staff and the governing authority of the State Office of Protection and Advocacy for Persons with Disabilities on policies and priorities to be carried out in protecting and advocating for the rights of individuals with mental illness;

b. Complete a section of the annual PAIMI program performance report that describes the activities of the Council and its assessment of the operation and quality of services of the PAIMI program;

c. Work with the governing authority of the State Office of Protection and Advocacy for Persons with Disabilities and the PAIMI program members jointly to develop the annual statement of objectives and priorities for the PAIMI program; and

d. Obtain public input into the policies and priorities of the PAIMI program.

17. As required by statute, the Council must be comprised of at least 60 percent primary mental health consumers or family members of such individuals, with the chairperson being an individual who has received or is receiving mental health services or a family member of such an individual. 42 U.S.C. § 10805(a)(6)(B)-(C). Additional members of the Council "shall include attorneys, mental health professionals, individuals from the public who are knowledgeable about mental illness, a provider of mental health services, individuals who have received or are receiving mental health services, and family members of such individuals." 42 U.S.C. § 10805(a)(6)(B).

18. The Council is currently comprised of ten members, nine of whom (90%) are consumers of mental health services in the State of Connecticut. The Council is currently seeking additional members. The members of the Council also include family members of individuals with mental illness, an attorney representing individuals with mental illness in the public mental health system, an educator of individuals with mental illness, several graduates of Advocacy Unlimited, Inc. (a statewide agency operated and controlled by persons in recovery from psychiatric disabilities that provides, among other things, extensive educational training to persons with, or in recovery from, psychiatric disabilities), and a social worker who provides support services for homeless individuals with mental health needs in the State of Connecticut. According to the Council's By-laws, each member of the Council "must have a commitment to promoting the legal and civil rights of persons with mental illness and advocating for their personal choices."

19. The Council considers, nominates, and appoints its own members, including its chairperson. OPA's Executive Director does not control or take part in the election of new members to the Council. Members may be removed only upon recommendation by the Council to the Executive Director. The Council's By-laws provide that new members to the Council "shall be diverse, including people of color, recipients or former recipients of mental health services, people who have physical disabilities, and people from different geographic locations in the state."

20. The Council holds official meetings once every other month to discuss, evaluate and implement OPA's policies, priorities, procedures and activities. OPA's Executive Director, PAIMI Program Director, and Managing Attorney typically attend these meetings. The Executive Director provides a report at the meetings of the Council concerning all matters of

OPA's activities. The Council also receives reports on proposed and ongoing litigation from OPA's Managing Attorney, receives reports from the PAIMI Program Director on various issues concerning OPA's activities, and receives presentations and/or training from various third-parties, including representatives from the National Disability Rights Network, the Connecticut Urban Legal Initiative, and various State governmental agencies.

21. The Council, in conjunction with the Executive Director, establishes OPA's PAIMI priorities for each fiscal year. To establish the PAIMI priorities, the Council holds public meetings throughout the State, in which persons with mental illness have the ability to provide input to the Council concerning issues that are important to them. The Council then votes on and approves the PAIMI priorities, which are made available to the public on OPA's website and are subject to ongoing public comment. The Executive Director has never vetoed a priority established by the Council.

22. In 2007, the Council approved the "PAIMI Priorities," which included, *inter alia*, OPA's goal to "educate residents with psychiatric disabilities in long term care facilities such as: residential care homes and skilled nursing homes, about their rights and services and self advocacy." One of the objectives of this goal was to provide outreach and advocacy to residents in locked behavioral health units in skilled nursing facilities.

23. The Council has also approved the "2007 Summary of Priorities," which set forth, *inter alia*, the following goals:

a. Protect rights, identify barriers, and increase awareness of benefits related to community inclusion of people with disabilities;

b. Educate policymakers regarding barriers to living and working in communities by participating in legislative and administrative forums and hearings, and preparing written analyses and personal stories for inclusion in reports;

c. Safeguard the rights of persons with disabilities living in institutions or at risk of institutionalization;

d. Advocate for the rights of people with mental retardation and mental illness who are incarcerated or are at risk of incarceration;

e. Conduct outreach to residents of long term care facilities;

f. Identify and selectively join coalitions and organizations addressing the unavailability of affordable, accessible housing for people with disabilities and families; and

g. Learn about different supportive housing models and options.

24. The Council is also empowered to review OPA's PAIMI budget and significant proposed expenditures, including budgets for litigation and funds earmarked for contracts entered into under PAIMI. Prior to making any significant financial commitment of PAIMI funds, OPA consults the Council. The Council receives quarterly expenditure reports from the Executive Director, and may question OPA's expenditures or proposed expenditures at any time.

25. The chairperson of the Council also sits on the State Advocacy Board, which, according to the statute, "shall advise the executive director of the Office of Protection and Advocacy for Persons with Disabilities on matters relating to advocacy policy, client service priorities and issues affecting persons with disabilities." Conn. Gen. Stat. § 46a-9. Two current members of the State Advocacy Board are individuals with mental illness, including one individual who resides in a nursing home and was previously confined to a locked unit. The State Advocacy Board provides recommendations concerning both OPA's policies and priorities as a whole and the PAIMI priorities to OPA's Executive Director.

26. OPA has established a direct grievance procedure pursuant to 42 U.S.C. § 10805(a)(9), whereby persons with disabilities or their representatives or family members may file a written grievance with OPA where (1) there is a disagreement about the decision of OPA not to provide assistance or advocacy services; (2) there is dissatisfaction regarding the quality or extent of services provided; (3) there is a belief that OPA failed to fulfill its legal obligations; or (4) there is a belief that OPA has discriminated in the provision of its services on the basis of

disability, race, or another prohibited basis. The grievance procedure is designed "to assure that individuals with mental illness have full access to the services of the system." 42 U.S.C. § 10805(a)(9). The Council makes the final decision regarding the appropriate response to grievances filed with OPA, and has the power to overrule the initial determinations made by the PAIMI Program Director, the Managing Attorney, and OPA's Executive Director.

27. The above allegations demonstrate that OPA's constituents have the power to participate in and exert significant influence over OPA's policies, priorities and activities. OPA provides the means by which these constituents "express their collective views and protect their collective interests." *Hunt v. Washington State Apple Adver. Comm'n*, 432 U.S. 333, 345 (1977). OPA is therefore the functional equivalent of a traditional membership organization, and OPA's constituents possess sufficient indicia of membership in OPA so as to support OPA's associational standing to sue on their behalf.

Shannon Hemmingsen

28. Plaintiff Shannon Hemmingsen, age 27 (born August 21, 1981), is a constituent of OPA who has mental illness, as that term is defined in 42 U.S.C. § 10802, including borderline personality disorder, attention deficit disorder, and depression.

29. Ms. Hemmingsen has resided in Chelsea Place since approximately November 2004. She was admitted to Chelsea Place from the Institute of Living in Hartford, Connecticut.

30. Ms. Hemmingsen is ambulatory and very high functioning, active, and alert. She is a high school graduate. Prior to her admission to Chelsea Place, she worked at Stop & Shop and at Dunkin Donuts.

31. Ms. Hemmingsen does not have significant physical health needs or require skilled nursing care in an institutional setting, and has demonstrated skills and abilities to enable

her to succeed in the community, including handling her own finances, and cooking her own meals. Her recent progress notes provide that she is "self-responsible."

32. Ms. Hemmingsen has many outside interests and actively pursues opportunities relating to these interests. For example, Ms. Hemmingsen is involved in the church at Chelsea Place and participates in and voluntarily assists with numerous group activities at Chelsea Place.

33. Ms. Hemmingsen is able to take public transportation independently and successfully engages in activities in the community that are of interest to her, including attending films, shopping at local stores, and using the local library.

34. Ms. Hemmingsen wishes to leave Chelsea Place and to live in a more integrated community setting, in order to accelerate her rehabilitation and to lead a more independent life.

35. Throughout her residency in Chelsea Place, Ms. Hemmingsen has expressed her desire to live in a home in the community that is not institutional. Facility records indicate her desire to live more independently. Her recent medical records and progress notes reflect that she is a candidate for placement in an integrated community setting and housing options and availability are being "explored."

36. Ms. Hemmingsen could live in the community if she were provided with the types of home and community-based supports and services currently provided in Connecticut.

37. Defendants, however, have failed to fund and provide adequate and appropriate, non-institutional placements in the community for Ms. Hemmingsen, and have taken no action to provide Ms. Hemmingsen the reasonable accommodations that would make a more integrated, noninstitutional community placement possible.

Samuel Rivera

38. Plaintiff Samuel Rivera, age 42 (born August 5, 1966), is a constituent of OPA who has mental illness, as that term is defined in 42 U.S.C. § 10802, including major depression with psychotic features.

39. People with this disorder are routinely served in integrated community settings.

40. Mr. Rivera has resided in Chelsea Place for approximately two years. He was homeless before being admitted to Chelsea Place.

41. Mr. Rivera is ambulatory with a cane and is active. He has full off-grounds privileges at Chelsea Place.

42. Mr. Rivera does not have significant physical health needs or require skilled nursing care in an institutional setting, and has demonstrated skills and abilities to enable him to succeed in the community, including initiating activities and setting his own goals. He is independent in all of his activities of daily living.

43. Mr. Rivera has many outside interests and would like the opportunity to explore them in the community. In Chelsea Place, he participates in exercise, reading, and horticulture activities.

44. Throughout his residency in Chelsea Place, Mr. Rivera has expressed his desire to live in a home in the community that is not institutional.

45. Mr. Rivera could live in an integrated, non-institutional setting if he was provided with the types of home and community-based supports and services currently provided in Connecticut.

46. Defendants have failed to provide Mr. Rivera with community-based services and have also failed to provide meaningful, adequate, and periodic assessments of Mr. Rivera's potential for placement in the most integrated community setting available.

47. Despite his demonstrated skills that would enable Mr. Rivera to succeed in more independent living, Defendants have failed to provide opportunities for him to lead a more independent and more productive life.

48. Defendants have failed to fund adequate and appropriate, noninstitutional community residential placements for Mr. Rivera, and have taken no action to provide Mr. Rivera the reasonable accommodations that would make a noninstitutional placement possible.

Gale Yencha

49. Plaintiff Gale Yencha, age 59 (born June 26, 1949), is a constituent of OPA who has mental illness, as that term is defined in 42 U.S.C. § 10802, including major depression. People with this disorder are routinely served in integrated community settings.

50. Ms. Yencha has resided in Bidwell since approximately September 2006. Prior to her admission to Bidwell, she lived with her mother.

51. Ms. Yencha is ambulatory using a rolling walker and high functioning, active, and alert. She is a high school graduate. She previously worked for 20 years as a nurse's aide in Rockville Hospital and has a certificate for private duty nursing.

52. Ms. Yencha does not have significant physical health needs or require skilled nursing care in an institutional setting, and has demonstrated skills and abilities to enable her to succeed in the community, including cooking her own meals and taking public transportation independently.

53. Ms. Yencha has many outside interests and actively pursues opportunities relating to these interests. For example, she engages in the news & coffee group, religious services, pet therapy, music, and is a member of the resident council.

54. Ms. Yencha wishes to leave Bidwell and to live in a more integrated community setting with a roommate, in order to accelerate her rehabilitation and to lead a more independent life.

55. Throughout her residency in Bidwell, Ms. Yencha has expressed her desire to live in a home in the community that is not institutional. Facility records indicate her desire to live more independently. Although Bidwell's administrator has suggested she go to a rest home, she would prefer to live in an apartment of her own in the community. Recent medical records and progress notes reflect that Bidwell does not have a discharge plan for Ms. Yencha.

56. Ms. Yencha could live in the community if she were provided with the types of home and community-based supports and services currently provided in Connecticut.

57. Defendants have failed to ensure adequate discharge planning for Ms. Yencha, even though she has demonstrated skills that would enable her to succeed in more independent living, and have failed to provide opportunities for her to lead a more independent and productive life.

58. Defendants have failed to provide Ms. Yencha with community-based services and have also failed to provide meaningful, adequate, and periodic assessments of Ms. Yencha's potential for placement in the most integrated community setting available.

59. Defendants, however, have failed to fund and provide adequate and appropriate, noninstitutional placements in the community for Ms. Yencha, and have taken no action to provide Ms. Yencha the reasonable accommodations that would make a more integrated, noninstitutional community placement possible.

Norma Jean Diaz

60. Plaintiff Norma Jean Diaz, age 61 (born December 21, 1946), is a constituent of OPA who has mental illness, as that term is defined in 42 U.S.C. § 10802, including major depression, anxiety and post traumatic stress disorder.

61. People with these disorders are routinely served in integrated community settings.

62. Ms. Diaz has resided in Bidwell since approximately December 2006.

63. Ms. Diaz has expressed her desire to live in an apartment in the community that is not institutional. Her medical records reflect her desire to live in the community in an apartment with her son.

64. Ms. Diaz does not have significant physical health needs or require skilled nursing care, and is qualified to reside in an existing, less restrictive community-based setting. She has demonstrated skills and abilities that will enable her to succeed in the community, including doing her own laundry, shopping and cooking her own meals.

65. Throughout her residency at Bidwell, Ms. Diaz has engaged in numerous independent and group activities, including shopping and other trips outside the facility, walking, gardening, spiritual and religious activities, music, reading and writing, and also participates in the daily "news and coffee" group at Bidwell. Ms. Diaz's medical records indicate that she independently chooses her own leisure activities, establishes her own goals, and is responsible for herself. Ms. Diaz is also permitted independent leaves of absence within the community.

66. Defendants have failed to provide Ms. Diaz with community-based services and have also failed to provide meaningful, adequate, and periodic assessments of Ms. Diaz potential for placement in the most integrated community setting available.

67. Defendants have failed to fund and provide adequate and appropriate, noninstitutional placements in the community for Ms. Diaz, and have taken no action to provide Ms. Diaz the reasonable accommodations that would make a noninstitutional placement possible.

Agatha Johnson

68. Plaintiff Agatha Johnson is age 57 (born June 29, 1951) is a constituent of OPA. According to her patient records, Ms. Johnson has mental illness, as that term is defined in 42 U.S.C. § 10802, including schizophrenia and depression.

69. People with these disorders are routinely served in integrated community settings.

70. Ms. Johnson has resided in West Rock since November 2003.

71. Prior to her admission to West Rock, Ms. Johnson lived in an apartment and received case management services from Cornerstone. She has also lived in a group home and received community-based services provided by Defendant DMHAS.

72. Ms. Johnson previously worked at Easter Seals for one year and at the Cabro Cheese Company.

73. Ms. Johnson is ambulatory and active and is able to take public transportation independently. She has had independent privileges for more than one year. Ms. Johnson travels into the community for shopping and to visit friends. She manages her own money and would like to work again.

74. Ms. Johnson attends resident council meetings.

75. Throughout her residency in West Rock, Ms. Johnson has expressed her desire to live in a home in the community that is not institutional.

76. Ms. Johnson does not have significant physical health needs or require skilled nursing care in an institutional setting.

77. Defendants have failed to provide Ms. Johnson with community-based services and have also failed to provide meaningful, adequate, and periodic assessments of Ms. Johnson's potential for placement in the most integrated community setting available.

78. Despite her demonstrated skills that would enable Ms. Johnson to succeed in more independent living, Defendants have failed to provide opportunities for her to lead a more independent and more productive life.

79. Defendants have failed to fund adequate and appropriate, noninstitutional community residential placements for Ms. Johnson, and have taken no action to provide Ms. Johnson the reasonable accommodations that would make a noninstitutional placement possible.

Defendants

80. Defendant, the State of Connecticut, is responsible for operating its programs, services, and activities in conformity with the Americans with Disabilities Act and the Rehabilitation Act. Each individual Defendant is also responsible for operating programs, services, and activities in conformity with the ADA and the Rehabilitation Act.

81. Defendant Thomas A. Kirk, Jr., Ph.D. is the Commissioner of the Department of Mental Health and Addiction Services ("DMHAS"). DMHAS is responsible for providing a network of effective and efficient mental health and addiction services that foster self-sufficiency, dignity and respect. As the State's mental health authority, DMHAS operates, funds and coordinates inpatient and community-based mental health services, including residential services, for adults 18 and older. It is responsible for delivery of all state-operated or state-funded mental health and addiction services. DMHAS manages the State's behavioral health general funds, state-administered general assistance dollars, and the Community Mental Health Services block grant. It is responsible for the screening, evaluating, and monitoring of persons

with a mental illness who reside in, or are at risk of entry into Connecticut nursing homes. DMHAS is responsible for contacting the nursing home administrator of any new admission with mental illness within fourteen days of admission concerning the individual's status and discharge, and must protect, to the fullest extent possible, the existing housing of any DMHAS client. Public Act No. 08-184, Sec. 576(b). Defendant Kirk is sued in his official capacity only.

82. Defendant Michael P. Starkowski is the Commissioner of the Department of Social Services ("DSS"). DSS provides services to individuals with disabilities who need help in maintaining or achieving self-direction, self-reliance, and independent living. DSS is one of Connecticut's largest agencies, responsible for administration of over one third of the state budget, more than $4 billion. DSS is the state agency responsible for administration of the Medicaid program, the Section 8 Housing Voucher Program, and Vocational Rehabilitation Services. DSS is required to ensure that people with mental illness are appropriately screened and maintained in nursing homes. Conn. Gen. Stat. § 17b-262. Defendant Starkowski is sued in his official capacity only.

83. Defendant J. Robert Galvin, M.D., M.P.H., is the Commissioner of the Connecticut Department of Public Health ("DPH"). DPH is the state agency responsible for regulatory oversight of health care facilities and services in Connecticut, and the licensing and regulation of long term care and nursing facilities. Conn. Gen. Stat. § 19a-490, *et seq*. As part of a comprehensive health care system, DPH determines the number of nursing home beds available, and determines whether nursing facilities are in compliance with federal and state statutes and regulations governing the quality of care and rights of residents in nursing homes. Those laws include the prohibition on admission or continuing confinement of individuals who

do not have skilled nursing needs, the unjustified use of locked units, the failure to ensure treatment services are provided, and the failure to do proper discharge planning. *See, e.g.*, 42 C.F.R. §§ 483.1 *et seq.*; Public Act No. 08-184, Sec. 57(a); DPH Public Health Code 19-13-D8t(b)(3)(A). To ensure enforcement of these laws, DPH conducts annual unannounced surveys of each nursing home and investigates complaints regarding violations of residents' rights. If a survey or complaint investigation finds that a nursing home is not providing care in compliance with the law, DPH is empowered to seek remedies that include a directed plan of correction, directed in-service training, temporary management, state monitoring, denial of payment for new admissions, civil money penalties, and closure of the facility and transfer of residents. *See, e.g.*, 42 C.F.R. § 488.303; *see also* Conn. Gen. Stat. §§ 19a-535. Defendant Galvin is sued in his official capacity only.

84. The State of Connecticut is a public entity subject to the requirements of Title II of the ADA, 42 U.S.C. § 12131. DMHAS, DSS and DPH are public entities subject to the requirements of Title II of the ADA, 42 U.S.C. § 12131.

85. The State of Connecticut is a recipient of federal funds subject to the requirements of Section 504 of the Rehabilitation Act, 29 U.S.C. § 794. DMHAS, DSS and DPH are recipients of federal funds subjecting them and the State of Connecticut to the requirements of Section 504 of the Rehabilitation Act, 29 U.S.C. § 794.

Jurisdiction and Venue

86. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1343.

87. Venue in the District of Connecticut is proper under 28 U.S.C. § 1391.

88. Declaratory and injunctive relief are sought under 28 U.S.C. § 2201 *et seq*.

Facts

Individuals with Mental Illness in Nursing Homes

89. When the State of Connecticut closed and downsized state hospitals, it failed to develop the supports and services, including residential services that individuals with mental illness need to live in the community. FINAL REPORT OF THE MENTAL HEALTH CABINET, December 21, 2004, at 4 ("Connecticut downsized and closed state mental hospitals that tended to warehouse patients ... Savings derived from closures were not reinvested to create an effective community-based mental health safety net.").

90. As a result, many individuals with mental illness now live in nursing homes, in which they are needlessly isolated, segregated, and institutionalized.

91. More than 2,700 individuals with serious mental illness live in nursing homes in Connecticut. The majority (53%) are under the age of 65. Admissions of individuals with serious mental illness to nursing homes are growing at a rate of between five and ten percent per year. FINAL REPORT OF THE MENTAL HEALTH CABINET, December 21, 2004, at 5.

92. Serving individuals with mental illness in nursing homes "is neither humane nor recovery-oriented." FINAL REPORT OF THE MENTAL HEALTH CABINET, December 21, 2004, at 12.

93. "If community-based services are not [made] available, children and adults with mental illness will continue to fill expensive, inappropriate, and non-therapeutic settings such as .... nursing homes or simply go untreated." FINAL REPORT OF THE MENTAL HEALTH CABINET, December 21, 2004, at Introduction by Lt. Gov. Kevin B. Sullivan, p. 2; *see also id.* at 12 (nursing homes "are the only option[] for many.").

94. It costs the State approximately $50,000 to $80,000 per year for the care and treatment of an individual with mental illness in a nursing home. This is far more than it would cost the State to provide care in a more integrated, community-based setting.

95. Individuals with mental illness are frequently placed in nursing homes solely to obtain mental health care that could easily be provided in an integrated, community-based setting. Often, these individuals do not have a significant physical health problem.

96. Defendants have failed to adequately assess and identify the long-term care needs of Plaintiffs and the Class they represent and to determine whether those needs could be appropriately met in integrated, community-based settings. Moreover, Defendants have failed to inform Plaintiffs and the Plaintiff Class members of the availability of alternatives to nursing home care and have denied them the right to choose home and community-based services instead of institutional care. DPH Public Health Code 19-13-D8t(d)(1).

97. Defendants routinely approve and fund care of individuals with mental illness in nursing homes such as Chelsea Place, Bidwell, and West Rock when such individuals are capable of receiving and would prefer receiving care in a more integrated, community-based setting.

98. Some nursing homes, including Chelsea Place and Bidwell, are locked or have locked psychiatric units. Residents cannot leave or go outside without permission. Often, an escort is required. Individuals with mental illness are placed in locked settings although there is no judicial determination that they are dangerous to themselves or others.

99. Most residents with mental illness remain in nursing homes for years because they lack the opportunity to obtain services in more integrated, community-based settings.

100. Despite the authority and legal obligation to do so, DPH does not effectively enforce the federal and state laws designed to ensure that nursing homes comply with the conditions of participation in Medicare and Medicaid, including the conditions relating to residents' rights and quality of care. DPH does not effectively use the many remedies within its

power to ensure that nursing homes abide by the laws prohibiting the admission of individuals without skilled nursing needs, the unjustified use of locked units, or the lack of proper discharge planning. *See, e.g.*, 42 C.F.R. §§ 483.1 *et seq.*; 42 C.F.R. § 488.303; DPH Public Health Code 19-13-D8t(b)(3)(A); DPH Public Health Code 19-13-D8t(d)(1), (o)(2)(I), (o)(2)(P), and (p); Conn. Gen. Stat. §§ 19a-535 and 19a-523.

101. Defendants do not ensure, consistent with *Olmstead*, that individuals with mental illness in nursing homes have the option of being served in a more integrated, community-based setting. More than a decade after the effective date of the ADA, and more than six years after *Olmstead* was decided, Defendants have yet to develop or implement a comprehensive and effective working plan that identifies individuals with mental illness who are needlessly in nursing homes and helps them move to more integrated settings.

102. Defendants have long been aware, through reports of state agencies, the press, and other sources, of the unnecessary isolation, segregation, and institutionalization of individuals with mental illness in nursing homes, including in locked settings.

Chelsea Place, Bidwell, and West Rock

103. Chelsea Place is a 234-bed skilled nursing facility located in Hartford. In 2002, Chelsea Place converted unit 2C into a locked, secured psychiatric unit. Approximately 22 residents with mental illness live in the locked unit. Upon information and belief, at least 25 other individuals with mental illness live in Chelsea Place. These residents may leave the building only if granted a pass.

104. Bidwell (also known as Touchpoints Rehabilitation and Wellness Center, LLC) is a 156-bed skilled nursing facility located in Manchester. It is a locked facility. Both of Bidwell's floors, each with about 75 residents, are locked. The second floor is a locked

psychiatric unit. Upon information and belief, at least 85 residents of Bidwell have mental illness. Following an annual review by nurses from DSS, the State was required to designated Bidwell an Institution for Mental Disease ("IMD") since August 2007 because more than 50% of Bidwell's residents have mental illness. The IMD designation means that the federal government does not provide federal Medicaid reimbursement for any services provided to individuals over age 21 and under age 65. 42 C.F.R. § 1936(d)(i). The State is therefore foregoing the federal Medicaid reimbursement for Bidwell and bears all of the costs for treatment and care of individuals with mental illness who reside in Bidwell. However, rather than reduce its census, Bidwell has requested to reconfigure the facility to admit more residents with short term medical rehabilitation needs.

105. West Rock (also known as New Haven Health Care Inc.) is a 90-bed intermediate care nursing facility in New Haven. The facility is unlocked, but is surrounded by a perimeter fence. Residents cannot leave without permission. Upon information and belief, at least 70 of the residents have mental illness. Following an annual review by nurses from DSS, the State was required to designate West Rock as an IMD since November 2007 because more than 50% of West Rock's residents have mental illness. The State is therefore foregoing the federal Medicaid reimbursement for West Rock and bears all of the costs for treatment and care of individuals with mental illness who reside in West Rock.

106. In fiscal year 2007, the State lost more than $1 million in federal Medicaid reimbursement because Bidwell and West Rock were designated as IMD's. In the first six months of 2008, the State has lost approximately $3.4 million in federal Medicaid reimbursement for these two facilities. Upon information and belief, all new admissions to Bidwell and West Rock must be pre-authorized by the DSS Medicaid unit.

107. Chelsea Place, Bidwell, and West Rock are institutions with characteristics similar to those of a psychiatric hospital. The State has identified each of these facilities as "institutional" facilities. *See* MFP Rebalancing Demonstration Operational Project, Appendix G. They place many limitations on residents' autonomy and privacy. Residents live a highly regimented lifestyle, spending most of their days in a few rooms among a great many other individuals with disabilities. They must abide by the nursing homes' restrictive rules and policies.

108. Chelsea Place, Bidwell, and West Rock are loud and impersonal. Announcements about meals, medications, phone calls, events, and administrative matters are constantly broadcast into all rooms over an intercom system. The common areas have televisions, which are almost always on.

109. Chelsea Place, Bidwell, and West Rock provide very few recreational or other activities aimed at helping residents gain independence. Cigarettes are distributed in limited numbers and at designated times. Residents spend hours watching television in a common room or waiting for the designated smoking break. Some residents are able to attend activities outside the facility; however, at the end of the day, they return to Chelsea Place, Bidwell, and West Rock.

110. Residents of Chelsea Place, Bidwell, and West Rock have virtually no privacy. Residents are not allowed to have personal telephones. Payphones are located in the common TV rooms, hallways, or lounges, where anyone can overhear conversations. Chelsea Place, Bidwell, and West Rock have policies limiting the use of the telephone.

111. The lack of privacy makes it difficult for residents to exercise their rights. When they make phone calls, they risk having their conversation overheard by staff and other residents. Many are fearful that if an advocate calls them at the facility, staff will find out and retaliate.

112. Residents of Chelsea Place, Bidwell, and West Rock have little contact with members of the community outside the facility. Usually, trips out of the facility are conducted in groups escorted by staff. Chelsea Place, Bidwell, and West Rock all have curfews and set visiting hours. In Bidwell and Chelsea Place, residents may not have visitors in their rooms.

113. Residents of Chelsea Place, Bidwell, and West Rock have almost no control over their personal space. Most residents of Chelsea Place, Bidwell, and West Rock share a bedroom and bathroom with one to three other people. Residents are not allowed to choose their own roommates except under rare circumstances. There is almost no space for personal items. Residents have extremely limited control over who has access to their rooms.

114. Residents of Chelsea Place, Bidwell, and West Rock are permitted to retain only a small "personal needs allowance" from their SSI checks. This allowance is currently $57.00 a month, or a little less than $2.00 per day. The remaining amount is paid to the nursing home. A resident's privileges may be suspended if he or she borrows, loans, buys from or sells items to other residents.

115. In Chelsea Place, Bidwell, and West Rock, residents have very limited choice over what they eat and no choice over when they eat. No foods, liquids, or gifts can be brought into the facilities without being examined by nursing staff. Meals and medication are dispensed at specific times. At Bidwell and West Rock, all the residents on a given floor must eat together; the same is true for residents of Chelsea Place's locked unit. West Rock and Bidwell have

assigned seating in the dining room; residents may not choose with whom they eat. At Chelsea Place, Bidwell, and West Rock, residents are not allowed to keep most foods in their rooms.

116. Residents of Chelsea Place, Bidwell, and West Rock receive little or no education or information about the limited community-based alternatives to nursing homes that do exist. Discharge planning is not regularly conducted. Many residents fear that if they leave the nursing home, they will become homeless.

117. Chelsea Place, Bidwell, and West Rock provide little or no rehabilitative treatment that promotes independence and integration into the community. The facilities do not provide training in symptom management, medication management, shopping, cooking, housekeeping, money management, or using transportation or community-based services. The facilities provide limited social work services.

118. A contract psychiatrist visits Chelsea Place, Bidwell, and West Rock once a month.

119. Numerous DSS inspection reports of Chelsea Place, Bidwell, and West Rock have documented health, safety, and sanitation problems. Inspection reports have also documented a lack of treatment and discharge planning.

Locked Psychiatric Units in Chelsea Place and Bidwell

120. More than 100 individuals with mental illness live in locked units at Chelsea Place and Bidwell. Many have no treatment or discharge plans. Individuals often remain in locked units for years.

121. Residents of the locked units at Chelsea Place and Bidwell are subject to highly restrictive "behavior management" programs in which they earn "privileges" for compliance with institutional and staff rules. Residents' freedom to leave the units depends largely on staff's

assessment of how well they comply with institutional rules. If they do not participate in structured activities, or if they violate a rule, such as bringing food in their rooms, they can lose "privileges."

122. Professional standards require that behavior management programs for individuals with mental illness be individualized and rely primarily on rewards rather than punishments. The behavioral management programs at Chelsea Place and Bidwell are not individualized, rely primarily on punitive measures, and do not meet professional standards.

123. At Bidwell, residents of the locked unit are assigned to one of five "levels" or "Steps," each with its own "privileges." While it can take months to "earn" a higher Step, a Bidwell resident's current Step can be reduced at any time for infractions of Bidwell's rules. At first, all residents are assigned to Step One, the most restrictive. Residents on Step One may not leave Bidwell, although they can have supervised smoking breaks in the outdoor Gazebo and can participate in supervised walks. Step Two residents can leave the facility on recreation trips if accompanied by staff. Step Three residents can leave the facility with a third party, such as a family member, but only during daytime hours. Step Four residents can leave the facility overnight with a third party and be unsupervised at the outdoor Gazebo for up to one hour at a time. Step Five residents have unsupervised grounds passes, although they are subject to curfews and other restrictions. Step Five residents can also spend up to 21 nights away from the facility each year. All of these "privileges" are contingent on complying with unit rules and participating in scheduled groups or activities.

124. Residents of the locked unit at Chelsea Place are subject to a similar program, with three tiers. All new residents are placed on Tier I, the most restrictive level. Tier I residents are checked every 15 minutes, and are confined to the unit except for scheduled off-unit

activities with staff. Tier I residents can smoke only during designated breaks with staff supervision. Tier II residents may leave the unit with family members, or other approved individuals, or to participate in activities with staff. Tier III residents may leave the unit unaccompanied and smoke without supervision, but staff may impose restrictions on these "privileges."

Community-Based Services

125. Defendants do provide community-based services to many individuals with mental illness. With appropriate and individualized community-based services, those individuals are able to live with family, in their own apartment or home, or in supportive housing.

126. Many of the individuals to whom Defendants provide community-based services have mental illnesses and functional capacities that are the same as, or are similar to, the individuals living in Chelsea Place, Bidwell, and West Rock.

127. If provided community-based services, virtually all individuals with mental illness in Chelsea Place, Bidwell, and West Rock could live with family, in their own apartment or home, or in supportive housing.

128. Many individuals with mental illness living in Chelsea Place, Bidwell, and West Rock would prefer to live with family, in their own apartment or home, or in supportive housing. Some may need education and support in order to make an informed choice.

129. Each of these options – living with family, in one's own apartment or home, or in supportive housing – would allow individuals who are currently in Chelsea Place, Bidwell, and West Rock to live and receive services in a more integrated setting. Each of these options would afford residents much more choice, freedom, and privacy, as well as the opportunity to maintain

regular family relationships and to interact with and form friendships with people who do not have disabilities.

130. In supportive housing, individuals with mental illness are not required to live solely with other individuals who have a disability. They have friends of their own choosing and have visitors and telephone conversations at the times of their choice in the privacy of their homes. They go to stores to shop for food and other necessities. They may engage in social activities of their choice. They tend to these and other daily needs to the degree they are able, with supportive services. These programs are designed to foster independence and to enable individuals to become as self-sufficient as possible. Unlike nursing homes, they are not institutional in character.

131. Individuals with mental illness continue to live and receive services in Chelsea Place, Bidwell, and West Rock due to inappropriate placement at the facilities, failure to implement discharge planning, and, primarily because there are insufficient community-based services, including supportive housing, to allow them to move to more integrated settings.

132. Many current residents entered Chelsea Place, Bidwell, and West Rock upon discharge from a psychiatric hospital. Upon discharge, they had nowhere else to live.

133. When individuals with mental illness are placed in Chelsea Place, Bidwell, and West Rock, opportunities for discharge, including discharge to supportive housing, are rare. There are long waiting lists for admission to supportive housing and other community-based programs that provide residential services.

134. Individuals with mental illness at Chelsea Place, Bidwell, and West Rock lack information about community-based alternatives and receive little assistance in moving to more integrated settings.

135. Residents are left to stagnate in these nursing homes. Often, they fear retaliation if they express a desire to leave.

Defendants' Administration of Programs, Services, and Activities

136. Defendants administer one or more systems of care for individuals with mental illness.

137. Defendants administer their programs, services, and activities, and/or fail to enforce state regulations, in a manner that supports and encourages the needless isolation, segregation, and institutionalization of individuals with mental illness.

138. In providing services to individuals with mental illness, and in providing long-term care, Defendants have relied too heavily on nursing homes such as Chelsea Place, Bidwell, and West Rock.

139. Defendants have failed to develop and fund sufficient capacity in community-based programs, forcing into Chelsea Place, Bidwell, and West Rock scores of individuals with mental illness who could be served, and would prefer to be served, in more integrated settings.

140. Providing community-based services to individuals with mental illness at Chelsea Place, Bidwell, and West Rock would not be a fundamental alteration of Defendants' services for people with mental illness or of its long-term care services. The individuals with mental illness at Chelsea Place, Bidwell and West Rock could be served in more integrated settings at a cost equivalent to or less than Defendants' current costs. Defendants already provide, in community-based settings, all the types of services and supports these individuals need.

141. Each service and support currently provided to residents with mental illness at Chelsea Place, Bidwell, and West Rock could be provided in an integrated, community-based setting.

Class Allegations

142. The Individual Plaintiffs bring this action pursuant to Rule 23 of the Federal Rules of Civil Procedure ("FRCP") on behalf of all individuals with mental illness, as that term is defined in 42 U.S.C. § 10802, presently residing in Chelsea Place, Bidwell and West Rock, who, with appropriate supports and services, could live in the community. The Individual Plaintiffs are members of the Class they seek to represent.

143. This action is brought and may properly be maintained as a class action pursuant to the provisions of FRCP 23(a)(1)-(4) and 23(b)(1)-(3). The Individual Plaintiffs seek certification of the Class described in the paragraph immediately above.

144. The Individual Plaintiffs are informed and believe that the Class is comprised of hundreds of current residents of Chelsea Place, Bidwell and West Rock and are so numerous that joinder of individual members herein is impracticable.

145. Questions of law and fact are common to the members of the Class. Common questions of fact and law include:

a. Whether Defendants have violated the integration provisions of Title II of the ADA, 42 U.S.C. § 12132, and/or Section 504 of the Rehabilitation Act, 29 U.S.C. § 794;

b. Whether Defendants are administering services, programs, and activities in the most integrated setting appropriate to the needs of individuals with mental illness residing in Chelsea Place, Bidwell and West Rock;

c. Whether Defendants have subjected individuals with mental illness to unjustified isolation by placing them in Chelsea Place, Bidwell and West Rock;

d. Whether Defendants have failed to offer sufficient rehabilitative treatment or discharge planning to promote the integration of individuals with mental illness residing in Chelsea Place, Bidwell and West Rock into more integrated, community-based settings;

e. Whether Defendants have allowed individuals with mental illness to languish in Chelsea Place, Bidwell and West Rock while equally affordable and more integrated community-based settings exist or could be made available;

f. Whether Defendants have failed to develop, fund and/or effectively utilize existing community-based programs so that individuals with mental illness residing in Chelsea Place, Bidwell and West Rock may be placed in more integrated, community-based settings;

g. Whether Defendants have unlawfully excluded individuals with mental illness residing in Chelsea Place, Bidwell and West Rock from participating in community-based services;

h. Whether Defendants have failed to establish and/or implement a comprehensive, effectively working plan to place individuals with mental illness residing in Chelsea Place, Bidwell and West Rock into more integrated, community-based settings;

i. Whether Defendants have a reasonably-paced waiting list not controlled by Defendants' efforts to keep Chelsea Place, Bidwell and West Rock fully populated, in which individuals with mental illness residing in Chelsea Place, Bidwell and West Rock may be placed into more integrated, community-based settings;

j. Whether Defendants have failed to effectively participate in Medicaid waiver programs to fund community-based programs; and

k. Whether Plaintiffs' request for community-based services can be reasonably accommodated by Defendants.

146. The claims of the Individual Plaintiffs are typical of the claims of the Plaintiff Class members. The Individual Plaintiffs and all members of the Plaintiff Class have been similarly affected by Defendants' common course of conduct. Claims of all Class members

depend on a showing of Defendants' common course of conduct, which gives Individual Plaintiffs, individually and as class representatives, the right to relief sought by this complaint.

147. There is no conflict as between the Individual Plaintiffs and other members of the Class who they seek to represent with respect to this action, or with respect to the claims for relief set forth herein.

148. The Individual Plaintiffs are able to and will fairly and adequately protect the interests of the Class.

149. A class action is superior to other available methods for fair and efficient adjudication of the controversy.

150. Certification of the Plaintiff Class is appropriate under FRCP 23(b)(1), (2) and/or (3).

Count I

Violation of the Americans with Disabilities Act Mandate to Administer Services and Programs in the Most Integrated Setting

151. Plaintiffs repeat the allegations of all of the above paragraphs as if fully set forth herein. This claim is brought against the individual Defendants only.

152. Plaintiff OPA's constituents, the Individual Plaintiffs, and the Class are individuals with mental illnesses. They have mental impairments that substantially limit one or more major life activity, such as self-care and interaction with others. They also have a record of such mental illnesses and are regarded by Defendants as having such mental illnesses.

153. The Individual Plaintiffs and the Class presently reside in Chelsea Place, Bidwell, and West Rock, and OPA's constituents presently reside in, or are at risk of entry in Chelsea Place, Bidwell, and West Rock. Plaintiff OPA's constituents, the Individual Plaintiffs, and the Class are qualified to participate in more integrated community-based programs that would meet their needs. Plaintiff OPA's constituents, the Individual Plaintiffs, and the Class are therefore qualified individuals with disabilities within the meaning of 42 U.S.C. § 1213 1(2).

154. Serving Plaintiff OPA's constituents, the Individual Plaintiffs, and the Class in more integrated settings can be reasonably accommodated.

155. Defendants Michael P. Starkowski, Thomas A. Kirk, Jr., PhD., and J. Robert Galvin, M.D., M.P.H., are responsible for the operation of public entities covered by Title II of the ADA. 42 U.S.C. §§ 1213 1(1)(A) and (B). Title II of the ADA prohibits Defendants from discriminating against individuals with disabilities in programs and activities. 42 U.S.C. §§ 12131, 12132.

156. The United States Department of Justice has promulgated regulations under Title II of the ADA stating that "a public entity shall administer services, programs and activities in

the most integrated setting appropriate to the needs of qualified individuals with disabilities." See 28 C.F.R. § 35.130(d). Such regulations further define "most integrated setting" as "...a setting that enables individuals with disabilities to interact with non-disabled persons to the fullest extent possible." 28 C.F.R. pt. 35, App. A, p. 450.

157. Defendants are obligated under the ADA to administer Connecticut programs in a manner that makes services and programs available in the most integrated setting for individuals with disabilities.

158. Defendants have failed to meet this obligation. Defendants are instead requiring hundreds of individuals to live and receive services in Chelsea Place, Bidwell, and West Rock, although these facilities are not the most integrated settings appropriate to their needs. Defendants are also failing to require that the facilities review and re-evaluate individuals' needs as appropriate.

Count II

Violation of the Americans with Disabilities Act's Prohibition on Using Methods of Administration that Subject Individuals with Disabilities to Discrimination

159. Plaintiffs repeat the allegations of all of the above paragraphs as if fully set forth herein. This claim is brought against the individual Defendants only.

160. The Individual Plaintiffs and the Class presently reside in Chelsea Place, Bidwell, and West Rock, and OPA's constituents presently reside in, or are at risk of entry in Chelsea Place, Bidwell, and West Rock. Plaintiff OPA's constituents, the Individual Plaintiffs, and the Class are qualified to participate in more integrated community-based programs that meet their needs.

161. Title II of the ADA, 42 U.S.C. §§ 12131, 12132, prohibits Defendants from discriminating against individuals with disabilities.

162. Regulations implementing Title II of the ADA provide that:

> a public entity may not, directly or through contractual or other arrangements, utilize criteria or other methods of administration: (i) That have the effect of subjecting qualified individuals with disabilities to discrimination on the basis of disability; [or] (ii) That have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the public entity's program with respect to individuals with disabilities . . . .

28 C.F.R. § 35.130(b)(3).

163. Defendants, however, utilize methods of administration that have the effect of subjecting individuals with mental disabilities to discrimination. Defendants continue to use methods of administration that perpetuate the use of nursing homes, rather than facilitating the receipt of services in the most integrated setting appropriate to the needs of Plaintiff OPA's constituents, the Individual Plaintiffs, and the Class. Such methods result in continued placement of Plaintiff OPA's constituents, the Individual Plaintiffs, and the Class in settings that are segregated and inappropriate.

Count III

Failure to Administer Services in the Most Integrated Setting Appropriate in Violation of the Rehabilitation Act

164. Plaintiffs repeat the allegations of all of the above paragraphs as if fully set forth herein. This claim is brought against all Defendants.

165. Section 504 of the Rehabilitation Act, 29 U.S.C. § 794, provides:

> No otherwise qualified individual with a disability in the United States . . . shall, solely by reason of her or his disability, be excluded from participation in, be denied benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

166. Defendants are recipients of Federal financial assistance. DPH, DMHAS and DSS are programs receiving Federal financial assistance.

167. Defendants Michael P. Starkowski, Thomas A. Kirk, Jr., PhD., and J. Robert Galvin, M.D., M.P.H, respectively, are responsible for the operation of DSS, DMHAS and DPH.

168. Plaintiff OPA's constituents, the Individual Plaintiffs, and the Class who reside in Chelsea Place, Bidwell, and West Rock are qualified to participate in more integrated community-based programs that meet their needs.

169. Section 504 of the Rehabilitation Act requires Defendants to serve individuals with disabilities in the most integrated setting appropriate to their needs.

170. Serving Plaintiff OPA's constituents, the Individual Plaintiffs, and the Class in more integrated settings can be reasonably accommodated.

171. Defendants have violated Section 504 of the Rehabilitation Act by failing to administer services to Plaintiff OPA's constituents, the Individual Plaintiffs, and the Class in the most integrated setting appropriate to their needs. Defendants also fail to require that the facilities accept only individuals with skilled nursing needs, and to review and reevaluate individuals' needs as appropriate and provide discharge planning.

Count IV

Violation of the Rehabilitation Act's Prohibition on Using Methods of Administration that Subject Individuals with Disabilities to Discrimination

172. Plaintiffs repeat the allegations of all of the above paragraphs as if fully set forth herein. This claim is brought against all Defendants.

173. Section 504 of the Rehabilitation Act, 29 U.S.C. § 794 prohibits Defendants from discriminating against individuals with disabilities.

174. Regulations implementing Section 504 of the Rehabilitation Act provide that:

> a recipient may not, directly or through contractual or other arrangements, utilize criteria or methods of administration: (i) That have the effect of subjecting qualified handicapped persons to

> discrimination on the basis of disability; [or] (ii) That have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the recipient's program with respect to handicapped persons . . . .

45 C.F.R. § 84.4(b).

175. Defendants are recipients of Federal financial assistance. DPH, DMHAS and DSS are programs receiving Federal financial assistance.

176. Defendants Michael P. Starkowski, Thomas A. Kirk, Jr., PhD., and J. Robert Galvin, M.D., M.P.H., respectively, are responsible for the operation of DSS, DMHAS and DPH.

177. Defendants use methods of administration that have the effect of subjecting Plaintiff OPA's constituents, the Individual Plaintiffs, and the Class to discrimination. Defendants use methods of administration that perpetuate the use of nursing homes rather than facilitate the receipt of services in the most integrated setting appropriate to the needs of Plaintiff OPA's constituents, the Individual Plaintiffs, and the Class. Such methods result in continued placement of Plaintiff OPA's constituents, the Individual Plaintiffs, and the Class in settings that are segregated and inappropriate.

Prayer for Relief

WHEREFORE, Plaintiffs request the following relief:

a. Certifying this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure;

b. Designating Individual Plaintiffs as class representatives and counsel for Individual Plaintiffs as counsel for the Class;

c. Declaratory and injunctive relief, including an order requiring that Defendants promptly take such steps as are necessary to enable Plaintiff OPA's constituents, the Individual

Plaintiffs, and the Class to receive services in the most integrated setting appropriate to their needs;

d. An award of prevailing party costs, including attorney fees; and

e. Such other relief as the Court deems appropriate.

Respectfully submitted,

STROOCK & STROOCK & LAVAN LLP

By: /s/ Kenneth Pasquale
Kenneth Pasquale, Esq.
Fed. Bar No. CT 20043
kpasquale@stroock.com
Joseph E. Strauss, Esq.
Fed. Bar No. CT 23035
jstrauss@stroock.com
Danielle Alfonzo Walsman, Esq.
Fed. Bar. No. PHV095
dwalsman@stroock.com
180 Maiden Lane
New York, New York 10038
Telephone: (212) 806-5400
Facsimile: (212) 806-6006

-and-

BAZELON CENTER FOR MENTAL HEALTH LAW
Ira A. Burnim, Esq.
Fed. Bar No. PHV0893
irab@bazelon.org
Karen A. Bower, Esq.
Fed. Bar No. PHV0892
karenb@bazelon.org
1101 15th Street, N.W., Suite 1212
Washington, D.C. 20005
Telephone: (202) 467-5730
Facsimile: (202) 223-0409

-and-

OFFICE OF PROTECTION AND ADVOCACY
FOR PERSONS WITH DISABILITIES
Nancy B. Alisberg, Esq.
Fed. Bar No. CT 21321
nancy.alisberg@po.state.ct.us
60B Weston Street
Hartford, CT 06120
Telephone: (860) 297-4300
Facsimile: (860) 566-8714

-and-

RELMAN & ASSOCIATES
Michael Allen
Fed. Bar No. PHV0891
mallen@relmanlaw.com
1225 Nineteenth Street, NW
Washington, DC 20036-2456
Telephone: (202) 728-1888
Facsimile: (202) 728-0848

Counsel for State of Connecticut Office of Protection and Advocacy for Persons with Disabilities and the Individual Plaintiffs

CERTIFICATION

I hereby certify that a copy of the foregoing First Amended Complaint was filed electronically and served by mail on anyone unable to accept electronic filing on September 9, 2008. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the notice of Electronic Filing. Parties may access this filing through the Court's system.

By: /s/
Nancy B. Alisberg