



U.S. Department of Justice

Civil Rights Division

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Disability Rights Section - NYA  
950 Pennsylvania Ave, NW  
Washington, DC 20530

March 13, 2017

**VIA ECF**

Honorable Nicholas G. Garaufis  
United States District Judge  
Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, New York 11201

Re: *United States v. State of New York* (Civil Action No. 13-cv-4165);  
*O'Toole et al. v. Cuomo et al.* (Civil Action No. 13-cv-4166)

Dear Judge Garaufis:

We write on behalf of the United States in the above-referenced cases pursuant to the Court's Order dated March 1, 2017 (Dkt. 80 in 13-cv-4165), directing Plaintiffs to advise the Court of their position on the New York State Office of the Attorney General's ("OAG") Motion to Withdraw as Counsel for defendants (Dkt. 79 in 13-cv-4165). The United States takes no position on OAG's motion, except to object to any undue delay in obtaining relief for the thousands of adult home residents whose lives stand to be profoundly and positively affected by the relief sought in these cases. *See SEC v. Great Am. Techs.*, No. 07 Civ. 10694 (DC), 2009 WL 4885153, at \*5 (S.D.N.Y. Dec. 15, 2009) (noting that courts may consider "the protracted history of the litigation" and denying motion to withdraw as counsel).

The United States also notes that attorneys from the law firm of Abrams, Fensterman, Fensterman, Eisman, Formato, Ferrara & Wolf, LLP ("Abrams & Fensterman") attended a meeting between the parties held on March 6, 2017 as counsel for the State, suggesting that the firm may be substituted as counsel in this case should the motion be granted. Abrams & Fensterman represents adult homes<sup>1</sup> and publicly expressed concern about the impact of the adult home regulations in January 2013.<sup>2</sup> Additionally, the description of the "Nursing Homes" practice area on the Abrams & Fensterman website states that the firm's "representation of long term care facilities is wide ranging and includes . . . criminal, civil, and administrative investigations, audits and actions by the New York State Office of the Medicaid Inspector

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<sup>1</sup> *See* [http://www.abramslaw.com/greg\\_stoller\\_attorney\\_profile\\_id\\_1056](http://www.abramslaw.com/greg_stoller_attorney_profile_id_1056) (accessed March 13, 2017). A number of other Abrams & Fensterman attorneys are listed as representing assisted living facilities, a category that includes adult homes. *See, e.g.*, [http://www.abramslaw.com/jordan\\_fensterman\\_attorney\\_profile\\_id\\_1019](http://www.abramslaw.com/jordan_fensterman_attorney_profile_id_1019) (accessed March 13, 2017).

<sup>2</sup> *See* [http://www.abramslaw.com/governor\\_cuomo\\_authorizes\\_regulations\\_that\\_drastically\\_limit\\_an\\_acute\\_psychiatric\\_care\\_center%E2%80%99s\\_ability\\_to\\_discharge\\_publication\\_media\\_id\\_1027](http://www.abramslaw.com/governor_cuomo_authorizes_regulations_that_drastically_limit_an_acute_psychiatric_care_center%E2%80%99s_ability_to_discharge_publication_media_id_1027).

General, New York State Attorney General's Office Medicaid Fraud Control Unit, [and] New York State Department of Health, . . . as well as other federal and State health care oversight agencies."<sup>3</sup>

Given that the settlement agreement requires the State to, among other things, take appropriate corrective action to address interference or discouragement by adult homes, this potential substitution of counsel raises concerns relating to the State's obligation to provide relief to adult home residents consistent with the terms of the settlement agreement. The United States respectfully requests the opportunity to explore these concerns at the March 22, 2017 hearing.

Respectfully submitted,

\_\_\_\_\_/s/\_\_\_\_\_  
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<sup>3</sup> See [http://www.abramslaw.com/nursing\\_homes\\_document\\_id\\_1049](http://www.abramslaw.com/nursing_homes_document_id_1049) (accessed March 13, 2017).