

Settlements In Mental Health Cases Face Scrutiny

by Ari Shapiro

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All Things Considered, March 30, 2009 · Mauryn White has lived in a state-run mental hospital in Georgia since just before Thanksgiving. She is bipolar, and 2008 was a rough year for her. Her stepfather died of cancer and she had a miscarriage. "I just sort of had a lot of stuff all fall apart," White said in a phone interview.

White checked into Georgia Regional Hospital in Atlanta for treatment. Her psychiatrists now say she is healthy enough to leave. The problem is that her social worker is too busy to fill out the necessary paperwork. The social worker "has a huge caseload," says White. "We were supposed to go file for Social Security, but that didn't get done." So White has been in state custody for weeks or months longer than she needed to be.

A [Justice Department investigation](#) last year found that "inadequate discharge planning" is just one item on a long list of problems at Georgia's state-run mental hospitals. Investigators described horrific cases of patients attacking each other, patients attacking staff, and patients who should have been on suicide watch left unattended to kill themselves. The findings describe the adolescent unit at the hospital as "a highly dangerous situation that requires immediate attention."

In cases like this, the Justice Department can intervene to make state-run institutions comply with civil rights laws. The statute is known as CRIPA — the [Civil Rights of Institutionalized Persons Act](#). The Justice Department's Civil Rights Division enforces the law against mental institutions, nursing homes, prisons and jails that don't meet basic standards of care.

Last Minute Settlements 'A Red Flag'

Government records show that in the last month before President Bush left office, the Justice Department reached six CRIPA settlements. Five of those were issued during his last week in office. The Justice Department has not released comprehensive statistics in this area, but people who work in the field say six CRIPA settlements in a month is a huge number for the Bush administration. The agreements span the country: [Hawaii](#), [Washington state](#), [South Carolina](#), [Tennessee](#), [Connecticut](#) and [Georgia](#).

Advocacy groups say the terms of these last-minute settlements are inexcusably weak and that the agreements don't do enough to make sure the states fix their problems.

Ira Burnim, legal director at the [Bazelon Center for Mental Health Law](#) in Washington, D.C., is working with advocacy groups in Georgia and Connecticut to challenge both of those settlements before a judge signs off on them.

At NPR's request, Burnim reviewed all six of the CRIPA settlements from the last month of the Bush administration. In each one, he says, the state basically makes a vague promise to do better.

"They all involve situations where people are dying," Burnim says. "In the cases of a couple of nursing homes, people are being denied adequate food and hydration. There are problems with food and restraint. They're all very serious issues. And in none of the settlements can you tell what is going to happen over the next month, the next six months, the next 12 months to improve the situation."

Margo Schlanger, who used to work on CRIPA cases as a Justice Department attorney and is now a law professor at Washington University in St. Louis, also reviewed the six agreements at NPR's request.

"There are a lot of things about these settlements that are nonstandard," said Schlanger. Some have very short timelines — as little as two years for a state to fix deep-seated problems. And if the states don't fix the problems, Schlanger said, "these are agreements that expire regardless of what the defendant does." Schlanger explains that the settlements give states an incentive to spin their wheels for two years. "They can run out the clock," said Schlanger. "That's why it's a red flag."

Some of the settlements also say a judge cannot intervene if a state fails to comply with the agreement. "If the United States says there's noncompliance, all it can do is get the action reinstated, at which point it's back to square one," said Schlanger. "That's not how you settle cases."

Defending The Settlements

People who led the Justice Department when these agreements were signed defend the settlements.

"They were based solely upon the facts and the law of each particular case," Grace Chung Becker says. Becker ran the Civil Rights Division at the end of the Bush administration, and she started work at the Justice Department during the Clinton administration. She has now left government. "These are settlements that are negotiated by career attorneys who approach every case with the same outcome in mind, and that is to ensure that the law and the Constitution are upheld," says Becker.

If there was an unusual burst of activity just before President Obama took office, Becker says, that's simply because "the last few months of any administration are extremely busy."

The Justice Department's current leaders would not allow the career attorneys who handled these cases to be interviewed. Spokesman Alejandro Miyar released a statement saying "this

administration's Justice Department is committed to revitalizing the Civil Rights Division and ensuring robust enforcement of the nation's civil rights laws."

Improving The State-Run Institutions

But states may have also had an incentive to close out these cases while President Bush was in office.

"The states understood that they were going to get a better deal from this administration than from the next," said Burnim of the Center for Mental Health Law. Civil rights groups have long argued that the Bush administration did not do enough to enforce the country's civil rights laws over the past eight years.

Law professor Schlanger agrees.

"This Civil Rights Division has been reaching weak settlements for its entire term in office," said Schlanger, "and these settlements are weak too. Now the question is, if they were going to have weak settlements, why settle at all? Maybe they just wanted to clear off their desks, or maybe they wanted to rule out any stronger kinds of settlements by subsequent administrations. Really that's hard to know."

States don't think the Justice Department gave them an easy break.

"The governor has said the one key goal is to improve care," said Burt Brantley, spokesman for Georgia Gov. Sonny Purdue. "That's where we're trying to keep the focus on making these plans and making these changes — are we doing what we need to do to improve the level of care that people receive from the state?" Brantley said the settlement with the Justice Department helps point the state in the right direction.

The goal of all these agreements is to make state-run institutions safer and better for the people who live there. When asked whether these settlements are likely to bring about that goal, Schlanger replied, "I'm not going to say something as punchy as what you want me to say. The reason is, the only people who can make an institution better are the people who run that institution. The toughest, strictest settlement agreement in the world can't make an institution better if the defendants aren't committed to the project of improvement