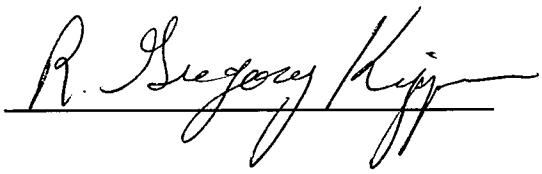
# Williams et al.

# v.

# Blagojevich

**Report of**
**R. Gregory Kipper**
**Navigant Consulting, Inc.**

**Signed:** 

**August 1, 2008**

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## I. Introduction

This report was prepared by R. Gregory Kipper of Navigant Consulting, Inc. ("Navigant"). Navigant is an international consulting firm providing litigation, financial and other services to clients. I am a Director of Navigant. I have provided consulting services on a wide variety of health care-related financial and economic matters, including Medicaid disputes involving lost profits, damages, and economic projections. I have developed expert reports addressing the potential financial implications of Americans with Disabilities Act ("ADA") cases in New York and Pennsylvania. Attachment A provides a copy of my resume which includes a list of cases in which I have testified in the last four years. I have not authored any publications over the last 10 years. Navigant has been retained by legal counsel for the Illinois Office of the Governor to provide expert testimony related to the costs and financial issues relevant to this matter. Attachment B provides a list of the documents which I have considered to date. Navigant is being reimbursed at a rate of $250 per hour for testimony in this matter which is consistent with the rates charged by Navigant for work with state Medicaid agencies around the country.

## II. Nature of the Dispute

The Plaintiffs in this matter are a class consisting Illinois residents who (a) have a mental illness; (b) are institutionalized in a privately owned Institution for Mental Diseases ("IMD"); and (c) with appropriate supports and services may be able to live in an integrated community setting.[1]

Plaintiffs seek relief in the form of a permanent injunction to (a) require Defendants to inform individuals with mental illnesses in the State that they may be eligible for community services and that they have the choice of such services; (b) require Defendants promptly to determine the class members' eligibility for community services; (c) prohibit Defendants from arbitrarily denying eligibility to individuals who are capable of living in a community setting with appropriate supports and services; and (d) require Defendants to promptly provide eligible class members with appropriate services sufficient to allow them to live in the most integrated setting appropriate to their needs.[2]

## III. Nursing Facilities and Community Mental Health Centers in Illinois

The Illinois Department of Public Health ("DPH") is responsible for monitoring the licensing requirements of nursing facilities. The Department of Healthcare and Family Services ("HFS") oversees Medicaid funding[3] and reimburses nursing facilities

[1] Order Certifying Plaintiff Class, dated November 13, 2006, p. 13.
[2] Plaintiffs' First Amended Complaint, dated April 26, 2006, pp. 28-29.
[3] FY 2008 Community Mental Health Block Grant Application, p. 67.

on a per diem.[4] HFS receives federal matching funds for Medicaid-eligible nursing facility residents.[5] The facilities at issue in this matter are privately owned IMDs, which are a specific type of nursing facility, defined generally as a facility where 50% or more of residents are diagnosed primarily with behavioral health issues, including mental illness and drug or alcohol abuse.[6] Under the federal Medicaid policy known as the IMD exclusion, the State does not receive federal matching funds for residents of IMDs ages 21 through 64, regardless of primary diagnosis.[7]

Community mental health centers, which provide mental health services to individuals living in the community, are funded and monitored by the Division of Mental Health ("DMH") within the Department of Human Services ("DHS").[8] Traditionally, community mental health centers have been funded on a grant basis. Beginning in 2004, DMH initiated a System Restructuring Initiative which, among other objectives, was charged with converting the funding of community mental health services from a grant system to a fee-for-service system.[9] Mental health services provided in the community to Medicaid-eligible individuals not residing in IMDs are eligible for federal matching funds.[10]

## IV. Illinois' Commitment to Developing and Funding Community Housing Options for the Mentally Ill

DMH recognizes that transitioning eligible individuals into community settings is an important aspect of the recovery-oriented system of care promoted by the System Restructuring Initiative.[11] The 2008 Community Mental Health Services Block Grant Application describes the consistent efforts Illinois has made to develop housing options and support services for individuals with serious mental illness. Traditionally, a substantial portion of community mental health grant funding has been allocated for the provision of supervised and supportive residential services.[12]

DMH has also undertaken a new Permanent Supported Housing ("PSH") initiative in collaboration with national experts who have developed PSH in other states.[13] PSH is a tenant-based model linking integrated permanent housing with flexible

[4] Exhibit 13 to the deposition of Joseph Holler.
[5] Chris Power deposition, pp. 195-196.
[6] Frank Kopel deposition, p. 90.
[7] Joseph Holler deposition, p. 13.
[8] FY 2008 Community Mental Health Block Grant Application, p. 47.
[9] Mental Health Field Test Evaluation, bates number CP0011482 and CP0011525; Chris Power deposition, pp. 37-39.
[10] Frank Kopel deposition, pp. 160-162.
[11] Final Report on a Strategic Vision and Comprehensive Evaluation of the Illinois Public Mental Health System, May 2005, p. 37.
[12] FY 2008 Community Mental Health Block Grant Application pp. 101-102.
[13] FY 2008 Community Mental Health Block Grant Application p. 66.

community-based services that are available to tenants but are not mandated as a condition of occupancy.[14]

## V. Scope of Work

I was asked by counsel to the Office of the Governor to quantify the economic impact on the State of Illinois assuming Plaintiffs are granted relief. I anticipate my analysis will be based on a number of data elements, as follows:

1. ***The nature and costs to the State of services currently provided to individuals currently residing in IMDs***

Understanding the costs incurred by the State for individuals currently residing in IMDs is the starting point to compare the current system to what is being requested by Plaintiffs. These costs include the residents' room and board as well as mental and physical health services.

2. ***The cost of screening individuals for eligibility for services in the community***

In 2006, there were an estimated 4,000[15] to 6,000[16] residents in Illinois' 27 private IMDs.[17] To determine the number of those mentally ill persons willing and able to live in the community, and the type of housing each person will require, individuals would need to be screened using an appropriate assessment tool.[18] The cost of the screening is a relevant cost to the State.

3. ***The availability and cost of housing in the community***

The availability (or lack) of housing is a known barrier to transitioning eligible individuals out of institutions and into the community.[19] Deposition testimony indicates that current residential programs in the State exhibit large variability in their program design and cost.[20] Creating housing and maintaining individuals in housing is a large component of the cost of transitioning individuals into the community. It will be necessary to know the clinical needs of the individuals moving into the community in

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[14] Illinois Permanent Supportive Housing Assessment, Technical Assistance Collaborative, Inc., Final Report 10/03/2007, bates number 9829.
[15] Exhibit 31 to the deposition of Dennis Smith (4,654 distinct persons living in IMDs on 6/30/2006).
[16] Joseph Holler deposition, pp. 21-22 and Exhibit 7 (6,148 unique Medicaid-eligible IMD residents in FY 2006).
[17] Exhibit 3 to the deposition of Joseph Holler.
[18] Lindsay Huth deposition, pp. 31-32.
[19] Final Report on a Strategic Vision and Comprehensive Evaluation of the Illinois Public Mental Health System, May 2005, pp. 7, 31, 37; Illinois Healthcare and Family Services Money Follows the Person Demonstration, Encouraging Community Transitions Grant, bates number 3959.
[20] Lindsay Huth deposition, pp. 61-63 and Exhibit 9 and Exhibit 23.

order to determine the appropriate housing and related costs associated with those individuals.

4. *The costs of moving persons into the community*

Depending on the housing option that is appropriate for the individuals moving into the community, the State may incur one-time start-up costs in those cases where such things as furniture, appliances and security deposits are required for individuals to occupy their residence.[21] I understand these can be as high as $2,800 per person.[22]

5. *The number of IMD residents who would be able to transition into the community and the nature and costs of the services those individuals will require in the community*

The intensity and frequency of services required in the community will vary from one individual to another.[23] When an individual moves out of an IMD and into the community, the intensity, frequency and nature of required support services may change dramatically as a result of the change in the individual's living arrangement.[24] The ultimate level of these services will have a substantial impact on the overall cost to the State. Therefore, it is essential that there be an accurate and thorough clinical assessment of the services required of IMD residents wishing to transition into a community setting.

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The data elements described above will allow an economic model to be constructed that will price out the estimated cost to the State assuming Plaintiffs are granted relief. At this point, I would anticipate relying upon the State's expert clinicians to identify (1) the number of individuals who would be able to move into the community, (2) the nature and frequency of the services required by those individuals, and (3) the type of housing that would be appropriate for those individuals. Using this information, combined with Illinois' Medicaid payment policies, I will determine the costs of those required services. These costs will be added to the costs of housing, start-up costs, and screening costs. The total of these cost components (adjusted for any savings the State may generate as individuals move out of IMDs) will be compared to the existing costs to the State for the IMD program to determine the incremental costs of granting the relief requested by Plaintiffs. I would anticipate performing these

[21] Lindsay Huth deposition, p. 138.
[22] Exhibit 23 to the deposition of Lindsay Huth.
[23] Exhibit 20 to the deposition of Lindsay Huth.
[24] Illinois Healthcare and Family Services Money Follows the Person Demonstration, Encouraging Community Transitions Grant, bates number 4060.

calculations and preparing a final report summarizing the costs after receiving the necessary clinical information from the State's expert clinician.

It has been my experience that once specific data is obtained, it is often appropriate to make some modifications to a proposed economic model because there may be previously unanticipated limitations on the data, or the data may raise other relevant issues that need to be incorporated into the model. For these and other reasons, it may be appropriate to modify the proposed methodology as clinical-related information becomes available.

Based on my reading of the Plaintiffs' expert clinicians' declaration and the Court Order outlining the proposed scope of their work, it seems unlikely that the Plaintiffs' expert clinicians will provide sufficient information for a comprehensive analysis of costs for individuals moving into the community. To the extent that the Plaintiffs' expert clinicians are merely planning to assess individual residents to determine their capacity to live in a more integrated setting, rather than providing a detailed determination of the specific services each individual would require in the community, the Plaintiffs' expert clinicians' work will be insufficient to complete the analysis I have described above. Their self-described scope "to assess the residents' capacity to live in a more integrated setting with adequate supports and services"[25] appears to omit two critical steps - determining the services that the transitioning individuals would require in the community, and determining the type of housing most appropriate for each individual.

It is also unclear how Plaintiffs' expert clinicians plan to address those times when residents do not consent to be interviewed. As the Court has indicated, this is an important factor that will go to the weight that can be given to the analyses presented by Plaintiffs' expert clinicians.[26] The decision by Plaintiffs' expert clinicians to evaluate residents from only eight[27] of the twenty-seven private IMD facilities also raises questions about their sampling process and the reasonableness of any extrapolations to the full IMD population. The reasonableness of Plaintiffs' expert clinicians' methodology cannot be fully evaluated until the details of that methodology are available for review.

[25] Revised Declaration of Jacob Kraemer Tebes, Madelon Visitainer Baranoski and Paul Thomas Amble, dated November 1, 2007, p. 1.
[26] Opinion and Order, dated January 2, 2008, p. 11.
[27] Revised Declaration of Jacob Kraemer Tebes, Madelon Visitainer Baranoski and Paul Thomas Amble, dated November 1, 2007, p. 2.