

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

ERIC STEWARD, by his next friend and  
mother, Lillian Minor, *et al.*,

Plaintiffs,

CIV. NO. 5:10-CV-1025-OG

v.

RICK PERRY, Governor, *et al.*,

Defendants.

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**DECLARATION OF GARTH CORBETT REGARDING EXHIBITS IN  
SUPPORT OF PLAINTIFFS' AMENDED MOTION FOR CLASS  
CERTIFICATION**

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I, GARTH CORBETT, hereby declare:

1. I am an attorney with Disability Rights Texas, and one of the attorneys of record for Plaintiffs in this case. I make this declaration in support of Plaintiffs' Amended Motion for Class Certification. I am competent to testify to the matters stated herein and either have personal knowledge of the facts set forth below or they are from sources deemed reliable.

2. This declaration has been prepared to authenticate the pertinent exhibits attached to Plaintiffs' Amended Motion for Class Certification.

3. Attached hereto as Exhibit 1 is a true and correct copy of an Open Records Request Response entitled *Request for Information, DADS No. 2009SOLEG0199* made by the Texas Department of Aging and Disability Service ("DADS"), dated October 26, 2009, in

response to Disability Rights Texas's Open Records Request regarding DADS' administration of Texas' Preadmission Screening And Resident Review (PASARR) program, individuals served and services provided in the program.

4. Attached hereto as Exhibit 2 is a true and correct copy of the United States Department of Health and Human Services' Center for Medicare and Medicaid Services ("CMS") quarterly *MDS Active Resident Information Report: Third Quarter 2010* available at <http://www.cms.gov/Research-Statistics-Data-and-Systems/Computer-Data-and-Systems/MDSPubQIandResRep/activeresreport.html> (last visited July 6, 2012). This quarterly report provides aggregate data regarding health characteristics of admitted to Medicaid-funded nursing facilities. The data from the report indicates that during the Third Quarter of 2010, there were over 4,500 individuals with developmental disabilities or related conditions living in Texas nursing facilities.

5. Attached hereto as Exhibit 3 is a true and correct copy of a report issued by the United States Department of Health and Human Services, Office of Inspector General, entitled *Preadmission Screening And Resident Review For Younger Nursing Facility Residents With Mental Retardation*, dated January 2007, available at: <http://oig.hhs.gov/oei/reports/oei-07-05-00230.pdf> (last visited July 6, 2012). This report examines the extent to which Preadmission Screening and Resident Review (PASRR) requirements were addressed for Medicaid nursing facility residents who are between the ages 22 to 64 in Texas and four other selected States.

6. Attached hereto as Exhibit 4 is a true and correct copy of the biennial disability report entitled *Texas Biennial Disability Report*, dated December 1, 2010, prepared by the Texas Council for Developmental Disabilities ("TCDD") available at:

[http://www.txddc.state.tx.us/resources/publications/biennial\\_report/2010biennial/2010biennialreport.pdf](http://www.txddc.state.tx.us/resources/publications/biennial_report/2010biennial/2010biennialreport.pdf) (last visited July 6, 2012). Each biennial report discusses the state of services to individuals with disabilities in Texas. The report is mandated by legislation passed by the 76<sup>th</sup> Legislature (1999) and requires the TCDD and the Texas Office for Prevention of Developmental Disabilities (“TOPDD”) to prepare such reports to the Legislature biennially.

7. Attached hereto as Exhibit 5 is a true and correct copy of the *Interim 2012 Promoting Independence Advisory Committee Stakeholder Report*, June 2012 available at: [http://www.dads.state.tx.us/providers/pi/piac\\_reports/piac-2012-interimstakeholder.pdf](http://www.dads.state.tx.us/providers/pi/piac_reports/piac-2012-interimstakeholder.pdf) (last visited July 6, 2012). On page 13 of this report, the Advisory Committee recommends that efforts be made to accommodate the needs of individuals with developmental disabilities who reside in nursing facilities and transition them to community living arrangements.

8. Attached hereto as Exhibit 6 is a true and correct copy of the DADS 2012 *Summary Table of Exceptional Items LAR FY 2014-15* and Attachment 1 thereto. On page 20 of Attachment 1 is a section entitled “Initiative Promoting Independence Diversion of IDD from Nursing Homes” that sets forth information regarding DADS’ 2012 legislative request as an exceptional item for 360 Home and Community-based Services (“HCS”) waiver slots for persons with intellectual and developmental disabilities who are residing in Texas nursing facilities.

9. Attached hereto as Exhibit 7 is a true and correct copy of the *Texas DADS Interest List Reduction Report Summary Fiscal Years 2012-2013* available at: <http://www.dads.state.tx.us/services/interestlist/index.html> (last visited July 6, 2012). This report indicates that no individuals have been enrolled into Texas’ Home and Community-based Services waiver (“HCS”) program, that none are in the “pipeline” for enrollment into the

program during fiscal year 2011-2012, and that there are over 52,000 persons in the HCS waiting list.

10. Attached hereto as Exhibit 8 is a true and correct copy of *Home and Community-based Services Program compared to Community Based Alternatives Program* available at: [http://www.dads.state.tx.us/providers/waiver\\_comparisons/hcs-cba.pdf](http://www.dads.state.tx.us/providers/waiver_comparisons/hcs-cba.pdf) (last visited on July 6, 2012). This document sets forth the eligibility requirements for Texas's HCS waiver and shows that with developmental disabilities whose Full Scale IQ exceeds 75 are excluded from the HCS waiver.

11. Attached hereto Exhibit 9 is a true and correct copy of the Third Quarter 2012 *MDS Q1a Report* issued by CMS which summarizes by state, the number residents living in nursing facilities who have expressed a preference for returning to the community to live.

12. Attached hereto as Exhibit 10 is a true and correct copy of a Findings Letter from the United States Department of Justice, Civil Rights Division, dated June 15, 2011, to Nancy Jurgen, Assistant Attorney General of the Texas Office of the Attorney General regarding the DOJ's investigative finding that Texas violates the rights of people with developmental disabilities by unnecessarily institutionalizing them in nursing facilities and places persons with developmental disabilities living in the community at risk of institutionalization in nursing facilities.

Pursuant to 28 USC § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on this 6th day of July 9, 2012, at Austin Texas.

  
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Garth A. Corbett