



Center for Public  
Representation

## **CPR Newsletter | October 2023**

***Updates on Litigation, Policy, Initiatives and Staff***

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### **Department of Justice Files Two Briefs in CPR's Massachusetts Nursing Facility ADA Case**

The Disability Rights Section of the Department of Justice filed two amici briefs in CPR's precedent-setting ADA/Olmstead case brought on behalf of people with disabilities in nursing facilities. The [first brief](#) supports the plaintiffs' motion for class certification, and describes the many common questions and single injunctive remedy that justify certification of a broad, cross-disability class. The [second brief](#) makes clear why the court should deny the defendants' motion to dismiss all of the named plaintiffs for lack of standing, since the [Complaint](#) adequately describes why all of these plaintiffs are unnecessarily institutionalized. The brief notes that Olmstead plaintiffs do not need to apply for specific community programs, nor be deemed eligible for such programs under a state's restrictive eligibility criteria, in order to have standing to bring an Olmstead case.

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### **Alabama Agrees to Extend Children's Behavioral Health Settlement Agreement**

In early October, Alabama state officials signed a [fourth extension](#) of a comprehensive [settlement agreement](#) that was entered in 2017. The agreement requires the state mental health, child welfare, and Medicaid agencies to expand five intensive home-based services for children with Serious Emotional Disorders (SED), and to develop new, intensive home-based services for children with Autism Spectrum Disorders (ASD). While the State has created a new infrastructure for funding, providing, and monitoring

intensive home-based services for children with SED and ASD, and has recruited and trained new providers, it has still not achieved the capacity and utilization requirements of the settlement agreement. CPR and ADAP will continue to meet quarterly with state officials during the next year to monitor the implementation of the agreement, including the expansion of intensive care coordination, new data collection mechanisms, and ongoing provider recruitment and capacity building for ASD services.

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### **CPR's Legal Director Testifies Against Outpatient Commitment**

At a September 7, 2023 hearing of the Massachusetts Legislature's Judiciary Committee, Steven Schwartz, CPR's Legal Director, presented compelling [testimony](#) in opposition to bills (H. 1694/S. 980) on involuntary outpatient commitment. CPR has long opposed all forms of outpatient commitment, and authored the leading law review article on this issue, *Compulsory Community Treatment: Distorted Doctrines and Violated Values*, 20 *Loyola L. R.* 1329 (1987). The bills are opposed by a broad coalition of people with lived experience, advocates, families, and clinicians.

Schwartz's [testimony](#) focused on the negative impact of outpatient commitment on the mental health system, by commandeering clinicians and providers to become mental health probation officers. He also noted the perverse consequence of prioritizing limited community mental health services to people who don't want them, while others who are seeking voluntary treatment remain on long waiting lists for limited services. Finally, he explained that by incorporating a list of treatment and social services in a court-ordered plan, without any accompanying new resources, the bill would effectively create an unfunded mandate and an unrestricted legal entitlement to court-ordered care.

CPR also submitted more [detailed written testimony](#) in opposition to the bills.

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### **CPR Testifies with Cross-Disability Coalition in Support of Massachusetts SDM Legislation**

On September 18, 2023, CPR and a coalition of diverse advocates testified in favor of Senate Bill 109, which would establish a legal framework for Supported Decision-Making (SDM) in Massachusetts. CPR testified alongside other members of the Massachusetts Advocates for Supported Decision-

Making (MASDM) Coalition, including people with disabilities and their supporters who talked about how SDM can transform lives.



As showcased in CPR's written testimony, at least 24 states and the District of Columbia have already passed statutes that formally recognize SDM agreements and/or require courts to consider SDM as a less-restrictive option before appointing a guardian. Rhode Island, New Hampshire, and Maine are among these states. We strongly urge Massachusetts to join them.

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### **CPR Advocates for SDM with Federal Regulations Impacting Older Adults**

On August 15, 2023, CPR submitted written comments to the Administration for Community Living (ACL) on its Notice of Proposed Rulemaking (NPRM) that seeks to modernize the implementing regulations of the Older Americans Act of 1965 (OAA).

In its comments, CPR applauded ACL for including provisions recognizing the importance of promoting less-restrictive alternatives to guardianship, including Supported Decision-Making (SDM). CPR also offered suggestions for improving the regulations, including further limiting the circumstances under which area agencies on aging (AAAs) can provide legal assistance to petitioners seeking guardianship. In addition, CPR recommended funding for initiatives that advance alternatives to guardianship through proactive outreach, training, legal assistance, and innovation projects aimed at older adults, including those that improve access to augmentative and alternative communication (AAC).

[Read More](#)

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## **CPR Seeks a Senior Litigation Attorney**

CPR's mission focuses on supporting institutionalized and other persons with disabilities, including people from BIPOC communities, to return to, or remain in, their homes and communities and to be full and equal participants in all facets of society. Through our systemic advocacy, we have been a major force in promoting civil rights, community integration, self-determination, and improvements in services for people with disabilities throughout the country. We are looking for a senior litigation attorney to lead significant portions of our systemic reform agenda, and to challenge the historical and structural racism that contributes to health inequities.

[View the job description](#)

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Contact Us

**Center for Public Representation  
5 Ferry Street, #314  
Easthampton, Massachusetts 01027  
413-586-6024  
communications@cpr-ma.org**

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