



from Equip for Equality's Legal Advocacy Program

EFE FACT SHEET – *Colbert* Consent Decree Program

WHAT IS THE *COLBERT* CONSENT DECREE?

Colbert v. Pritzker is a lawsuit that was filed under the Americans with Disabilities Act (ADA) against the State of Illinois in 2007 by people with disabilities (plaintiffs) who resided in Cook County nursing facilities and who wanted to live in community and receive community services. The case was certified as a class action. In 2011, the parties reached an agreement which resulted in the court-approved Consent Decree.

The Consent Decree requires the State to allow Class Members the opportunity to receive services in the least restrictive environment that is appropriate to their needs. It also requires the State to provide housing assistance to Class Members who want to move out into the community. Class Members who are transitioning to the community will be assigned a Care Manager who will develop a Service Plan with them to set them up with the supports and services they need to live in the community. This can also include employment opportunities and supports as well as medical services and in-home care, rental assistance, and move-in costs.

WHO ARE *COLBERT* CLASS MEMBERS?

Colbert Class Members are people with disabilities who are 1) Medicaid-eligible or on Medicaid; 2) reside in nursing homes in Cook County; and 3) want to move out into the community and receive community services. If this description applies to you, you are a *Colbert* Class Member and you have certain rights under the Consent Decree.

WHAT DOES THE *COLBERT* TRANSITION PROCESS LOOK LIKE?

The process begins with you saying you want to participate in the *Colbert* process during outreach visits from an agency called Maximus or by requesting outreach or assessment. You can request outreach any time (see "The Right to *Colbert* Outreach" below). If you want to go forward with the program, Maximus will schedule an in-person assessment for you. Once the assessment is complete, you will be assigned to a separate agency, called a prime agency, that will help you with your transition to the community by creating a personalized service plan and setting you up with housing supports. Some people also transition into the community with their Medicaid

Managed Care Organization (MCO) through something called the Community Transition Initiative (CTI).

The process for the *Colbert* transition program can be long, and oftentimes there are issues that come up that cause delays for some people. For instance, if you are not recommended for transition to the community and want to appeal your decision (see “The Right to Appeal” below), the *Colbert* process may take longer for you. For this reason, the earlier you can get assessed for *Colbert*, the sooner you can start the process and hopefully move out into the community.

RIGHTS AS A COLBERT CLASS MEMBER

The Right to an Assessment

If you are a *Colbert* Class Member, you have the right to request an assessment to participate in the Consent Decree program at any time. Assessments are conducted in person by Maximus. To request an assessment yourself, you can call the number **1-833-727-7744**, and press **4** at the menu. An assessment should be initiated within **14 days** of your request and conducted within **45 days** of your request. Class members can request a new assessment every **90 days**.

The Right to *Colbert* Outreach

If you are unsure whether you want to participate in the *Colbert* Consent Decree program, but you would like to learn more, you have the right to request outreach. Someone from Maximus will come to you to tell you about the *Colbert* program and answer your questions. If you decide that you would like to participate, they will refer you for a formal assessment.

The Right to Appeal

Class Members should not be told by Maximus they cannot transition under the program. If that happens, please contact Equip for Equality. The State’s use of Maximus is a new process and we want to make sure it is being applied fairly. Appeals over the assessment outcome will most likely involve the prime agency or MCO who handle next steps. You have a right to appeal almost any decision made, be sure to ask about your appeal rights any time you disagree with a decision.

The Right to Make Your Own Decisions - Guardianship and Power of Attorney Issues

If you have a guardian and you are concerned that your guardian will not approve of you participating in this program, you should know that the guardian cannot interfere with your right to an evaluation. Under the Illinois Probate Act, a guardian is supposed to help the person under the guardianship to be as independent as possible. 755 ILCS 5/11a-17(a). Your guardian must consider where you want to live and cannot act against your wishes unless they believe (with reasonable certainty) that your preferences for where you want to live will cause you substantial harm. 755 ILCS 5/11a-17(e).

Even if your guardian has the authority to place you in a residential facility under the court order granting them guardianship (or if they are an Office of the State Guardian appointed guardian), they are still required to “investigate the availability of reasonable residential alternatives,” to monitor your placement on an ongoing basis to ensure that it is appropriate, and to “pursue appropriate alternatives as needed.” 755 ILCS 5/11a-14.1. The *Colbert* assessment is to explore the possibilities of community integration and the transition program is likely to offer “reasonable residential alternative[s]” or “appropriate alternative[s].”

If you have a healthcare power of attorney, you may have delegated healthcare decision-making authority and/or placement authority to your power of attorney. A power of attorney with decision-making authority must still do what is best for you and carry out their wishes, even if they do not agree. 755 ILCS 45/2-7(b). If you wish to revoke your Power of Attorney, you can do so at any time. 755 ILCS 45/4-6.

For more details and specific questions about guardianships or power of attorney, please contact Equip for Equality.

The Right to Be Free From Retaliation

Nursing home staff are not allowed to retaliate against Class Members for wanting to move out of the nursing home and into the community. If you believe you are being retaliated against for your interest or participation in the *Colbert* program, please call the Class Member Retaliation Hotline at **1-833-515-0846**. You can also notify your facility's Long Term Care Ombudsman, and the Illinois Department of Public Health at **1-800-252-4343**.

NOTE: Consent Decree Requirements May Not Apply to Everyone

People who have severe dementia or other significant, progressive, and unlikely to improve cognitive disorders may not be able to transition right away under the *Colbert* Consent Decree if they cannot be safely served in the community. However, this determination must be made by a doctor *outside* the Nursing Facility in which the person lives. Usually, the determination is made by a doctor at the University of Illinois at Chicago (UIC) or Maximus. If you receive notice from Maximus that you are not eligible for *Colbert* due to severe dementia, be sure to appeal right away or contact EFE.

If you get this determination, you have the right to appeal the decision and request a fair hearing. You also have the right to view your own records. Appeal information will be included in the determination letter you receive after your assessment, which will say "Exclusionary Criteria is Met" or "Notice of *Colbert* Dementia Review Outcome." You must file your appeal within **60 days of the "Date of Determination"** as indicated on the determination letter.

For more questions about the *Colbert* Dementia Review process or to request an appeal or copy of your records, you can call Maximus at **1-833-727-7745 and press 6**.



DO YOU HAVE A QUESTION?

Contact Equip for Equality (all services are free of charge):

800.537.2532 (voice) or 800.610.2779 (TTY)

Contactus@equipforequality.org

www.equipforequality.org

This resource material is intended as a guide for people with disabilities. Nothing written here shall be understood to be legal advice. For specific legal advice, an attorney should be consulted.

Equip for Equality, an independent nonprofit organization, is the Illinois state Protection & Advocacy System whose mission is to advance the human and civil rights of children and adults with disabilities.

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