

August 8, 2001
ILR 2001-F

Representative Margaret Dayton
House of Representatives
318 State Capitol Bldg
Salt Lake City UT 84114

Subject: *Lisa P* Settlement Agreement Costs

Representative Dayton:

In response to your request, we estimated the costs associated with the *Lisa P* settlement agreement. The settlement was in response to a class action lawsuit asserting violations of state and federal law regarding the conditions at the Utah State Developmental Center (USDC) and the rights of residents to receive services in less restrictive, integrated and more enabling environments. During the course of litigation, the services and conditions at the USDC improved and the primary focus of the agreement was to set up a mechanism to ensure that the placement of each resident was based upon his or her assessed needs and guiding principles regarding personal growth, individualization, and integration. Determining the costs associated with settlements as opposed to the cost of continued litigation is important when considering future settlement decisions.

Determining what costs should be attributed to the *Lisa P* settlement agreement is difficult because many costs associated with the individuals covered by the settlement agreement would have been incurred regardless. However, our estimate of additional costs attributable to the settlement agreement from 1993 to 2001 is \$1.7 million. Most of the costs we included resulted from implementing the evaluation process required by the agreement. Our rationale for including or excluding some costs is discussed later in the report.

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The *Lisa P* settlement agreement resulted from a class action lawsuit (Lisa Parrent et al v. D. Michael Stewart et al) filed against the state in December 1989. The lawsuit was filed by the Disability Law Center and the Association of Retarded Citizens of Utah on behalf of all residents of the USDC. The state entered into a settlement agreement on October 5, 1993 that required each resident be evaluated by an interdisciplinary team to decide if either the USDC or a community program would provide the “least restrictive and most enabling environment” for that individual (**Utah Code** 62A-5-102-5(a)). All residents were to be evaluated within four years, and any person recommended for outplacement from the USDC was to move into a community program within two years of the recommendation. Since the 1993 settlement, more than 100 individuals have moved from the USDC. The *Lisa P* lawsuit was dismissed in February, 2001 after the plaintiffs agreed that the state had satisfactorily complied with the terms of the settlement agreement.

This report summarizes the terms of the settlement agreement, provides an overview of the history of the out-movement after the settlement, and estimates the evaluation and accreditation expenditures incurred by the state.

Required Evaluation Process Increased Costs

Although the 1993 settlement agreement included many terms and conditions, only the required evaluation process led to significant additional state costs. The evaluation process was costly because, although annual reviews were already held as required by Medicaid, the settlement required evaluations to include criteria that was more specific than the general Medicaid requirements along with a dispute resolution process that otherwise would not have been used. In contrast, the other provisions in the settlement agreement were generally consistent with existing state policy, so they did not lead to added costs.

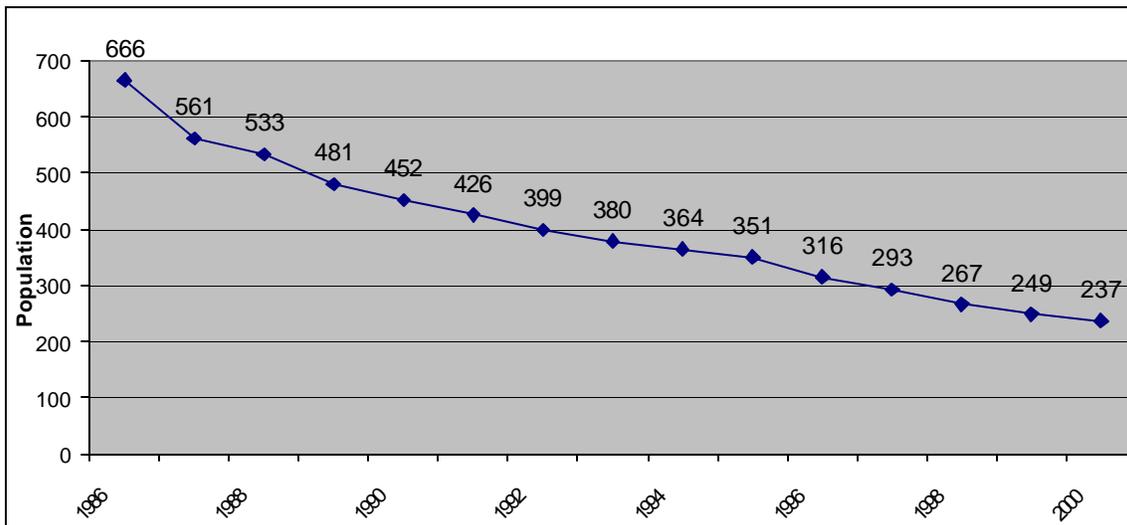
At the time the settlement agreement was signed, many changes were taking place in how states provide services to people with disabilities. Nationwide, states were evaluating the needs of individuals who resided in institutional settings and transferring them to community settings when appropriate. As a result, the resident population of institutions like the USDC throughout the nation was declining. Similarly, in Utah the population of the USDC was being reduced before the *Lisa P* lawsuit was filed, while it was being litigated, and since the settlement agreement. Thus, as Figure 1 shows, the average population of the USDC declined from 1986 to 2000.

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Figure 1. Utah State Developmental Center Average Population 1986 to 2000.



The declining population of the USDC resulted from state policy to annually review and assess the needs of its residents and determine the number of individuals who would move to less restrictive placements. **Utah Code 62A-5-201(4)**, amended in 1993, states

The division shall, in its discretion, place residents from the developmental center into appropriate less restrictive placements and determine each year the number to be placed based upon the individual assessed needs of the residents. The division shall confer with parents and guardians to ensure the most appropriate placement for each resident.

Before 1993, that statutory section was more prescriptive, expressing the Legislature's intent that the population of the USDC be reduced to no more than 285 by 1996. So with or without the settlement agreement, USDC residents would have been evaluated annually and some moved into community settings when appropriate.

Settlement Agreement Required Special Evaluation Process

The settlement agreement required that by 1997, four years from the date of the settlement, each resident's service needs be evaluated to determine whether the USDC or a

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community placement was the most appropriate, enabling and least restrictive setting to meet his or her needs. Evaluations were to be conducted using philosophical criteria defined in the agreement to reflect established state and federal policies. In addition, the evaluations were to be conducted by an interdisciplinary team, and disputes were to be resolved by an independent mental retardation professional. Individual choice and families' or guardians' wishes were to be considered before moving a resident into the community.

Agreement Identified Evaluation Criteria. The settlement agreement required that USDC or community placement decisions be made by team consensus, according to values and principles described in the settlement agreement. Four principles used to evaluate each individual include the following:

- **Personal Growth:** People with disabilities are capable of growth throughout life. Personal growth depends upon environment, training, the range and quality of learning experiences and on positive expectations for improvement. Services shall facilitate (not restrict) people receiving services to confront new life challenges. Individuals with mental retardation and developmental disabilities best learn cognitive, social, and functional skills when taught in the environment in which they are expected to use those skills. . . .
- **Individualization:** People with disabilities have the same need for individual attention and identity common to everyone. . . Attention to individual characteristics encourages realization of a person's potential. Persons with disabilities have a right to receive services from a system that is accountable to each person and places the decision-making process as close to the person as is possible. Personal choice, as it reflects the preferences of the person with the disability, must be sought out, supported and not limited by law or state policy. . . Decisions about discharging an individual from the USDC should be part of a team process that includes the individual, his guardian and his designated legal representative. . .
- **Integration:** People with disabilities should be provided the opportunity to live, work, and associate with other people, including those with and without disabilities. While an individual with disabilities may need additional assistance to function well, this assistance need not interfere with physical, vocational, and social integration.
- **Professionally-oriented Criteria:** USDC staff were to identify the services and supports that a person may need or benefit from, the environmental factors that

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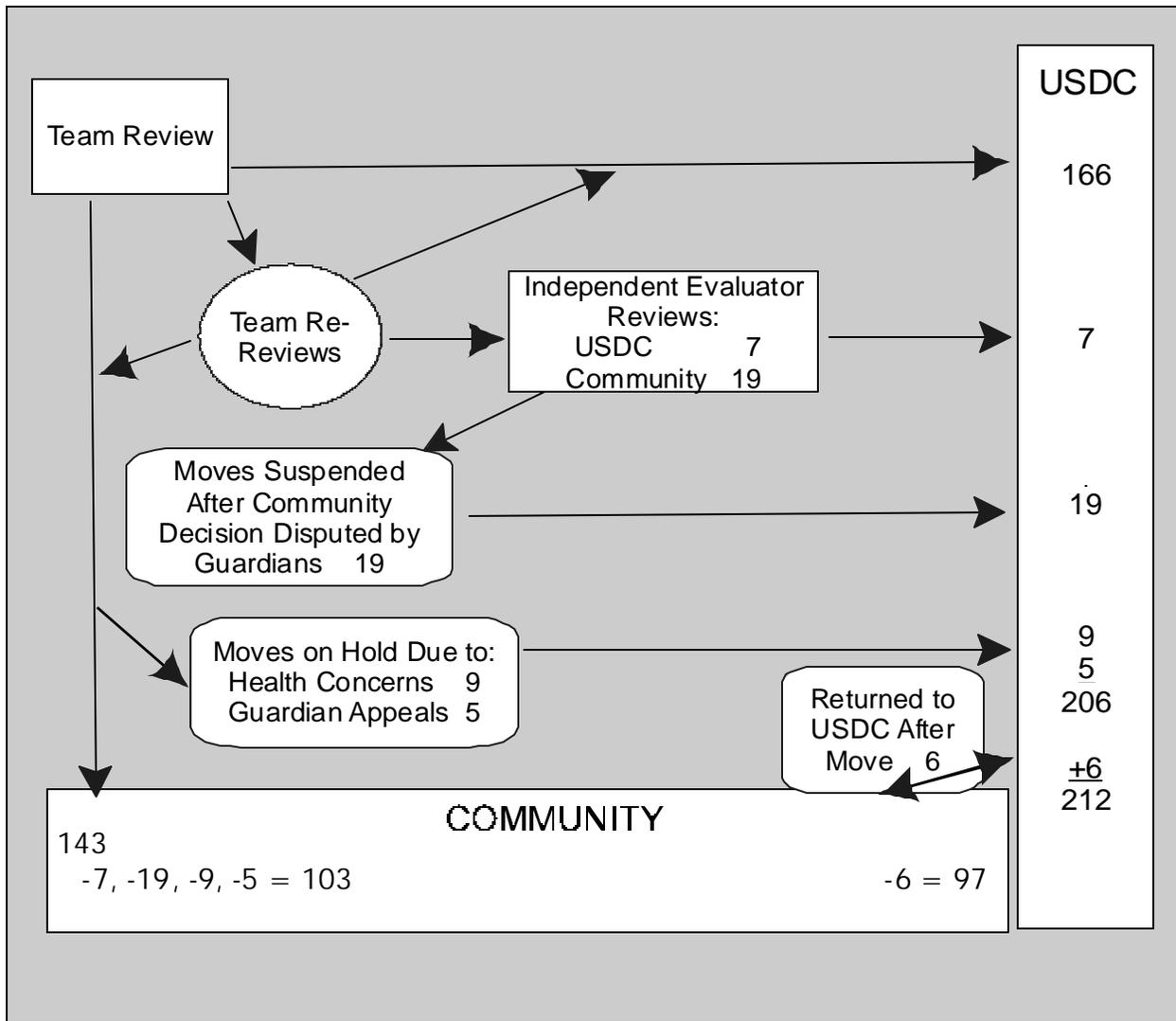
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could affect the person, and the measures necessary to transition him/her into a new environment. The team conducting the final evaluation would then recommend the services and supports in which the needs and factors might be met consistent with the above three criteria, focusing on what it would take to service the individual in an environment which most closely meets those criteria.

Agreement Defined Evaluation Process. Figure 2 illustrates the review process, team decisions and moves resulting from evaluating the 371 individuals who resided at the USDC when the settlement agreement was entered into. Evaluation results are for 309 because 62 individuals died before the evaluation process was complete.

Figure 2. Review Process, Decisions, and Moves Resulting From *Lisa P* Settlement Agreement. Of 309 USDC residents evaluated, 206 residents stayed at the USDC and 103 moved or are in the process of moving into the community. Six individuals who moved have returned to the USDC.



- Team Review** - Each resident's services needs were identified and evaluated by an interdisciplinary team which included the person, his or her legal guardian and/or parent, USDC professionals and a regional case manager from the resident's region of origin. This team recommended whether the USDC or a community placement was the most enabling and least restrictive setting to meet his or her needs. Residents were already being reviewed annually, but this review specifically applied the criteria defined in the settlement. Team members were trained to apply the four criteria in making a placement decision. Recommendations for the 309 individuals were that 166 should continue living at the USDC, and 143 should move to the community. However, of the 143 recommended to move to the community, 40 did not move, most often because families and guardians preferred they continue residing at the USDC.

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- **Team Re-reviews** - Evaluations were re-reviewed by the same interdisciplinary team if supervisory staff or attorneys from the Disability Law Center deemed it necessary. For example, teams were required to re-review all of the first group of 23 evaluations because the Disability Law Center found their recommendations did not incorporate the principles of the settlement in analyzing the optimal placement. Teams were required to apply the same principles to justify their recommendation that either the USDC or the community was the most appropriate placement.
- **Independent Evaluator Reviews** - When the team still did not agree that moving certain individuals to the community provided the most appropriate placement, an independent mental retardation professional was hired to resolve disputes. Two different evaluators completed the reviews. The 17 reviews conducted by the first evaluator were not used. The second evaluator reviewed 26 disputed decisions including those 17 previously completed by the first evaluator. He upheld team decisions for 19 individuals to move into the community but overturned 7 decisions, ruling that those people should remain at the USDC. Families and guardians continued to object to community placement for the 19 individuals and they presently still reside at the USDC. One additional individual is still in the process of deciding where to live.
- **Moves Suspended.** Of the 143 community team decisions, moves were suspended or placed on hold for 40 individuals. Moves were suspended for 9 individuals because of health reasons; for 7 individuals, because the independent evaluator decided the USDC was the best placement; and, for 24 individuals because the guardians' choice for the person to remain at the USDC was honored over the team decision that the community provided a more appropriate living environment. Guardian appeals for 5 of the 24 disputed community decisions were not reviewed by an independent evaluator because the appeal occurred after the evaluation process was complete.

Families and Guardians Reactions Were Mixed. Individual choice and parent or guardian involvement in deciding where a person would live was an important part of the settlement agreement. Families and guardians were involved in the evaluation process and in identifying services and supports for each individual if they were to move. Most families and guardians concurred with the team's recommendation for an individual to move into

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the community. However, some disagreed with the recommended outplacement. Although the settlement agreement required that the wishes and recommendations of the person's family or guardian be considered before discharging a resident, several families felt that their choice to have their family member remain at the USDC was not readily accepted and retained legal counsel to prevent community placements. Family members and legal guardians are concerned that the Disability Law Center will continue to insist some USDC residents must move into the community against the families' wishes. However, the Disability Law Center has represented that they will not insist that these residents move. Conflicts continue about how to weight parents wishes with professional judgements about what constitutes the most appropriate placement.

In summary, of the 309 individuals evaluated, 103 (33 percent) moved or are in the process of moving into the community, and 206 (67 percent) remained at the USDC. Of those who moved, 6 have returned to live at the USDC.

Seven Year Settlement Cost \$1.7 Million

We estimate the seven years it took to evaluate, re-evaluate, place individuals into community settings, and seek accreditation cost the state approximately \$1.7 million. Most of the costs included were from implementing the evaluation process required by the settlement. It was difficult to identify what costs were associated with the *Lisa P* settlement agreement because the decision on what costs to include or exclude was somewhat subjective and because exact cost information was unavailable. The attached appendix estimates implementation expenditures for each year from fiscal year 1994, when the settlement was entered into, until the case was dismissed in 2001.

Determining what costs to attribute to the settlement agreement was difficult. We attempted to include only costs that directly resulted from the settlement agreement. Thus, we didn't include additional service delivery costs incurred to enable a person to live in the community as opposed to the USDC. Our reasoning was that the person moving may have incurred those costs regardless of the settlement. In addition, we excluded litigation costs because they were incurred prior to the settlement agreement and because the state avoided additional litigation costs by reaching a settlement. We also excluded the legal costs incurred by the Disability Law Center because state money was not used to fund its services. We discuss these costs that are related to the *Lisa P* process at the end of this section, even

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though they are not included in our cost estimate.

Significant Evaluation Costs Were Incurred

Most of the costs of implementing the settlement were to implement a special evaluation process. The costs associated with evaluating and moving some USDC residents into the community were over \$1.6 million. We estimated the costs by asking the personnel involved to estimate the amount of time they contributed to the evaluation process from 1993 to present. Deciding where a person should live was costly because placement decisions were reviewed repeatedly. Decisions were reviewed if the initial team or parent disagreed, if the Disability Law Center determined settlement evaluation criteria were not adequately followed, and by an independent evaluator when disagreements could not be resolved.

Figure 3 summarizes the costs associated with evaluating USDC residents and locating services necessary for those people who the team decided should move to the community. Evaluation costs include an interdisciplinary team to evaluate and often re-evaluate each resident, coordinators from the USDC and the state office, and an independent evaluator hired to resolve disputes. Also included are legal costs for consultation services provided by the attorney general.

Figure 3. Evaluation Process Costs. Evaluating USDC residents and locating services for individuals placed in the community cost approximately \$1.6 million.

Cost Category	Amount
Interdisciplinary Teams	\$ 1,133,000
USDC Coordinator	271,000
State Office Coordinator	99,000
Independent Evaluator	80,000
Legal Services	<u>49,000</u>
	<u>\$ 1,632,000</u>

The following discusses the evaluation costs listed in Figure 2.

- **Interdisciplinary Team** - Costs include the time regional team employees estimate they devoted to the evaluation process multiplied by their wages, including benefits. USDC team member costs include only the additional time the settlement added to an existing annual review process. USDC estimated that annual reviews that normally averaged one hour increased to three hours because the evaluation criteria specified by the settlement differed from their usual approach. Additional time was also needed for training, re-reviewing and/or rewriting evaluations, and helping to locate appropriate community services and supports.
- **USDC and State Office Coordinators** - Costs include the pro-rated wages and benefits of the USDC and State Office coordinators who planned, coordinated, and monitored implementation of the settlement agreement. Coordinators served as liaisons, trained teams to apply the settlement criteria appropriately, and were involved with the dispute resolution process.
- **Independent Evaluator** - Mental retardation professionals were hired as independent evaluators to resolve disputed placement recommendations. Costs include payments for two evaluators because the first evaluator was replaced.

- **Legal Services** - The attorney general provided advice about complying with criteria required by the settlement agreement. Legal costs are minimal because litigation costs occurring prior to the settlement were excluded.

Limited Accreditation Requirement Costs Were Incurred

As shown in Figure 4, costs incurred by the USDC to seek accreditation were about \$57,000 for accreditation training and for surveys conducted by a vendor called the Accreditation Council. Costs were minimal because the settlement agreement only required the USDC to “initiate efforts” towards accreditation. Although the settlement set a January 1996 goal for the USDC to obtain full accreditation, it also specified that no additional monies were to be requested to accomplish accreditation.

Figure 4. Accreditation Costs Were About \$57,000. Payments were to the Accreditation Council for training and surveys.

Fiscal Year	Accreditation Council Payments
1996	\$ 25,000
1997	29,000
1999	1,000
2000	<u>2,000</u>
TOTAL	<u>\$ 57,000</u>

In seeking accreditation, all USDC employees were trained and an off-site Quality Enhancement Team was trained and certified by the Accreditation Council (now called Council on Quality and Leadership in Supports for People with Disabilities). The Division of Services for People with Disabilities (DSPD) now conducts the same surveys internally that would be conducted by the Accreditation Council. Only a small portion (7 percent) of the last two fiscal years’ payments to the Accreditation Council were included because the Quality Enhancement Team also provides services to the rest of the division. Seven percent of those receiving division services reside at the USDC. Although many accreditation requirements have been fulfilled, the USDC has not been accredited and there are no plans

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to obtain full accreditation.

Some *Lisa P* Related Costs Are Not Included

A variety of costs related to the *Lisa P* lawsuit, or to individuals covered by it, are not included because we didn't feel they directly resulted from implementing the settlement agreement. For example, additional costs incurred to provide services to people who moved from the USDC into the community are not included because the people may have moved even without the settlement agreement. As noted earlier, even before the settlement agreement, state policy was to reduce the population of the USDC by placing individuals in community settings when possible. Similarly, we didn't include pre-settlement litigation costs, Disability Law Center costs, or a variety of other costs that could be argued as related to the *Lisa P* settlement. We also concluded that there should not be any ongoing state costs due to the settlement agreement.

Increased Service Costs Are Not Included. We excluded the additional \$1.2 million budget increase appropriated by the Legislature for the *Lisa P* settlement beginning in fiscal year 1998 to cover the additional service costs for both the people who moved into the community and for those who remained at the USDC. The budget increase was excluded because it was for additional service costs not associated with implementing the settlement agreement. Our 1998 report, *A Review of the Costs And Services for Individuals With Developmental Disabilities*, explained that the funds transferred from the USDC to pay for the *Lisa P* individuals who moved, fell short of the amount needed to fully pay for the transferred persons' community program services. Individuals' service costs may have increased regardless if that person resided at the USDC or in a community setting. In addition, we excluded the additional service costs because it's unclear whether the funds were used only for the extra costs of individuals who were parties to the settlement. For example, some funds were designated for the USDC to cover variable staff costs during a transitional period. Because people have been admitted to the USDC since the settlement, the appropriations helped to fund their services along with those parties to the settlement.

Litigation Costs and Potential Savings Are Not Included. We excluded litigation costs and potential savings from our cost estimate. We estimated that four years of litigation cost the state at least \$250,000 in salaries, benefits and overhead for the attorney general handling the case. The court also would have accrued substantial costs. We excluded litigation costs because they occurred prior to the settlement and therefore are not relevant to the decision to settle or continue with litigation. Additionally, the settlement may have

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saved the state money because it avoided incurring additional costs to continue litigating the case.

Disability Law Center Costs Are Not Included. Costs of the Disability Law Center were excluded because state funds were not used to fund its services. In order to receive certain federal funds, states must provide protection and advocacy for its disabled citizens. The Disability Law Center is part of a nationwide network of protection and advocacy systems which are mandated by Congress to provide legal representation and advocacy services on behalf of all persons with disabilities. The Disability Law Center's contract with the U.S. Department of Health and Human Services allows them to use their federal resources to bring lawsuits against the state to fulfill its mission. The Disability Law Center estimates its attorney and staff costs were \$225,000. Costs for salary, benefits, and overhead were approximately \$97,000 for four years of litigation and \$128,000 for the seven years it took to implement the settlement.

Other Potentially Related Costs Are Not Included. We did not attempt to estimate a variety of other costs that arguably were caused by the settlement agreement. Some costs were emotional rather than financial. For example, the attorney who represented many families of the USDC residents told us that some of the elderly parents of life-long residents of the USDC bore a high emotional cost worrying that their child might be forced out of the USDC and into the community despite their wishes. On the other hand, there is also a high emotional cost to keeping someone at the USDC who could live a more fulfilling life in the community. Other costs may be related to program effectiveness. For example, the families' attorney also felt there was a significant cost to the USDC in staff morale, and many experienced workers left because of the settlement. In addition, concerns about the settlement agreement consumed valuable time in legislative and executive deliberations. For example, the past three years the appropriations bill included intent language that the settlement agreement be dismissed as soon as possible. While these other costs are significant, it was beyond the scope of this review to try to estimate them.

No Ongoing Settlement Agreement Costs Should Be Incurred. We do not believe any ongoing costs will be incurred because of the settlement agreement. The *Lisa P* lawsuit was dismissed "with prejudice" which means that the lawsuit is over and can not be brought up again. Each resident will continue to have a formal annual review that includes evaluating his or her placement as is required by Titled XIX of the Social Security Act. The Disability Law Center has specifically requested to receive copies of the annual reviews for the 19 individuals who still reside at the USDC contrary to both the team and independent

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evaluator's recommendation that they move into the community. This is the Disability Law Center's right as the state's protection and advocacy agency.

Consider Better Accounting for Settlement Costs

In summary, we estimate the direct costs resulting from the *Lisa P* settlement agreement were about \$1.7 million, not including legal or service delivery costs. That estimate is based on the decisions we made about what costs to include and the available information or staff estimates about costs incurred. No one kept track of settlement costs as they were incurred. If better track of such costs should be kept in the future, legislation could be enacted to require it.

The *Lisa P* settlement highlighted the need to designate what costs should be considered part of a state settlement agreement. In our attempt to decide what costs to include, we learned that Utah law now requires terms of settlement agreements be approved before the state enters into financial obligations exceeding \$100,000. **Utah Code** (63-38b) was enacted in 1995 requiring the Governor to approve settlement agreements that might cost the state more than \$100,000 to implement and the Legislature to approve those that may cost more than \$500,000. Although the *Lisa P* settlement preceded the reporting requirement, it's not clear which costs the agency would have needed to report to help the Legislature decide if settling or continued litigation was the best decision.

We believe these laws could be clarified to specify what costs an agency should report to the Governor or Legislature before approving a settlement. In addition, additional approval should be obtained if the terms of the settlement change the estimated obligation to the state. Finally, accounting for what costs were incurred should be required once the settlement is complete.

We hope this report supplies the information you need. If you have any questions, please call our office at 538-1033.

Sincerely,

Wayne L. Welsh

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Auditor General

WLW:SBV/lm

Appendix A

Estimated Cost for *Lisa P* Settlement Agreement

Fiscal Year	1994	1995	1996	1997	1998	1999	2000	2001	TOTAL
Northern Region Coordinator	15,000	45,133	45,866	50,347	50,301	24,861	10,287		241,795
Central Region Coordinator	25,845	40,514	41,543	45,845	37,778	38,683	9,998		240,206
Western Region Coordinator	22,520	23,999	24,418	16,066	13,598	5,424	5,743		111,768
Eastern Region Coordinator	1,864	1,962	2,392	417	428				7,063
State Office Coordinator	18,642	20,568	31,819	10,973	10,722	4,180	2,000	500	99,404
USDC*	237,257	214,524	192,653	50,888	47,403	31,215	17,378	11,055	802,373
Independent Evaluator		4,265	4,865		32,817	24,778	12,813		79,538
Attorney General	4,500	6,900	7,100	8,700	8,200	1,500	4,500	7,479	48,879
Total	325,628	357,865	350,656	183,236	201,247	130,641	62,717	19,034	1,631,025
Accreditation Council			25,136	28,750		1,047	2,020		56,952
Total	325,628	357,865	375,791	211,986	201,247	131,688	64,739	19,034	1,687,977

* USDC estimates include wages paid for additional time for annual reviews and re-reviews, discharge meetings, training, quarterly meetings, and rewritten evaluations.