

2008 Innovations Awards Program APPLICATION

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ID # (assigned by CSG): 08-M-26OH

Please provide the following information, adding space as necessary:

State: OHIO

Assign Program Category (applicant): Corrections (Use list at end of application)

1. Program Name ***Fussell* settlement - Alternative Dispute Resolution (ADR)**
2. Administering Agency **Ohio Dept. of Rehabilitation & Correction**
3. Contact Person (Name and Title) **Gregory Trout, Chief Legal Counsel**
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8. Web site Address **http://www.drc.state.oh.us/**
9. Please provide a two-sentence description of the program.

The *Fussell* ADR program represents a practical approach to managing systemic, institutional litigation. The program contains costs, preserves operational control for the agency and fosters an environment that is conducive to cultural change where that is appropriate.

10. How long has this program been operational (month and year)? Note: the program must be between 9 months and 5 years old on March 1, 2008 to be considered.

The *Fussell* lawsuit was filed in October, 2003; settlement was approved by the Federal Court in November, 2005; implementation of the settlement objectives is current and ongoing.

11. Why was the program created? What problem[s] or issue[s] was it designed to address?

The *Fussell* ADR program was created to resolve a lawsuit over the quality of medical care in all of Ohio's prisons. The lawsuit could have been disruptive or even demoralizing, and would have been extremely expensive, won or lost. By utilizing the ADR approach described in our application, the Department focused its energy on the areas where improvement was indicated and invested in solutions rather than litigation.

12. Describe the specific activities and operations of the program in chronological order.

1. Assess the facts. 2. Hire an objective fact-finder. 3. Seek a collaborative process for dispute resolution. 4. Work toward a collaborative solution. 5. Utilize the informed, neutral fact-finder to assist in problem solving. 6. Let the agency professionals implement solutions. 7. Communicate the developments throughout the agency. 8. Report the status and the progress

in a neutral, credible manner. 9. Set clear objectives and involve staff in creating the solutions. 10. Commit the resources necessary to accomplish the task as quickly as possible.

13. Why is the program a new and creative approach or method?

Major systemic litigation is typically expensive and disruptive. By using this ADR approach, the litigation costs here were minimized and the agency maintained operational control.

14. What were the program's start-up costs? (Provide details about specific purchases for this program, staffing needs and other financial expenditures, as well as existing materials, technology and staff already in place.)

\$ 86,000. The initial cost of the program was an investment in the neutral fact-finding team, starting with the project coordinator / lead consultant. The team consisted of an attorney with expertise in prison health care litigation; and an M.D., a Nurse Practitioner and a Registered Nurse, all with experience in correctional health care delivery and administration. Later a second physician and two dentists were added to the team. The initial task of the team was to audit and evaluate the health care being delivered to Ohio inmates. The report was provided to the parties upon completion. The parties agreed to the preparation and sharing of the report as a substitute for traditional discovery, and the discovery deadlines were suspended by the court. Once the report was distributed the parties decided to engage in discussions over possible settlement. This ultimately led to an agreed entry (a settlement) resolving the legal claims in exchange for a commitment to create and implement certain specified improvements to the health care delivery system.

15. What are the program's annual operational costs?

FY2004 \$ 138,550; FY2005 \$232,200; FY2006 \$624,025; FY2007 \$ 482,910; FY2008 \$940,260. These are the costs of the consultants who monitor the settlement resulting from this approach. Legal costs for opposing counsel have been kept to a minimal amount.

16. How is the program funded?

The program is funded from general revenue funds, as with other litigation settlement and medical programs.

17. Did this program require the passage of legislation, executive order or regulations? If YES, please indicate the citation number.

The only legislation required was the department's annual budget, adjusted to reflect the adjusted staffing levels agreed through settlement.

18. What equipment, technology and software are used to operate and administer this program?

None.

19. To the best of your knowledge, did this program originate in your state? If YES, please indicate the innovator's name, present address, telephone number and e-mail address.

Yes; the ADR approach was first evolved in mental health lawsuit in the 1990's, and then replicated in 2003. The parties should all share in recognition for the approach: Joseph Mancini, Assistant Atty. General; Gregory Trout, Chief Legal Counsel for DRC; Alphonse Gerhardstein, Counsel for the Plaintiffs; and Prof. Fred Cohen, Consultant / Fact-Finder / Monitor.

20. Are you aware of similar programs in other states? If YES, which ones and how does this program differ?

No.

21. Has the program been fully implemented? If NO, what actions remain to be taken?

The settlement is in the implementation phase, to be followed only by termination when the objectives have been achieved.

22. Briefly evaluate (pro and con) the program's effectiveness in addressing the defined problem[s] or issue[s]. Provide tangible examples.

The ADR led to self-recognition of systemic deficiencies. This recognition in turn led to increased budget costs for medical care. The budgeted amount for all medical care has increased steadily:

<u>Fiscal Year</u>	<u>Budget</u>
2003	\$118,364,700
2004	\$131,481,800
2005	\$144,856,000
2006	\$173,131,500
2007	\$190,251,300
2008	\$205,373,600

The Department's medical budget would have increased during this time, regardless of the obligations undertaken as a result of the lawsuit, but the budget was affected by the increases mandated in the settlement. The increases might have been lower for a period of time during the pendency of a traditional litigation process, but the litigation defense costs could easily have exceeded \$10m. The Department would have had to gamble that further increases might not have been ordered; if they had been ordered by the court, the final cost could easily have exceeded that which the Department negotiated, and the process of implementation could have been far more disruptive with far less control resting in the department's hands.

23.How has the program grown and/or changed since its inception?

Following the mental health lawsuit in the '90's, there was a reluctance to pursue settlement with a well-known adversary. The *Fussell* lawsuit allowed the department to explore a similar ADR approach sequentially, one step at a time. At each step, the Department was able to reassess the financial and legal interests as they developed, without committing to settlement.

24. What limitations or obstacles might other states expect to encounter if they attempt to adopt this program?

A state will need a trustworthy legal adversary, a political climate that will tolerate change (assuming it is cost-effective) and a willingness to consider the possibility of a litigation settlement.