Strategies to Proactively Avoid *Olmstead* Lawsuits – Lessons Learned from Two States Successfully Exiting Settlements

Staff from New Jersey and Delaware, two states that recently exited Settlement Agreements related to Olmstead violations, shared their experiences and lessons learned.

New Jersey

In 2005, the organization now known as Disability Rights of New Jersey (DRNJ) filed a lawsuit against the New Jersey Department of Human Services (NJDHS) on behalf of individuals with mental illness who are confined to a state psychiatric hospital whom the court adjudicated as no longer meeting commitment standards, but for whom there is no appropriate and available placement. These individuals are classified as "Conditional Extension Pending Placement" (CEPP). The state entered into a settlement agreement in 2009 with DRNJ to discharge CEPP individuals in a timely manner, and to create community placements for CEPP discharges and individuals at risk of hospitalization and homelessness. NJDHS pursued a variety of strategies to achieve these goals, and shared them, along with their progress, during the session.

In 2008, during development of the Olmstead lawsuit and prior to the Settlement Agreement, the Department of Mental Health and Addiction Services (DMHAS) began taking steps toward improving community services for its CEPP population and published its Home to Recovery CEPP Plan, which establishes the state's policies, goals, and strategies related to community integration for CEPP individuals. To achieve the goals of the Settlement Agreement, and those laid out in the Home to Recovery CEPP Plan, New Jersey established the Office of Olmstead, Compliance, Planning and Evaluation, which brings together all Olmstead-involved offices, including Central Office Administration, Regional Olmstead staff, state psychiatric hospitals, and community providers on a weekly basis to develop comprehensive policy geared toward community integration.

The state also developed the Individual Needs for Discharge Assessment (INDA), a multi-dimensional discharge planning tool that examines potential barriers to discharge, including legal issues, finances, insurance, level of needed care, challenging behaviors, housing preferences, and substance abuse issues. The INDA is administered to every individual receiving services in a state psychiatric hospital to help providers and clients develop comprehensive discharge plans to ensure clients are discharged to more appropriate community settings successfully, and in a timely manner. The Intensive Case Review Committee (ICRC) was created to review the INDA results and facilitate community transitions for all individuals receiving services in state hospitals. In addition to these activities, the state also established Hospital Project Teams (chaired by the hospitals' CEOs) to address systemic issues at each of the state hospitals, and developed positions for Transitional Case Managers to assist community transitions for individuals with developmental disabilities. One critical element to New Jersey's success is its ability to access patient identification documents that are necessary for discharge planning. When it is determined that an individual does not have these forms, such as their birth certificates, the hospital is able to work with the Office of Vital Statistics to obtain the necessary documents. This relationship between the DMHAS and the Office of Vital Statistics has been instrumental in facilitating discharge planning for individuals in state psychiatric hospitals.

Data presented during the session indicate that these efforts are working. Between 2006 and 2016, the state has realized a 36% decrease of admissions to state psychiatric hospitals, and a reduction in the average census of nearly 34%. Since the Settlement Agreement, the SMHA has doubled the number of clients served in Supportive Housing, and has reduced the number of CEPP clients from 735 individuals in 2008, to three individuals in 2016.

New Jersey is committed to exceeding the goals of the Settlement Agreement, and ensuring that all clients receive care in the most integrated setting appropriate. The state recently released its Home to Recovery 2 Plan for 2017 through 2020, outlining its goals and strategies for community integration for the next three years.

Delaware

The U.S. Department of Justice (DOJ) found that Delaware's mental health system failed to provide services to individuals in the most integrated setting appropriate to their needs, resulting in prolonged institutionalization at the Delaware Psychiatric Center, and put individuals currently residing in the community at risk of unnecessary institutionalization. In July 2011, the state entered into a Settlement Agreement with the DOJ to reduce institutionalization, increase the array and availability of community support services (such as crisis services, case management, supported employment, and peer services), increase community living options, and increase family and client supports.

To ensure sustainable change, the Division of Substance Abuse and Mental Health (DSAMH) worked with the State Legislature and the Division of Medicaid and Medical Assistance (DMMA) to develop policies and programs to support community integration activities. The State Legislature made changes to the civil commitment process and created an independent oversight commission to monitor this process, and DMMA now implements an 1115 Demonstration Waiver to pay for an increased variety of community-based mental health services. In addition, DSAMH created a credentialing process for mental health screeners and peers.

To monitor the success of these initiatives, and evaluate its progress in meeting the goals outlined by the Settlement Agreement, DSAMH restructured its data system based on criteria set forth in the Settlement Agreement. During this process, a handful of challenges were realized, specifically related to definitions, data sharing, data collection, and a lack of Electronic Health Records (EHRs). To overcome some of these challenges, and to improve the state's evaluation efforts related to the Settlement Agreement, the state contracted with the University of Pennsylvania, Center for Psychiatry Research and Service to design and conduct an evaluation of the system outputs and consumer outcomes of the Settlement Agreement, design and implement a methodology to assess readiness for discharge, and develop and implement a new Quality Program Review process. This experience led to a variety of lessons learned: 1) do not underestimate the staffing requirements to successfully implement the terms of a Settlement Agreement; 2) pay attention to all of the details during negotiations to limit having to go back and make revisions later; and 3) be mindful that problems identified in the Settlement Agreement are not being "pushed" to another division.

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