

**Building Inclusive Communities
in West Virginia**



ANNUAL OLMSTEAD REPORT

The Year in Review



**STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL**

**Jim Justice
Governor**

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Cabinet Secretary**

October 10, 2017

The Honorable Jim Justice
Governor of West Virginia
State Capitol Building
Charleston, WV 25305

Dear Governor Justice:

On behalf of the Olmstead Office, and in accordance with the Olmstead Plan, Building Inclusive Communities: Keeping the Promise, I am pleased to submit to you the Annual Report for state fiscal year 2017.

Please contact the Olmstead Office with questions or information requests. We are happy to provide assistance.

Sincerely,

Vanessa K. VanGilder
Olmstead Coordinator

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Remembering Cathy Hutchinson



It is with great sadness that we bid farewell to our long-time colleague and friend, Cathy Hutchinson. Cathy was a well-known disability advocate and passed away on Wednesday, December 14, 2016. She was 63 years of age. Cathy graduated from Marshall University in 2001 with a degree in counseling, and began working at the Mountain State Center for Independent Living that same year. At the time of her passing, she was a member of the West Virginia Olmstead Council. She was serving her second term as Chairperson of the West Virginia Statewide Independent Living Council. She was also the Chairperson of the Ron Yost Personal Assistance Services Board and a former Chairperson of the Fair Shake Network.

Olmstead Mission Statement

The mission of the Council is to develop and monitor the implementation of a plan to promote equal opportunities for people with disabilities to live, learn, work and participate in the most integrated setting in the community of their choice through West Virginia's compliance with Title II of the Americans with Disabilities Act.

Olmstead Vision Statement

The vision of the Council is for all West Virginians with disabilities to live, learn, work and participate in the most integrated setting in the community of their choice.

Guiding Principles

- People with disabilities, regardless of the severity of the disability, can be supported to live in the community and setting of their choice.
- People with disabilities must have choice and control over where and with whom they live.
- People with disabilities must have opportunities to live integrated lives in communities with their neighbors and not be subjected to rules or requirements that are different from those without disabilities. Integration does not just mean physical presence in a neighborhood, but valued and meaningful participation in community services and activities.
- People with disabilities must have access to information, education, and experiences that foster their ability to make informed choices while respecting dignity of risk.
- People with disabilities must have opportunities to develop valued social roles, meaningful personal relationships, and activities of their choice.
- People with disabilities must have meaningful opportunities for competitive employment.

Introduction: The *Olmstead* Decision

In 1995, the landmark case now known as *Olmstead v. L.C.* was brought by the Atlanta Legal Aid Society on behalf of Lois Curtis and Elaine Wilson, who were confined in a state psychiatric hospital in Georgia. Hospital staff agreed that both women should be discharged to supportive community programs, but no such placements were available, and the state of Georgia offered nursing facility placements. Ms. Curtis and Ms. Wilson believed this action violated their rights under Title II of the Americans with Disabilities Act (ADA).



Lois Curtis

The memories of living in institutional settings since the age of 13 will remain with Lois Curtis. Her story did not end after the landmark Supreme Court decision. Ms. Curtis lived in staffed residential settings after her discharge from the institution. She now rents a beautiful home in Stone Mountain, Georgia, with a fellow artist and friend. Ms. Curtis herself is a successful artist. When asked what her artwork means to her, she responded, “My art been around a long time. I came along when my art came along. Drawing pretty pictures are a way to meet God in the work like it is.” On June, 20, 2011, Lois Curtis presented President Obama with a gift of one of her original paintings in the Oval Office. The “Girl in Orange Dress” is one in a series of three pastel self-portraits that Ms. Curtis created because she has no photographs to mark her own childhood.



Elaine Wilson

During her lifetime, Elaine Wilson had 36 stays in mental institutions. At a hearing in Georgia before Judge Marvin H. Shoob, Ms. Wilson testified, “When I was in the institution, I felt like I was in a little box and there was no way out.” Her story began when Ms. Wilson was an infant, and a 107 degree fever damaged her brain. Her mother tried to provide a normal life. She first sent her to public school, then private school, then an Augusta school for children with disabilities. Ms. Wilson had been shunted among institutions and shelters from age 15 and subjected to shock treatment and psychotropic drugs “that knocked her out and ruined her kidneys,” said her mother, Jackie Edelstein of Atlanta. Once Ms. Wilson was placed with a caretaker and given independence, her life changed dramatically. “She blossomed,” said Legal Aid attorney Sue Jamieson of Atlanta, who took on the case in 1995. “She took an interest in cooking and church and her personal appearance. She wanted to do advocacy for other people so [she] acquired training in presenting workshops and giving speeches.”

“We saw Elaine become very independent and very proud of her independence,” said Harriet Harris of Lithonia, executive director of Circle of Support Inc., who provided Ms. Wilson with caretakers. “She loved to shop at Wal-Mart and Kmart and the grocery store. One of her hobbies was to clip grocery coupons in the Sunday paper. She spent hours picking out greeting cards. She loved to visit people and have people come visit her. She was a very social person.” Elaine Wilson died in 2004 at the age of 53.

The *Olmstead* Case

The plaintiffs were successful throughout the judicial process. The Georgia Department of Human Resources appealed to the United States Supreme Court the lower court's decision that Georgia had violated the ADA's integration mandate by segregating Ms. Curtis and Ms. Wilson. On June 22, 1999, the U.S. Supreme Court issued its ruling that such segregation is a form of discrimination prohibited by the ADA because:

- It perpetuates unwarranted assumptions that people with disabilities are incapable or unworthy of participating in community life.
- Confinement in an institution severely diminishes the everyday life activities of individuals, including family relations, social contacts, work options, economic independence, educational advancement, and cultural enrichment.

Olmstead has been called the *Brown v. Board of Education* for people with disabilities. Like *Brown*, it is forcing change very slowly, and through determined and vigorous advocacy. *Olmstead v. L.C.* upheld the rights of people with disabilities to live and receive supports in the most integrated setting in their community. Title II of the ADA was the basis for this landmark decision. Title II of the ADA applies to state and local government entities and the programs funded and administered by them. Two regulations under Title II were fundamental to the *Olmstead* decision:

- The integration regulation mandates that states, “shall administer services in the *most integrated setting appropriate* to the needs of individuals with disabilities.” The most integrated setting is “a setting that enables individuals with disabilities to interact with non-disabled persons to the fullest extent possible.”
- The reasonable modifications regulation mandates that states, “shall make reasonable accommodations in its policies, practices, or procedures when necessary to avoid discrimination, unless modifications would fundamentally alter the nature of the services, programs, or activities.” The Supreme Court stated that, “...if the State were to demonstrate that it had a comprehensive, effectively working plan for placing qualified persons...in [most integrated] settings, and a waiting list that moved at a reasonable pace, not controlled by the State's endeavors to keep institutions fully populated, the reasonable modification standard would be met.”

West Virginia Executive Order

On October 12, 2005, Executive Order 11-05 was signed by Governor Joe Manchin, formally approving and directing the implementation of the West Virginia Olmstead Plan: Building Inclusive Communities. Executive Order 11-05 directs:

- The implementation of the West Virginia Olmstead Plan;
- The cooperation and collaboration between all affected agencies and public entities with the Olmstead Office to assure the implementation of the *Olmstead* decision within the budgetary constraints of the state; and
- The submission of an annual report by the Olmstead Office to the governor on the progress of the implementation of the Olmstead Plan.

West Virginia Olmstead Office

The Olmstead Office, created by Governor directive in 2003, provides West Virginians with information, referral and assistance with Olmstead-related issues, including community-based supports and providers, and advocacy services. Assistance can also be provided to resolve individual or systemic Olmstead-related complaints or issues. The Olmstead Office resides in the Office of Inspector General.

Olmstead Council

The West Virginia Olmstead Council was established in 2003 to advise and assist the Olmstead Coordinator to develop, implement, and monitor West Virginia's Olmstead activities. The mission of the council is to develop and monitor the implementation of a plan to promote equal opportunities for people with disabilities to live, learn, work and participate in the most integrated setting in the community of their choice through West Virginia's compliance with Title II of the ADA. The council has the following responsibilities as outlined in the *Olmstead Plan*:

- Advise the coordinator in fulfilling the position's responsibilities and duties;
- Review the activities of the coordinator;
- Provide recommendations for improving the long-term care system;
- Issue position papers for the identification and resolution of systemic issues; and

- Monitor, revise, and update the Olmstead Plan and any subsequent work plans.

West Virginia Olmstead Council Priorities for 2017

Priority 1: *Implement the West Virginia Olmstead Plan to ensure compliance with Title II of the Americans with Disabilities Act (ADA).*

- Revise the West Virginia Olmstead Plan to address federal enforcement guidelines.
- Establish a formal agreement to ensure the cooperation and collaboration between all affected agencies and public entities with the Olmstead Office to implement the Olmstead Plan, as outlined in *Executive Order 11-05*.
- Ensure inclusion of the Olmstead Office and Council in state processes that affect the institutional and/or community-based long term care system.
- Improve access to home and community-based services and supports through the passage of the Community-Based Services Act or equivalent legislation.

Priority 2: *Eliminate the institutional bias in West Virginia's long-term care system.*

- Support the continued development and implementation of the Centers for Medicare and Medicaid Services Money Follows the Person (MFP) grant, Take Me Home, West Virginia.
- Increase access and availability of home- and community-based services while reducing reliance on institutional settings.
- Issue an annual report that identifies institutional bias and recommendations for change.

Priority 3: *Develop and maintain a statewide, comprehensive transition and diversion program.*

- Obtain additional funding to support other transition and diversion programs throughout West Virginia.

Priority 4: *Implement a formal plan to address the major barrier of affordable, accessible, and integrated housing options for people with disabilities.*

- Provide state designation of federal Home Investment Partnership Program (HOME) funds for tenant-based rental assistance.
- Identify local, state and federal housing resources either under-utilized or un-utilized to address the critical housing gap in West Virginia for people with disabilities.

Priority 5: *Ensure people with disabilities have opportunities for employment, education, transportation, and meaningful participation in their community.*

- Reduce reliance on day programs and sheltered workshops.
- Support the development of an "Employment First" Initiative.
- Support people with disabilities to participate meaningfully in their communities and to attain valued social roles.
- Support a collaborative and coordinated approach to assure available, affordable, and accessible transportation.

Priority 6: *Ensure children with mental health issues receive services in the most integrated setting appropriate to their needs.*

- Support children with mental health issues to have access to a comprehensive array of services that address their physical, emotional, social and educational needs and receive individualized services in accordance with the unique needs and potentials of each child.
- Support children with mental health issues to receive services within the least restrictive, most normative environment that is clinically appropriate and assures that the families of children are full participants in all aspects of the planning and delivery of services.

West Virginia Olmstead Council Membership

The membership of the council is comprised of no more than 35 persons from the following groups: eight people with disabilities and/or immediate family members; ten advocacy or disability organization representatives; eight providers of home and community-based services and/or supports; seven state agency representatives; and two optional, at-large members.

Elliott Birckhead	WV DHHR Bureau for Behavioral Health & Health Facilities
Angela Breeden	Charleston, WV
Marcus Canaday	WV DHHR Bureau for Medical Services, Money Follows the Person
Leslie Cottrell	WVU Center for Excellence in Disabilities
Ardella Cottrill	WV Behavioral Health Planning Council
Mark Drennan	Behavioral Health provider
Jeannie Elkins	Ashford, WV
Joyce Floyd	Elkins, WV
Mark Fordyce	Traumatic Brain Injury Waiver provider
Laura Friend	Home Health provider
Nancy Fry	Legal Aid of WV Behavioral Health Advocacy Project
Susan Given	Disability Rights West Virginia
Roy Herzbach	Legal Aid of WV Long-Term Care Ombudsman Project
Amber Hinkle	Open Doors, Inc.
Regina Mayolo	Housing representative
Ann McDaniel	WV Statewide Independent Living Council
Suzanne Messenger	Bureau of Senior Services
Rebecca Nicholas	WV DHHR Bureau for Children and Families
Pat Nisbet	WV DHHR Bureau for Medical Services
Kim Nuckles	State ADA Coordinator
Meredith Pride	Appalachian Center for Independent Living
Carissa Shirley	Aging and Disability Resource Center
Paul Smith	Fair Shake Network
Richard Stonestreet	AARP
Jenny Sutherland	Putnam County Aging Program
Cindy Tucker	Lewisburg, WV
Richard Ward	WV Division of Rehabilitation Services
Steve Wiseman	WV Developmental Disabilities Council
Jim Womeldorff	Job Squad Inc.

Olmstead Enforcement

The United States Department of Justice, Civil Rights Division's Disability Rights Section, that enforces Title II and Title III of the ADA, and Special Litigation Section that enforces the Civil Rights of Institutionalized Persons Act (CRIPA), have made Olmstead enforcement a top priority. The first year of the Obama administration proved to be a landmark year, with a record number of amicus briefs, lawsuits, and intervention into state Olmstead cases.

In addition to stepping up enforcement, investigatory work has significantly changed. In the past, the first questions asked were whether the institutions under investigation are safe, and whether conditions of confinement are constitutional. These are now the second questions asked. The first question asked is whether there are individuals in those institutions who could appropriately receive supports in a more integrated setting.

In 2011, the Civil Rights Division of the Department of Justice released the Statement of the Department of Justice on Enforcement of the Integration Mandate of Title II of the ADA and *Olmstead v. L.C.* This technical assistance guide was created to assist individuals in understanding their rights under Title II of the ADA and its integration mandate, and to assist state governments in complying with the ADA.

Olmstead on the National Level

Since 1999, there have been four major federal initiatives to assist state compliance with Title II of the ADA and the *Olmstead* decision. Those have been:

- The New Freedom Initiative (2000)
- The Deficit Reduction Act (2005)
- The Year of Community Living (2009)
- The Affordable Care Act (2010)

Year of Community Living

The *Year of Community Living* is the most recent initiative that had a direct impact on federal enforcement and federal collaboration to assist states in implementing the promise of the *Olmstead* decision.

In 2009, President Obama launched the *Year of Community Living* to commemorate the 10th anniversary of the *Olmstead* decision. The *Year of Community Living* was launched to reaffirm the commitment to “vigorous enforcement of the civil rights for Americans with disabilities.” The “Community Living Initiative” was developed to coordinate the efforts of federal agencies and underscored the importance of the ADA and *Olmstead*.

Administration for Community Living

The Administration for Community Living (ACL) was initially established on April 18, 2012, by bringing together the Administration on Aging, the Office on Disability and the Administration on Developmental Disabilities. Since then, ACL has grown significantly. Through budget legislation in subsequent years, Congress moved several programs that serve older adults and people with disabilities from other agencies to ACL, including the State Health Insurance Assistance Program, the Paralysis Resource Center, and the Limb Loss Resource Center. The 2014 Workforce Innovation and Opportunities Act moved the National Institute on Disability, Independent Living, and Rehabilitation Research and the independent living and assistive technology programs from the Department of Education to ACL.

State Examples of Olmstead Enforcement

Ball v. Kasich, No. 2:16-cv-282 (S.D. Ohio) - On August 22, 2016, the United States filed a Statement of Interest in the case of *Ball v. Kasich*. In *Ball*, individuals on a wait list for home- and community-based services allege that Ohio’s ongoing denial of services has placed them at serious risk of institutionalization. The Statement of Interest clarifies that non-institutionalized individuals with disabilities who are not currently receiving state-funded home- and community-based services may bring a claim that a public entity has placed them at risk of institutionalization or segregation in violation of Title II’s “integration mandate.” The Statement of Interest also makes clear that a serious risk of institutionalization need not be imminent to state a valid *Olmstead* claim. The Court granted Plaintiffs’ Motion to Include Supplemental

Evidence and a Revised, Proposed Class Definition on September 20, 2017, in Further Support of Plaintiffs' Motion for Class Certification.

Georgia Network for Educational and Therapeutic Support : U.S. v. Georgia, No. 1816-cv-03088 (N.D. Ga.) - On August 23, 2016, the United States filed the lawsuit against the State of Georgia in federal district court to remedy violations of the ADA pertaining to the State's failure to provide thousands of public school students with behavior-related disabilities with appropriate mental health and therapeutic educational services and supports in the most integrated setting appropriate to their needs. The lawsuit alleges that, as a result of the manner in which Georgia plans, funds, administers, and delivers its mental health and therapeutic educational services through the Georgia Network for Educational and Therapeutic Support Program (GNETS Program), students with disabilities are unnecessarily segregated and provided unequal educational opportunities in GNETS centers and classrooms, where they are isolated from their non-disabled peers, when they could be served in general education classrooms. The lawsuit further alleges that other students with behavior-related disabilities are placed at serious risk of segregation in the GNETS Program. On August 11, 2017, the Court granted the State of Georgia's request for a stay until the Eleventh Circuit Court of Appeals resolves *C.V. v. Dudek* or the United States in *Dudek* dismisses its appeal.

DOJ Findings Letter to Louisiana - On December 21, 2016, the United States sent its findings to the state notifying it of violations of the Americans with Disabilities Act, which stem from its failure to deliver services to people with serious mental illness in the most integrated settings appropriate. People with serious mental illness in Louisiana often must enter nursing facilities to receive the day-to-day assistance they need when they rely on the state to provide those services.

U.S. v. Mississippi, No. 3:16-cv-00622 (S.D. Miss.) - On August 11, 2016, the United States filed a lawsuit against the State of Mississippi, pursuant to the Americans with Disabilities Act (ADA) and Civil Rights of Institutionalized Persons (CRIPA) alleging it violates Title II of the ADA and Olmstead by unnecessarily segregating people with mental illness in its state hospitals and placing people with mental illness at serious risk of hospitalization as a result of insufficient community-based services. The complaint alleges that the state's failure to provide services in community settings forces adults with mental illness to access services in segregated state hospitals, including the Mississippi State Hospital, East Mississippi State Hospital, North Mississippi State Hospital, and South Mississippi State Hospital. This case is currently in the discovery phase, and a settlement conference is scheduled for October 16, 2018.

U.S. v. North Carolina, No. 5:12-cv-557 (E.D.N.C.) - On September 21, 2017, the Court granted in part and denied in part the United States' motion to enforce the settlement agreement with the State of North Carolina resolving the Civil Rights Division's ADA Olmstead investigation of the State's mental health service system. The Agreement will expand access to community-based supported housing – integrated housing that promotes inclusion and independence and enables individuals with mental illness to participate fully in community life.

On January 9, 2017, the United States moved to enforce the supported housing and supported employment provisions of the Agreement. The Court agreed that the State has repeatedly failed to substantially comply with its annual obligations, regarding the number of occupied housing slots and the number of individuals with serious mental illness in or at risk of entry to an adult care home who received supported employment services. The Court has ordered the parties to continue to negotiate in good faith.

Olmstead on the State Level

The Olmstead Council, through extensive public input, developed ten Olmstead goals for West Virginia. Each goal has a series of specific objectives.

1. **Informed Choice:** Establish a process to provide comprehensive information and education so people with disabilities can make informed choices.
2. **Identification:** Identify every person with a disability impacted by the Olmstead decision who resides in a segregated setting.
3. **Transition:** Transition every person with a disability who has a desire to live and receive supports in the most integrated setting appropriate.
4. **Diversion:** Develop and implement effective and comprehensive diversion activities to prevent or divert people from being institutionalized or segregated.
5. **Reasonable Pace:** Assure community-based services are provided to people with disabilities at a reasonable pace.
6. **Eliminating Institutional Bias:** Provide services and supports to people with disabilities by eliminating the institutional bias in funding and administering long-term care supports.

7. **Self-Direction:** Develop self-directed community-based supports and services that ensure people with disabilities have choice and individual control.
8. **Rights Protection:** Develop and maintain systems to actively protect the civil rights of people with disabilities.
9. **Quality:** Continuously work to strengthen the quality of community-based supports through assuring the effective implementation of the Olmstead Plan, and that supports are accessible, person-centered, available, effective, responsive, safe, and continuously improving.
10. **Community-Based Supports:** Develop, enhance, and maintain an array of self-directed community-based supports to meet the needs of all people with disabilities and create alternatives to segregated settings.

West Virginia Department of Health and Human Resources

On June 1, 2015, the United States sent its findings to the State of West Virginia asserting it violated the Americans with Disabilities Act and *Olmstead v. L.C.* by failing to deliver mental health services to children who rely on publicly funded care in the most integrated settings appropriate. The state is currently in discussions with the Department of Justice.

West Virginia Successes

- The Money Follows the Person Program and Olmstead-related activities have similar goals, which are to allow people with disabilities the opportunity to live in integrated community-based settings. This Rebalancing Demonstration Grant helps rebalance the long-term care system by transitioning people from institutions into the community. Money Follows the Person is just one strategy that is being used to promote opportunities for people to live in integrated community settings. During state fiscal year 2017, Take Me Home West Virginia received 233 intakes, and 83 individuals were transitioned. During this time, 42 individuals successfully completed 365 days of participation in the community. Since the program began in February 2013, there have been 836 intakes. There have been 252 individuals transitioned, with 122 individuals successfully completing 365 days of participation in the community.
- On August 1, 2015, the WV Clearance for Access: Registry & Employment Screening Unit (WV CARES) began processing background checks for current

and potential nursing home employees in the state of West Virginia. WV CARES has expanded to begin screening employees in all provider types covered by the WV CARES Act. Since its inception, WV CARES has provided monthly monitoring of approximately 57,000 long-term care employees and has provided employment fitness determinations for over 62,000 potential and current employees. With the addition of the federal background check, WV CARES has found approximately 100 individuals seeking employment in the state who are wanted on various charges across the country. Several of these individuals were taken into custody by the WV State Police or U.S. Marshals for extradition.

- Ventilator care can be provided to children 18 years of age or younger under the Private Duty Nursing service through Medicaid. This service is provided in the home to those who are eligible. Ventilator care can also be provided under the I/DD waiver to anyone regardless of age by a Registered Nurse (RN), Licensed Practical Nurse (LPN) and/or Approved Medication Assistive Personnel (AMAP). In ICF/IID facilities, this service can be provided through RN, LPN, and or AMAP. Assisted living residences can provide this service through RN, LPN, and/or AMAP.
- West Virginia's first Behavioral Health Referral & Outreach Call Center, HELP4WV, a statewide 24-hour call center, continued to provide resources and referral support for those seeking behavioral health services. The 24-hour call center maintains a live database with service options – updated daily with residential facilities' bed capacity and additional treatment information. The call center works in conjunction with existing on-call or crisis support systems to strengthen ease of navigation and connectivity for callers. Individuals contacting the call center are offered behavioral health education materials, information on available behavioral health services in or near their respective location, as well as referral to the appropriate level of care based on individual needs in coordination with regional and local providers. For state fiscal year 2017 there were 10,307 HELP4WV calls. 6,911 requested general information and 3,396 requested information on access/navigational intakes. The most requested resources were information on detoxification/crisis stabilization centers, assessments and diagnostics and inpatient residential services. Callers are connected to a provider during the call and the helpline agent stays on the phone with the caller and the provider until an appointment is scheduled. Follow up calls are also made to those who gave permission.
- The West Virginia Department of Health and Human Resources, Bureau for

Medical Services has applied for a 1115 Waiver from the Centers for Medicare and Medicaid Services (CMS) to address substance use disorder (SUD). The goal of the SUD waiver is to build a comprehensive continuum of care across the state to more effectively prevent and treat substance use disorders in West Virginia. Features of the proposed waiver include:

- Medicaid fee-for-service and managed care members will be eligible for SUD treatment services under the waiver.
 - The waiver will include strategies focused on SUD prevention and treatment among adolescents. At-risk families will be eligible for SUD treatment services to allow for community-based treatment and supports to prevent children from being placed out of the home.
 - Foster care youth will be able to receive SUD treatment services through the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) benefit.
 - Medicaid will build on existing efforts to raise awareness and address the prevalence of babies born with exposure to substance use.
 - Statewide adoption of the screening, brief intervention, and referral to treatment (SBIRT) method to ensure a consistent and effective diagnosis and enrollment process.
 - Expanded coverage of withdrawal management in regionally identified settings.
 - Short term, residential substance use treatment for Medicaid managed care enrollees.
 - Enhanced access to outpatient SUD treatment as appropriate when residential treatment is not required.
 - Coverage of methadone and methadone administration as part of the state's opioid treatment program.
 - A comprehensive initiative for distributing naloxone and cross-training staff on administration of naloxone as part of the effort to reduce overdose deaths.
 - Coverage of a set of clinical and peer recovery support services and recovery housing supports designed to promote and sustain long term recovery.
- The Bureau for Behavioral Health and Health Facilities is making progress with the Peer Support certification process. The Bureau for Medical Services is adopting West Virginia's peer credentialing process as a requirement for peer supporters to be eligible to bill for the Substance Use Disorder Waiver peer support service. Medicaid will begin paying for peer support in January 2018.

- The Olmstead Office provided \$1,000 to assist in sponsoring the annual West Virginia Housing Conference. This conference attracts more than 250 housing advocates, lenders, developers, administrators and policy makers from the non-profit, public, and private sectors each year. The theme for 2017 is “Housing: It’s Not Just About Housing Anymore” and will feature over 70 workshops plus opportunities to learn and network with national, state, and local experts - from the nuts and bolts of housing development to funding tools and innovative models. This conference will also recognize the important connection of housing to health, economic development, and social stability for children, families, and elder population.
- The Olmstead Office provided \$1,000 to the Fair Shake Network for its annual legislative training and Disability Advocacy Day at the Capitol. The legislative training provided instruction to individuals on how to speak with legislators, and how to educate participants about upcoming legislative issues. For Disability Advocacy Day, there was a large rally and numerous vendor displays.

2017 Legislative Session

Several bills passed during the 2017 West Virginia legislative session that could impact people with disabilities and the Olmstead decision goal of having people with disabilities living in the most integrated setting.

- SB 76, Creating WV Second Chance for Employment Act - This legislation will ultimately make it easier for people who have served time in a correctional facility, some of whom have disabilities, to find employment.
- HCR 130, Feasibility Study of Selling West Virginia’s State-Owned Mental Health Facilities - This study would explore the consequences of the State selling its two psychiatric hospitals to the private sector which may or may not lead to decreased instances of institutionalization. Selling the state-run nursing homes is also being discussed and advocates are asking questions about where current residents would be placed and where people currently living in the community would go, should they ever need to be placed in a nursing home.

- SB 198, Expanding Health Sciences Program to Allow Certain Medical Practitioners in Underserved Areas - This bill would help incentivize clinicians to work in rural parts of the state and better serve people with disabilities in those areas.
- SB 386, Creating WV Medical Cannabis Act - This bill would legalize treatment for people with certain disabilities and potentially improve their quality of life by helping to decrease some of the more challenging symptoms of their illnesses.
- HB 2428, Establishing Additional Substance Abuse Treatment Facilities - This bill creates a new funding mechanism to expand access to Substance Use Disorder treatment services using the drug manufacturer settlement funds.
- HB 2459, Relating to Regulation of Health Care and the Certificate of Need Process – By opening and simplifying the Health Care Authority’s Certificate of Need Process, it should be easier for new providers to expand treatment services to parts of the state that do not have providers.
- HB 2848, The Livable Home Tax Credit – This bill which did not pass, would have provided a tax credit for modifications to homes made more accessible for an elderly person or a person with a disability.

West Virginia Barriers Identified by the Council

Just as there are successes, the Olmstead Council has identified barriers that impede or prohibit individuals from accessing supports and services that are necessary to maintain their presence in the community. It is important to note that this is not an all-inclusive list of barriers, and that the Olmstead Coordinator is merely reporting the findings of the Council.

- The Aged and Disabled Waiver and Traumatic Brain Injury Waiver do not permit nurses to provide ventilator care. While the state code explains nursing homes can provide ventilator care, it cannot cost more than the typical care, making it cost prohibitive to nursing homes.
- The Eligibility Process: The Intellectual/Developmental Disability (I/DD) Waiver Program, Aged and Disabled Waiver Program, and Traumatic Brain

Injury Waiver Program eligibility processes are more restrictive, complicated and lengthy when compared to institutional care settings.

- **Medicaid Long-Term Care Budget:** A greater percentage of the overall Medicaid long-term care budget is spent for institutional care when compared to community-based supports.
- **Workforce:** There is a lack of an available, responsive and competent workforce to provide direct services to enable people with disabilities to remain or return to their home and community.
- **Waiting lists** are in place for eligible applicants of the I/DD Waiver Program, the Aged and Disabled Waiver Program, the Traumatic Brain Injury Waiver Program, the Lighthouse Program, the Family Alzheimer's In-Home Respite Program and, the Housing Choice Voucher Program and the Community Living Services Program.
- **Housing:** There is a lack of affordable, accessible, and available housing for people with disabilities.
- **Alternatives to Nursing Facility Care:** The Aged and Disabled Waiver Program does not provide a comparable or functional alternative to nursing facility care, nor does it provide personal care options.
- **Medicaid Personal Care services** are not available to all recipients of the Aged and Disabled Waiver Program.
- **Informed Choice:** Adequate education on home- and community-based service and support options is not required to be provided prior to institutional placement, or regularly thereafter.
- **Incentives to Provide Institutional Care:** The cost-based reimbursement methodology incentivizes institutional care.
- **Mental Health and Substance Abuse Services:** A fragmented and inadequate service system exists for people with mental illness and co-occurring disabilities.

- Case Management Services and Transition: The case management services are not effectively used to support people in transitioning from institutional care to the community.

Olmstead Initiatives in West Virginia

Revising and Updating the Olmstead Plan

In response to the increased federal Olmstead enforcement and technical assistance, the Council is establishing a process to update the plan.

Information, Referral and Assistance Program

The Olmstead Office provides information, referral and assistance to West Virginians with disabilities and their families concerning Olmstead-related issues. In addition to information and referral, the Olmstead Office provides residents with assistance on Olmstead-related complaints or grievances. In state fiscal year 2017, the Olmstead Office received 784 contacts for information, referral and assistance. The biggest barrier to providing assistance is the need for systems change to decrease the institutional bias and make community-based services and supports more readily available and accessible.

Olmstead Transition and Diversion Program

Since 2007, the purpose of the Olmstead Transition and Diversion Program (formerly the Transition Navigator Program) has been to assist West Virginians with disabilities residing in institutional facilities (or at-risk of institutionalization) to be supported in their home and community. In 2010, the program experienced a major change as a result of the Take Me Home, West Virginia Program. The Bureau for Medical Services (BMS) is in the process of expanding this program statewide. The Olmstead Office has provided BMS with \$292,000 in state general revenue funding for program expansion.

The Olmstead Office continues to offer smaller grants through the Olmstead Transition and Diversion Program. This program supports people for transition and diversion and focuses on those not otherwise supported by the Take Me Home, West Virginia Program. In addition to our normal grant funding, the Olmstead Office received additional one-time funding of \$200,000 from the Bureau of Behavioral Health and Health Facilities.

For those transitioning to the community, each participant is eligible to receive up to \$2,500 to pay for reasonable and necessary one-time start-up costs that may include security deposits, household furnishings, set-up fees and deposit, moving expenses, assistive devices or technology and home access modifications.

During state fiscal year 2017, the program supported 283 people through the transition and diversion process. Nine people were transitioned from facilities into the community including two from William R. Sharpe, Jr. Hospital. The average start-up funding allocated per participant was \$1,182.35. The Olmstead Transition and Diversion Program has the potential to save the Medicaid Program money each time it transitions or diverts someone from institutional care. Of the 283 people assisted in this fiscal year, 41 received Medicaid only, 145 received both Medicaid and Medicare, and 186 received Medicare only. Eight people did not report what they received.

	# of Applications Approved	Funding Allocated	Average Cost Per Person
January 2017	108	\$131,746.69	\$1,219.87
February 2017	64	\$69,178.66	\$1,080.91
March 2017	26	\$29,701.14	\$1,142.35
April 2017	40	\$57,714.11	\$1,442.85
May 2017	24	\$26,673.22	\$1,202.34
June 2017	21	\$19,592.62	\$932.98
Year to Date	283	\$334,606.44	\$1,182.35