Olmstead Annual Report

July 1, 2008 - June 30, 2009

Building Inclusive Communities in West Virginia

This Annual Report is dedicated in memory of

Stephen Bowles, Olmstead Council member.

July 22, 1955 – May 31, 2009

Contents

Figures, Tables and Charts

THE OLMSTEAD CASE

In 1995, the landmark case now known as *Olmstead* 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. The state of Georgia offered nursing facility placements. Ms. Curtis and Ms. Wilson believed this violated their rights under *Title II of the Americans with Disabilities Act*.

Olmstead v. L.C. went through the judicial process. The Georgia Department of Human Resources appealed to the U.S. Supreme Court the lower court's decision that it had violated the ADA's integration mandate by segregating Ms. Curtis and Ms. Wilson in the hospital.

The U.S. Supreme Court found such segregation discriminatory both because it "perpetuates unwarranted assumptions" that people with disabilities "are incapable or unworthy of participating in community life" and because "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. And like *Brown*, it is forcing change very slowly, and then only through determined and vigorous advocacy.

Excerpts and photo from "Still waiting…The Unfulfilled Promise of Olmstead" by the Bazelon Center for Mental Health Law, June 24, 2009.

Elaine Wilson (left) and Lois Curtis came to Washington in 1999 for the argument of their case before the U.S. Supreme Court. Today, Ms. Curtis is a successful folk artist in Atlanta, living at home with supportive services. Ms. Wilson lived in her own apartment until she died in 2004, at the age of 53.

INTRODUCTION

June 22, 2009 marked the tenth anniversary of the landmark Olmstead decision. *Olmstead v. L.C.* is a U.S. Supreme Court decision upholding the rights of people with disabilities to receive supports in the most integrated setting in their community. *Title II of the Americans with Disabilities Act* (ADA) was the basis for the Supreme Court 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:**

1. The **integration regulation** mandates that states "shall administer services in the most integrated setting appropriate to meet the needs of individuals with disabilities." The **most integrated setting** is where people with disabilities are able to engage in the same opportunities to be active members of their community to work, live, socialize, and contribute as other citizens without disabilities.

2. The **reasonable modifications regulation** mandates that states "shall make reasonable modifications 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 modifications standard would be met."

On October 12, 2005, Governor Joe Manchin III signed Executive Order 11-05 formally approving and ordering the implementation of the *West Virginia Olmstead Plan: Building Inclusive Communities* (or the Olmstead Plan). **Appendix A** provides a list of the 10 key Olmstead Plan goal statements. **Executive Order 11-05 directs:**

1. the implementation of the *West Virginia Olmstead Plan: Building Inclusive Communities*;

2. 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

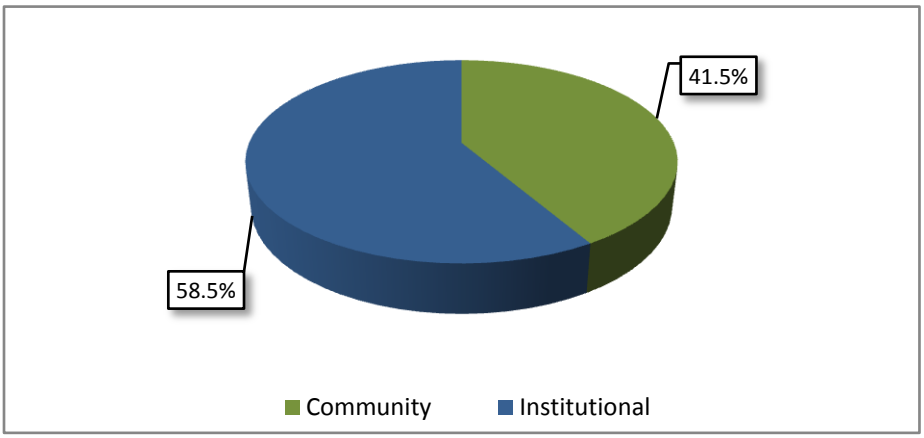
3. the submission of an annual report by the Olmstead Office to the Governor on the progress of implementing the Plan.

One of the major barriers to achieving compliance with the Olmstead decision and Title II of the ADA is the institutional bias of federal and state Medicaid regulations. Historically, Medicaid has covered long term care supports more readily when an individual resides in an institutional setting. However, in response to the Olmstead decision, the Centers for Medicare and Medicaid Services have offered states clarification, guidance, and increased flexibility to implement community-based services, and reduce reliance on institutions. West Virginia has lagged behind in taking advantage of this flexibility and maintains an institutional bias in implementing and funding long term care supports. Examples of this institutional bias are provided on pages 8-10 of this report.

Figure 1 compares Medicaid long term care spending for community-based and institutional supports in West Virginia for fiscal year 2008.

In 2008, West Virginia spent 58.5% ($502.8m) of its total Medicaid long term care expenditures on institutional care and 41.5% ($356.9m) on community-based supports.[1] Institutional care includes nursing facilities and intermediate care facilities for persons with mental retardation (ICF/MR). Community-based services include the Aged and Disabled Waiver, Mental Retardation/Developmental Disabilities (MR/DD) Waiver, Personal Care, and Home Health services.

Figure 1. WV Medicaid Long Term Care Spending, FY 2008



[1] Burwell, Brian; Sredl, Kate; Eiken, Steve. (December 1, 2009). Medicaid Long Term Care Expenditures FY 2008. Thomson Reuters

Figure 2 shows the distribution of Medicaid long term care expenditures for 2008 in West Virginia.[2] Since 2004, West Virginia has dropped in the national rankings from 17th to 24th when comparing overall Medicaid institutional and community-based spending. It should be noted that five states were not included in the rankings due to insufficient data.

Figure 2. Distribution of WV Medicaid Long Term Care (LTC) Expenditures, 2008

	Institutional Expenditures[3]	% of Medicaid LTC	Community Expenditures[4]	% of Medicaid LTC	TOTAL Expenditures	National Ranking	
	2008					2004	2008
MR/DD[5]	$60,128,913	21.5%	$219,893,087	78.5%	$280,022,000	19th	17th
AD[6]	$442,720,809	76.4%	$136,967,315	23.6%	$579,688,124	18th	24th
TOTAL	$502,849,722	58.5%	$356,860,402	41.5%	$859,710,124	17th	24th

Figure 3 details the distribution of Medicaid spending for institutional and community-based services for aging and disability services since the Olmstead decision was rendered in 1999.[7]

Figure 3. WV Medicaid Expenditures (millions), 1999-2008

	Nursing Facility	Aged and Disabled Waiver, Personal Care, Home Health	Expenditure Ratio
FY 1999	$274.2	$81.6	$3.36 to $1
FY 2000	$275	$81	$3.40 to $1
FY 2001	$293	$86	$3.41 to $1
FY 2002	$311	$92	$3.38 to $1
FY 2003	$331	$104	$3.18 to $1
FY 2004	$378	$119	$3.18 to $1
FY 2005	$397.5	$119	$3.34 to $1
FY 2006	$402	$115.5	$3.48 to $1
FY 2007	$420.7	$128.3	$3.28 to $1
FY 2008	$502.8	$137	$3.67 to $1
% Increase 1999 to 2008	+83%	+68%	

[2] Burwell, Brian; Sredl, Kate; Eiken, Steve. (December 1, 2009). Medicaid Long Term Care Expenditures FY 2008. Thomson Reuters

[3] Institutional includes nursing facilities and ICF/MR facilities.

[4] Community includes the Aged and Disabled Waiver, MR/DD Waiver, Personal Care, and Home Health services.

[5] MR/DD includes costs for ICF/MR facilities and MR/DD Waiver services.

[6] AD includes costs for Aged and Disabled Waiver, Personal Care, and Home Health services.

[7] Burwell, Brian; Sredl, Kate; Eiken, Steve. (December 1, 2009). Medicaid Long Term Care Expenditures FY 2008. Thomson Reuters

Figure 3 shows during 2008, for every $1.00 spent on Aged and Disabled Waiver, Personal Care and Home Health services, $3.67 was spent on nursing facility care. Nursing facility expenditures increased by 83% (not factoring for inflation) from 1999 to 2008. During the same time period expenditures for the Aged and Disabled Waiver, Home Health and Personal Care services (combined) increased by 68%.

The national organization, United Cerebral Palsy (UCP) issued an annual report entitled "The Case for Inclusion 2009" that analyzed and rated states on a variety of performance outcomes. Most notably West Virginia was among eight other states with a significant negative change in overall national rankings. West Virginia dropped in the national rankings from 16th in 2007 to 23rd in 2009. The UCP attributed this drop in the rankings as "mostly due to not keeping pace with the rest of the country and due to not serving more families in family support."[8] **Figure 4** details areas West Virginia was nationally ranked in 2009 compared to the 2007 rankings:[9]

Figure 4. "The Case for Inclusion" MR/DD National Rankings for West Virginia

Key Outcomes and Data Elements	National Rankings	
	WV 2007	WV 2009
Allocating Resources to Those in the Community (Non-ICF/MR)	22	24
Supporting Individuals in the Community and Home-Like Settings	13	14
Keeping Families Together through Family Support	25	26
Supporting Meaningful Work	45	45
State Ranking of Medicaid Spending for MR/DD	16	23

States can have an institutional bias in both the funding of long term care services, and in statutes and regulations for implementing those services. **Some examples of institutional bias in West Virginia are:**

1. The West Virginia Aged and Disabled Waiver Program is the home and community-based alternative to nursing facility care. Under the traditional model, the waiver program offers eligible recipients 62 to 155 hours per month of in-home support based on level of care defined by the state Bureau for Medical Services. This equates to 2 to 5 hours per day of direct in-home

[8] *The Case for Inclusion 2009, An Analysis of Medicaid for Americans with Intellectual and Developmental Disabilities*. United Cerebral Palsy. 2009.
[9] Ibid

support as opposed to nursing facility care offers support and care 24 hours per day for eligible residents.

2. West Virginia permits presumptive eligibility for ICF/MR and nursing facility care. This means individuals can be admitted to these programs before Medicaid eligibility is established. The eligibility process is considerably longer for those seeking Aged and Disabled or MR/DD waiver services. Furthermore, waiting lists significantly impact the length of time an eligible individual must wait before services can be provided.

3. West Virginia nursing facilities receive comprehensive per diem reimbursement rates based on actual costs and case mix that are recalculated every six months. Aged and Disabled Waiver Program services are reimbursed on a fee-for-service basis.

4. West Virginia ICF/MR facilities receive comprehensive per diem reimbursement rates based on actual costs and client specific needs assessments. MR/DD Waiver Program services are reimbursed on a fee-for-service basis. Individual budgeting has been implemented for the MR/DD Waiver Program though assessment of need.

5. The West Virginia MR/DD Waiver Program has one of the most restrictive eligibility criteria in the nation. This results in people who have significant needs being un-served or under-served. This results in people who have significant needs being un-served or under-served.

6. West Virginia is using sparse and vital resources by permitting the construction of new ICF/MR facilities to replace old or unused beds or structures. West Virginia passed a real opportunity to support community-based services when it downsized Green Acres, a large ICF/MR facility and built smaller ICF/MR facilities.

7. West Virginia severely restricts the location of personal care services to the recipients' home. This causes individuals to be unnecessarily segregated or confined to their home. People receiving nursing facility services are not restricted to the facility, and have access to community outings.[10]

[10] As of November 2009, the Bureau for Medical Services had requested a state plan amendment to allow community activities up to 20 hours per month.

8. West Virginia restricts the number of hours a recipient of Aged and Disabled Waiver supports can receive services in the community to 20 hours per month. This causes individuals to be unnecessarily restricted to their home. The individuals' needs should drive where appropriate services are received.

9. West Virginia uses waiting lists for both the MR/DD Waiver Program and the Aged and Disabled Waiver Program. This results in eligible individuals being unable to access services at a reasonable pace. Often eligible individuals are forced to wait years to receive services and potentially being forced into institutional settings before services can be established. When individuals are forced into nursing facilities, it costs the state more to provide care. In 2009, the average cost of nursing facility was $44,560 (does not include patient share), and the average cost of Aged and Disabled Waiver services was $18,858.[11]

10. West Virginia does not provide direct and targeted services to people with traumatic brain injuries. Individuals with traumatic brain injuries are inappropriately institutionalized or receive inadequate supports from programs that are designed for seniors, people with mental illness or people with developmental disabilities.

11. West Virginia does not effectively address the needs of people who are ventilator dependant. West Virginia citizens must have significant informal supports or they are forced out-of-state for nursing facility care.

12. West Virginia does not permit the administration of medication in community-based setting through flexible delegation or exemption programs, thus forcing individuals to accept costly nursing care.

In the 1980's and 1990's, West Virginia has been a leader in the nation for closing institutions for people with developmental disabilities and downsizing institutions for people with mental illness. **Some recent positive achievements in West Virginia's long term care system include the following:**

1. Moratoriums on the development (net increase) of nursing facility and ICF/MR beds and facilities.
2. Implementation of the self-directed option for the Aged and Disabled Waiver Program.

[11] Data provided by the WV Bureau for Medical Services.

3. Implementation of a pilot transition/diversion program in 22 counties, the West Virginia Transition Navigator Program.
4. Development and expansion of the Aging and Disability Resource Centers.
5. Implementation of the Ron Yost Personal Assistance Program (RYPAS).
6. Implementation of state funded senior programs, Lighthouse and FAIR.
7. Planning a self-directed option for the MR/DD Waiver Program.
8. Implementation of court action in the Hartley case has been re-opened to address community mental health services, overcrowding at state-operated psychiatric facilities, and traumatic brain injury services.

WEST VIRGINIA OLMSTEAD PLAN IMPLEMENTATION

The Olmstead Plan has been in place through Executive Order 11-05 since 2005. The Olmstead Council and Office has worked diligently and taken proactive steps for its implementation.

WEST VIRGINIA OLMSTEAD COUNCIL

The West Virginia Olmstead Council (Council) was established to advise and assist the Olmstead Coordinator to develop, implement and monitor West Virginia's Olmstead activities. The mission of the Council is to assist all West Virginia citizens with disabilities to have the opportunity to receive supports and assistance in the most integrated setting in the community. **The Council has the following responsibilities as outlined in the West Virginia Olmstead Plan:**

1. advise the Olmstead Coordinator in fulfilling the position's responsibilities and the duties;
2. review the activities of the Olmstead Coordinator;
3. provide recommendations for long term care institutional and community-based supports systems;
4. issue position papers for the identification and resolution of systemic issues; and
5. monitor, revise, and update the Plan and any subsequent work plans.

"Much can be done when we raise our voices and join together. We cannot simply stand by and wait for someone else to take action. We must make our own history."

-the late Ken Ervin
WV ADAPT &
Olmstead Council member

The Council is a 30 member body consisting of eight (8) people with disabilities and/or immediate family members; eleven (11) advocacy and/or disability organizations; six (6) providers of institutional and community supports; four (4) state agencies; and one (1) representative from federal/local housing. **Appendix B** provides a list of Council members serving during the state fiscal year.

The Olmstead Council identifies priorities and issues to be addressed each year. The overarching goal for 2009 was to implement the West Virginia Olmstead Plan. **The Olmstead Council identified the following priorities for 2009:**

1. **Implement the Money Follows the Person (MFP) and Rebalancing Study Recommendations**

Implement the study recommendations issued by the Public Consulting Group in the "Money Follows the Person and Rebalancing Long Term Care Study" report.[12] At least forty-three (43) states across the country are implementing MFP and Rebalancing initiatives. It is critical to utilize existing funding in a more effective and efficient manner to implement the Olmstead Plan. **Appendix C** details the recommendations issued in this study report.

2. **Increase Availability and Access to Needed Home and Community-Based Services**

Develop or enhance services and supports for people who are under-served or un-served throughout West Virginia. This includes people with support needs for: mental illness, substance abuse, traumatic brain injury, physical disability, developmental disability, ventilator dependency, and co-occurring disabilities.

3. **Eliminate Waiting Lists for Home and Community-Based Services**

Waiting lists for home and community-based services severely diminish an individual's independence and freedom to remain at home.

4. **Enhance the Services Offered by the Aged and Disabled Waiver Program**

The Aged and Disabled Waiver Program does not provide a realistic and functional alternative to nursing facility care.

5. **Implement a Statewide Transition and Diversion Program**

The Transition Navigator Program needs to be expanded to cover all 55 counties in West Virginia. This program addresses several components of the Olmstead Plan.

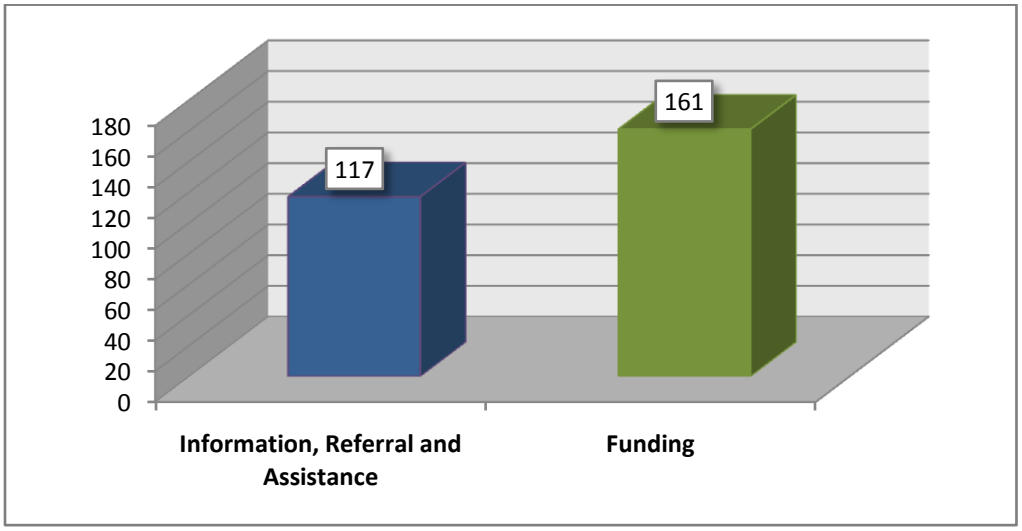
WEST VIRGINIA OLMSTEAD OFFICE

The Olmstead Office provides information, referral and assistance to West Virginia citizens concerning Olmstead-related issues. The Olmstead Office also provides support for start-up funding under the Transition Navigator Program.

[12] Study report issued on August 8, 2008 and was detailed in the Annual Olmstead report for state fiscal year 2008.

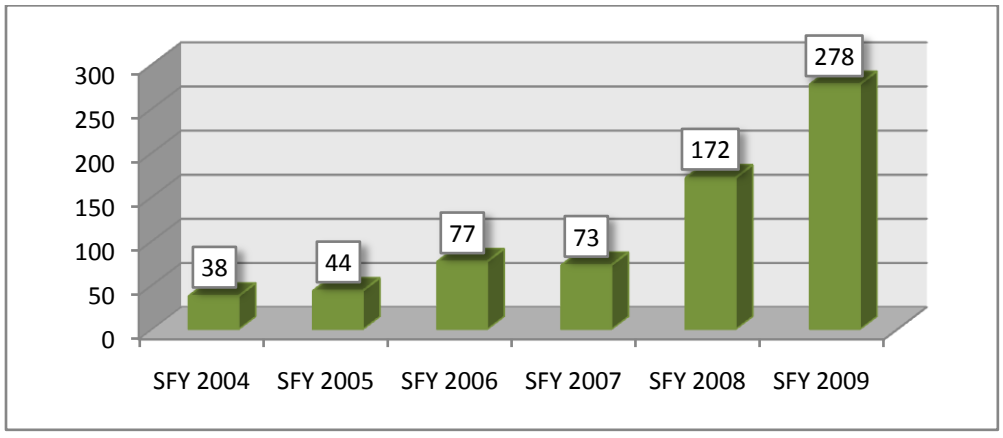
In state fiscal year 2009, the Olmstead Office received 278 documented contacts for information, referral, assistance and funding. **Figure 5** details the number of contacts by category for state fiscal year 2009.

Figure 5. Olmstead Contacts, SFY 2009



The Olmstead Office has been tracking Olmstead-related contacts since the office was established in 2003. **Figure 6** shows the number of contacts per state fiscal year 2004 through 2009.

Figure 6. Number of Annual Olmstead Contacts, SFY 2004 - 2009



OLMSTEAD COUNCIL AND OFFICE ACTION STEPS

During the fiscal year, the Olmstead Council and Office have taken steps to address the implementation of the Olmstead Plan. **The following provides some examples of these action steps:**

1. The Council established a committee to develop a comprehensive work plan to assist with the implementation of the Olmstead Plan.

2. The Office and Council continue to administer and monitor the on-going implementation of the Transition Navigator Program through grant agreements with community organizations.

3. The Public Consulting Group (PCG) issued the *Money Follows the Person Rebalancing Long Term Care* study report to the Olmstead Office .

4. The PCG presented the *Money Follows the Person Rebalancing Long Term Care* study findings to the Olmstead Council and the PEIA, Seniors and Long Term Care Subcommittee of the West Virginia Legislature.

5. The Office and Council participated on the *Health Care Reform in WV: the Roadmap to Health Project*, an initiative of the WV Legislature Interim Select Committee on Health.

6. The Council issued a letter to the Office of Health Facilities Licensure and Certification requesting clarification on the number of licensed ICF/MR beds in West Virginia.

7. During the regular 2009 Legislative session, the Council issued a letter to the House Committee on Finance supporting the Long Term Care Redistribution Act, HB 3268. This bill was not passed during the 2009 regular legislative session.

8. The Council issued a letter to the Department of Health and Human Resources urging the support for community-based mental health services as opposed to developing additional in-patient psychiatric beds.

9. The Office and Council participated in a series of meetings concerning the Nurse Practice Act and Medication Administration by Unlicensed Personnel. Extensive research was completed on state and national laws and regulations affecting medication administration within community-based services. As a result, the Fair Shake Network, West Virginia Developmental Disabilities Council, West Virginia Olmstead Council, and West Virginia Statewide Independent Living Council issued recommendations to pertinent stakeholders. These recommendations were presented to the Legislative Select Committee on Health.

10. The Office created a Community-Based Services and Supports Reference Guide that covers Medicaid waivers; Medicaid state plan services; MR/DD services; Comprehensive Behavioral

Health Center Services; early intervention services; family/foster care programs; community mental health services; general assistance services; senior programs; Olmstead Programs; Americans with Disabilities Act programs; independent living services; traumatic brain injury assistance; assistive technology; and critical disability and advocacy organizations. The guide provides the following information: program description, eligibility criteria, services and caps, and contact information for each service. This information was distributed to organizations with the goal to increase access to appropriate community-based supports.

11. The Office and Council requested an improvement package for additional funding to expand the West Virginia Transition Navigator program statewide. However, no new funding was appropriated for state fiscal year 2010.

12. The Office and Council monitored the MR/DD Waiver wait list through reports received from the Bureau for Behavioral Health and Health Facilities.

13. The Office and Council monitored the Aged and Disabled Waiver and Personal Care services through reports received from the Bureau of Senior Services.

14. The Office and Council participated on the MR/DD Waiver Self-Direction Work Group.

15. The Office and Council sponsored the MR/DD Waiver Self-Direction Work Group by funding stipends and meetings.

16. The Office participated on the Metro AAA Aging and Disability Resource Center Advisory Council.

17. The Office assisted the U.S. Office of Civil Rights (Region III) concerning several Olmstead-related complaint resolutions.

18. The Office distributed Olmstead-related printed materials and resources to approximately 1,023 individuals, advocacy organizations, disability organizations, provider, and state agency stakeholders.

19. The Office participated in the Social Work Conference with presentations on Olmstead, Rebalancing Long Term Care, and the West Virginia Transition Navigator Program.

20. The Office providing funding support to the West Virginia Fair Shake Network and Disability Training Day.

21. The Office participated in the Disability Advocacy Day during the regular 2009 Legislative Session.

22. The Office managed an annual budget of $493,709.00 (state general revenue funds) for grant programs. The Council assists with the allocation of grant funds for two key initiatives: the Transition Navigator Program and Olmstead Plan activities. Olmstead funding was not subject to budget cuts or reductions for the 2010 state fiscal year.

23. The Office administered the Olmstead grant provided by the federal U.S. Substance Abuse and Mental Health Services Administration.

The Olmstead Office tracks and monitors systemic issues that impedes the successful implementation of the Olmstead Plan. **The Olmstead Office is tracking and monitoring seven (7) unresolved systemic issues:**

1. Individuals inappropriately placed at the state-operated psychiatric hospitals, Sharpe and Bateman. (since 2004)

2. Individuals inappropriately placed at the five (5) state-operated long term care nursing facilities. (since 2004)

3. The waiting list for eligible individuals to receive MR/DD Waiver Program services. (since 2004)

4. Implementation of rebalancing initiatives and Money Follows the Person strategies in West Virginia. (since 2005)

5. Individuals inappropriately placed in out-of-state nursing facilities due to the need for ventilator care or other services not available in West Virginia. (since 2005)

6. Development of new ICF/MR programs through the “re-deployment project” by the Bureau for Behavioral Health and Health Facilities. (since 2006)

7. Modification to statutes and regulations related to medication administration within community-based service settings to increase choice, independence and safety for people receiving community-based supports. (since 2007)

SAMHSA FEDERAL OLMSTEAD GRANT

Since 2000, the U.S. Substance Abuse and Mental Health Services Administration (SAMHSA) has issued state Olmstead Initiative grants to states and territories. The purpose of this grant funding is to expand resources and opportunities for adults with serious mental illnesses and children with serious emotional disturbances to live in their home communities. This grant funding offers states up to $60,000 over a three-year grant period. West Virginia has received this grant funding since 2000.

The 2006 – 2009 funding was granted to Legal Aid of West Virginia to supplement the Children's Legal Advocacy Support Project (CLASP). Legal Aid hired a full-time attorney to provide legal assistance to children (and their families) with severe emotional and/or behavioral needs. The Olmstead Office has received a two year extension for funding through September 2011.

During state fiscal year 2009, the CLASP program achieved the following:

1. A client survey was developed to evaluate satisfaction with program services. The survey was disseminated to 50 participants, and 15 surveys were returned. Fourteen people reported high satisfaction with the services they received.

2. A family empowerment survey is being developed to assess individuals who received extensive services from the project.

3. Schools, mental health care providers, DHHR workers, and primary care offices were targeted for outreach and education regarding the project. This outreach was implemented statewide with eight training events reaching approximately 200 people.

4. Trainings were held on special education law, the Individuals with Disabilities Education Act (IDEA), Section 504 of the Rehabilitation Act, and the Americans with Disabilities Act to a peer support group, a family's conference, members of the Bar, and to special education stakeholders. These trainings reached approximately 55 people.

5. Direct legal services ranging from brief services (advice and counsel) to full legal representation was provided to 34 people with 26 closed cases. Thirteen people received extensive services through this project. Of the 26 cases that were closed, 495 hours of legal service was provided.

Specific examples of legal services provided under this project:

1. A child receiving special education services was sent to an interim alternative educational setting after kicking a teacher. The Individual Education Plan (IEP) team concluded the incident was not a manifestation of the child's disability. The behavior plan was not implemented during the incident, and it was never reviewed by the IEP team. The parents were not consulted about the alternative education setting. The attorney successfully represented the child at a due process hearing, where the hearing officer found for the child on every issue cited in the complaint.

2. A child with a sensory disorder had been denied an IEP for the past two years due to the specific diagnosis being unidentified. The attorney assisted the child to obtain an independent comprehensive evaluation conducted by a neuropsychiatrist. As a result, the child had an IEP developed.

3. A child receiving special education services had an incident with a substitute teacher. The substitute teacher was not provided a copy of the student's IEP which allowed a "cool down" period. The school threatened to expel the student. The attorney met with the school and it was agreed the student would not be expelled, the IEP would be revised, and a functional behavior assessment would be created to address the need for a behavior plan.

4. A child receiving special education services was expelled for ingesting a prescription drug given to the child by another student. The school determined the conduct was not a manifestation of the child's disability. The attorney filed for an expedited due process complaint and was able to get the explusion reversed. The hearing officer found in favor of the child on every issue cited in the complaint and ordered a functional behavior assessment.

5. A child with a suspected mental health disorder was denied a psychoeducational evaluation for more than a year. The attorney filed a state due process complaint, and the hearing officer found three violations of the law and required the school to conduct the evaluation. The state may award compensatory education to the student pending the outcome of the evaluation.

WEST VIRGINIA TRANSITION NAVIGATOR PROGRAM

The purpose of the Transition Navigator Program is to assist West Virginians with disabilities residing in institutional facilities to be supported in their home and community. As a pilot program, direct transition assistance is provided in 22 counties through two full-time Transition Navigators. Transition Navigators are employed through grant funding by Community Access and Northern West Virginia Center for Independent Living.

> "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."
>
> *-United States Supreme Court*
> *Olmstead v. L.C.*

The remaining 33 counties can access information, referral and assistance through the Olmstead Office, however direct transition services are not provided in these counties.

Transition Navigators assist people residing in nursing facilities (and their representatives), who want to leave the facility and return to their home and community. Navigators provide: direct transition services; information and referral; outreach and education; assessment and planning; and advocacy.

During state fiscal year 2009, the program supported 129 people through the transition or diversion process. **Figure 7** identifies the program outcomes during the state fiscal year.

Figure 7. People Served by the Transition Navigator Program, SFY 2009

	Transition Navigators	Olmstead Office	Total SFY 2009
Total # of People Transitioned	20	8	28
Total # of People Diverted	48	53	101
TOTAL	**68**	**61**	**129**
Total # of People Anticipating Transition	7	4	11
Total # of People Anticipating Diversion	20	6	26
TOTAL	**27**	**10**	**37**

Figure 7 shows 28 people were transitioned from nursing facilities to home and community-based settings. In addition, 101 people were diverted from admission to a nursing facility. At the end of the fiscal year, thirty-seven (37) people were anticipating transition or diversion and will continue to be supported by the Transition Navigator.

The following details some information gathered about the people served by the Transition Navigators through Community Access and Northern West Virginia Center for Independent Living:

1. Participants of the program had physical disabilities, cognitive (dementia-related) disabilities, mental illness, traumatic brain injury, mental retardation, developmental disabilities, and sensory disabilities. Participants ranged from 30 to 94 years of age.
2. Fifty-five percent (55%) of the participants transitioned were admitted to nursing facilities after being hospitalized.
3. Forty-five percent (45%) of the participants transitioned were admitted to nursing facilities due to a lack of community-based supports.
4. Thirty percent (30%) of the participants transitioned were receiving in-home community-based supports prior to being admitted to the nursing facility.
5. Fifteen percent (15%) of the participants transitioned received no formal in-home supports after they transitioned home.
6. Seventy percent (70%) of the participants transitioned have informal supports available to assist them in the community.
7. Ninety-five percent (95%) of the participants transitioned had one or more high risk conditions that required extra planning. Some examples of high risk conditions: over age 70; multiple or extensive diagnoses; catastrophic illness or injury; terminal or chronic illness; history of substance abuse; history of homelessness; multiple hospital admissions; and multiple emergent care.
8. Forty percent (40%) of the participants transitioned had a legal representative, and thirty-five percent (35%) of the legal representatives were family members.

Each participant of the Transition Navigator Program is eligible to receive up to $2,500.00 to pay for reasonable and necessary one-time start-up costs to support their transition or diversion to the community. This funding supports: security deposit for housing; set-up fees for utilities; moving expenses; essential home furnishings and supplies; home accessibility modifications; and assistive technology.

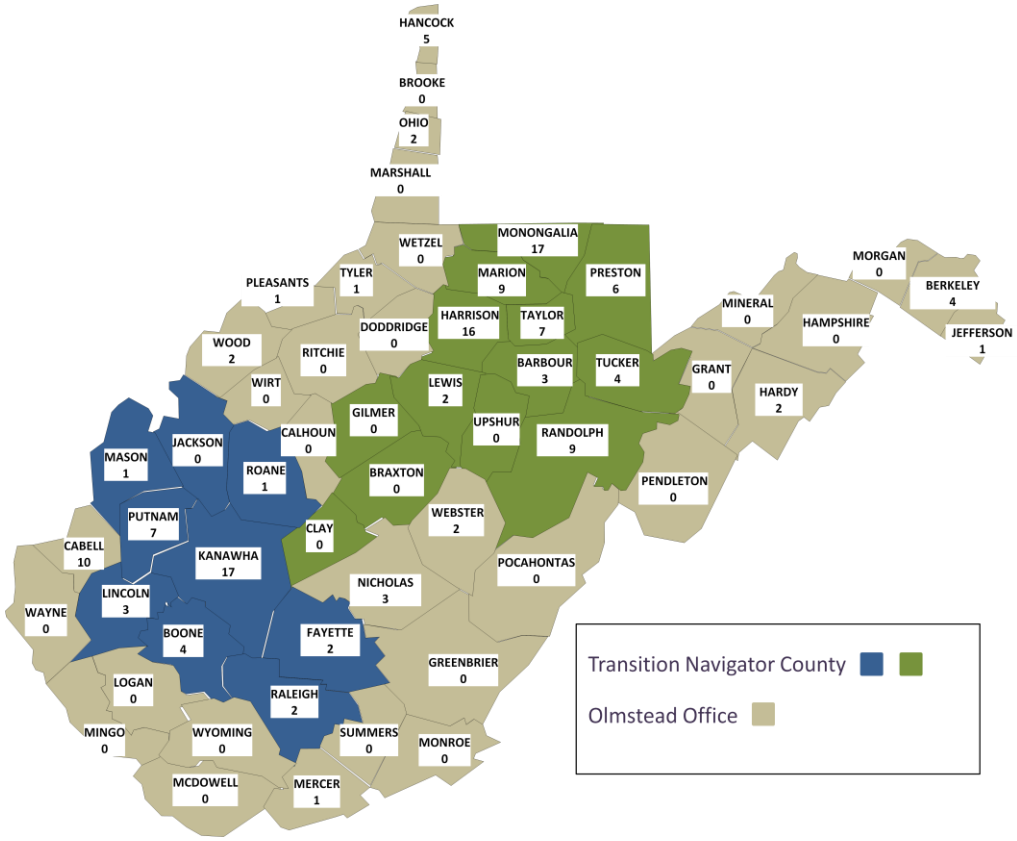
Figure 8 details the funding allocated for participants of the Transition Navigator Program during the fiscal year.

Figure 8. Transition Navigator Start-Up Funding, SFY 2009

Transition Navigator Start-Up Funding	Total Expenditures
Housing Security Deposit	$3,748.58
Utility Set-Up Fees or Deposits	$5,005.34
Essential Home Furnishings and Supplies	$38,441.13
Moving Expenses	$8,027.33
Home Modifications	$266,887.02
Assistive Technology	$87,361.21
TOTAL	**$409,470.61**

During state fiscal year 2009, 144 people received start-up funding.[13] Some of the individuals who received start-up funding are scheduled for transition or diversion during the beginning of state fiscal year 2010. **Figure 9** illustrates the number of people supported in each county for transition or diversion.

Figure 9. Number of Approved Start-Up Funding Applications, SFY 2009



[13] On page 18, 129 people are referenced as being supported for transition or diversion during state fiscal year 2009. The number of people reference as receiving start-up funding is 144. This number includes people who have had funding allocated, but will be transitioned or diverted in state fiscal year 2010.

The average start-up funding allocation per participant was $2,844.00. This average was higher than the funding cap for the program due to the number of requests for extensive and expensive home modifications. Due to the overwhelming number of applicants for this program, additional funding was allocated mid-year in the amount of $125,000.00. This funding was allocated as a one-time addition to the program.

Transition Navigators have identified barriers that prevent or hinder people returning to or remaining in their home and community. As a result of these barriers, many people are forced to leave their home to receive more costly institutional care. The Olmstead Office tracks, monitors and reports on identified barriers to the Olmstead Council and other appropriate entities. **The following lists some of these barriers:**

1. Lack of affordable and accessible housing remains the most critical barrier for people. This includes waiting lists for federal and/or state housing vouchers or lack of adequate funding for housing programs.
2. Lack of funding and programs to meet the needs of people requiring home modifications or home repairs that are essential to remaining at home in the community. Bathroom modifications, access modifications to multi-levels of a home, and ramps are expensive one-time costs. However, they are significantly less costly than nursing facility placements.
3. Lack of community-based supports for people with mental health needs. Waiver, home health and personal care are not always able meet the mental health needs of participants.
4. Lack of comprehensive community-based supports under the aged and disabled waiver program. There is a real disparity between the care provided in a nursing facility and the services offered under the Aged and Disabled Waiver Program.
5. Lack of fast track or presumptive eligibility for home and community-based services results in nursing facility placements often being the only viable option.
6. Lack of timely processing for grant agreements and funding at the state-level creates delays in responsive Transition Navigator services.

The future outlook for this program hinges on securing additional funding to provide statewide implementation. Additional funding will be requested in the amount of $557,500.00 in on-going state general revenue funds. **This funding would allow:**

1. Expansion of Transition Navigator services to the 33 un-served counties by adding coverage to three additional regions. This includes the hiring of three additional full-time Transition Navigators.
2. Expansion of start-up funding services to an additional 100 people within 3 additional regions.

A goal of the program is to compare the costs of caring for people in the nursing facility to supporting people through in-home supports. The first analysis of this data will occur at the end of state fiscal year 2010. The Bureau for Medical Services is a collaborative partner in the Transition Navigator Program to provide data for this analysis.

CONCLUSION

There are many opportunities West Virginia can take advantage of to ensure no West Virginia citizen is unnecessarily or unwilling institutionalized based on disability. The Olmstead Council recognizes the need to administer services in a cost effective manner, however they believe many of the Olmstead Plan goals can be implemented using current resources and rebalancing strategies.

APPENDIX A. *Olmstead Plan Goals*

The Olmstead Council through extensive public input developed the 10 key goals of the Olmstead Plan. Each goal has a series of specific objectives. The following lists the 10 key goal statements:

1. **Informed Choice:** Establish a process to provide comprehensive information and education so people with disabilities can make informed choice.
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 in accordance with the three conditions identified in the Olmstead decision.
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 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.

APPENDIX B. *Olmstead Council Members*

People with Disabilities and Immediate Family Members	
Karen Davis	
Jeannie Elkins	
Darla Ervin	
Linda Maniak	
Suzanne Messenger	
Kevin Smith	
Vanessa VanGilder	
Advocacy and Disability Organizations	
Libby Collins	EMS-TSN Medley/Hartley Advocacy Program
Jan Derry	Northern West Virginia Center for Independent Living
Nancy Fry, Vice Chair	Legal Aid of West Virginia
Clarice Hausch	West Virginia Advocates
Roy Herzbach	Legal Aid of West Virginia Long Term Care Ombudsman Program
Cathy Hutchinson	Mountain State Center for Independent Living
Ted Johnson	West Virginia Mental Health Planning Council
Ann McDaniel	West Virginia Statewide Independent Living Council
David Sanders	West Virginia Mental Health Consumers' Association
David Stewart, Chair	Fair Shake Network
Steve Wiseman	West Virginia Developmental Disabilities Council
Providers	
Laura Friend	West Virginia Council of Home Care Agencies
Brenda Hellwig	Job Squad, Inc.
John Russell	West Virginia Behavioral Health Providers' Association
Christina Shaw	Res-Care, Inc.
State Agencies	
Cindy Beane	Bureau for Medical Services
Elliott Birckhead	Bureau of Behavioral Health and Health Facilities
Penney Hall	State ADA Coordinator
Vonda Spencer	Bureau of Senior Services

APPENDIX C. *Money Follows the Person Rebalancing Long Term Care Study Recommendations*

1) Create an action plan for increasing the availability of home health, adult medical day care, and assisted living services in West Virginia through a review of the existing Certificate of Need (CON) program and Medicaid payment rates.
2) Expand the AD Waiver to provide a wider variety of services to more individuals, and continue to support the self-directed option under the waiver.
3) Replace ICFs/MR with Waiver services and apply for two new Medicaid waivers to incorporate into the West Virginia long term care system: a Traumatic Brain Injury waiver and an MR/DD Supports waiver.
4) Boost the existing Assertive Community Treatment (ACT) program and expand telemedicine services.
5) Continue and expand options for self-direction and individualized budgeting into statewide long term care programs and services.
6) Improve access to community-based services for underserved and unserved populations by expanding home and community-based services.
7) Expand the Transition Navigator Program.
8) Continue to develop a single point of entry system through the Aging and Disability Resource Centers (ADRC) with other community services for improved information accessibility and a streamlined eligibility and assessment process.
9) Change the current assessment process for long term care consumers to: a) ensure providers are not completing individuals' assessments (remove the apparent conflict of interest); b) ensure that options / benefits counseling is occurring at the time of potential facility admission; and c) utilize a presumptive eligibility process or fast track initiative.
10) Modify the Nurse Practice Act.
11) Modify current policies and practices that reinforce institutional bias.
12) Review the medical records of and discuss HCBS options with current LTC facility residents to identify those more appropriately served in and ready for transitioning to the community.
13) Expand the amount of funding resources set aside for assisted living services so that Medicaid and Medicare recipients can access assisted living more equitably.
14) Expand the variety of services and the number of recipients utilizing personal care services by allocating more state-only dollars toward these services.
15) Continue to apply for federal grants to increase funding for LTC services and supports.
16) Promote affordable and accessible housing.
17) Work with the Department of Transportation to provide more affordable and accessible transportation that allows individuals to access recreational, social, medical and spiritual events.
18) Tackle the state's critical workforce shortage by increasing direct care workers' salaries and implementing new methods for recruitment, retention, training and credentialing.
19) Continue to increase consumer and family involvement in the development of policy and the development or redesign of quality improvement / quality assurance activities and processes.

Olmstead Office
State Capitol Complex
Building 6, Room 850
Charleston, West Virginia 25305
(304) 558-3287 or (866) 761-4628