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

Bill J. Crouch
Cabinet Secretary

Olmstead Office
State Capitol Complex
Building 6, Room 817-B
Charleston, West Virginia 25305
Telephone: (304) 558-3287 or (866) 761-4628

Jolynn Marra
Interim Inspector General

October 1, 2019

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 2019.

Please contact the Olmstead Office with questions or information requests.

Sincerely,

Carissa Davis
Olmstead Coordinator

Building Inclusive Communities in West Virginia

Olmstead

ANNUAL REPORT ON THE OLMSTEAD PLAN

The Year in Review

WEST VIRGINIA Department of Health & Human Resources
Office of Inspector General

July 1, 2018—June 30, 2019

Building Inclusive Communities: Keeping the Promise

Table of Contents

Olmstead Mission Statement

The mission of the Olmstead 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 Olmstead 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 their 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: 20 Years of *Olmstead*

June 22, 2019, marked 20 years since the United States Supreme Court ruled in *Olmstead v. L.C.* that unjustified segregation of persons with disabilities is a violation of Title II of the Americans with Disabilities Act (ADA).

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."

In the 20 years since the *Olmstead* decision, thousands of people with disabilities have been helped and able to receive services in the communities of their choice.

West Virginia Executive Order

On October 12, 2005, Executive Order 11-05 was signed by West Virginia 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.

- 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

Carissa Davis has been West Virginia's Olmstead Coordinator since June 2019. Ms. Davis has been an advocate for people with disabilities for 16 years. She is a former employee and member of the West Virginia Statewide Independent Living Council. She was the administrative assistant of Take Me Home, West Virginia – A Money Follows the Person Initiative for six years. She holds bachelor's and master's degrees from West Virginia University.

The Olmstead Office is in the West Virginia Department of Health and Human Resources (DHHR), Office of the Inspector General.

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

West Virginia Olmstead Council Membership

The Olmstead Council is comprised of no more than 35 persons from the following: eight people with disabilities and/or immediate family members; 10 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	DHHR's Bureau for Behavioral Health
Sally Blackburn	Aging and Disability Resource Network
Angela Breeden	Member and/or immediate family member with a disability
Marcus Canaday	DHHR Bureau for Medical Services Money Follows the Person Program
Renee Chapman	Member with a disability and/or immediate family member
Leslie Cottrell	WVU Center for Excellence in Disabilities
Ardella Cottrill	W. Va. Behavioral Health Planning Council
Mark Drennan	Behavioral health provider
Jeannie Elkins	Member and/or immediate family member with a disability
Joyce Floyd	Member and/or immediate family member with a disability
Mark Fordyce	Panhandle Support Services, Traumatic Brain Injury Waiver provider
Laura Friend	Home health provider
Nancy Fry	Legal Aid of W. Va. - Behavioral Health Advocacy Project
Susan Given	Disability Rights of West Virginia
Roy Herzbach	Legal Aid of W. Va. - Long-Term Care Ombudsman Program
Amber Hinkle	Open Doors, Inc., Intellectual and Developmental Disabilities Waiver provider
Ann McDaniel	W. Va. Statewide Independent Living Council
Suzanne Messenger	West Virginia Bureau of Senior Services
Sherry Minter-Elliott	Member and/or immediate family member with a disability
Pat Nisbet	DHHR's Bureau for Medical Services
Kim Nuckles	State ADA Coordinator
Meredith Pride	Appalachian Center for Independent Living
Paul Smith	Fair Shake Network
Richard Stonestreet	AARP – West Virginia Chapter
Jenni Sutherland	Putnam Aging, Aged and Disabled Waiver provider
Richard Ward	West Virginia Division of Rehabilitation Services
Steve Wiseman	W. Va. Developmental Disabilities Council
Jim Womeldorff	Job Squad, Inc.

West Virginia Olmstead Council Priorities for 2019

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.
- 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 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 with access to a comprehensive array of services that address their physical, emotional, social and educational needs and receipt of 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.

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)

Administration for Community Living

The U.S. Department of Health and Human Services' 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 U.S. Department of Education to ACL.

New federal nursing facility regulations require every nursing facility to develop and implement an effective discharge plan that focuses on the residents' discharge goals and includes them as active partners. As part of that plan, nursing facilities are required to document that the resident has been asked about returning to the community; document any referral(s) made; and update the comprehensive care plan based on the response to the referral(s). *See* 42 C.F.R. 483.21(c)(1)(vii). This regulation basically codifies what had been part of the minimum data set assessment, also known as "Section Q." This new regulation requires nursing homes to document that a resident has been asked about his or her interest in receiving information regarding returning to the community. If the resident indicates an interest in returning to the community, the facility must document any referrals to local contact agencies or other appropriate entities made for this purpose. In West Virginia, the local contact agency is the Aging and Disability Resource Network (ADRN). Facilities must update a resident's comprehensive care plan and discharge plan, as appropriate, in response to information received from referrals to local contact agencies or other appropriate entities. If discharge to the community is determined to not be feasible, the facility must document who made the determination and why.

Olmstead Enforcement

The U.S. Department of Justice, Civil Rights Division's Disability Rights Section, enforces Title II and Title III of the ADA, and the Special Litigation Section that enforces the Civil Rights of Institutionalized Persons Act (CRIPA), have made *Olmstead* enforcement a top priority. Since 2008, a record number of amicus briefs, lawsuits, and intervention into state *Olmstead* cases has been observed.

In addition to stepping up enforcement, investigatory work has significantly changed. In the past, the first questions asked were whether the institutions under investigation were safe and whether conditions of confinement were constitutional. These have become the second questions asked. Now, 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 U.S. Department of Justice released the Statement of the U.S. 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.

State Examples of *Olmstead* Enforcement

The examples of *Olmstead* Enforcement that follow have taken place in West Virginia and nationally and are why we strive for all West Virginians with disabilities to live, learn, work, and participate in the most integrated setting in the community of their choice.

Disability Rights of W. Va. and Kanawha County Schools

Local and national disability advocacy organizations have filed three complaints with the West Virginia Department of Education alleging widespread failures by Kanawha County Schools (KCS) to educate children with disabilities, including autism, intellectual or developmental disabilities, mental health concerns, and Attention Deficit Hyperactivity Disorder (ADHD). Specifically, the groups assert that KCS—the public school district serving Charleston, West Virginia's state capital, and its environs—has failed to provide behavioral and academic supports to students with disabilities and are instead segregating them into separate schools and classrooms, or sending them home because KCS schools will not educate them. The advocates—Disability Rights of West Virginia, Mountain State Justice, The Arc, and the Bazelon Center for Mental Health Law, along with the global law firm Latham & Watkins LLP—allege that KCS has violated federal laws protecting students with disabilities. The students seek remedies for themselves as well as all other students in similar circumstances in KCS Schools.

"Students with disabilities and behavioral support needs can thrive in school, graduate with diplomas, and transition to successful adulthood provided they receive the appropriate supports to which they are entitled under federal law. It is critical that KCS take responsibility for teaching all of its students, not just some," said Jeremiah Underhill, Legal Director of Disability Rights of West Virginia.

As described in the complaints, scores of children with disabilities enrolled in KCS have been separated unnecessarily from mainstream classrooms in their schools.

Instead, the students are segregated for years in separate classrooms where they interact only with other students with disabilities and receive an inferior education; placed on "homebound" status where they may only receive a few hours of tutoring each week; or are suspended or even expelled from school for behaviors that are caused by their disabilities. The students are not receiving critical behavioral supports that could help them be successful in the general education classroom with their classmates without disabilities.

"It is heartbreaking to see KCS undermine the great potential of students with disabilities by failing to provide necessary supports and, ultimately, removing them from the classroom, causing them to miss vital instructional time and fall farther and farther behind academically and socially," said Lewis Bossing, Senior Staff Attorney with the Bazelon Center.

Specifically, the complaints allege that KCS is: 1) violating the Individuals with Disabilities Education Act (IDEA) by failing to provide children with disabilities with the special education they need to receive a "free appropriate public education" in the least restrictive environment; and 2) violating the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act (Section 504) by failing to educate children with disabilities in the most integrated setting appropriate to their needs, and denying them equal educational opportunity.

"We are seeing KCS discipline students with disabilities with months-long homebound placements, out-of-school suspensions, and segregated placements in classrooms that resemble storage facilities rather than places of learning for 'infractions' as minor as touching another student with a plastic fork or refusing to get off the playground slide at the end of recess. Students are receiving behavior plans that take the form of rote checklists rather than the individualized guidance documents the IDEA requires to adequately support children to succeed in school," said Shira Wakschlag, The Arc's Director of Legal Advocacy & Associate General Counsel.

In 2017, the U.S. Supreme Court held unanimously in Endrew F. v. Douglas County School District RE-1 that the "IDEA demands more." Specifically, the Court provided a new and more demanding standard for what schools must do to adequately educate students with disabilities, requiring that school districts provide "an educational program reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances" and provide students with disabilities the opportunity to meet "challenging objectives" with "appropriately ambitious" special education. For virtually all children, this means receiving

instruction and services in the general education classroom, with appropriate supports, alongside students without disabilities. In addition, the *Olmstead* Court held that the ADA prohibits the needless isolation or segregation of people with disabilities. The ADA applies to public schools, which cannot unnecessarily segregate students with disabilities, nor deny them equal opportunities.

"We have long fought for students with disabilities throughout West Virginia to be educated in their neighborhood schools with appropriate services and supports. KCS's systemic failures to support students with disabilities in the least restrictive, most integrated setting cannot be justified in light of recent and longstanding Supreme Court precedent," said Lydia Milnes, an attorney with Mountain State Justice. "KCS must do much more to ensure that all its students with disabilities receive the education they need and to which they are entitled."

"By failing to adhere to the Individuals with Disabilities Education Act and Americans with Disabilities Act, Kanawha County Schools is diminishing the ability of our clients to secure the education to which they are entitled by law," said Michael Faris, Latham & Watkins partner. "We look forward to ensuring that the law is upheld."

20th Anniversary of *Olmstead v. L.C.*

The Department of Justice (DOJ) celebrated the 20th anniversary of the United States' Supreme Court decision in *Olmstead v. L.C.* Robust federal enforcement of Title II's "integration mandate" continues today across the country. In West Virginia, the DOJ entered into an agreement on May 14, 2019, with the Department of Health and Human Resources (DHHR) to address the 2015 DOJ findings regarding DHHR's service system for children with serious mental health conditions. This agreement requires DHHR to continue expanding the community-based mental health services which in return will reduce the number of children in residential mental health treatment facilities.

***U.S. v. New York* – 13-cv-4165 – (E.D.N.Y. 2013)**

On July 23, 2013, the United States, individual plaintiffs, and the State of New York filed a settlement agreement in the U.S. District Court for the Eastern District of New York. The agreement remedies discrimination by the State of New York in the administration of its mental health service system and ensures that

individuals with mental illnesses who reside in 23 large adult homes in New York City receive services in the most integrated setting appropriate to their needs consistent with the ADA and *Olmstead*. Under the agreement, such individuals will have the opportunity to live and receive services in the community such that they are able to live, work, and participate fully in community life.

The parties filed an amended settlement agreement on January 30, 2014, and the Court approved the amended settlement agreement on March 17, 2014. The parties filed a second amended settlement agreement on May 4, 2017, which the Court approved on May 18, 2017. The parties filed a supplement to the second amended settlement agreement on March 16, 2018, which the Court approved on September 6, 2018.

Prior to the agreement, the parties litigated these issues in *Disability Advocates v. Paterson*, in the District Court and in the U.S. Court of Appeals for the Second Circuit. In that case, following a trial on the merits, the U.S. District Court for the Eastern District of New York ruled that New York State officials and agencies discriminated against thousands of people with mental illness by administering the State's mental health service system in a manner that segregated them in large, institutional adult homes and denied them the opportunity to receive services in the most integrated setting appropriate to their needs.

Olmstead on the State Level

The Olmstead Council, through extensive public input, developed 10 goals for West Virginia. Each goal has a series of specific objectives.

- **Informed Choice**: Establish a process to provide comprehensive information and education so people with disabilities can make informed choices.

- **Identification**: Identify every person with a disability impacted by the *Olmstead* decision who resides in a segregated setting.

- **Transition**: Transition every person with a disability who has a desire to live and receive supports in the most integrated setting appropriate.

- **Diversion**: Develop and implement effective and comprehensive diversion activities to prevent or divert people from being institutionalized or segregated.

- **Reasonable Pace**: Assure community-based services are provided to people with disabilities at a reasonable pace.

- **Eliminating Institutional Bias**: Provide services and supports to people with disabilities by eliminating the institutional bias in funding and administering long-term care supports.

- **Self-Direction**: Develop self-directed community-based supports and services that ensure people with disabilities have choice and individual control.

- **Rights Protection**: Develop and maintain systems to actively protect the civil rights of people with disabilities.

- **Quality**: Continuously work to strengthen the quality of community-based supports through assuring the effective implementation of the Olmstead Plan, and to ensure that supports are accessible, person-centered, available, effective, responsive, safe, and continuously improving.

- **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.

DHHR *Olmstead* Compliance

Money Follows the Person Program

DHHR's Bureau for Medical Services' Money Follows the Person (MFP) Program and Olmstead-related activities have similar goals 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. MFP is just one strategy that is being used to promote opportunities for people to live in integrated community settings. During State Fiscal Year 2019, DHHR's Bureau for Medical Services' Take Me Home West Virginia program received 186 intakes and 45 individuals were transitioned to a more integrated setting. During this time, 65 individuals

successfully completed 365 days of participation in the community. Since the program began in February 2013, there have been 1,225 intakes, 385 individuals transitioned, with 246 individuals successfully completing 365 days of participation in the community.

West Virginia Clearance for Access: Registry & Employment Screening

On August 1, 2015, DHHR's Office of Inspector General's West Virginia Clearance for Access: Registry & Employment Screening Unit (WVCARES) began processing background checks for current and potential long-term care employees in the state of West Virginia. Over the course of this year, WVCARES has expanded to begin screening employees in additional provider types as allowed by the WVCARES Act. Since its inception, WVCARES has been providing monthly monitoring of approximately 71,500 direct access employees and has provided employment fitness determinations for over 140,000 potential and current employees. With the addition of the federal background check, WVCARES found multiple individuals seeking employment in the state who were wanted on various charges across the country. Several of these individuals were taken into custody by the West Virginia State Police or U.S. Marshals for extradition.

Ventilator Care

Ventilator care can be provided by an approved medication assistive personnel (AMAP) under the supervision of a registered nurse (RN) if the individual resides with and receives support in the family home. The RN needs to have a policy and procedure in place for the ventilator care. The AMAP must be trained in ventilator care, and the training needs to be documented. The AMAP must be observed by the supervising RN every quarter. There are other requirements for the AMAPs that are in the AMAP rule, 64 CSR 60, including CPR care, First Aid training, GED or high school diploma.

844Help4WV: Behavioral Health Referral and Outreach Call Center

844Help4WV, the state's behavioral health referral and outreach call center, is a statewide 24-hour call center, that continues to provide resources and referral support for those seeking behavioral health services. Help4WV maintains a live database with service options and is updated daily with residential facilities' bed capacity and additional treatment information. Help4WV 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. Between September 9, 2015, and May 31, 2019, there were a total of 35,045 total calls, including 11,689 Access/Navigation Intakes (all of whom were connected to at least one provider during the call, with the helpline agent staying on the phone with caller and provider until an appointment was scheduled), and 23,356 general information only calls. The most requested information was for assessment, diagnostic and detox/crisis stabilization 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 give permission.

West Virginia 1915 Children with Serious Emotional Disorder Waiver

DHHR's Bureau for Medical Services (BMS) has submitted an application for a 1915(C) Home- and Community-Based Services Waiver to the Centers for Medicare and Medicaid Services (CMS) for Children with Serious Emotional Disorder (CSEDW). West Virginia defines the term "Children with Serious Emotional Disorder" as children from ages three up to 21 who currently, or at any time in the past year, have had a diagnosable mental, behavioral, or emotional disorder of sufficient duration, which substantially interferes with or limits the child's role or functioning in family, school and/or community activities.

The CSEDW's primary goal is to support children ages three to 21 with severe emotional disorders by helping to keep them with their families, in their home and with a support network while receiving services to improve their outcomes. This waiver prioritizes children/youth with serious emotional disorder (SED) who are placed in Psychiatric Rehabilitation Treatment Facilities (PRTFs) or other residential treatment providers out-of-state, and those who are in such facilities in state. Medicaid-eligible children with SED who are at risk of residential placement will become the target group after children in placement are prioritized.

To be eligible for this waiver, the child/youth must meet the following:

- medical eligibility;
- financial eligibility (have a Medicaid card);
- be between the ages of 3 and 21;
- be a resident of West Virginia, and be able to provide proof of residency upon application; and

- have chosen Home- and Community-Based Services over services in an institutional setting.

Services offered by the CSEDW Program are:

- Case Management
- Independent Living/Skills Building
- Job Development
- Supported Employment, Individual
- In-Home Family Therapy
- In-Home Family Support
- Respite, In-Home and Out-of-Home
- Specialized Therapy
- Assistive Equipment
- Community Transition
- Mobile Response
- Non-Medical Transportation
- Peer Parent Support

The CSEDW application was submitted to CMS on June 14, 2019, for approval. CMS has 90 days to review the application and to make a determination. If CMS does not take longer than the 90 days, we can anticipate program approval by September 14, 2019. If approval is received by the end of September, BMS will start assessing children and youth for program eligibility in October, with service access beginning in January 2020.

Peer Support Certification

On October 10, 2017, the Centers for Medicare and Medicaid Services (CMS) approved a Medicaid section 1115 waiver application for the DHHR to develop a continuum of Substance Use Disorder (SUD) treatment benefits designed to address the immediate and long-term physical, mental, and social needs of individuals and to promote and sustain long-term recovery.

Peer recovery support services are an evidence-based model of care which consists of a qualified peer recovery support specialist (PRSS) who assists members with their recovery. The experiences of PRSS as consumers of substance use services can be an important component in promoting and sustaining long-term recovery. A PRSS is a person who has the qualifications, education, and experience established by BMS and who has received certification in good standing by a certifying body recognized by BMS. A PRSS is professionally qualified and trained to provide

collaborative services to assist members in achieving sustained recovery from the effects of substance use disorders, to provide peer support as a self-identified individual successful in the recovery process with lived experience with substance use disorders or co-occurring mental health and substance use disorders, and to offer support and assistance in helping others in the recovery and community-integration process.

The PRSS requirements include:

- Self-identify as an individual with life experience of being diagnosed with a serious mental illness or substance use disorder which meets federal definitions;
- Must be well established in his or her own recovery; currently in recovery for a minimum of two years and not have received SUD treatment for the preceding six months, except for MAT which is considered a part of recovery;
- Have a high school diploma or diploma equivalency (not applicable to 16-17-year old applying to be a PRSS);
- The individual must be employed by either a Comprehensive Behavioral Health Center (CBHC) or Licensed Behavioral Health Center (LBHC);
- Certification as a PRSS; *
- PRSS application which includes the Attestation of Recovery Statement and three letters of reference;
- Must be supervised by an individual who has a master's degree and is employed by the same provider;
- Not a family member of the individual receiving the peer support services;
- Continuing education of 30 hours must be completed every two years in the competency domains which must include six hours in ethics;
- Completes 40 contact hours of volunteer work or paid work at an agency or provider prior to Medicaid services being rendered;
- Current CPR/First Aid card;
- Fingerprint-based Background Check (please see Section 504.4 of the Substance Use Disorder Services Manual for more information); and
- Only peers under the age of 18 can provide peer recovery support services to other peers under the age of 18. No adult PRSS can provide services to a minor.

* BMS will accept any peer recovery support certification completed prior to July 1, 2018, to be grandfathered in for the purposes of meeting this requirement. Applicants who have not previously completed a certification prior to July 1, 2018, must complete the BMS PRSS webinar with an 80 percent or higher score in order to be certified. The applicant must provide proof that certification was

completed prior to July 1, 2018 or must complete the certification of the BMS webinar on or after July 1, 2018. Peer support certification is currently available from two nationally affiliated groups in West Virginia, the West Virginia Association of Alcoholism and Drug Abuse Counselors (WVAADAC), and the W. Va. Certification Board for Addiction & Prevention Professionals (CBAPP).

The Bureau for Behavioral Health (BBH) and its community partners have provided both staff time and grant funding to help support more than 800 people who have completed Recovery Coach Academy training in West Virginia. In addition, aside from ongoing grant funding of established peer supports, DHHR's Bureau for Behavioral Health has awarded 14 State Opioid Response grants during Year One totaling $1,522,371 for the creation of peer recovery support programs throughout the state. For Year Two, the expected amount will be $3,633,083. In addition, if its carryover request of Year One funds is approved by Substance Abuse and Mental Health Services Administration (SAMHSA), BBH will be adding an additional $2,110,712 for peer recovery coaches to aid and support individuals with Opioid Use Disorder in multiple settings. More specifically, new peer recovery coaches are being hired and trained with a focus on the following populations: offenders re-entering the community from incarceration in a correctional setting; pregnant and post-partum women and their infants/children; and overdose survivors served by the emergency response system and emergency departments.

West Virginia 1115 Substance Use Disorder Waiver

DHHR's Bureau for Medical Services announced that Medicaid recipients began receiving the second phase of new services under the West Virginia 1115 Substance Use Disorder (SUD) Waiver on July 1, 2018. These new services for Medicaid enrollees are part of an ongoing effort of Governor Jim Justice's Administration to provide a continuum of care designed to treat substance use issues. Phase two services began on July 1, 2018, and expanded coverage to include:

- **Adult Residential Treatment:** West Virginia added Medicaid coverage of adult residential treatment levels adhering to the American Society of Addiction Medicine (ASAM) criteria. These are comprehensive programs for adults ages 18 and older who have a diagnosis of substance abuse and/or co-occurring substance abuse/mental health disorder.
- **Peer Recovery Support Services:** West Virginia implemented peer recovery support services delivered by a trained and certified peer recovery specialist who has been successful in his or her own recovery process to

extend the reach of treatment beyond the clinical setting into a member's community and home environment.

- **Withdrawal Management Services**: West Virginia now offers coverage of withdrawal management services. This licensed program provides short-term medical services on a 24-hour basis for stabilizing intoxicated members, managing their withdrawal and facilitating access to SUD treatment as needed by a comprehensive assessment.

"The addition of adult residential treatment, peer recovery support services and withdrawal management services expand the Medicaid benefits package to build a comprehensive statewide strategy to combat drug misuse and substance use disorders," said Cindy Beane, Commissioner of DHHR's Bureau for Medical Services. "Governor Justice's Administration continues to support the expansion of high-quality SUD care and the expansion of SUD provider networks to serve the State's Medicaid population."

As of July 1, 2019, the Bureau for Medical Services has approved 559 Residential Adult Service (RAS) beds in 41 programs and has approved 229 Peer Recovery Support Specialists to provide recovery support services.

Phase one services of the SUD Waiver, began January 14, 2018, and included:

- **Screening, Brief Intervention, and Referral to Treatment (SBIRT):** West Virginia implemented statewide use of the widely accepted SBIRT tool to identify SUD treatment needs among the Medicaid population.
- **Methadone Treatment and Administration:** West Virginia added Medicaid coverage of methadone as a withdrawal management strategy, as well as the administration and monitoring of the medication, and related counseling services.
- **Naloxone Distribution Initiative:** West Virginia implemented a statewide initiative to make naloxone widely available and increase awareness of the benefits of naloxone in reversing the effects of an overdose; and began reimbursing EMTs, Paramedics and EMS providers for providing informational material on the WV Helpline and/or local treatment options available to state Medicaid members and, if the member is willing, by making a referral to treatment.

Achieving a Better Life Experience Accounts

An Achieving a Better Life Experience (ABLE) Account is an investment account available to eligible individuals with disabilities. These accounts are made possible

by the federal ABLE Act. These accounts allow individuals with disabilities to save and invest money without losing eligibility for certain public benefits programs, like Medicaid or Social Security. Earnings in an ABLE account are not subject to federal income tax, so long as they are spent on "Qualified Disability Expenses." These accounts have some similar features to regular privately managed bank accounts, but they are not checking or savings accounts. These accounts are investment accounts, similar to 529 college savings accounts or 401(k) retirement accounts.

West Virginia Olmstead Activities

West Virginia Olmstead Office Sponsored Training

The West Virginia 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 policymakers from the non-profit, public, and private sectors each year. The 2018 conference featured more than 70 workshops and opportunities to learn and network with national, state, and local experts covering the basics of housing development to funding tools and innovative models. This conference also recognized the important connection of housing to health, economic development, and social stability for our children, families, and elder population.

Information, Referral and Assistance Program

The West Virginia 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 West Virginia Olmstead Office provides residents with assistance on Olmstead-related complaints or grievances. In state fiscal year 2019, the Olmstead Office received more than 200 calls 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. DHHR's Bureau

for Medical Services (BMS) is in the process of expanding this program statewide. The West Virginia Olmstead Office has provided BMS with $292,000 in state general revenue funding for program expansion.

The West Virginia Olmstead Office continues to offer smaller grants through the Olmstead Transition and Diversion Program. This is the only program of its kind in the United States. This program supports people in transition and diversion and focuses on those not otherwise supported by the Take Me Home, West Virginia Program. Each participant transitioning to the community 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. Each year there is a waiting list once funds are depleted.

During 2019, the program supported 154 people through the transition and diversion process. One person transitioned from a facility into the community. The average funding allocated per participant was $1,314. 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 154 people assisted in this fiscal year, 15 received Medicaid, 45 received Medicare, and 78 received both Medicaid and Medicare. Three people did not receive Medicaid or Medicare.

Month	**# of Applications Approved**	**Funding Allocated**	**Average Cost Per Person**
July 2018	0	$0.00	$0.00
August 2018	21	$20,926.55	$996.50
September 2018	0	$0.00	$0.00
October 2018	0	$0.00	$0.00
November 2018	0	$0.00	$0.00
December 2018	0	$0.00	$0.00
January 2019	0	$0.00	$0.00
February 2019	47	$69,469.03	$1,478.06
March 2019	36	$44,274.06	$1,229.83
April 2019	0	$0.00	$0.00
May 2019	19	$19,969.94	$1,051.05
June 2019	31	$39,746.27	$1,282.14
Total served in SFY 2019	154	$194,385.85	$1,262.24

Revising and Updating the Olmstead Plan

In response to the increased federal *Olmstead* enforcement and technical assistance, the West Virginia Olmstead Council is in the process of updating West Virginia's Olmstead Plan. In state fiscal year 2019, the West Virginia Olmstead Office, used funds received from the Center for Medicare and Medicaid Services through the Money Follows the Person Program to hold four public forums and focus groups around the state, as well as an online survey to gather information to update the Plan. The opportunity also permitted the Council to educate people about the *Olmstead* decision and West Virginia's Olmstead Plan. The information was used to solicit stakeholder input and feedback for updating the goals, objectives and action steps of West Virginia's Olmstead Plan.

2019 West Virginia Legislative Session

Several bills passed during the 2019 Regular Session of the West Virginia Legislature that may impact people with disabilities and the *Olmstead* decision goal of having people with disabilities live in the most integrated setting.

House Bill 2515 – exempting the sale and installation of mobility enhancing equipment from the sales and use tax.

House Bill 2618 – including undue influence as a factor in the definition of financial exploitation of an elderly person or protected person.

House Bill 2715 – relating to Class Q special hunting permit for disabled persons.

House Bill 2816 – removing the terms "hearing impaired," "hearing impairment," and "deaf mute" from the West Virginia Code and substituting "deaf and hard of hearing" terms.

West Virginia Barriers Identified by the Olmstead 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.

- The Aged and Disabled Waiver and Traumatic Brian Injury Waiver do not provide skilled nursing services.

- 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: The Managed Enrollment List (MEL) is a waitlist until a funded slot becomes available. There are various services available for waiver eligible applicants placed on a MEL depending on for which they had applied: Individuals with Developmental Disabilities (IDDW), the Aged/Disabled Waiver (ADW) or the Traumatic Brain Injury Waiver (TBIW). Some of those services are State Plan funded and not part of Medicaid, some are services through other bureaus, and some are programs offered through other agencies if the person meets the eligibility criteria.

- Housing: There is a lack of safe and affordable, accessible, and available housing for people with disabilities.

- 24/7 Care: The Aged and Disabled and Traumatic Brain Injury Waivers are the alternative to nursing facility care if the participant chooses to live in the home and community. They are not intended to provide services 24/7. If a participant is receiving the maximum level of care, they can also be eligible to receive services through the State Plan Personal Care Services Program.

- Medicaid Personal Care: These 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.

Until we resolve these barriers, and any identified in the future, we have work to be done.