

**THE UNITED STATES DEPARTMENT OF JUSTICE
CIVIL RIGHTS DIVISION
WEST VIRGINIA CHILDREN’S MENTAL HEALTH FINDINGS LETTER**

FACT SHEET

The United States has issued a findings letter explaining its conclusions from its investigation of West Virginia’s children’s mental health system begun in April 2014. The United States concludes that West Virginia fails to serve children with mental health conditions in the most integrated setting appropriate to their needs in violation of the Americans with Disabilities Act (ADA) and *Olmstead v. L.C.* The United States has issued a findings letter explaining our findings.

OVERVIEW OF FINDINGS

- **WEST VIRGINIA’S CHILDREN’S MENTAL HEALTH SYSTEM VIOLATES THE ADA**
 - West Virginia has over 1,000 children with mental health conditions in segregated residential facilities. The State’s rate of institutionalizing children is significantly higher per capita than other states in the nation.
 - Once placed in these facilities, children often remain for long terms for reasons unrelated to their disability, such as because the facilities require that children complete standardized goals or achieve proficiency at certain levels unrelated to their treatment. As a result, on average, West Virginia children often remain in facilities for as long as a year and those in out-of-state facilities for an average of eight months, even when West Virginia could better serve these children in the community.
 - The default mental health treatment location for children is in a facility. At critical junctures, such as when West Virginia’s multidisciplinary treatment team—the mandated team to develop a plan for services for many children in the care of the Department of Health and Human Resources (DHHR)—is considering how to support a child with a significant mental health condition, often their first and only consideration is a segregated residential treatment facility.
 - West Virginia lacks in-home and community-based services. Across the state, children and their families suffer because critical mental health services are unavailable, or the services offered are too infrequent. At West Virginia’s Comprehensive Centers, children wait months for mental health services.
 - Certain groups of children are at heightened risk of placement due to the lack of community-based services: status offenders, lesbian, gay, bisexual, transgender, or questioning children, trauma-exposed children, dually diagnosed children, children from racial minority groups, previously placed children, and older children.

- **WEST VIRGINIA MUST REALIGN ITS CHILDREN'S MENTAL HEALTH SYSTEM**

- The state has recently undertaken some plans and programs that will help some of the children in the affected group. We look forward to incorporating into an agreement many of the state's recent initiatives to reduce its reliance on institutional care. These initiatives include:
 - The recently approved IV-E Waiver Application that will ultimately allow the state to redirect federal child welfare funds currently used in out-of-home placements to in-home services that include wraparound services, in an effort to avoid removal.
 - Youth Service Centers that will improve access to services for children with a substance abuse disorder, including those with a co-occurring mental health condition.
 - Contracting with the Pew Foundation to conduct a statewide taskforce and suggest legislative changes regarding juvenile justice matters, many of which were implemented during this legislative session.
 - West Virginia Center for Children's Justice – a collaboration between the United States Attorney's office, DHHR, and the State Police to improve communication and collaboration between law enforcement, prosecutors, schools, advocates and mental health providers, and help connect families, schools and communities to mental health services.
- West Virginia can realign and expand services to accommodate children in the community. The State has numerous pilot projects and grant-based initiatives that have shown that the State can provide mental health services to children in the community. Those initiatives include the School Based Mental Health Initiative and the previously funded Mountain State Family Alliance. These initiatives have only focused on small areas of the State or are limited to subpopulations of children, but the State could expand each throughout the State.
- West Virginia must develop a comprehensive, statewide action plan for community-based services that includes, at a minimum:
 - Intensive care coordination;
 - In-home and community-based direct services;
 - Responsive and individualized crisis response and stabilization services;
 - Therapeutic foster care.
- West Virginia can afford to serve more children in their homes and communities. During the State's fiscal year 2012, the State spent over \$67.5 million dollars on residential placements. The State's overreliance has impacted the State's education system; of the \$6 million that the State allocates to county school districts to pay for special education services, over \$2.2 million is spent on youth in out-of-state placements.
- West Virginia has a provider base experienced in providing in-home and community-based mental health services. These providers have demonstrated success with in-home

and community-based individual counseling, therapeutic behavioral supports, and therapeutic foster care. The State could expand or replicate these programs across the State.

- **WEST VIRGINIA SHOULD IMPLEMENT THE FOLLOWING RECOMMENDED REMEDIAL MEASURES TO COMPLY WITH THE ADA**

- West Virginia should expand in-home and community-based mental health service capacity throughout the state and provide quality oversight and public accountability for all services.
- West Virginia should eliminate the unnecessary use of public and private segregated residential treatment facilities, both within the state and outside of the state.
- West Virginia should ensure that all Comprehensive Centers provide for in-home and community-based mental health services across the state. These services should be in fidelity to national models and the State should provide the services in sufficient amount, duration, and scope.
- West Virginia policy, practice, and regulations should ensure that a single Intensive Care Coordinator has ultimate responsibility and accountability for ensuring the planning, delivery, and monitoring of services in cases where a child is involved in multiple child-serving systems.
- West Virginia should develop an interagency decision-making and oversight entity that includes families, youth, and advocates meaningfully informing and providing oversight of high-level policy development, program planning, decision-making, and implementation of remedial actions.
- West Virginia should modify its policies and practices to ensure the effective engagement of families as full partners in the assessment, planning, and implementation of services and supports.
- West Virginia should provide families, children and youth with accurate, timely, and accessible information regarding the services available in their communities that can meet the needs of the individual child and his or her family in the most integrated setting.
- West Virginia should develop and implement a cross-system remedial plan that ensures children throughout the state are not unnecessarily placed in segregated residential treatment facilities. This remedial plan should include outreach and educational programs for stakeholders including judges and other court personnel, law enforcement, educational personnel, and others. The remedial plan should specifically address those children at heightened risk of placement in facilities.
- West Virginia should assess each individual placed in segregated residential treatment facilities by the State, based on the principle that with appropriate supports and services, the State can serve individuals in an integrated community setting.