

# MEMORANDUM

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To: Office of Management and Budget

From: Elizabeth G. Booth, Esq. on behalf of the following organizations:  
State Council for Persons with Disabilities  
Developmental Disabilities Council  
Governor's Advisory Council for Exceptional Citizens

Date: November 15, 2016

Re: Division of Substance Abuse and Mental Health ("DSAMH") FY 2018 Budget

Please consider this memorandum a memorialization of the oral testimony presented by Elizabeth G. Booth, Esq. on behalf of the State Council for Persons with Disabilities ("SCPD"), the Developmental Disabilities Council ("DDC"), and the Governor's Advisory Council for Exceptional Citizens ("GACEC").

We wish to focus our comments today on the need for ongoing funding of community-based services and supports beyond the conclusion of the State's Settlement Agreement with the U.S. Department of Justice.

## **Ongoing Funding for Community-Based Services**

The State has been required to establish a variety of community-based mental health services by the State's Settlement Agreement with United States Department of Justice ("U.S. DOJ") instituted in 2011.<sup>1</sup> The impact of the Settlement Agreement has been a total transformation of the landscape of mental health services in Delaware. In implementing the terms of the Settlement Agreement, DSAMH has created a system of comprehensive community-based programs to serve individuals with serious and persistent mental illness ("SPMI") who are at highest risk of institutionalization.<sup>2</sup> These services include Assertive Community Treatment ("ACT") teams, Intensive Care Management ("ICM") teams, and the Community Reintegration Support Program ("CRISP") as well as the crisis intervention services, targeted case management, supported housing, and supported employment services.<sup>3</sup> Over the course of the Settlement Agreement, more than 12,000 Delawareans were identified as meeting the criteria for the Agreement's target population.<sup>4</sup>

After five years of monitoring by the Court Monitor Dr. Robert Bernstein, the State has demonstrated substantial compliance with all terms of the Settlement Agreement, and the U.S.

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<sup>1</sup> U.S. DOJ Settlement Agreement, U.S. v. State of Delaware, Civil Action 11-591-LPS.

<sup>2</sup> *Id.* The Settlement Agreement created specific criteria for inclusion its target population, including history of psychiatric hospitalization, homelessness, and criminal justice involvement.

<sup>3</sup> *See, e.g.*, Tenth Report of the Court Monitor on Progress Toward Compliance with the Agreement, U.S. v. State of Delaware, Civil Action 11-591-LPS.

<sup>4</sup> *Id.* at 5, indicating that as of December 2016 12,826 individuals were identified per the Settlement Agreement's criteria.

DOJ agreed to dismissal of its federal court complaint, concluding the terms of Settlement Agreement and monitoring by Dr. Bernstein.<sup>5</sup>

It is imperative, however, that the community-based services that were established and expanded by the Settlement Agreement remain fully funded. The Americans with Disabilities Act and the Supreme Court's landmark decision in *Olmstead v. L.C.* prohibit unnecessarily institutionalization of people with disabilities, including those with SPMI, and require that those individuals be served in the community, as opposed to an institutional setting, when appropriate.

While the Court's monitoring established by the Settlement Agreement has concluded, oversight of the programs serving the Settlement Agreement's target population will be ongoing at the state level. In June 2016, both houses of the Delaware General Assembly passed S.B. 245, creating a Behavioral and Mental Health Commission which will include a Peer Review Subcommittee to oversee the ongoing provision of services to the target population as defined by the Settlement Agreement.<sup>6</sup> This Commission and the Peer Review Subcommittee will advise the Secretary of the Department of Health and Human Services as to ongoing issues with the provision of effective services to this target population.<sup>7</sup>

The community-based services created under the Settlement Agreement have enabled more individuals with SPMI to live in their communities and pursue employment with the support they need to live more independently. As further detailed in the Court Monitor's tenth and final report, many consumers have reported the ways in which the changes implemented by the Settlement Agreement and the expansion of community-based services have changed their lives by providing them with greater stability and increased interaction with their communities.<sup>8</sup> The Court Monitor also noted in his final report, however, that "[i]n interacting with a broad range of stakeholders—including peers, family members, providers, and others—the most consistent concern heard by the Monitor is not so much that there are problems in services, but far more often that stakeholders worry that the array of services introduced through the Agreement will go away once the Agreement is resolved and the State is no longer subject to a court order."<sup>9</sup>

The community-based services expanded under the Settlement Agreement have proven to be more cost-effective than institutionalization. For example, the estimated total annual cost of ACT services is \$23,500 per person (which includes the cost of housing in the form of an SRAP voucher), versus \$292,000 per person for a year of inpatient hospitalization at Delaware Psychiatric Center.<sup>10</sup> Further, the U.S. DOJ's appointed Court Monitor has consistently noted in his reports that clients being served by ACT, ICM, and CRISP services had lower frequency of hospital readmissions, "even though these programs serve individuals with significant disabilities, generally with long histories of recurrent hospital admissions."<sup>11</sup>

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<sup>5</sup> See Joint Brief in Support of Parties Joint Motion to Dismiss, U.S. v. State of Delaware, Civil Action 11-591-LPS.

<sup>6</sup> *Id.* at 9-10. Governor Markell signed the bill into law on September 6, 2016, which is now codified at 16 Del. C. § 5191, et seq.

<sup>7</sup> 16 Del. C. § 5194.

<sup>8</sup> See Tenth Report of the Court Monitor at 1-2. One consumer, who had previously been admitted to Delaware Psychiatric Center over thirty times stated, "I'm doing so much better now than I've ever been in my life."

<sup>9</sup> *Id.* at 11-12.

<sup>10</sup> Corrected Fourth Report of the Court Monitor, U.S. v. State of Delaware, Civil Action 11-591-LPS at 7.

<sup>11</sup> *Id.* at 22.

The Councils recommend consideration of continued funding of comprehensive and intensive community-based mental health services, as these services are essential to maintaining and improving the wellbeing of individuals with SPMI in our communities. These programs are not only what the ADA and *Olmstead* require and what the ongoing oversight of the Mental and Behavioral Health Commission will mandate, but they will continue to save the state money in the long-term and enable more Delaware residents to receive the treatment and support they need in a more integrated setting.

Thank you for your consideration.