Update on the US DOJ Settlement and the Role of the Counties in Compliance

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February 12, 2016

Background

- **May 2010 Disability Rights North Carolina investigated Adult Care Homes in North Carolina**
- "In order to investigate the condition of Adult Care Homes in North Carolina, Disability Rights NC partnered with the University of North Carolina School of Law to organize a pro bono project sending eight students across the state to monitor and survey fifteen Adult Care Homes."
- "The project occurred over a two week period (May 17 – May 28, 2010), during which students and Disability Rights NC staff observed the condition of each facility and interviewed Adult Care Home residents, staff and administrators."

DRNC findings:

- "Between October 2008 and July 2009, four residents of North Carolina's Adult Care Homes died as a result of resident-on-resident assaults. Disability Rights North Carolina has learned that all of the residents involved had mental health diagnoses. Disability Rights North Carolina considers all of the people involved in these tragic assaults to be victims of North Carolina's failed policy decision to rely on Adult Care Homes for the primary form of publicly-funded housing for people with mental health disabilities."

DRNC Complaint to USDOJ

- July 29, 2010 DRNC filed a complaint with the United States Department of Justice
  - "[T]he state of North Carolina continues to rely on institutional placements for the long-term care of many adults with severe and persistent mental illness."

DRNC Complaint

- "In filing this complaint, Disability Rights NC respectfully requests the assistance of the U.S. Department of Justice in evaluating and investigating the appropriateness of placement of adults with mental illness in Adult Care Homes, and whether these placements constitute a violation of the ADA under the principles articulated in Olmstead."

USDOJ's response

- Letter to NC, November 17, 2010
  - USDOJ opened an investigation to assess the State's compliance with Title II of the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12132, as interpreted by Olmstead v. L.C., 527 U.S. 581 (1999), requiring that individuals with disabilities receive services in the most integrated setting appropriate to their needs.
- USDOJ requested many documents from DHHS
  - We produced documents from January 2011 to April 2011.

USDOJ investigation

- USDOJ toured numerous adult care homes
- Spoke with residents and staff at adult care homes
- Spoke with community service providers and stakeholders
- Spoke with individuals with mental illness receiving services in their own apartments and members of psychosocial rehabilitation clubhouses and centers.
- Met with members of the long-term care and adult care home industries

USDOJ findings letter July 2011

- "The State fails to provide services to individuals with mental illness in the most integrated setting appropriate to their needs in violation of the ADA."
- "The State plans, structures, and administers its mental health service system to deliver services to thousands of persons with mental illness in large, segregated adult care homes, and to allocate funding to serve individuals in adult care homes rather than in integrated settings."
- "Adult care homes are institutional settings that segregate residents from the community and impede residents' interactions with people who do not have disabilities."

UDSOJ Findings Letter

- "Most people with mental illness receiving services in adult care homes could be served in more integrated settings, but are relegated indefinitely and unnecessarily to adult care homes because of systemic State actions and policies, which include:
  - The State's failure to develop a sufficient quantity of community-based alternatives for individuals with mental illness unnecessarily and indefinitely confined to adult care homes;

USDOJ Findings

- The State's failure to redirect resources already available to expand community-based alternatives;
- The State's prioritization of investment in institutional settings at the expense of community-based settings; and
- The use of policies and practices that cause individuals with mental illness to enter adult care homes to obtain support services.

USDOJ Findings

- Reliance on unnecessary institutional settings violates the civil rights of people with disabilities. Community integration will permit the State to support people with disabilities in settings appropriate to their needs in a cost effective manner."

NC's response

- Negotiations with the USDOJ began in 2011, and continued on through the signing of the settlement agreement on August 23, 2012.
- The agreement is between the State of North Carolina and the United States Department of Justice
- USDOJ filed its complaint in federal court, and the parties filed a joint motion to dismiss on that same date.
- The settlement agreement is filed with the court, which retains jurisdiction to enforce the terms of the agreement.

Terms of the Settlement Agreement

"This Agreement is intended to ensure the State will willingly meet the requirements of the ADA, the Rehab Act, and the Olmstead decision, which require that, to the extent that the State offers services to individuals with disabilities, such services shall be provided in the most integrated setting appropriate to meet their needs. Accordingly, through this Agreement, the Parties intend that the goals of community integration and self-determination will be achieved."

Definition of Individual

- The term "individual" shall mean the individual, or, in situations where a guardian of the person or general guardian has been appointed because the individual has been declared legally incompetent, the individual and his or her guardian.

Role of Guardians

- Guardians shall seek to preserve for the individual who has been declared legally incompetent the opportunity to exercise those rights that are within his or her comprehension and judgment, allowing for the possibility of error to the same degree as is allowed to persons who have not been declared legally incompetent, in accordance with N.C. Gen. Stat. § 35A-1201(a)(5).

Role of Guardians

- Guardians shall permit individuals who have been declared legally incompetent to participate as fully as possible in treatment discussions and discharge planning, to the maximum extent of the individual's capabilities, in accordance with N.C. Gen. Stat. § 35A-1201(a)(5).
- Any decisions made by the guardian about where the individual will live should reflect the individual's preferences, to the extent possible, in accordance with guidance issued by the Division of Aging and Adult Services.

Requirements of the State

- The State shall conduct in-reach and education with county Departments of Social Services and Clerks of Court to ensure that guardians of individuals with Serious Mental Illness and Serious and Persistent Mental Illness, as defined below, who have been declared legally incompetent understand these requirements.

Requirements:

"State shall monitor adult care homes for compliance with the Adult Care Home Residents' Bill of Rights requirements contained in Chapter 131D."

This just restates the requirements of NCGS §131D, which includes the role the counties play in monitoring the Adult Care Homes.

CITE 131D

Substantive Provisions

- Community Based Supportive Housing Slots
- Community Mental Health Services
  - ACT (DACT or TMACT)
- Supported Employment (IPS-SE)
- Discharge and Transition (Inreach)
- Preadmission screening and Diversion

Implementation

- TCLI program process:
  - Identify individuals with SMI/SPMI prior to entry to ACH, (PASRR screen and diversion)
  - Identify individuals in ACHs who are SMI/SPMI who want to participate
  - Identify individuals in state operated psychiatric hospitals who are SMI/SPMI and who are homeless or have unstable housing.
  - Refer individuals to LME/MCO for in-reach activities, (sharing housing options, and services options with residents who meet the priority population served by the settlement.)
  - Housing search, and transition to placement, includes housing subsidy
  - Ongoing provision of services and supports

Housing slot priority

- a. Individuals with SMI who reside in an adult care home determined by the State to be an Institution for Mental Disease ("IMD");
- b. Individuals with SPMI who are residing in adult care homes licensed for at least 50 beds and in which 25% or more of the resident population has a mental illness;
- c. Individuals with SPMI who are residing in adult care homes licensed for between 20 and 49 beds and in which 40% or more of the resident population has a mental illness;
- d. Individuals with SPMI who are or will be discharged from a State psychiatric hospital and who are homeless or have unstable housing; and
- e. Individuals diverted from entry into adult care homes pursuant to the preadmission screening and diversion provisions of Section III(F) of this Agreement.

Role of independent Reviewer

- The Reviewer shall have full authority to independently assess, review, and report annually on the State's implementation of and compliance with the provisions of this Agreement.
- Marylou Sudders was the original reviewer. She began work October 2012
- Baseline report given May 2013
- First annual report May 2014
- Resigned in November, effective January 7, 2015
- New independent Reviewer Martha "Marti" Knisley began January 2015.

First reviewer findings significant to the Counties

- "The settlement is clear that the State should engage in in-reach and education with the County Departments of Social Services. Their engagement is important to the successful implementation of the settlement provisions."
- "Anecdotal evidence suggests that the county staff, particularly public guardians, could benefit from on-going education and training in order to increase referrals for in-reach and transition planning."
- "The State should increase opportunities to meaningfully engage with their county colleagues and to monitor the referral processes by Counties to ACHs."

Report findings October 2015

- "Section III.E.13. of the Settlement is clear that the State should engage in in-reach and education with the County Departments of Social Services."
- "[T]here continue to be unsolicited reports that suggest county staff, particularly Public and agency Guardians, remain an impairment to planning and successful discharge."
- "[T]he State should increase opportunities to meaningfully engage with their county colleagues and to monitor the referral processes by counties to ACHs."

USDOJ letter of non-compliance

Focus on Housing numbers, Supported Employment numbers and community mental health services gaps.

Plan of correction submitted December 22, 2015 set out plans for increasing numbers in supported housing, and supported employment and provide greater access to services and supports to maintain housing.

In the meantime, the independent reviewer is continuing her monitoring of the terms of the settlement.

Where the county comes in....

- When the county is the guardian:
  - Partnering with LME/MCO, and other housing resources locally and at the state level (NCHFA, Targeted units, and the Key program, in addition to TCLI) to identify local, affordable, accessible housing for wards.
  - Partnering with the LME/MCO to educate staff on ward's needs to transition successfully
  - Being open to the concept of supportive housing, educating staff on the programs, its pros and cons in order to make an informed decision concerning your ward's participation.

Challenges for guardians

- Balancing goals of agreement with concerns for safety and welfare of the ward.
- Many individuals have history of non-compliance with medications and difficulty adjusting to community living.
- The process for placement in supportive housing can take months and individuals often need housing more quickly, and there may be limited resources.

Other areas of County involvement

- Under NCGS 131D, county DSSs have a role in monitoring and investigating complaints in adult care homes.
  - DOJ independent reviewer perceives a conflict of interest when DSS as guardian places ward in ACH and then has responsibility to investigate and monitor the ACH.

Hopes going forward

- LME/MCO staff and DSS staff will develop even stronger collaborative relationships relating to individuals they both serve, respecting the issues and challenges for guardians and the responsibility they have, and respecting the role and responsibility of the LME/MCOs as well.

Questions?