UNITED STATES' INVESTIGATION

Q: What prompted your investigation of West Virginia?

A: The United States began its inquiry into potential violations of the ADA in West Virginia's children's mental health system through a data review of several states. As indicated in our findings letter, by its own report, West Virginia placed a higher percentage of children into segregated residential care than 46 other states.

Q: What population of children did you look at in this investigation?

A: Our investigation focused on children up to age 21 with mental health conditions who rely on West Virginia's Department of Health and Human Resources for mental health treatment. These children become eligible for public mental health services through several avenues including the child welfare system, the juvenile justice system, or family eligibility through the Medicaid program. Regardless of their point of entry, we found that these children have significant mental health needs that are largely unmet in the community.

Q: What violations did you find during your investigation?

A: We concluded that West Virginia violates the ADA by its over-reliance on segregated residential facilities for children, including out-of-state facilities far from children's homes and families.

The facilities where West Virginia places its children with serious emotional and behavioral disorders are not the most integrated settings in which to provide the services those children need. Once placed in these facilities, children often remain for long terms -- during our investigation, we found that West Virginia children remained in facilities for a year, on average.

We also concluded that West Virginia lacks in-home and community-based services. Across the state, children and their families suffer because critical mental health interventions are unavailable, or the wait for services is so long that a child's condition deteriorates or escalates during the wait. Even when mental health services are provided to a child, they are often too infrequent to support a child's needs.

Q: How were children affected by the violations?

A: Throughout our investigation, we met families and children who suffered due to the lack of community-based mental health services. We met several children who had experienced institutional placement. Among them were:

- A ten year old whose family sought in-home and community-based mental health services when their son began exhibiting destructive behaviors, but were unable to receive these services in the community. The child has been in psychiatric hospitals or residential treatment facilities at least four times due to his severe behavioral

issues. While the State has provided intensive mental health treatment in residential facilities, the only mental health treatment in the community was capped at three hours per week. Three hours is not sufficient to address his intensive needs. (Family specifically consented to sharing this example, which have not shared publicly previously).

- A fourteen year old and her mother who have struggled to find services. Because they could not find treatment in the community, the child spent seven months in a segregated facility in another state. She was four hours away from her family, and had to sleep on an air mattress on the floor and take cold showers every day. (Notice Letter, page 17).

Our team also met youth who were at risk of placement in an institution:

- A seven year old who is diagnosed with post-traumatic stress disorder, ADHD, anxiety, and a mood disorder. His family has experienced many delays in getting their son the services he needs. Even once he received services, they received only one hour of individual therapy a week, which was insufficient to address his needs. (Family enthusiastically consented to sharing this example, which we have not shared publicly previously).

- A young man whose grandmother drives him to Baltimore, 100 miles each way, to receive services because there are no services in his area to address his mental health disabilities and developmental disability. (We have **no**t been able to speak with this family recently – this is not an example we have used publicly).

SUBSTANCE OF REFORMS IN THE SETTLEMENT

Q: Do the requirements in the agreement apply to all children with mental illness?

A: No. In the agreement we have identified a target population of children with significant needs who are most likely to benefit from the services in the agreement. The target population covers all children under the age of 21 who:

- Have a serious emotional or behavioral disorder, and who either
    - Are placed in a residential mental health treatment facility; or
    - May reasonably be expected to be placed in a residential treatment facility in the future; and who

- Are eligible for mental health services provided by or paid for by the Department of Health and Human Resources.

If a child meets these eligibility requirements, the agreement sets out a screening and assessment process to identify any needed in-home and community-based mental health services.

Q: How does the agreement ensure that children who qualify for mental health services under the agreement are identified and served?

A: The agreement requires the State to adopt a standardized screening tool to identify children in the target population. The agreement requires the State to screen any child who enters the juvenile justice system, or the child welfare system, or if the child's family is eligible for public mental health services and requests a screening. The agreement also requires that the State screen fifty-two percent of all Medicaid-eligible children each year. Children whose screening indicates a need for mental health services, all children who have received mental health crisis services, and all children who have been referred for a residential mental health facility placement, will then go through an intake and assessment process to identify any needed in-home and community-based services.

For all children who are assessed to need services, a Child and Family Team will manage the child's care, and work with the family to develop an individual care plan.

Q: Can a child or family refuse the services offered in the agreement?

A: Yes. Our agreement recognizes that the child and his family have the right to refuse offered services.

Q: What specific reforms must West Virginia make to comply with the agreement?

A: There are three categories of reforms that West Virginia must make:

- First, they must increase the availability and quality of in-home and community based mental health services. The State must ensure that every child who is determined appropriate for community based services receives timely access to these services in a convenient location and receives services of the intensity and duration that they need;

  These services include:
  - Wraparound facilitation - a service that facilitates care planning and coordination for children with mental illness;
  - Behavioral Support Services- services that address a child's behaviors that interfere with successful functioning in the home and community.
  - Family support and training services – services that provide education and training for the child's family about the child's condition and how the family can best support the child in the home and community;
  - In-home therapy with a licensed clinician;

- Children's Mobile Crisis Response- a crisis response program for children that includes a hotline and mobile crisis response teams that maintain children in their home, whenever possible;

- Therapeutic Foster Care- a clinical intervention that includes placement of a child in a home with specially-trained foster parents; and
- Assertive Community Treatment- a treatment model in which a multidisciplinary team assumes accountability for a small, defined caseload of individuals and provides the majority of direct services to those individuals in the individual's community.

- Second, West Virginia must decrease the unnecessary use of Residential Mental Health Treatment facilities. The agreement requires the state to create a plan to reduce its unnecessary use of these facilities. By the end of 2024, a qualified professional must have assessed all children living in a facility and determined that this setting is the most appropriate setting for each individual child.

- Third, the State must develop a Quality Assurance and Performance Improvement system. This system will allow the State to assess the quality of its mental health services and timely address gaps in services across the state.

- The State must also hire a subject matter expert to provide technical assistance on the implementation of reforms, and offer recommendations on how to attain compliance with the agreement.

Q: The State is taking steps already to decrease the number of children in out of home placements. How does the agreement account for these steps?

A: Secretary Crouch has undertaken positive steps to reduce DHHR's reliance on institutional care. These initiatives include:

- Children's Mobile Crisis services operating in some counties;
- The Expanded School Mental Health Care program that provides prevention, early intervention services, and treatment to children in some schools;
- The Safe at Home program that provides wraparound services to some children currently in residential mental health treatment facilities or who are involved in the foster care system who are at risk of entering a facility; and
- The children's mental health wraparound pilot program that provides wraparound services to some children who are not eligible for the Safe at Home program.

Our agreement built on these initiatives as a base for expanding services throughout West Virginia.

MONITORING AND ENFORCEMENT OF THE SETTLEMENT AGREEMENT

Q: How long will the agreement last?

A: The agreement will terminate on December 31, 2024, if the State has reached full and effective compliance. That means that they must implement the reforms and then maintain them for one year.

The agreement allows West Virginia to seek early termination of the entire agreement or particular substantive provisions if it has maintained substantial compliance for at least a year.

Q: Why is this agreement not a court-enforceable consent decree?

A: The United States believes that the State is committed to reforming its mental health system, as shown by its cooperation and collaboration during our investigation, and the changes it has already begun to implement. Compliance with this agreement provides a roadmap for the State to come into full compliance with the ADA.

Q: What remedy does the United States have if West Virginia does not comply with this agreement?

A: We are confident that West Virginia will comply with this agreement. It is the result of the collaborative efforts of both the United States and West Virginia to serve the State's children with mental illness.

However, if the State does not comply, the United States will take prompt action to remedy any noncompliance. The agreement allows the State 60 days to remedy most breaches. If the State does not cure the breach, we may file a lawsuit asking a federal Court to the State to comply specifically with any term of this agreement.

Q: West Virginia is a poor state. How can it afford to implement these reforms?

A: West Virginia can afford to serve more children in their homes and communities. Studies have shown that community-based services like those required by the agreement produce positive outcomes for children while reducing institutionalization and related costs. West Virginia can realign and expand services to accommodate children in the community. West Virginia's own experience with pilot programs and grant-based initiatives have shown that the State can provide mental health services to children in the community. Those initiatives include the recently approved Safe at Home Title IV-E waiver, the School Based Mental Health Initiative, and the children's mental health wraparound pilot. These programs have only focused on small areas of the State, but the State could expand each throughout the State. The State has also taken steps to create a new program, called a Serious Emotional Disturbance waiver program, that could expand federal Medicaid payments for many of the mental health interventions described in this agreement that are not currently paid under the State's plan.