U.S. Department of Justice

January 2, 2014

John Dunbar
Attorney in Charge, Special Litigation Unit
Oregon Department of Justice
1515 S.W. Fifth Avenue, Suite 400
Portland, OR 97201

Re: Interim Report regarding United States' Investigation of Oregon's Mental Health System, DJ#168-61-30

Dear Mr. Dunbar:

We write in connection to our upcoming meeting with State officials as agreed upon in our November 9, 2012 letter. That letter provides an opportunity to work cooperatively together to resolve the United States Department of Justice's investigation of the State's compliance with the integration mandate of Title II of the Americans with Disabilities Act and *Olmstead v. L.C.*, 527 U.S. 581 (1999), as it applies to persons with mental illness.

Oregon has made clear that the transformation of its health care system, pursuant to the Affordable Care Act, will include: integration of the systems delivering physical and mental health care; expanded coverage under the Oregon Health Plan; and ensuring improved quality of services through an outcome-driven system. As Governor Kitzhaber has recognized, this pivotal turning point in delivery of health care services provides a unique opportunity for the State and the Department to work together to address the Department's concerns in this particular investigation, by embedding necessary mental health care reform in the design and transformation of the State's overall health care system. By utilizing health-care reform to ensure that the integration mandate is met for treatment of mental illness, Oregon has the opportunity to become a national model for community-based care. It is the desire of the Department to work with Oregon to meet this charge.

We previously agreed that it is the State's intent to use this health reform process to better provide individuals with serious and persistent mental illness ("SPMI") with the critical community services necessary to help them live in the most integrated setting appropriate to their needs and achieve positive outcomes. As you know, the State and the Department agreed to resume discussions shortly after the system-wide data was shared with the Department. In conjunction with that understanding, the State and the Department have agreed to meet January 8-10, 2014 in Oregon.

In order to facilitate these discussions, we are writing to provide the State with our preliminary review of the state-wide data provided by State officials over the past year. As

evidenced in the attached Interim Report, several themes emerge from the State's information. First, and foremost, despite the blueprint provided in our November 9, 2012 agreement matrix for the array of services Oregon must support to build a community-based system, the State's data displays that the funding of mental health services has not shifted away from costly restrictive inpatient settings to less costly preventative community settings and services. This particular concern was raised during our meetings with State officials in March 2013, and in a subsequent letter to the State. Second, Oregon appears to have made only limited progress over the past three quarters in improving key outcomes for consumers. While the data suggests a minimal decline in the number of consumers seeking emergency room services, the number of consumers using community-based crisis stabilization services (such as mobile crisis teams and walk-in crisis centers) has not increased, evidencing a lack of intended outcomes. Third, while Oregon reports to have an array of mental health services, the data indicates a lack of adequate high-intensity services like Assertive Community Treatment, and critical supports for housing and employment. Fourth, despite the data suggesting a high *quantity* of services in some parts of the State, these services do not appear to meet evidence-based models for *quality*. Finally, how the State provides services across the State remains an unanswered question in the data.

As agreed in our November letter, our upcoming discussions will focus on identifying gaps in the community service system that are impeding serving individuals in the most integrated setting appropriate to their needs. These discussions will also include whether our shared analysis should be broadened to include crisis service access by those with serious mental illness, as well as those with SPMI as defined in the letter agreement. If gaps in the system are agreed upon, the State has agreed to include further requirements in its plan documents, regulatory materials, and provider contracts with the managed care organizations and counties to ensure that an adequate array of community services is available throughout the State to help individuals live successfully in the community and prevent their unnecessary institutionalization. During our January meetings we will provide additional recommended changes to these documents to help achieve the positive outcomes sought by us both.

We trust that our upcoming discussions will allow us to move forward to reach our mutual goal of identifying and agreeing on the gaps in the community service system that are impeding serving individuals in the most integrated setting appropriate to their needs. Understanding these gaps will allow the State to take necessary remedial measures to ensure that an adequate array of community services is available throughout the State to help individuals live successfully in the community and prevent their unnecessary institutionalization. We look forward to meaningful and fruitful discussions next week.

Sincerely,

S. AMANDA MARSHALL
United States Attorney
District of Oregon

JONATHAN SMITH
Section Chief
Special Litigation Section
Civil Rights Division

Enclosure (Interim Report)