U.S. Department of Justice

Civil Rights Division

JMS: JP: JP: LL
DJ 168-61-30

Special Litigation Section - PHB
950 Pennsylvania Ave, NW
Washington DC 20530

March 11, 2015

VIA FIRST CLASS MAIL AND ELECTRONIC MAIL

John Dunbar
Markowitz Herbold PC
1211 SW Fifth Avenue, Suite 3000
Portland, OR 97204-3730

Re: Oregon's Status Resolving the U.S. Department of Justice's Investigation into Oregon's Mental Healthcare System

Dear Mr. Dunbar:

We write in connection with our ongoing negotiations with state officials regarding the U.S. Department of Justice's investigation of Oregon's compliance with the integration mandate of Title II of the Americans with Disabilities Act ("ADA") and *Olmstead v. L.C.*, 527 U.S. 581 (1999), as it applies to adults with mental illness. As anticipated in our November 9, 2012 letter, the Department and the State continue to work cooperatively to resolve our investigation. The United States agreed to this collaborative effort because of Oregon's stated commitment to develop the infrastructure and services which will allow individuals with serious and persistent mental illness to live integrated lives in the community, maintain safe and stable housing and employment, and avoid outcomes such as homelessness, jail, and unnecessary hospitalizations and institutionalization. As provided in our 2012 letter, we are currently working to develop outcome measures which the State must meet in order to resolve the Department's investigation. These outcome measures will be crucial in demonstrating whether Oregon is in compliance with the ADA's integration mandate.

Since Oregon and the Department began our work together, the State has begun to lay the foundations to improve its mental health system. We commend the State's progress in a number of areas. First, Oregon has significantly increased the number of individuals who have healthcare coverage under the Oregon Health Plan. We applaud the State's work to provide healthcare coverage for vulnerable individuals. Second, the Addictions and Mental Health Division ("AMH") has rolled out the Measures and Outcomes Tracking System (MOTS), an electronic data system for behavioral health providers. There are now more than 127,000 individuals enrolled in MOTS. This system has the capacity to address one of the Department's key concerns about Oregon's historic failure to collect statewide data about the mental health services it funds and the individuals receiving those services. We look forward to MOTS being fully developed for utility with providers. We are similarly encouraged by the new Emergency

Department Information Exchange system AMH is unveiling, which will provide hospital emergency departments with key information for the treatment of individuals with mental illness. We also appreciate AMH's efforts to develop a strategic plan under the leadership of Pam Martin, the Director for Addictions and Mental Health.

There are several key areas that we continue to watch closely as we embark on an agreement regarding outcome measures: development of reliable baseline data; the population of the State Hospitals; fidelity and outcomes of Assertive Community Treatment teams; supported housing; crisis services and jail diversion; supported employment; peer services; and delivery of care in frontier regions.

Development of Baseline Data

We are pleased that the State has begun to collect and report data on the areas agreed upon in our data matrix. This data is providing us with critical information regarding Oregon's use of institutions and community-based mental health services, and once the State achieves consistency in its reporting, such data will provide us with baseline data that we can use to track outcome measures. However, it is concerning that there were significant discrepancies in certain data points between the October 2014 and January 2015 reports – purportedly reporting on the exact same time periods. For example, in the October 2014 report, AMH reported that in the first quarter of 2014 there were 4,256 emergency room visits by Medicaid-enrolled adults with mental illness. In the January 2015 report, AMH revised that number for the same quarter to 3,447 – a decrease of more than 800. In another example, in the October 2014 report, AMH reported that in the third and fourth quarters of 2013, 415 and 455 individuals with SPMI received supported employment services, respectively. Yet, in the January 2015 report, AMH reported that for the exact same time periods – the third and fourth quarters of 2013 – more than 1,000 individuals with SPMI received those services during each of those quarters. These shifts in data that are supposed to be reporting on the exact same periods of time illustrate that we still do not have true baseline data. Our November 2012 letter contemplated that we would have this baseline data by October 2013, but as of March 2015, we do not yet have reliable baseline data for important measures. By necessity, because we are more than a year past a key agreement deadline, the timelines in our November 2012 resolution must be extended. As we move forward with an agreement to track outcome measures, it will be critical to have data upon which we can all rely in order to determine whether Oregon is meeting the agreed-upon outcome measures.

State Hospital Population

The population at the Oregon State Hospital has decreased since the start of our investigation. We are pleased with the State's current success in this key area. However, as previously stated, we have serious concerns about the State's development of another state hospital institution at Junction City, when the resources necessary to resolve this investigation must be focused on increased community-based services.

Assertive Community Treatment

We are cautiously optimistic of the State's expansion of critical community-based services under the 2013 Investments in Community Mental Health. These investments included expanded Assertive Community Treatment (ACT) services, mobile crisis services, supported housing, and jail diversion programs. While it is too early to see results of these investments in the data that we have been provided, we are encouraged that the State is investing in these critical areas. If the State continues to expand these services and provides that they have the intended outcomes, it will address many of the concerns raised in our investigation. We encourage the State to utilize these cost effective, evidence-based practices for solving the vicious cycle of institutionalization of vulnerable populations in the jails and hospitals.

As noted above, the State has expanded its ACT services, and it is committed to increasing the provision of ACT services across Oregon. The developments around ACT are encouraging, including the creation of the Oregon Center of Excellence for Assertive Community Treatment, the expansion of the number of ACT teams statewide, the use of fidelity reviews, and the creation of an ACT team for a forensic population. However, the State's data shows that many ACT teams are still not meeting fidelity, and that caseloads for most ACT teams are well below that of full-fidelity ACT services. Further, there still are not nearly enough ACT services across the State. Indeed, according to the most recent data we have been provided, just 460 individuals across the State received ACT services during the second quarter of 2014. Moreover, as we have emphasized in meetings and in our August 8, 2014 letter, the State must confirm that ACT achieves the desired outcomes for the individuals receiving those services. We encourage you to begin assessing outcomes for ACT services. In addition, we urge you to ensure that appropriate high-intensity services are available for individuals with mental illness in the State's frontier regions.

Supported Housing

It is also critical that the State continue to increase its investments in integrated, community-based supported housing for individuals with serious mental illness. The 2013 Mental Health investments provide for rental assistance and for the development of 32 units of housing for individuals with serious mental illness. However, there is still a dearth of supported housing, as is evidenced by the fact that of the 115 individuals who were discharged from the Oregon State Hospital in the first half of 2014, just 3 or 4 were discharged to supported housing. Disturbingly, more than half of those individuals leaving the state hospital were moved to another institutional setting, and two individuals were discharged to homelessness.

Crisis Services and Jail Diversion

It is vital that the State work collaboratively with local agencies to develop strategies to address services for individuals experiencing mental health crises and to prevent their unnecessary hospitalization and incarceration. For example, the State must make efforts to provide that individuals with mental illness do not end up arrested or incarcerated due to their mental illness. As memorialized in our May 12, 2014 letter, AMH had committed to partnering with local law enforcement agencies statewide to develop its crisis system and was evaluating

how partnerships might occur through the Local Public Safety Coordinating Councils. AMH had further committed to drafting a comprehensive plan to establish agreements between providers and law enforcement agencies by July 2014 and to implementing that plan by January 2015. To our disappointment, these steps have not occurred. We are concerned with AMH's lack of progress in working with local law enforcement and other community partners, beyond providing some grant funding.

While AMH has not taken the lead in this area, we are aware of some promising models in Oregon. For example, the Marion County mental health system, sheriff's office, police department, and court system are working together to provide services to individuals in mental health crisis and to avoid their unnecessary arrests. These services respond directly to our concerns. We encourage AMH to explore these and other models further, to help bring these models to scale and to provide that these services are available statewide. We appreciate that AMH has committed to meet with sheriffs and other local law enforcement as it continues to explore these areas, and we look forward to further work and investments in this area.

Supported Employment

The State has increased its investment in supported employment services, and it is providing data by county and conducting fidelity reviews. However, we still are not receiving information which the State committed to provide in May 2014 regarding the number of individuals with serious and persistent mental illness who are competitively employed. This data is necessary in order to evaluate the success of any of these programs. Additionally, there are significant swaths of the State where there are no providers of supported employment services.

Peer Delivered Services

We applaud the State's increased focus on peer-delivered services, including the creation of an Office of Consumer Affairs and the development of a peer certification process. We have seen the effectiveness of peer-delivered services in other jurisdictions, and we urge the State to further incorporate these services throughout its mental health programs, such as in walk-in centers for crisis stabilization, and through warm-lines utilized for telecare.

Frontier Services

Finally, there are still significant gaps in the provision of services in the frontier areas. This is especially problematic with regard to crisis services, ACT, jail diversion, and supported employment services. In order to resolve the Department's investigation, the State must ensure that appropriate services are available to all individuals with serious and persistent mental illness, and we look forward to discussions with you concerning services in the frontier.

Conclusion

This is a critical time for the reform effort. While we are encouraged by some of the State's efforts, there are key areas of community-based services where the State needs to increase its efforts to achieve compliance with the ADA's integration mandate. Those investments are both evidence-based and provide the public health system a significant cost savings to institutional care. We urge the State to be ambitious in developing the high-intensity community services and supports that are necessary so that Oregonians with serious and persistent mental illness can live in the most integrated setting appropriate to their needs.

Sincerely,

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