NC DEPARTMENT OF HEALTH AND HUMAN SERVICES

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To: Local Management Entities-Managed Care Organizations (LME-MCOs)

From: Kody H. Kinsley
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Subject: TO REITERATE OLMSTEAD OBLIGATIONS AND ADDRESS DEPARTMENT'S CURRENT INITIATIVES AND PLANNING

North Carolina has an obligation under *Olmstead*, the Americans with Disabilities Act, and the North Carolina Persons with Disabilities Protection Act to provide appropriate opportunities for people with disabilities to become fully integrated into the community if they choose to do so. This is more than a legal obligation—it is a moral imperative.

The Americans with Disabilities Act and the *Olmstead* decision.

The year 2020 marked the 30th anniversary of the signing of the Americans with Disabilities Act (ADA) of 1990. The Act is a civil rights law that prohibits discrimination against people with disabilities in all areas of public life, including jobs, schools, transportation and all public and private places that are open to the general public. The purpose of the law is to make sure that people with disabilities have the same rights and opportunities as everyone else.

In 1999, the United States Supreme Court issued its landmark decision in *Olmstead v. L.C.*, 527 U.S. 581 (1999). The Court found that the unjustified segregation of people with disabilities is a form of unlawful discrimination under the Americans with Disabilities Act (ADA) and its "integration mandate." The integration mandate requires that all public entities, including the State of North Carolina, "administer services, programs, and activities" for people with disabilities in the most integrated setting appropriate to the person's needs. "Most integrated setting" has been defined as one that enables people with disabilities to interact "to the fullest extent possible" with individuals that don't have a disability. Specifically, the case requires states to provide services in the community for eligible persons with disabilities when (a) such services are appropriate; (b) the affected persons do not oppose community-based treatment; and (c) community-based services can be "reasonably accommodated." Twenty-two years after the Supreme Court's ruling, there are still far too many people who can – and want to – live in their communities.

Current planning at NC DHHS

NC DHHS is committed to the principle that people with disabilities should have access to the services and supports necessary to enjoy the same benefits of community life as do other North Carolinians. Each day at NC DHHS, we are working to ensure that all people with disabilities have the opportunity to live, work and fully participate in their communities. We are looking forward to working with people with disabilities, their families, and our networks and partners to seize the unprecedented opportunities before us and to realize the true promise of *Olmstead*.

Starting in the Fall of 2019, NC DHHS commenced planning to broaden its efforts under *Olmstead* and expand the reach of its community-based services. In the Spring of 2020, NC DHHS organized a stakeholder advisory group comprised of people with disabilities, family members, advocacy groups, state agencies, Local Management Entities/Managed Care Organizations (LME/MCOs), providers and others. NC DHHS is being supported in these efforts by the Technical Assistance Collaborative (TAC), a national nonprofit organization based in Boston, Massachusetts. The TAC is working closely with NC DHHS to ensure the development of an *Olmstead* plan that is data-driven, outcome-based, and person-centered.

By the end of 2021, NC DHHS will have developed an *Olmstead* plan. The *Olmstead* plan will be built upon the foundation of the Department's existing *Olmstead* work, such as Transitions to Community Living and Money Follows the Person (MFP) programs as well as the work being done under our four 1915 (c) waivers [Community Alternatives Program for Disabled Adults (CAP/DA), Community Alternatives Program for Children (CAP/C), NC Innovations, and the Traumatic Brain Injury (TBI) waiver], our 1915 (b)(3) services (Supported Employment, Respite, Individual Supports, Transitional Living Skills, and In Home Skill Building), and Intermediate Care Facility for Individual with Intellectual Disability (ICF IID) In Lieu of Services. There will be much to discuss as the plan is being drafted, and much to share as we begin to work with our stakeholders and legislative leaders to implement these important systems changes in the coming years.

As these plans are being developed, we want to remind all stakeholders that the critical and affirmative obligation to provide for community-based alternatives to institutionalization remains central to our day-to-day work. LME/MCOs are reminded of the following:

- Individuals are presumed to be able to live in the community with all appropriate supports. This is a guiding principle underlying all our planning.

- Policies and procedures must be made available to NC DHHS by each LME/MCO, outlining the on-going work of In-reach and Diversion teams in helping people to make informed decisions about where they wish to live, work, receive services, and integrate into the community of their choice.

- Individual supports are expected to include the assistance of Certified Peer Support Specialists, when appropriate, particularly during transitions to the community.

- DHHS expects that reliance on institutions will decrease over time. This includes both State operated and private facilities.

- LME/MCOs have affirmative obligations to provide for quality community-based alternatives to institutionalization It is not feasible to make significant Olmstead-driven care only relying on the current providers and their current performance outcomes. To accomplish this, LME/MCOs must train, monitor, and shape their current and additional network providers' services and staff to be wholly focused on Olmstead outcomes for all individuals in their care.

- At transition meetings, LME/MCOs are required to have decision-makers in attendance who can commit to providing for community-based alternatives.

- LME/MCOs must identify and use any and all funding sources that could support an individual to reside in the community. With regard to those on an HCBS waiver, the LME/MCO must identify other supports that may be available.

- Services and supports are person-centered and plans must be reviewed by the LME periodically to ensure that providers are following the desires and goals of the person, and that service array clearly address the person's desired outcomes. Plans are to be amended by providers as the person's life changes. Providers should inform and create person-centered plans and provide services to maintain a person in their chosen community.

- Institutional placement should be a rare exception and there must be clear and convincing habilitative, physical, and/or clinical reasons to support the placement.

DHHS remains committed to these principles.

If you have any questions, please contact Sam Hedrick at 919-527-7525 or Sam.Hedrick@dhhs.nc.gov or Holly Riddle at 919-733-7011 or holly.riddle@dhhs.nc.gov .

Previous bulletins can be accessed at: www.ncdhhs.gov/divisions/mhddsas/joint-communication-bulletins.

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