

ANNUAL REPORT ON THE *OLMSTEAD* PLAN

**Building Inclusive
Communities in West Virginia**

July 1, 2023 - June 30, 2024



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REMEMBERING JOYCE FLOYD



It is with great sadness that we bid farewell to our long-time colleague and friend, Joyce Floyd, who died in January 2024. Joyce joined the *Olmstead* Council in 2016 and was also a member of many other disability and community organizations in West Virginia. She was a passionate advocate, friend to all, and is greatly missed.



OLMSTEAD MISSION, VISION, & GUIDING PRINCIPLES



Olmstead Mission Statement

The mission of the *Olmstead* Council is to develop and monitor the implementation of plan to promote equal opportunities for people with disabilities to live, learn, work, and participate in the most integrated setting in the community of their choice through West Virginia's compliance with Title II of the Americans with Disabilities Act (ADA).

Olmstead Vision Statement

The vision of the *Olmstead* Council is for all West Virginians with disabilities to live, learn, work, and participate in the most integrated setting in the community of their choice.

Olmstead Guiding Principles

- People with disabilities, regardless of the severity of the disability, can be supported to live in the community and setting of their choice.
- People with disabilities must have choice and control over where and with whom they live.
- People with disabilities must have opportunities to live integrated lives in communities with their neighbors and not be subject to rules or requirements that are different from those without disabilities. Integration does not just mean physical presence in a neighborhood, but valued and meaningful participation in community services and activities.
- People with disabilities must have access to information, education, and experiences that foster their ability to make informed choices while respecting their dignity of risk.
- People with disabilities must have opportunities to develop valued social roles, meaningful personal relationships, and activities of their choice.
- People with disabilities must have meaningful opportunities for competitive employment.

OLMSTEAD 25TH ANNIVERSARY



In 1995, the landmark case now known as *Olmstead v. L.C.* was brought by the Atlanta Legal Aid Society on behalf of Lois Curtis and Elaine Wilson, who were confined in a state psychiatric hospital in Georgia. Hospital staff agreed that both women should be discharged to supportive community programs, but no such placements were available, and the State of Georgia offered nursing facility placements. Ms. Curtis and Ms. Wilson believed this action violated their rights under Title II of the Americans with Disabilities Act (ADA).

The plaintiffs were successful throughout the judicial process. The Georgia Department of Human Resources appealed the lower court's decision that Georgia had violated the ADA's integration mandate by segregating Ms. Curtis and Ms. Wilson to the U.S. Supreme Court. On June 22, 1999, the U.S. Supreme issued its ruling that such segregation is a form of discrimination prohibited by the ADA because:

- It perpetuates unwarranted assumptions that people with disabilities are incapable or unworthy of participating in community life.
- Confinement in an institution severely diminishes the everyday life activities of individuals, including family relations, social contacts, work options, economic independence, educational advancement, and cultural enrichment.

Olmstead has been called the *Brown v. Board of Education*, case for people with disabilities. Like *Brown*, it is forcing change very slowly, and through determined and vigorous advocacy. *Olmstead v. L.C.* upheld the rights of people with disabilities to live and receive supports in the most integrated setting in their community. Title II of the ADA was the basis for this landmark decision. Title II of the ADA applies to state and local government entities and the programs funded and administered by them. Two regulations under Title II were fundamental to the *Olmstead* decision:

- The integration regulation mandates that states “shall administer services in the *most integrated setting appropriate* to the needs of the individuals with disabilities.” The most integrated setting is defined as “a setting that enables individuals with disabilities to interact with non-disabled persons to the fullest extent possible.”

OLMSTEAD 25TH ANNIVERSARY



- The reasonable modifications regulation mandates that states “shall make reasonable accommodations in its policies, practices, or procedures when necessary to avoid discrimination, unless modifications would fundamentally alter the nature of the services, programs, or activities.” The Supreme Court stated that, “...if the state were to demonstrate that it had a comprehensive, effectively working plan for placing qualified persons ... in [most integrated] settings, and a waiting list that moved at a reasonable pace, not controlled by the State’s endeavors to keep institutions fully populated, the reasonable modification standard would be met.”

The implementation of the *Olmstead* decision in West Virginia began in 2001 with Governor Underwood’s Executive Order establishing an *Olmstead* Task Force. Governor Wise established the *Olmstead* Office/Coordinator position in 2003. The *Olmstead* Council was also created in 2003. On October 12, 2005, Executive Order 11-05 was signed by West Virginia Governor Joe Manchin, formally approving and directing the implementation of the West Virginia *Olmstead* Plan: Building Inclusive Communities. Executive Order 11-05 directs:

- The implementation of the West Virginia *Olmstead* Plan and the cooperation and collaboration between all affected agencies and public entities with the *Olmstead* Office to assure the implementation of the *Olmstead* decision within the budgetary constraints of the state; and
- The submission of an annual report by the *Olmstead* Office to the Governor on the progress of the implementation of the *Olmstead* Plan.

“To live in my own home, well I feel very grateful to all the people who helped me to get my own home and I feel very good about my home. I have a great life and I can make my own decisions. And I can handle my own business, and I feel good about myself.”

*-Elaine Wilson, from an interview
published by ILRU*

OLMSTEAD ENFORCEMENT



The United States Department of Justice, Civil Rights Division’s Disability Rights Section, which enforces Title II and Title III of the ADA, and the Special Litigation Section, which enforces the Civil Rights of Institutionalized Persons Act, has made *Olmstead* enforcement a top priority. Since 2008, a record number of amicus briefs, lawsuits, and interventions into state *Olmstead* cases have been observed.

In addition to increasing enforcement, investigatory work into what constitutes an *Olmstead* violation has significantly changed. In the past, the primary question asked was whether the institutions under investigation were safe. Additionally, the secondary question asked was whether the conditions of confinement were constitutional. Considering changes to *Olmstead* enforcement prioritization, the primary question is now whether there are individuals in those institutions who could appropriately receive supports in a more integrated setting.

Olmstead enforcement is evidenced in the State of West Virginia through the current activities and efforts of the *Olmstead* Council, partner affiliates, individuals, families, and communities, and through coordinated planning efforts and system reformation to address children’s mental and behavioral health needs.

State Example of *Olmstead* Enforcement

In the State of West Virginia, the *Olmstead* Council, partners, stakeholders, and communities statewide strive for all West Virginians with disabilities to live, learn, work, and participate in the most integrated setting in the community of their choice.

One example of *Olmstead* enforcement is the initiation of an investigation of children’s mental health services in West Virginia in April 2014 by the U.S. Department of Justice. On May 14, 2019, West Virginia entered into an agreement (the Agreement) with the U.S. Department of Justice to address allegations regarding the state’s service system for children with serious mental health conditions.

Since entering the Agreement, the Kids Thrive Collaborative, consisting of multiple state bureaus, community partners, and stakeholders was developed. The Collaborative meets quarterly to brainstorm and discuss strategies to ensure home and community-based services (HCBS) are available statewide.

According to the Collaborative’s January 2024 semi-annual report, “reducing the overall census in residential mental health treatment facilities (RMHTF) continues to be a primary focus for the West Virginia Department of Human Services. The point-in-time residential mental health treatment facilities census on December 1, 2023, was 872.”

OLMSTEAD COUNCIL PRIORITIES AND GOALS



All West Virginians have the right to be full, productive, and participating members of their communities. The West Virginia *Olmstead* Council promotes equal opportunities for people with disabilities to live, learn, work, and participate in the most integrated settings in the community of their choice. The Council has established the following policy priorities and goals to further its mission to achieve West Virginia's full compliance with Title II of the ADA. The program information in this report provides examples of how the West Virginia *Olmstead* Council is addressing its priorities and goals.

Priority 1: *Implement the West Virginia Olmstead Plan to ensure compliance with Title II of the ADA.*

Priority 2: *Prevent, reduce, and eliminate bias in West Virginia's Long-Term Care System that results in the unnecessary and improper segregation of individuals with disabilities in more restrictive settings, placing persons at-risk for institutionalization.*

Priority 3: *Advocate for the development and implementation of a program to address the major barriers of affordable, accessible, and integrated housing options for people with disabilities.*

Priority 4: *Advocate for people with disabilities to have opportunities in the most integrated settings for employment, education, transportation, and meaningful participation in their community.*

Priority 5: *Advocate for individuals with mental health issues to receive services in the most integrated setting appropriate to their needs.*

Priority 6: *Advocate for equitable access to telehealth and services to support independent, community living.*

Priority 7: *Return persons with disabilities residing in hospital units to a community of their choice, provide individuals residing in other institutions or large segregated and/or congregate settings the opportunities for individuals with disabilities to participate in education, work, or experience activities in the community.*

OLMSTEAD COUNCIL PRIORITIES AND GOALS



Priority 8: *Examine qualitative and quantitative data to evaluate individual choice in defining services and supports people with disabilities need to successfully live in the most integrated setting and further identify, with specificity, all types of services, supports, and infrastructure development needs in order to meet the needs of individuals discharged or diverted from hospital settings, persons living in other institutions or congregate care settings, and persons living in otherwise segregated settings.*

Priority 9: *Enhance outreach efforts to empower individuals and families to advocate effectively, learn how to be equal partners and participants in choices and opportunities to advance community integration, and maximize impact to localized, regional, and statewide system reformation consistent with continuously changing needs.*

The *Olmstead* Council, with extensive public input, developed goals for West Virginia to reflect and improve upon the State's mission for full compliance. Each goal has a series of specific objectives to focus efforts and increase achievement success. These objectives include the following:

- Safeguard self-determination and informed choices;
- Create and maintain a user-friendly system;
- Expand and improve transitions from facilities to the most integrated settings;
- Strengthen in-home services and the direct service workforce (include strategies for increasing the quantity and quality of the direct service workforce);
- Improve and expand housing options;
- Improve and expand transportation options;
- Increase income and employment opportunities; and
- Strengthen inclusive education.

WEST VIRGINIA'S OLMSTEAD ACTIVITIES



Olmstead Office Sponsored Training

The West Virginia *Olmstead* Office provided \$1,000.00 to assist in sponsoring the annual Fair Shake Network's David Stewart Legislative Training Day and Jan Lilly Stewart Disability Advocacy Day at the Capitol. Sixty-five people attended the training to learn about West Virginia Achieving a Better Life Experience (ABLE) Program, supported decision making, and other legislative and advocacy related activities.

Information, Referral, and Assistance Program

The West Virginia *Olmstead* Office provides information, referral, and assistance to West Virginians with disabilities and their families concerning *Olmstead*-related issues. In addition to information and referral, the West Virginia *Olmstead* Office provides residents with assistance on *Olmstead*-related complaints or grievances. In State Fiscal Year 2024, the *Olmstead* Office received 321 calls for information, referral, and assistance. The biggest barrier to resolving these concerns is the need for systems change to decrease the institutional bias in people's ability to access long-term services and supports and make community-based services and supports more readily available and accessible.

Olmstead Transition and Diversion Program

The West Virginia *Olmstead* Office continues to support people who are currently institutionalized or at imminent risk of institutionalization through the *Olmstead* Transition and Diversion Program. The Transition and Diversion Program is the only program of its kind in the United States. Each participant seeking to transition to or remain in the community is eligible to receive up to \$2,500 to pay for reasonable and necessary one-time start-up costs that may include security deposits, household furnishings, set up fees and deposits, moving expenses, assistive devices or technology, and home access modifications.

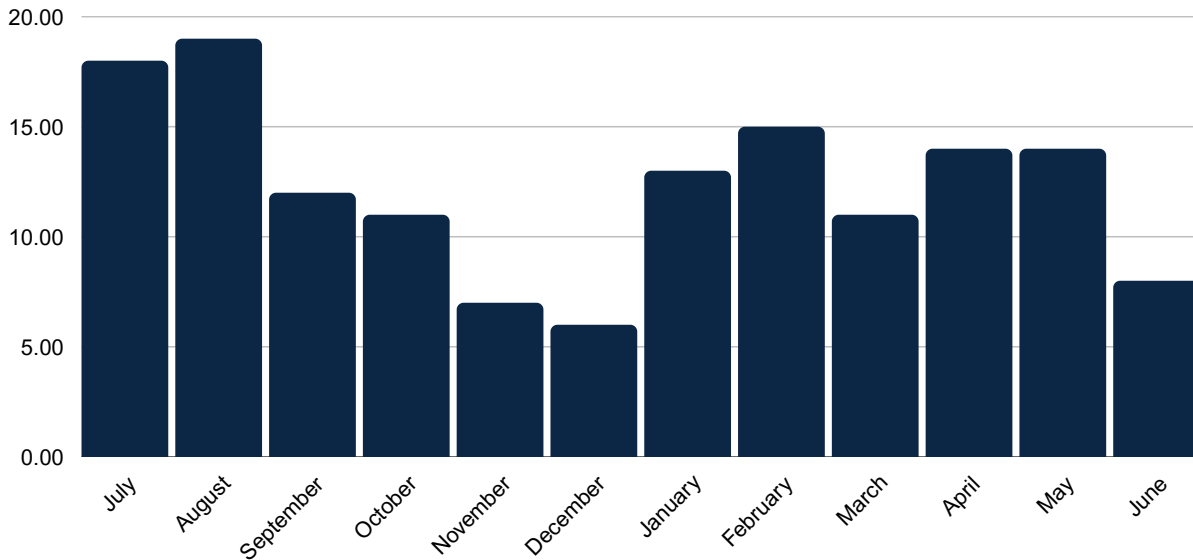
During State Fiscal Year 2024, the Program supported 157 people through the transition and diversion process. Twenty-seven individuals transitioned from institutions into the community. The average funding allocated per participant was \$1,488.69. Forty-three applications were denied due to not meeting the definition of imminent risk of institutionalization. Applications were received from 46 counties.

WEST VIRGINIA'S OLMSTEAD ACTIVITIES

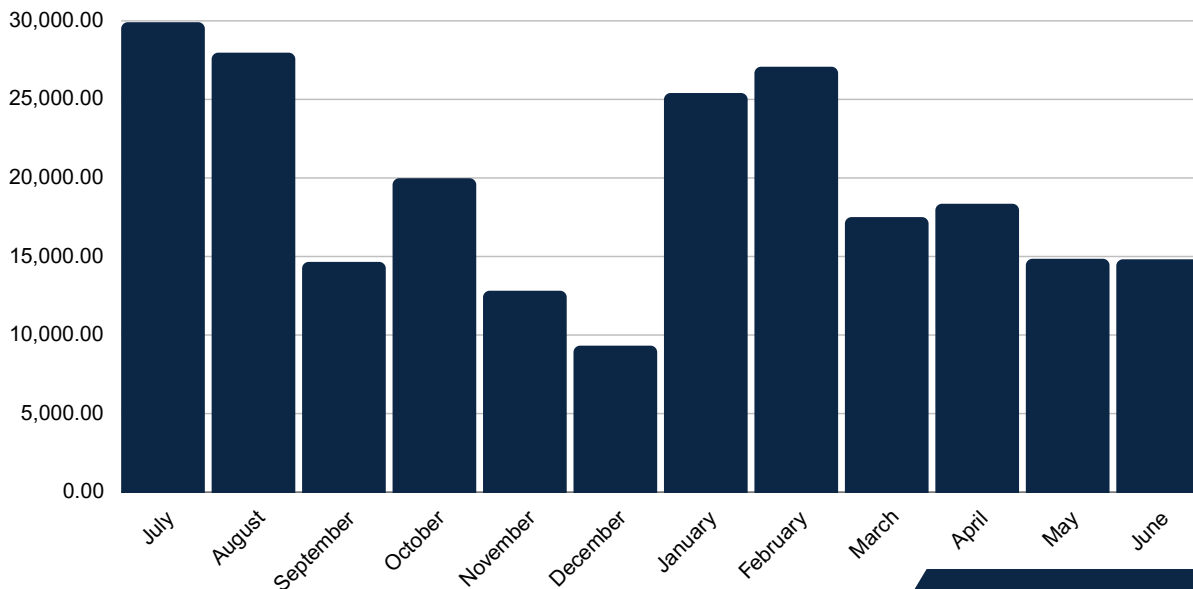


The *Olmstead* Transition and Diversion Program has the potential to save the Medicaid program money each time it transitions or diverts someone from institutional care. Of the 157 people assisted in this fiscal year, 43 received Medicaid only, 46 received Medicare only, and 63 received both Medicaid and Medicare. Five recipients did not indicate whether they receive Medicaid or Medicare.

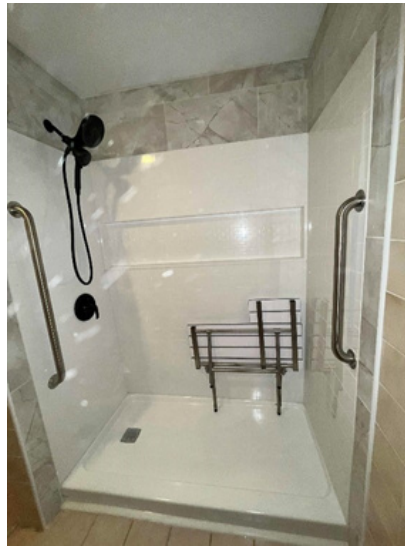
Approved Applications



Total Funding Approved



WEST VIRGINIA'S OLMSTEAD ACTIVITIES



“Thank you so very much for allowing me to be able to purchase a lift chair.”

-Transition and Diversion Recipient

Because of the *Olmstead* decision, many states are now in the process of implementing “*Olmstead* Plans” that expand community-based services and supports. In West Virginia those services and supports include programs such as the Aged and Disabled Waiver (ADW), the Children with Serious Emotional Disorder Waiver, the Intellectual and Developmental Disabilities Waiver, the Traumatic Brain Injury Waiver (TBIW), the West Virginia Substance Use Disorder Waiver, the “Money Follows the Person” Initiative/Take Me Home Transition Program, No Wrong Door/Bridging Resources West Virginia, West Virginia ABLE, HELP4WV: Behavioral Health Referral and Outreach Call Center, Peer Support Certification, and the State Opioid Response Grant Agreement. Many of these programs are represented on the *Olmstead* Council.

WEST VIRGINIA BARRIERS IDENTIFIED BY THE OLMSTEAD COUNCIL



Just as there are successes, the *Olmstead* Council has identified barriers that impede or prohibit individuals from accessing supports and services that are necessary to maintain their life in the community. It is important to note that this is not an all-inclusive list of barriers.

- Waiver Services: The Aged and Disabled Waiver and Traumatic Brain Injury Waiver do not provide skilled nursing services.
- Medicaid Long-Term Care Budget: A greater percentage of the overall Medicaid long-term care budget is spent for institutional care when compared to community-based supports (institutional bias).
- Workforce: There is a lack of an available, responsive, and competent workforce to provide direct services that enable people with disabilities to remain or return to their home and community.
- Unsafe Environments for Direct Care Workers: There has been an increase in the number of individuals who fall into unsafe work environments. This may be due to physical conditions requiring more than one direct care worker or environmental factors making it unsafe for a worker to be in the home.
- Waiver Waiting Lists: The Managed Enrollment List is a waitlist for services until a funded slot becomes available through a waiver program.
- Waiver Application Process: The application process has a financial eligibility and medical eligibility component, which can sometimes make it difficult to comply with time requirements needed to determine eligibility.
- Housing: There is a lack of safe, affordable, accessible, and available housing for people with disabilities.
- Around the Clock Care: The Aged and Disabled Waiver and Traumatic Brain Injury Waiver are marketed and used as the State's alternative to nursing facility care if the member chooses to live in his or her home and community. However, they do not support the cost of 24/7 services. In fact, even if a member is receiving the maximum level of care, as well as services through the State Plan Personal Care Services Program, they still cannot access 24/7 services.
- Medicaid Personal Care: Due to the restrictive eligibility criteria for dual services with a waiver, these services are not available to all recipients of the Intellectual and Developmental Disabilities Waiver, Aged and Disabled Waiver or the Traumatic Brain Injury Waiver programs.

WEST VIRGINIA BARRIERS IDENTIFIED BY THE OLMSTEAD COUNCIL



- Informed Choice: Adequate education on home and community-based services options is not mandated either prior to institutional placement or regularly thereafter. As a result, it is still easier for people needing long-term care to access institutional services rather than community-based services.
- Children’s Mental Health Services: Identifying a sufficient number of qualified children’s mental health providers with the capacity to serve children in a timely way statewide.
- Incentives to Provide Institutional Care: Because the Social Security Act makes services in institutions a right but services in the community optional, the cost-based reimbursement methodology incentivizes institutional care over home and community-based services.

Until these barriers are resolved, as well as any future obstacles that develop as the community-based health care system evolves, there remains much work to be done.

Updating the *Olmstead* Plan

During State Fiscal Year 2024, the *Olmstead* Council and a facilitator began the process to update the *Olmstead* Plan. Four public forums and eight focus groups were held to engage the public and interested individuals. Individual interviews and a survey were being planned at the end of the fiscal year.

“Nobody’s free until we are all free.”

-Lois Curtis

WEST VIRGINIA OLMSTEAD OFFICE & COUNCIL



West Virginia Olmstead Office

Carissa Davis has been West Virginia's *Olmstead* Coordinator since June 2019. Ms. Davis has been an advocate for people with disabilities for 20 years. Ms. Davis is a former employee and member of the West Virginia Statewide Independent Living Council and Take Me Home, West Virginia - A Money Follows the Person Initiative. Ms. Davis earned her bachelor's and master's degrees from West Virginia University.

West Virginia Olmstead Council

The West Virginia *Olmstead* Council was established in 2003 to advise and assist the *Olmstead* Coordinator to develop, implement, and monitor West Virginia's *Olmstead* activities. The mission of the implementation of a plan to promote equal opportunities for people with disabilities to live, learn, work, and participate in the most integrated setting in the community of their choice through West Virginia's compliance with Title II of the Americans with Disabilities Act. The Council has the following responsibilities as outlined in the *Olmstead* Plan:

- Advise the Coordinator on fulfilling the position's responsibilities and duties;
- Review the activities of the Coordinator with a focus on systemic issues and barriers;
- Provide recommendations for improving the long-term care system;
- Issue position papers for the identification and resolution of systemic issues; and
- Monitor, revise, and update the *Olmstead* Plan and any subsequent work plans.

West Virginia Olmstead Council Membership

The *Olmstead* Council is comprised of no more than 40 persons from the following:

- Ten people with disabilities and/or immediate family members;
- Twelve advocacy or disability organization representatives;
- Nine providers of home and community-based services; and/or supports; and
- Nine state agency representatives.

THANK YOU



Contact Us

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