



Jim Barrett, Chair

Jennifer Simmons, Director

[ncequaljusticealliance.org](http://ncequaljusticealliance.org)

PO Box 28802, Raleigh, NC 27611

November 8, 2021

NC Department of Health and Human Services  
via Technical Assistance Collaborative  
c/o Jenn Ingle  
3 Bigelow Drive  
Berlin, MA 01503  
Sent via email: [ncolmstead@tacinc.org](mailto:ncolmstead@tacinc.org)

RE: Draft Olmstead Plan Public Comment

Dear Secretary Cohen;

I am writing you as the Chair of the North Carolina Equal Justice Alliance to provide feedback on North Carolina's draft Olmstead Plan. We hope you will revise the plan to provide more meaningful and measurable plans to comply with the State's obligation to allow people with disabilities to live, learn, work, enjoy life, and receive needed treatment in their communities.

The North Carolina Equal Justice Alliance (EJA) is a community of civil legal aid providers serving low-income and underrepresented constituencies. Equal Justice Alliance's mission is to provide central coordination of a sustained, comprehensive, integrated, statewide system to provide the most effective legal services to people in poverty in North Carolina. Our members include Charlotte Center for Legal Advocacy, Council for Children's Rights, Disability Rights North Carolina, Financial Protection Law Center, Land Loss Prevention Project, Legal Aid of North Carolina, North Carolina Justice Center, North Carolina Prisoner Legal Services, and Pisgah Legal Services. Together we employ approximately 1,000 staff attorneys, paralegals, and support staff, who work together to provide legal help to meet basic needs and promote safety for millions of low-income and vulnerable North Carolinians.

The members of the Alliance are deeply invested in the rights of individuals with disabilities. Our organizations are intertwined with North Carolinians with disabilities at all levels, including staff and Board members as well as clients. Some member organizations report that at least 40% of their client households contain individuals with disabilities. Our advocacy around disability rights takes many forms. Council for Children's Rights represents people in IV-C and judicial commitment to psychiatric



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residential treatment facility (PRTF) cases. Disability Rights NC serves as the state's federally mandated protection and advocacy agency, providing individual and systemic advocacy on behalf of people with disabilities through eight federal programs as well as private funding sources. Legal Aid of North Carolina, North Carolina Justice Center, Pisgah Legal Services, and Charlotte Center for Legal Advocacy all advocate to protect the rights of people with disabilities and for increased access to resources that enable people with disabilities to find stability and pursue opportunity.

People with disabilities overwhelmingly want to live in the community near their friends and family, rather than in congregate settings. Indeed, that right is guaranteed to them by the Americans with Disabilities Act (ADA). This legal obligation is shared by every part of North Carolina's state government. In order to move toward compliance with the ADA and the Olmstead decision, North Carolina must commit to investing resources in community-based services and supports. We call for the final plan to articulate the increase in investment in community-based services and supports, including any resources that may be reallocated from institutional settings. The absence of such clear commitment in the draft plan reads as a defense of the status quo rather than a commitment to progress. While we recognize the political complexities of such commitments, we believe that to bring credibility to its articulation of respect for the rights of people with disabilities, NC's Olmstead plan should express the resources that will be used to accomplish the measures set forth.

In addressing the needs of people with disabilities from cradle to grave and regardless of diagnosis, the state should identify concrete, measurable goals to increase community integration in every area of change addressed. In the draft plan, even where such goals are named, they too often represent a mere maintenance of effort or, worse, a reduction from existing commitments.

For example, the mental health service and housing goals in the draft plan fall short of even the requirements of the 2012 settlement with the US Department of Justice, already extended multiple years beyond its original end date. Similarly, the plan articulates a commitment to decrease utilization of out-of-state psychiatric residential treatment facilities (PRTFs) in concept, but no such commitment with respect to North Carolina-based PRTFs. The plan should reduce NC's reliance on PRTFs altogether, whether in-state or out-of-state, and should include specific metrics for this change.



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The plan notes the state's inappropriate dependence on emergency departments (EDs) to hold people experiencing behavioral health crises, but it contains no targeted measure of commitment to reducing the number of ED admissions or bed days utilized for people in need of behavioral health care. Specific metrics for reduction of ED admissions and bed days for behavioral health care should be added to the final plan. Finally, while we support the intention to expand access to children's mental health services by expanding mental health services in primary care, schools, and specialty care, the final plan should articulate associated measures for implementation of this strategy.

Of the targeted measures that are present, many fall short of the bold leadership we hope to see from NC Department of Health and Human Services. Notably, the proposed increase in Innovation Waiver slots falls short. The quantity stated in the draft plan would not even keep up with the waitlist's growth over recent years. That is, even if the State meets the goal of adding 1000 additional slots per year, the waitlist will still be longer at the end of two years than it is today. The final plan should include an increase in Innovation Waiver slots designed to eliminate the waitlist in a reasonable period of time.

Other targeted measures are tangential to Olmstead at best. While it is possible, for example, that ongoing quality improvement efforts in PRTFs will eventually reduce the repeated admissions many children experience, Olmstead's intent is not to make institutions better. Instead, the plan should identify and put into place structures and supports that will avoid care in institutions and replace it with community-based services.

ADA and Olmstead compliance, as mentioned before, are obligations borne across state government, not just by the Department of Health and Human Services. It is essential that NC's plan address the activities of other state agencies and how those agencies will cooperate to move NC toward compliance. This is especially important given the unique Council of State structure of our executive branch. In the Minnesota plan, widely acknowledged as the standard toward which states should strive, executive branch coordination is accomplished through the creation of an Olmstead Implementation Office and an Olmstead Subcabinet from across state agencies. A similar approach should be employed in North Carolina. The importance of such cross-departmental planning was made clear recently when Governor Cooper



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expressed a plan to commit a substantial amount of funding from the American Rescue Plan Act to repairs and updates at our state-operated hospitals, while DHHS was simultaneously preparing the draft Olmstead plan. Governor Cooper's statement was contrary to one of the stated legislative purposes of ARPA, to support Home and Community Based Services, and would commit funding to institutional care that otherwise could be used for measures to comply with the Olmstead mandate of community-based treatment.

We need strong leadership & vision from DHHS and Governor Cooper to achieve true community inclusion for people with disabilities. Where we believe the Minnesota plan shared by DHHS sets forth an example of a model for transparent, concrete progress, the draft plan you've released falls short of that goal. Please follow the best practices identified by your staff and consultants and produce a final plan that honors the rights of people with disabilities in our state.

Respectfully,

A handwritten signature in cursive script that reads "James A. Barrett".

James Barrett

Chair, NC Equal Justice Alliance

Executive Director, Pisgah Legal Services