



November 21, 2019

Mandy Cohen, Secretary
North Carolina Department of Health and Human Services
101 Blair Drive, Adams Building
Raleigh, North Carolina 27603

Via Email Only to:
mandy.cohen@dhhs.nc.gov

Dear Secretary Cohen:

We write regarding the recent issuance of Request for Proposal (RFP) #: 30-200179, Olmstead Plan Development: Phase one. We are concerned with the issuance of the RFP because much of it appears aimed at gathering information already available to the Department. The RFP suggests that the Department will invest, unnecessarily, unspecified funds and a year of time on this preliminary data compilation.

There are 14 deliverables contained in section 5.2 of the RFP. We have listed them below with our comments.

- ***Identify facilities or programs, directly or indirectly operated or financed by the DHHS, that may place the State at risk of Olmstead violations.***

DHHS knows what facilities and programs it operates and which support integration. The Department issued its *Strategic Plan for Improvement of Behavioral Health Services* on January 31, 2018. That document identified the funding spent on segregated settings and the funding spent on integrated settings. The data reported there and the underlying source information should directly respond to this deliverable. *See Section 6.3* (describing the effort invested in conducting a Statewide Needs Assessment requested by the General Assembly). The *Strategic Plan* contains fiscal data regarding SUD, MI, and I/DD services, identified as community or facility-based, that was derived by the Department, presumably through available means that could be deployed to update the data. *See, e.g.*, pp. 78, 82, 84, 86, and 87.

We are also concerned about the use of the phrase “that may place the State at risk of *Olmstead* violations.” We hope the Department will pursue integration as part of its mission rather than simply seek to defend against liability.

- ***Specify the number of individuals with SMI, SPMI, intellectual and other developmental disabilities (I/DD), Traumatic Brain Injury (TBI) and age-related or other disabilities who are subject to this inquiry and who reside in or are served by these facilities or programs. Include children in out-of-home placements.***

This is data that is maintained by the Department, and already aggregated in any number of ways – e.g. through billing codes and census data received from facilities. It is presumably the source of the

Strategic Plan fiscal analysis referred to above. If the Department cannot summon this information from existing databases, it is unclear how an outside party would do so.

- ***Describe the population of individuals who may be at risk of entering segregated settings or the criminal justice system incident to a lack of community-based services, system coordination barriers or other issues.***

We are unclear what is meant by this deliverable, but it appears to invite a general statement about the circumstances or features that may place an individual at risk. The question contains the answer: those who are at risk are those with unmet needs for community-based services and “system coordination” assistance, which we take to mean case or care management. The *Strategic Plan* describes these barriers, and others. See, e.g., pp. 31-32, 34-36, and 40-41.

- ***Determine numbers of qualified individuals with unmet needs, not receiving services.***

There are charts in the *Strategic Plan* with precisely this information. See pp. 10-14.

- ***Determine allocation of federal and state dollars and the degree to which these funds are spent in integrated or segregated settings.***

Please see page 87 of the *Strategic Plan*, where this information is reflected in a series of pie charts.

- ***Identify instances where planning, service system design, funding choices or service implementation practices may place the State at risk of Olmstead violations.***
- ***Develop an initial assessment of policies, procedures, practices and programs that may require reasonable modification.***
- ***Assess the alignment of DHHS Medicaid waivers and state plan services with community integration goals.***

These deliverables are addressed together because they appear to be interrelated questions about where State policies and practices, including those with regard to waivers and other funding streams, impede integration.

We again note the reference to potential *Olmstead* violations, which we hope is meant as a shorthand for a commitment to integration.

The Department has noted specific barriers to integration with regard to planning, design, funding, and implementation throughout the *Strategic Plan*. See, e.g., pp. 4-6, 19-22, 31-32, and 40-41. In addition, the DOJ findings and settlement, as well as the *Samantha R.* litigation, have identified barriers in each of these areas. It is unclear why the Department believes that more time and money should be expended gathering information that is already available.

- ***Assess the State’s Home and Community Based Services (HCBS) Transition Plan under the Medicaid Settings Rule.***

Any assessment of HCBS compliance should recognize that the Rule is but one codification of the principles in the ADA as clarified in *Olmstead*. Further, if the Transition Plan is merely benchmarked to CMS guidance, reviewing whether the plan meets CMS’ standards simply duplicates a review already

conducted by CMS. Since CMS approved the existing plan, any meaningful review would necessarily be compared to some other standard and, because we would expect that the Department already has a means to track implementation of the Transition Plan and considered the ADA/Olmstead implications in its development, this deliverable is concerning.

- ***Inventory community housing, numbers served and projected need.***

This seems to ignore the significant investment by NC DHHS and NCHFA with TAC and other contractors to create housing plans. The shortage of affordable, accessible housing is well-documented. It would be more useful to focus resources on how to increase housing capacity in areas known to have shortages.

- ***Assess the State's progress in compliance with meeting all targets identified in Department of Justice settlement agreements under Olmstead.***

The State's progress in compliance with the DOJ settlement is being regularly assessed by the assigned Independent Reviewer. It is unclear why a separate assessment is needed.

- ***Inventory employment programs and services; numbers served; and resource allocation across integrated and segregated service settings.***

The Department's various divisions pay for services that are traceable through billing codes and otherwise. Presumably, that data was relied in the *Strategic Plan*, which contains the following on page 89:

Sixteen million dollars of State expenditures for Facility Based Day Supports for adults with I/DD is for sheltered workshops rather than on competitive integrated (supported) employment. This far exceeds the State expenditure of \$1.1m for supported employment. Unfortunately, center-based employment in sheltered workshops has been shown to rarely result in integrated employment. Shifting to supported employment in integrated settings would have an estimated return on investment of \$1.21 in benefit to taxpayers for every dollar spent.

- ***Assess current data capacities and available data to inform the development of programs and services.***

As described above, there is significant data already available that obviates the need for most of the deliverables in the RFP. It appears that the drafting of this RFP was done without the benefit of knowledge of the available data, but that knowledge exists elsewhere in the Department. This deliverable appears to invite a paid consultant to tell the Department what it already knows.

- ***Provide a framework for subsequent phases of this initiative, specifically, plan development, implementation and quality management, inclusive of recommendations with regard to consolidation or unification of TCLI, MFP and other relevant initiatives within DHHS.***

This deliverable appears to ask for *an outline of a process*. It does not provide for the actual development of an Olmstead Plan.

We agree that outside assistance is needed to address the systems issues alluded to in the RFP. However, these issues have been studied extensively and the information sought in the RFP is already

known. We are concerned that the Department appears poised to expend funds on activities that will not actually make progress toward addressing the known and documented lack of integrated community supports for people with disabilities in North Carolina. Continued gathering of the same data will do nothing to change the trajectory of the current behavioral health system. However, we do encourage the Department to engage outside assistance in developing and implementing an Olmstead Plan.

We would be happy to discuss this with you further. Thank you for considering our views.

Sincerely,

A handwritten signature in blue ink, appearing to read "Virginia Knowlton Marcus", with a long horizontal flourish extending to the right.

Virginia Knowlton Marcus
Chief Executive Officer

cc: Lisa Corbett
Kody Kinsley
Sam Hedrick