Legislative Budget and Finance Committee

Department of Human Services' Implementation of the *Olmstead* Decision

Report Presentation by Patricia Berger, September 30, 2015, Meeting

Good morning. House Resolution 2014-903 directed us to conduct a comprehensive review of the Department of Human Services' implementation of the 1999 U.S. Supreme Court ruling in *Olmstead v. L.C.*, as it relates to the closure of five state centers for people with intellectual disabilities (ID) and the provision of home and community-based services. We were also asked to report on the economic impact of the closure of the state centers on local communities and staff and the potential to reinvest post-closure financial savings in community-based supports for people on the waiting list for intellectual disabilities services.

The *Olmstead* decision held that Title II of the Americans with Disabilities Act (ADA), requires public entities to provide community-based services to persons with disabilities when:

- such services are appropriate;
- the affected persons do not oppose community-based treatment; and
- community-based services can be reasonably accommodated.

Olmstead does not, however, require individuals who object to community services to move to a community placement, and we spoke with several family members who believe the interests of their loved ones are best served by remaining in a state center.

By the time *Olmstead* was decided, Pennsylvania, like many other states, had already begun to increasingly serve individuals with intellectual disabilities using home and community-based services (HCBS). At one point, the state operated 20 state centers for individuals with intellectual disabilities, and between the mid-1980s and 1999, nine state centers (or ID units associated with state mental health facilities) were closed. Since *Olmstead*, the Department has closed two additional state centers and one ID unit. Pennsylvania currently has five state centers for individuals with intellectual disabilities: Ebensburg, Hamburg, Polk, Selinsgrove, and White Haven.

Department officials have indicated that all the remaining state centers will close at some point, primarily due to the shift from institutional to community placements, but that there is no specific plan for closing them at this time.

Although the *Olmstead* decision does not require states to develop specific plans to implement the decision, 27 states have done so. DHS does have an Olmstead Plan for individuals needing mental health services, and considers the *Benjamin* Settlement Agreement to be its Olmstead Plan for persons with intellectual disabilities.

The 2014 settlement agreement in the *Benjamin* case, which involved five state center residents seeking community placements for themselves and others, requires the Department to move up to 230 state center residents into community placements by June 2018. It also includes protections for class members who choose to remain in a state center. The first quarterly status report, issued in November 2014, showed that 40 class members on the planning list had been discharged to community placements. The next three status reports showed only six additional discharges; however, DHS reported expecting an additional 6 to 22 discharges by the end of August 2015.

Some advocates also consider this agreement to serve as an Olmstead Plan for this population; however, others point out that it does not provide for the ongoing movement of residents into community placements in a structured manner as delineated by the *Olmstead* decision. In addition, the *Benjamin* Agreement is silent on new admissions to the state centers, which now occur only through a court order. From July 2012 through March 2015, 23 individuals were admitted to state centers. The majority of these admissions were from psychiatric facilities, hospitals, and prisons.

In the report, we recommend that the Department create an Olmstead Plan for the continued transition of state center residents to community placements as appropriate. We also recommend that the Department restrict new admissions to one or two designated state centers and review the operation of the state centers to identify whether center operations could be consolidated. At this time, two centers each serve fewer than 150 residents.

In addition to the legal issues, there are also significant financial concerns with the costs at the state centers. In FY 2014-15, expenditures at state centers were $330,223 per resident. This is over twice the average cost for individuals in private intermediate care facilities ($145,170) and seven times the average cost for individuals receiving community-based care ($47,000). Of course, to some extent, higher costs should be expected at state centers, as almost 90 percent of the current residents of state centers are diagnosed as severely or profoundly disabled, compared to 16 percent of individuals similarly diagnosed in the community-based system. Also, even though the number of individuals in the state centers declines, the utilities and fixed costs to maintain the centers remain about the same, which drives up costs on a per resident basis.

We found that additional growth in community placements will be needed to accommodate those who are transitioning to community placements. About 90 percent of the current residents of the state centers have been residents of a state center for over 16 years. Many have highly complex conditions, and over a quarter are 65 years of age or older. So transitioning these residents from the state centers will obviously put a strain on the current community-based system.

According to representatives of the intellectual disability service providers, funding issues related to the Chapter 51 regulations, delays in processing PROMISe applications, limited funding for start-up costs, restrictive service definitions, and restrictive exceptions processes have slowed the growth in community services in the last four years. These delays and policies are reportedly having the effect of discouraging providers from accepting more involved cases or offering new services.

A settlement agreement between the Department and several service providers concerning the Chapter 51 regulations adjusted some of the provisions, and the Department has convened a stakeholder workgroup to make further recommendations for regulatory and other policy changes by December 15, 2015.

To assess the potential impact of closing the state centers on the local economy and staff, we first looked at prior facility closures in Pennsylvania. As in other states that have closed similar facilities, the state centers in Pennsylvania that have closed have been sold to private concerns, repurposed for state use, or remain unused awaiting sale or other use. When the Western Center closed in 2000, the majority of the residents were transitioned to community placements, and the property was sold in 2003 for $2 million to the Washington County Authority for development. A portion of the property has since been developed into a business park with an estimated $412 million of private investment funds.

To further assess the economic development potential of the remaining five state centers, we contacted the regional economic development agencies in each area. While each indicated they would be interested in the opportunity to be involved in the development of these sites, none had developed specific plans for any of the properties. The five remaining state centers are also in largely rural areas of the state, so it is reasonable to assume that any economic development potential would be modest.

With regard to the staff at the state centers, we found that state center staff are typically transferred to similar positions in other state centers or agencies, retire, or accept furloughs when the facilities close. Although the private service providers may have positions available, the salaries and benefits are significantly lower than those in the state centers for similar positions.

We estimate that if all five state centers are closed, the resident care and facility maintenance funds saved would total approximately $175 million annually. This assumes all facilities are fully closed and ownership is transferred to another party (i.e., DHS has no ongoing maintenance costs). It also assumes that the cost of providing services for the former state center residents would, on average, be similar to the costs now incurred to provide services at a private intermediate care facility, which is about $145,000 per year per resident.

Of course, those in the intellectual disabilities community would like to ensure that any such savings are re-directed to the community-based service system. In Maryland, a fund was established to ensure that funds from closing one of their facilities would be used to provide community-based services to eligible individuals. In Pennsylvania, a similar approach was taken when savings generated by efforts to reduce the inmate population were directed to the Pennsylvania Justice Reinvestment Fund to supplement criminal justice services. We recommend the General Assembly consider establishing a similar fund to ensure that any savings due to state center closures be available to supplement community-based services.

Before closing, we thank Secretary Dallas and his staff for the excellent cooperation they provided during this study. We also thank the numerous stakeholders who assisted us in our work. Thank you.