

## Report Highlights

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

House Resolution 2014-903 directed the LB&FC to assess the Department of Human Services' (DHS) implementation of the 1999 U.S. Supreme Court ruling in *Olmstead v. L.C.*, as it relates to individuals with intellectual disabilities (IID) and the provision of home and community-based services (HCBS).

- ***Olmstead* held that individuals with disabilities have a right to receive care in a community-based setting.** Public entities are required to provide community-based services when (1) appropriate; (2) the affected persons do not oppose such treatment; and (3) those services can be reasonably accommodated.
- **Prior to *Olmstead*, DHS was transitioning ID services from institutional to community settings.** From the mid-1980s through 1999, 9 state centers/units for ID were closed; 2 state centers and one ID unit were closed since 1999. DHS currently operates 5 state centers.
- **DHS considers the *Benjamin Settlement Agreement* to be its *Olmstead* plan for IID.** The *Benjamin Settlement Agreement* provides a plan to transition up to 230 state center residents into community placements by June 2018, a process that is already underway. Class members that do not want to move into a community-based setting may choose to remain in a state center. The Agreement does not, however, provide for continuing transitions to community placements after 2018 and is silent on new admissions. From July 2012 through March 2015, 23 individuals were admitted to state centers. As of 2013, 27 states had *Olmstead* Plans.
- **In 2014-15, expenditures at state centers averaged \$330,223 per resident, 7 times the average cost of care for residents in community settings.** Costs for state center residents can be expected to be higher than community-based costs since 88% of current state center residents have a severe or profound level of a disability, compared to 16% of HCBS clients. Private ICFs/IID, whose residents are more comparable to state centers, had costs averaging \$145,170 per resident. Looked at differently, state centers accounted for 11% of total ID expenditures, but served only 2% of the ID population.
- **Funding and restrictive regulations reportedly have slowed growth in HCBS.** In particular, issues with Chapter 51 regulations, delays in processing PROMISE applications, limited funding for start-up costs, and restrictive service definitions have been cited.
- **The remaining state centers may have only modest economic development potential, but significant operating cost savings could be achieved.** State centers that have closed have been sold to private concerns, repurposed for state use, or remained unused awaiting sale or other use. Staff from these facilities have transferred to similar positions in other state centers or agencies, retired, or accepted furloughs. Although the economic development agencies we contacted were unable to provide us with the potential economic value of the sites, given the largely rural locations of the 5 state centers, we believe their economic development potential should be considered modest. However, due to their high operating costs, we estimate that DHS would save approximately \$175M annually if all state centers were closed and ownership transferred (i.e., no maintenance costs to DHS). In Maryland, funds saved from closing state centers were dedicated to the community-based system. In PA, a similar approach was taken with the Justice Reinvestment Fund (JRF) for savings generated by efforts to lower incarceration rates.

#### We recommend:

1. **The General Assembly consider monies saved due to the transitioning of residents of state centers to community services be retained for ID services, perhaps in a manner similar to the JRF.**
2. **DHS: (a) Create an *Olmstead* Plan for the continued transition of state center residents to community placements. (b) Review state centers' operations to identify centers that could be consolidated. (c) Consider restricting new admissions to designated state centers. (d) Review the revised PROMISE approval process to ensure it has been successful in reducing processing times.**