EXHIBIT 7
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civil rights protection & advocacy system for montana

disability rights montana
formerly Montana Advocacy Program

January 15, 2015

To the Members of the Joint Appropriations Subcommittee on Health and Human Services:

Disability Rights Montana supports the Governor's mental health plan insofar as it increases funds to community-based services. However, we believe that its proposal to expand institutional beds at both the Montana State Hospital and the Mental Health Nursing Care Center proposes a violation of federal law, as our state mental health system already over relies upon institutional placements in violation of the Americans with Disabilities Act.

The federal Americans with Disabilities Act requires that services for people with disabilities be provided in the most integrated setting appropriate to their needs. *See Olmstead v. L.C.*, 527 U.S. 581 (1999). Over the past 6 years, the U.S. Department of Justice has made it a priority to enforce this requirement and has engaged in litigation in multiple states to challenge and change states' over-reliance on institutional care for adults and children with mental illness, adults with developmental disabilities and adults with mobility impairment who are unnecessarily housed in nursing homes.

One of the most instructive cases for our purposes today was the case against the state of New Hampshire for a mental health system that over-relied upon a state psychiatric hospital and state psychiatric nursing home to serve people with mental illness. In *Amanda D., et al. v. Hassan, et al.; United States v. New Hampshire*, No. 1:12-CV-53, filed in 2012, the Justice Department argued that the state's decision to invest in institutional beds while failing similarly invest in community services was a violation of the Americans with Disabilities Act.

New Hampshire has a population of 1.32 million people. At the time of the litigation, the state had a combined total of 152 beds at its state psychiatric hospital and 130 beds at its state psychiatric nursing home for a total of 282 institutional psychiatric beds.

Montana has a population that is 300,000 less than New Hampshire. Yet Montana has 9 more institutional psychiatric beds than New Hampshire had when it was sued by the Justice Department. Should the legislature adopt the part of the Governor's plan to add 45 more institutional beds, it will place Montana even further into violation of the ADA.

The lawsuit against New Hampshire was settled in February of 2014. The settlement required the state to develop the kind of services that the interim Children, Families, Health and Human Services Committee embraced in addition to those supported by the Governor in Change package NP 3333319, entitled "Expand Community Mental Health Services." The settlement included increases in crisis services, peer support, housing support and other services to keep people from entering institutions for their care. A summary of that settlement is attached.

It makes far more sense for Montana to plan to create this system without being forced by litigation to do so. However, should Montana decide to invest further in these institutional beds at the cost of community services, litigation will likely be inevitable.

Sincerely,

Beth Brenneman
Staff Attorney

NEW HAMPSHIRE ADA MENTAL HEALTH SETTLEMENT FACT SHEET

Amanda D., et al. v. Hassan, et al.; United States v. New Hampshire, No. 1:12-CV-53 (SM)

Overview

The United States Department of Justice, a coalition of private plaintiff organizations, and the State of New Hampshire, have entered into a comprehensive Settlement Agreement that will transform New Hampshire's mental health system by significantly expanding and enhancing mental health service capacity in integrated community settings. The Agreement will enable a class of adults with serious mental illness to receive needed services in the community, which will foster their independence and enable them to participate more fully in community life. The expanded and enhanced community services will significantly reduce visits to hospital emergency rooms and will avoid unnecessary institutionalization at State mental health facilities, including New Hampshire Hospital ("NHH") (the State's only psychiatric hospital) and the Glencliff Home (a State-owned and -operated nursing facility for people with mental illness). The Agreement requires the State to expand and enhance community services over the next six years.

Remedial Relief and Legal Framework in Settlement Agreement

Target Population

- The Agreement provides relief to several thousand adults within New Hampshire who have serious mental illness and who are institutionalized or at serious risk of institutionalization at New Hampshire Hospital or the Glencliff Home. Those at serious risk of institutionalization include those within the target population who, within the last two years: have been admitted multiple times to New Hampshire Hospital, have used crisis or emergency services for mental health reasons, have had criminal justice involvement as a result of their mental illness, or have been unable to access needed community services.

Crisis Services

- Over the first four years of the Agreement, the State will develop a crisis system that: is available at all times; provides timely and accessible services and supports; stabilizes individuals and assists them to return to their pre-crisis level of functioning; provides interventions to avoid unnecessary hospitalization, incarceration, and admission to an institution; provides services at the site of the crisis, including in individual homes; and promptly assesses individual needs and connects people to critical services and supports in a timely manner.

- For the first time, the State will create mobile crisis teams in the three largest population centers in the state – Manchester, Concord, and Nashua – that will be able to respond onsite in the community to any individual crisis within one hour from the time of contact. The mobile crisis teams will be: available at all times; comprised of trained clinicians and peers; able to respond onsite in individual homes; provide face-to-face interventions to de-escalate crises without removing people from their homes; able to provide services beyond the immediate crisis; and able to work with law enforcement during a crisis.

- As an alternative to hospitalization or institutionalization, each mobile crisis team will have available to it, also for the first time, at least four community crisis apartment beds, with no more than two beds per crisis apartment. These apartments will have sufficient clinical and peer staff onsite at all times, whenever necessary to meet individual needs.

Assertive Community Treatment ("ACT")

- The State will expand and enhance community ACT team services in order to deliver comprehensive, individualized, and flexible services and supports to people at all times, in a timely manner as needed, and face-to-face and onsite in homes and other natural environments, so as to allow people a reasonable opportunity to live independently in the community.

- The State will elevate the performance of all of its ACT teams to better comport with good practice and to better achieve desired outcomes.

- For the first time, the State will provide statewide ACT coverage in each mental health region.

- Over the first three years of the Agreement, the State will expand ACT team service capacity so as to be able to serve at least 1,500 people in the target population; this expansion will provide ACT team services to hundreds of additional people in need.

- The State will develop effective regional and statewide plans going forward to provide sufficient ACT services to ensure reasonable access by additional eligible individuals.

Housing

- The State will provide additional supported housing for hundreds of people throughout the state that: is scattered-site, permanent housing with tenancy rights, where tenancy is not conditioned on an individual's participation in treatment or compliance with mandatory programmatic criteria; includes flexible services and supports to enable people to attain and maintain integrated affordable housing; and is predominantly single-occupancy or single-family supported housing.

- The State will create additional supported housing whenever there are too many people on a housing waiting list for too long, per specified triggering criteria.

- For the first time, the State will create community settings to meet the needs of people at Glencliff with complex health care needs, who cannot readily be served in supported housing.

- Going forward, the State will develop an effective plan for providing sufficient community-based residential supports for additional people at Glencliff who have complex health care needs.

Supported Employment

- For the first time, the State will deliver supported employment services in accordance with the Dartmouth evidence-based model. These services will help enable individuals to obtain and maintain paid, competitive employment in integrated community settings. Over the life of the Agreement, this provision will impact thousands of people.

- Over the first five years of the Agreement, the State will increase its penetration rate of people with serious mental illness receiving supported employment services by about seven percent, to 18.6 percent of eligible individuals with serious mental illness; this means that several hundred additional people, approaching 1,000 people, will get needed supported employment services.

- For those not getting such services, the State will develop an effective plan for providing sufficient supported employment services to eligible individuals going forward.

Family and Peer Supports

- The State will ensure that there is an effective family support program to meet the needs of families throughout the state. This program will teach families skills and strategies for better supporting their family members' treatment and recovery in the community.

- The State will ensure that there is an effective peer support program throughout the state to help individuals manage and cope with their mental illness. The State will expand peer support services offered through peer support centers, ensuring that the centers are open a minimum of eight hours per day, five-and-a-half days per week, or the hourly equivalent.

Transition Planning and Transition Plans

- The State will provide each person in NHH and Glencliff with effective, person-centered transition planning that starts with the presumption that individuals can live in the community with sufficient services and supports. Transition planning will be based on the principle of self-determination; it will not exclude anyone from consideration for community living based solely on level of disability. Transition planning will be based on the individual's needs, not on the availability, perceived or actual, of current community resources and capacity.

- The State will also provide these people with an effective written transition plan that sets forth timeframes and details on the particular services and supports each person needs to successfully transition to and live in the community, whether or not a suitable community setting is currently available; it will set forth who has responsibility for deliverables before, during, and after the transition; it will include barriers to transition and how to overcome them; and it will include a post-transition schedule of community monitoring to see if individual needs are being met.

- Going forward, the State has agreed to avoid placing people into nursing home settings.

- The State will avoid placing people with developmental disabilities in NHH; the State will provide those already there with effective transition planning and plans using resources from both the State's mental health system and system for people with developmental disabilities.

- The State will create a central team to address and overcome barriers to discharge identified through the transition planning process. The team will be composed of people who have experience and expertise in how to successfully resolve barriers to discharge.

- The State will conduct in-reach activities to help institutionalized individuals transition to the community; team activities will include visits to community settings and facilitated talks with individuals who have already successfully transitioned from institutions to the community.

Quality Assurance and Performance Improvement

- The State will develop and implement a quality assurance and performance improvement system, emphasizing the use of client-level outcome tools and measures to ensure that individuals are provided with sufficient services and supports of good quality to best ensure their health, safety, and welfare. The goal is to help individuals achieve increased independence and greater integration in the community, obtain and maintain stable housing, avoid harms, and decrease the incidence of hospital contacts and institutionalization.

- The State will ensure that there is an adequate network of qualified community providers with expertise/competency to deliver needed services and supports per performance-based contracts.

- The State will regularly review community providers and programs to identify gaps and weaknesses, as well as areas of highest demand, to provide assist with comprehensive planning, administration, resource-targeting, and implementation of needed remedies; the State will develop and implement effective measures to address any gaps or weaknesses.

- The State will conduct face-to-face Quality Service Reviews to evaluate the quality of services and supports and to see whether individuals' needs are being met.

Independent Monitor

- The Agreement creates an independent monitoring official, called the "Expert Reviewer," who will assess the State's implementation of and compliance with the terms of the Agreement, provide technical assistance when asked, and mediate disputes between and among the parties.

- The Expert Reviewer is to be independent, with no party having supervisory authority over activities, reports, or recommendations; the Court will resolve any payment disputes.

- The Expert Reviewer is to have full access to the people, places, and documents necessary to assess compliance with the Agreement.

- The Expert Reviewer may retain consultants to assist with the monitoring work.

- The Expert Reviewer will issue at least two public reports each year.

Legal Architecture

- The Settlement Agreement is a full consent decree to be entered by the Court as a Court order.

- The case may not be dismissed until the State has complied with all provisions of the Agreement and maintained compliance for one year.