



## DISABILITIES RIGHTS CENTER, Inc.

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November 2, 2010

Nicholas A. Toumpas  
Commissioner  
Department of Health and Human Services  
105 Pleasant Street  
Concord, NH 03301

Erik Riera  
Administrator  
Bureau of Behavioral Health  
Department of Health and Human Services  
105 Pleasant Street  
Concord, NH 03301

FILE

Dear Commissioner Toumpas and Mr. Riera:

We are writing on behalf of individuals with mental illness in New Hampshire who are needlessly institutionalized and desire to receive services in more integrated settings. These individuals, qualified for mental health services under RSA 135-C, have been forced to receive services in segregated institutions because New Hampshire has failed to develop sufficient community alternatives. The individuals on whose behalf we write are needlessly segregated at New Hampshire Hospital (NHH) and the Glencliff Home (Glencliff), including individuals who repeatedly cycle through these institutions because of the lack of appropriate community services. The failure of the State to provide appropriate community services has resulted in frequent and preventable admissions to NHH and prolonged institutionalization at NHH and the Glencliff Home.

The Disabilities Rights Center (DRC), as the Protection and Advocacy System for New Hampshire, has a long history of advocating on behalf of individuals with mental illness in the State's mental health system. The DRC, in collaboration with the Center for Public Representation and the Bazelon Center for Mental Health Law, has responded to concerns raised by individuals languishing inappropriately in institutional settings by undertaking an investigation of barriers to community living. We met with individuals, families, and guardians, reviewed individual records, analyzed detailed public studies and reports, and spoke with professionals in the field. Our investigation revealed that NH's inadequate community services cause individuals with mental illness to be unnecessarily institutionalized and to needlessly cycle between community settings and NHH. As set forth more completely below, we believe the

State's overreliance on institutional settings and lack of community alternatives violate Title II of the Americans with Disabilities Act, 42 U.S.C. § 12132 and its implementing regulations, as well as Section 504 of the Rehabilitation Act, 29 U.S.C. § 794.

New Hampshire has the experience and the know-how to fix this problem. Almost all of the individuals with mental illness experiencing long term institutionalization at NHH and Glencliff can live in integrated settings with supports and return to their home community. An increase in community supports, including statewide Assertive Community Treatment teams, supportive housing, and crisis intervention will enable those needlessly institutionalized and at risk of institutionalization to live meaningful lives in the community. We are requesting a meeting with the Department in the hopes that we can work collaboratively toward change and resolve these matters without the need for formal legal action.

### **The State Mental Health Services System Is in Crisis**

New Hampshire was once a leader in community integration. Plans were undertaken in the 1980s to close the Laconia State School, drastically reduce the number of individuals at New Hampshire Hospital, and to serve individuals with intellectual disabilities and mental illness in the community. This plan included the development of regional community mental health centers, community housing, and regional treatment facilities. New Hampshire Hospital was supposed to be down-sized to a facility used only for individuals that could not safely live in community settings or be served in regional short-term treatment facilities.

Not only has the promise of the State's plans not been realized, needless institutionalization of persons with mental illness has actually increased. In the last two decades, there have been dramatic increases in the number of individuals with mental illness who are institutionalized – most of them needlessly so. The community mental health services system has steadily eroded. New Hampshire Hospital and the Glencliff Home have become holding facilities for individuals who, with appropriate supports, could live in the community. The down-sizing goals for NHH have never been achieved, and the census is almost double that projected more than two decades ago. The number of admissions has increased by 70% over the last 10 years, reaching an annual rate in excess of 2,200. Concomitantly, NHH has become the State's primary crisis service, admitting and holding scores of persons who could and should live in the community. Because of the dearth of community services, NHH has a 36% readmission rate for persons who were discharged within the past 180 days.

New Hampshire has a network of ten regional community mental health centers (CMHCs) established to provide mental health services to all New Hampshire residents. In recent years, as a direct result of the State's actions and inactions, state-funded community mental health service providers no longer provide adequate community services necessary to avoid needless institutionalization. Case managers' case loads have risen dramatically, rendering this core service unable to provide needed attention to each client. ACT teams have been reduced or diluted. The result is that many individuals with severe mental illness are provided with insufficient supports to remain in the community and find themselves institutionalized or at risk of institutionalization.

Other core community mental health programs have also been eliminated or reduced. New Hampshire used to have a number of Designated Receiving Facilities (DRFs) and Local Acute Psychiatric Residential Treatment Programs (APRTPs) to prevent needless hospitalization. Presently, there are only eight DRF beds and 16 beds in local APRTPs throughout New Hampshire, down from 101 and 52 beds respectively, with no corresponding increase in community supports. As a result, individuals in crisis are now seen in NHH and local hospital emergency rooms. New Hampshire is thereby opting for the most costly, rather than the least costly, interventions.

There is also a shortage of residential services for individuals with mental illness. Presently, the waiting time for Section 8 housing is more than five years. Simultaneously, the community mental health centers have been decreasing their supportive housing options, resulting in unnecessary institutionalization or homelessness. Only some of the regional mental health centers operate residential programs and some of these have reduced services.

As a result of these trends, more people with mental illness are being unnecessarily segregated at Glencliff. Glencliff Home is a state-operated nursing facility for individuals with mental illness. Over half of the individuals in Glencliff come directly from NHH. In fact, there are regularly people at NHH awaiting transfer to Glencliff. While originally intended as a facility for the elderly, individuals in their 40s and 50s now make up a significant percentage of the residents at Glencliff, who face the prospect of spending the balance of their life at this highly isolated institution.

### **The Impact of the Crisis on Persons with Mental Illness**

The DRC has met with many individuals over the past several months who reside at NHH, Glencliff, and in the community. We have heard their stories, spoken with their families and guardians, and met their mental health professionals. They hang onto the hope of returning to the community and seek the opportunity to work, spend time with friends and family, and live independently.

We have spoken with individuals in their 20s and 30s that have already had well over 10 admissions to NHH. We have met with individuals of all ages who have spent most of their lives bouncing between residential group homes, NHH, and Transitional Housing Services. These individuals' lives are often in a constant state of disruption and change. Many are living in the community with inadequate services and are therefore at constant risk of re-institutionalization.

We have met individuals in their 40s, 50s, and 60s who are languishing in the Glencliff Home without any prospect of returning to their communities. They remain inappropriately institutionalized due to the lack of supported housing, mental health, and medical services. Treatment providers and guardians believe these individuals could live successfully in the community if adequate supports and services were available. Instead, they face indefinite segregation, suffering the daily consequences of the State's failing mental health system.

Finally, we have spent time with individuals who are languishing for years at NHH, many of whom have guardians, family members, and mental health providers who believe that

discharge would be appropriate if they were able to access supports such as Assertive Community Treatment Teams and supportive housing. These individuals are frustrated that they have been unable to return to their communities, live in their own apartments, and take part in meaningful, productive activities such as work.

### **Federal Law Requires the State to Develop Integrated Community Services Sufficient to Avoid the Unnecessary Segregation of Individuals with Mental Illness**

In 1990, the United States Congress enacted the Americans with Disabilities Act (ADA). In enacting the ADA, Congress recognized that “society has tended to isolate and segregate individuals with disabilities” and that “such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem.” 42 U.S.C. §12101(a)(2). In fact, the purpose of the ADA is to “provide clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities.” 42 U.S.C. §12101(b)(1).

The United States Supreme Court has interpreted the integration mandate and held that unnecessary institutionalization of individuals with mental disabilities is discrimination under Title II of the ADA and that treatment and services should be provided to individuals with mental disabilities in the least restrictive setting. *Olmstead v. L.C. ex rel. Zimring*, 527 U.S. 581 (1999). The ADA’s implementing regulations specifically articulate that a state must “administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.” 28 C.F.R. §35.130(d). Similarly, a State violates Section 504 of the Rehabilitation Act, 29 U.S.C. § 794 when, as a recipient of federal funds, it fails to “administer programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons”. 28 C.F.R. 41.51(d).

There are many individuals at NHH and Glencliff who are needlessly segregated and desire to live in the community with appropriate supports. They are languishing in these institutions due to inadequate community-based services. Others live constantly cycling between the community and institutions. New Hampshire’s exclusion of these citizens with mental illness from community life constitutes a form of discrimination, which the State must take steps to redress.

### **Relief Requested**

In an effort to promote a resolution of these issues without resort to litigation, and to more quickly address the needs of individuals with mental illness in the state, we suggest the State take the following actions, reflecting a commitment to serve individuals with mental illness in integrated community settings:

1. **Supportive Housing.** The State should recognize that people with even the most severe mental disabilities can successfully live in the community like everyone else. Supportive housing makes this possible. The State needs to create a plan to provide supportive housing to individuals who are institutionalized or at risk of institutionalization. Such housing should have neither time limits nor requirements for treatment compliance. Subsidies should be made available as necessary to secure individual apartments, and

apartments must be scattered site (i.e., not congregated housing). The State should make available to residents of supportive housing the services they need to live and participate in the community, including mental health and substance abuse treatment, independent living services, social skills training, medication management, crisis intervention, peer support services, personal and/or home care services, and coordination of medical care.

2. **ACT Teams.** The State should make available Assertive Community Treatment teams statewide to meet the needs of those who are institutionalized or at risk of institutionalization. Currently, there are far too few ACT teams in New Hampshire. In addition, the few existing ACT teams lack both sufficient staff and capacity to provide services that meet fidelity standards. ACT teams must provide 24/7 coverage, a comprehensive and flexible range of services, and operate with fidelity.
3. **Crisis Intervention.** The State should develop an effective, 24/7 community-based mobile crisis system with sufficient crisis and respite beds to prevent unnecessary hospitalization. Presently, the system inordinately relies on emergency rooms, police departments, and involuntary emergency admissions. Crisis services should be mobile and home-based (rather than hospital-based). In addition to mobile teams, the crisis system should include walk-in centers, overnight crisis/respite beds, and detox services.
4. **Meaningful Rehabilitative Services.** The State should make available meaningful rehabilitative services primarily focused on supported employment. Present efforts to implement supported employment around the state are wholly inadequate. The lack of meaningful rehabilitative services prevents individuals who are institutionalized or at risk of institutionalization from accessing services in integrated environments and making progress in their recovery.

## Conclusion

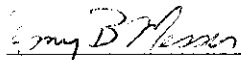
As the State of New Hampshire has expressly recognized, “NH’s mental health care system is failing, and the consequence of these failures is being realized across the community. The impacts of the broken system are seen in the stress it is putting on local law enforcement, hospital emergency rooms, the court system and county jails, and most importantly, in the harm under-treated mental health conditions cause NH citizens and their families.”<sup>1</sup> Recognition of the scale of the problem, however, has not led to needed improvements. The situation continues to worsen, and thousands of New Hampshire residents are being denied the opportunity to live and receive services in community settings, in violation of the ADA and Olmstead. We believe it is critical for the State to provide the services necessary to allow New Hampshire residents with mental illness to live full and productive lives, integrated in their home communities, as required by federal law.

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<sup>1</sup> *Addressing the Critical Mental Health Needs of NH’s Citizens: A Strategy for Restoration*, p. 1.

Along with our partners, the Center for Public Representation, the Judge David L. Bazelon Center for Mental Health Law, and Devine, Millimet & Branch, PA, we are available to meet with you in the next 30 days in Concord and will be calling your office within the next week to determine your interest in scheduling a time to meet.

Sincerely,



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Concord, NH



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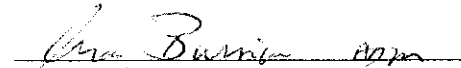
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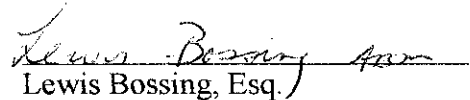
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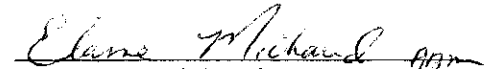
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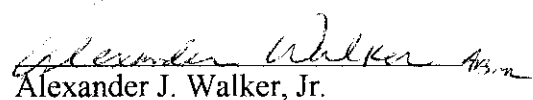
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