

Reviewing the Letter of Findings from the U.S. Dept. of Justice Investigation of the Children's Behavioral Health System in Maine

Maine Coalition for Housing and Quality Services

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DISCLAIMER: Nothing in this presentation should be considered legal advice.

Disability Rights Maine - Identifying the problem

- ▶ P&A unique role
- ▶ Outreach and Monitoring
 - ▶ Maine's juvenile correctional facility
 - ▶ Three inpatient psychiatric facilities
 - ▶ Residential treatment and crisis stabilization units

Disability Rights Maine - Identifying the problem

- ▶ Individual advocacy, training and support to youth and families to navigate the system and address barriers
- ▶ Identification of clear systemic barriers and gaps in system

Maine Landscape

- ▶ Disinvestment in home and community services over many years
- ▶ Dismantling of state infrastructure to develop, oversee, and support a statewide community provider network
- ▶ Children and families waiting months, years, for intensive home based services

Maine Landscape

- ▶ Children's residential treatment settings reliance on law enforcement and emergency department for crisis response, settings far from child's home and community, increase in youth being sent out of state
- ▶ Increase of youth entering Maine's juvenile detention facility directly from residential treatment settings

Maine Landscape

- ▶ State completed assessment of Children's Behavioral Health Services
- ▶ 13 different short and long term strategies
- ▶ Improvements to intensive home and community service array and access identified as long term strategies

Maine Landscape

- ▶ State moves ahead to develop more institutional beds and identifies as a short-term strategy
- ▶ Continued waitlists for intensive home-based services and youth forced into institutional placements
- ▶ Families and providers report children's needs can be met in their homes and communities

U.S. Dept. of Justice Investigation of the Children's Behavioral Health System in Maine

- ▶ Disability Rights Maine filed a state-wide *Olmstead* Complaint with DOJ
- ▶ DOJ investigation found that Maine is violating the Americans with Disabilities Act by failing to provide behavioral health services to children in the most integrated setting appropriate to their needs

Olmstead v. L.C. 527 U.S. 581 (1999)

- ▶ Supreme Court decision interpreting the Americans with Disabilities Act (ADA)
- ▶ The ADA prohibits unnecessary segregation of people with disabilities.
- ▶ People with disabilities have the right to live and receive services in the most integrated settings appropriate to their needs.
- ▶ This is the “integration mandate” of the ADA
- ▶ <https://www.ada.gov/olmstead/>

U.S. Dept. of Justice Investigation of the Children's Behavioral Health System in Maine

DOJ issued letter of findings June 22, 2022

[https://www.justice.gov/opa/press-
release/file/1514326/download](https://www.justice.gov/opa/press-release/file/1514326/download)

DOJ Maine Investigation (cont.)

“We have determined that Maine is violating the ADA by failing to provide behavioral health services to children in the most integrated setting appropriate to their needs. Instead, the State unnecessarily relies on segregated settings such as psychiatric hospitals and residential treatment facilities to provide these services. As a result of these violations, children are separated from their families and communities.” (p.1)(emphasis added)

DOJ Maine Investigation (cont.)

“A troubling picture emerged from our investigation: Maine’s community-based behavioral health system fails to provide sufficient services. As a result, hundreds of children are unnecessarily segregated in institutions each year, while other children are at serious risk of entering institutions. (p. 2)(emphasis added)

DOJ Maine Investigation (cont.)

“Children are unable to access behavioral health services in their homes and communities—services that are part of an existing array of programs that the State advertises to families through its Medicaid program (MaineCare), but does not make available in a meaningful or timely manner.” (p. 2)(emphasis added)

DOJ Maine Investigation (cont.)

“Although Maine describes its residential treatment facilities for children as “community-based” placements, these facilities have all of the usual hallmarks of segregated institutions. Children residing in these facilities are separated from their families and communities, and have few interactions with people without disabilities other than paid staff. Children’s movements and daily activities are restricted and regimented.” (p. 9)(emphasis added)

DOJ Maine Investigation (cont.)

“Long Creek Youth Development Center, the State’s sole juvenile justice facility, currently fills a gap left by Maine’s community-based behavioral health system...Our meetings with children at Long Creek, facility staff, and attorneys representing young people similarly echoed that the State’s lack of community-based behavioral health services leads to unnecessary and prolonged incarceration Maine is using Long Creek as a de facto children’s psychiatric facility instead of providing more integrated treatment options.” (pp. 6-7)(emphasis added)

DOJ Maine Investigation (cont.)

“One of Maine’s central priorities for the future is expanding services in institutional settings by creating one or more psychiatric residential treatment facilities for children. Creating or expanding institutional options without timely addressing community-based waitlists suggests that Maine’s current plan will do little to decrease its reliance on segregated settings such as residential facilities and psychiatric hospitals, which are more expensive and can exacerbate trauma.” (p. 16)(emphasis added).

DOJ Maine Investigation (cont.)

“Both institutional and community providers consistently told us that children in institutional settings could be appropriately served in the community if services were available to them Families and children in Maine are overwhelmingly open to receiving services in integrated settings. In fact, parents indicated a strong preference that their children receive services at home due to trauma, neglect, and abuse that their children reportedly endured in residential facilities within and outside of Maine.” (p. 10)(emphasis added)

DOJ Maine Investigation (cont.)

“For some parents, the strain of going months without necessary services in place has reached a breaking point, forcing them to quit their jobs to provide care for their children’s escalating needs or to send their children to institutions.” (p. 11)

DOJ Maine Investigation (cont.)

DOJ found (pp. 10-14) that Maine fails to ensure access to the community-based services it offers, resulting in unnecessary institutionalization and the risk of institutionalization, highlighting the following

- ▶ Lengthy wait lists for community-based services;
- ▶ Failure to maintain a network of providers to meet the demand for community based behavioral health services;
- ▶ Lack of appropriate crisis services and responses; and
- ▶ Lack of support for treatment foster care.

Remedial Measures

- ▶ Remedial measures recommended by DOJ include (pp. 15-18):
 - ▶ Use an evidenced based screening process to determine service needs and inform person-centered planning;
 - ▶ Improve access to existing community-based programs to support discharge from institutional settings and prevent entry or re-entry to those settings;
 - ▶ Ensure access to ongoing, intensive, behavioral health services when needed;
 - ▶ Re-establish the previously successful wraparound program in Maine;

Remedial Measures (cont.)

- ▶ Address waitlists for community based services before expanding services in institutional settings;
- ▶ Provide appropriate crisis services including mobile crisis services;
- ▶ Recruit, train and maintain a pool of providers, state-wide; and
- ▶ Implement a policy to require community-based providers “to actually serve eligible children who are assigned to their caseloads.”

Discussion

1) To what extent do the findings outlined in the DOJ letter align with your current experience in your current role?

2) What are your thoughts regarding the remedial measures highlighted by DOJ?

Resources: Home Based Services

Joint CMS/SAMHSA Bulletin on Coverage of Behavioral Health Services for Children, Youth, and Young Adults with Significant Mental Health Conditions (May 2013)

<https://www.medicaid.gov/federal-policy-guidance/downloads/cib-05-07-2013.pdf>

SAMHSA Children's Behavioral Health System of Care Resources and Program Evaluations

<https://store.samhsa.gov/product/The-Comprehensive-Community-Mental-Health-Services-for-Children-with-Serious-Emotional-Disturbances/PEP18-CMHI2016>

Resources: Home Based Services

Medicaid Guidance on the Scope of and Payments for Qualifying Community-Based Mobile Crisis Intervention Service

<https://www.medicaid.gov/federal-policy-guidance/downloads/sho21008.pdf>

Resources: Wraparound

National Wraparound Initiative

<https://nwi.pdx.edu/>

National Wraparound Implementation Center

<https://www.nwic.org/>

Resources: Wraparound

Intensive Care Coordination for Children and Youth
with Complex Mental and Substance Use Disorders,
SAMHSA,
(June 2019)

<https://store.samhsa.gov/sites/default/files/d7/priv/samhsa-state-community-profiles-05222019-redact.pdf>

Resources: National

NDRN Report on Youth Residential

Desperation without Dignity: Conditions of Children
Placed in For Profit Residential Facilities - NDRN