

# MEMORANDUM

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To: The Honorable Harris B. McDowell, III, Co-chair  
The Honorable Melanie George Smith, Co-chair  
Joint Finance Committee Members

From: Elizabeth G. Booth, Esq. on behalf of the following organizations:  
Developmental Disabilities Council  
State Council for Persons with Disabilities  
Governor's Advisory Council for Exceptional Citizens

Date: February 7, 2016

Re: Division of Substance Abuse and Mental Health ("DSAMH") FY 2018 Budget

Please consider this memorandum a summary of the oral testimony presented by Elizabeth Booth, Esq. of the Disabilities Law Program on behalf of Developmental Disabilities Council ("DDC"), State Council for Persons with Disabilities ("SCPD"), and the Governor's Advisory Council for Exceptional Citizens ("GACEC").

We wish to focus our comments today on the need for ongoing funding of community-based services and supports beyond the conclusion of the State's Settlement Agreement with the U.S. Department of Justice.

## **Ongoing Funding for Community-Based Services**

The State has been required to establish a variety of community-based mental health services by the State's Settlement Agreement with United States Department of Justice ("U.S. DOJ") instituted in 2011.<sup>1</sup> The impact of the Settlement Agreement has been a total transformation of the landscape of mental health services in Delaware. In implementing the terms of the Settlement Agreement, DSAMH created a system of comprehensive community-based programs to serve individuals with serious and persistent mental illness ("SPMI") who are at highest risk of institutionalization.<sup>2</sup> These services include Assertive Community Treatment ("ACT") teams, Intensive Care Management ("ICM") teams, and the Community Reintegration Support Program ("CRISP") as well as the crisis intervention services, targeted case management, supported housing, and supported employment services.<sup>3</sup> Over the course of the Settlement Agreement, more than 12,000 Delawareans were identified as meeting the criteria for the Agreement's target population.<sup>4</sup>

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<sup>1</sup> U.S. DOJ Settlement Agreement, U.S. v. State of Delaware, Civil Action 11-591-LPS.

<sup>2</sup> *Id.* The Settlement Agreement created specific criteria for inclusion its target population, including history of psychiatric hospitalization, homelessness, and criminal justice involvement.

<sup>3</sup> *See, e.g.*, Tenth Report of the Court Monitor on Progress Toward Compliance with the Agreement, U.S. v. State of Delaware, Civil Action 11-591-LPS (pages 1-3 included as Attachment A).

<sup>4</sup> *Id.* at 5, indicating that as of December 2016 12,826 individuals were identified per the Settlement Agreement's criteria.

After five years of monitoring by the appointed Court Monitor Dr. Robert Bernstein, the State was found to have demonstrated substantial compliance with all terms of the Settlement Agreement, and the U.S. DOJ agreed to dismissal of its federal court complaint, concluding the terms of Settlement Agreement and monitoring by Dr. Bernstein.<sup>5</sup>

It is imperative, however, that the community-based services that were established and expanded by the Settlement Agreement remain fully funded. The Americans with Disabilities Act and the Supreme Court's landmark decision in *Olmstead v. L.C.* prohibit unnecessarily institutionalization of people with disabilities, including those with SPMI, and require that those individuals be served in the community, as opposed to an institutional setting, when appropriate.

While the Court's monitoring established by the Settlement Agreement has concluded, oversight of the programs serving the Settlement Agreement's target population will be ongoing at the state level. In June 2016, both houses of the Delaware General Assembly passed S.B. 245, creating a Behavioral and Mental Health Commission which will include a Peer Review Subcommittee to oversee the ongoing provision of services to the target population as defined by the Settlement Agreement.<sup>6</sup> This Commission and the Peer Review Subcommittee will advise the Secretary of the Department of Health and Human Services as to ongoing issues with the provision of effective services to this target population.<sup>7</sup>

The community-based services created under the Settlement Agreement have enabled more individuals with SPMI to live in their communities and pursue employment with the support they need to live more independently. As further detailed in the Court Monitor's tenth and final report, many consumers have reported the ways in which the changes implemented by the Settlement Agreement and the expansion of community-based services have changed their lives by providing them with greater stability and increased interaction with their communities.<sup>8</sup> The Court Monitor also noted in his final report, however, that "[i]n interacting with a broad range of stakeholders—including peers, family members, providers, and others—the most consistent concern heard by the Monitor is not so much that there are problems in services, but far more often that stakeholders worry that the array of services introduced through the Agreement will go away once the Agreement is resolved and the State is no longer subject to a court order."<sup>9</sup>

In addition to the community based-services expanded under the Settlement Agreement, an array of complementary support services is now available to eligible consumers through the PROMISE Medicaid waiver program. PROMISE allows for federal Medicaid reimbursement

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<sup>5</sup> See Joint Brief in Support of Parties Joint Motion to Dismiss, U.S. v. State of Delaware, Civil Action 11-591-LPS.

<sup>6</sup> *Id.* at 9-10. Governor Markell signed the bill into law on September 6, 2016, which is now codified at 16 Del. C. § 5191, et seq.

<sup>7</sup> 16 Del. C. § 5194.

<sup>8</sup> See Attachment A, Tenth Report of the Court Monitor at 1-2, for individual consumer stories. One consumer, who had previously been admitted to Delaware Psychiatric Center over thirty times stated, "I'm doing so much better now than I've ever been in my life."

<sup>9</sup> *Id.* at 11-12.

for these supports, which include but are not limited to financial counseling, non-medical transportation, and peer support.<sup>10</sup>

Community-based services have proven to be more cost-effective than institutionalization; for example, the estimated total annual cost of ACT services is \$23,500 per person (which includes the cost of housing in the form of an SRAP voucher), versus \$292,000 per person for a year of inpatient hospitalization at Delaware Psychiatric Center.<sup>11</sup> Further, the U.S. DOJ's appointed Court Monitor consistently noted in his reports that clients being served by ACT, ICM, and CRISP services had lower frequency of hospital readmissions, "even though these programs serve individuals with significant disabilities, generally with long histories of recurrent hospital admissions."<sup>12</sup>

The Councils recommend consideration of continued funding of comprehensive and intensive community-based mental health services, as these services are essential to maintaining and improving the wellbeing of individuals with SPMI in our communities. These programs are not only what the ADA and *Olmstead* require and what the ongoing oversight of the Mental and Behavioral Health Commission will mandate, but they will continue to save the state money in the long-term and enable more Delaware residents to receive the treatment and support they need in a more integrated setting.

Thank you for your consideration.

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<sup>10</sup> See, e.g., PROMISE Program Brochure available at <http://dhss.delaware.gov/dhss/dsamh/files/promisebrochure.pdf> (included as Attachment B).

<sup>11</sup> Corrected Fourth Report of the Court Monitor, U.S. v. State of Delaware, Civil Action 11-591-LPS at 7.

<sup>12</sup> *Id.* at 22.

**TENTH REPORT OF THE COURT MONITOR  
ON PROGRESS TOWARDS COMPLIANCE  
WITH THE AGREEMENT:  
U.S. v. STATE OF DELAWARE**

U.S. District Court for the District of Delaware, Civil Action No: 11-591-LPS

9/19/2016

1 Karen<sup>1</sup> describes her life as a journey through hell and back. As a child, when she entered  
2 Delaware's mental health system, she was shy to the point that she wouldn't speak. She  
3 mostly kept her head down and stared at her feet, but would sometimes throw tantrums for  
4 no apparent reason. As an adult, she had a history of repeatedly overdosing. Within the  
5 Delaware Psychiatric Center, where Karen reports she was admitted around 30 times, she  
6 would bang her head against the brick wall. "It was torture," she said, "Like a prison. You  
7 have no freedom. I remember looking out the window and thinking 'When is it going to  
8 end?'" Karen now describes with pride how, with the assistance of the CRISP program, she  
9 has taken control of her own recovery. "I'm doing so much better now than I've ever been  
10 in my life. I get upset and I bounce right back." She lives in her own apartment in an  
11 ordinary apartment complex. She cooks and cleans and has plans to help others, perhaps as  
12 a peer specialist. "Life is wonderful now."

13 style="text-align:center">###

14 Jerry had been working as an emergency responder, but after becoming seriously injured in  
15 an accident and followed by the breakup of his marriage, his life seemed to fall apart. He  
16 estimates that he tried to harm himself—through overdosing on pills or stabbing himself—  
17 about 20 times. He started drinking heavily to soothe his depression, but became a "fall  
18 down drunk." He was admitted to the Delaware Psychiatric Center several times and was  
19 diagnosed with bipolar disorder. He is now receiving outpatient mental health services and  
20 alcohol treatment and has been clean for six months. Jerry lives in his own apartment, which

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<sup>1</sup> To protect their privacy, peers' names used in this report have been changed.

21 he describes as nice, and finds his treatment team to be very supportive of his recovery. He  
22 is thinking about job prospects and, while he admits to being “a little scared every day,”  
23 describes himself as now optimistic. He reads a lot, stays in touch with his family, and  
24 attends to grocery shopping and other household chores.

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26 Susan has had a very difficult life. Beginning as a teenager, she was the victim of abuse  
27 and molestation. She has been diagnosed as having paranoid schizophrenia and guesses  
28 that she was psychiatrically hospitalized 15 or 20 times. When outside of a hospital, much  
29 of Susan’s adult life was spent in homelessness. She described living in shelters, sleeping  
30 on park benches, or huddled with other homeless people; “It was scary and dangerous, but  
31 you just keep on going. Never stay in one place too long.” She reported the many indignities  
32 of being homeless: trying to find a private place to relieve herself because she was denied  
33 access to restrooms; police harassing her—shooing her away, telling her to go down the  
34 street or to another city, and threatening to arrest her for vagrancy; and being looked down  
35 upon by passersby. “Try living on the streets without food and rest for days on end. Tell  
36 me how strong you’re going to be,” she said. And hers was a lonely life, “Most people are  
37 unable to understand me or they don’t take the time to get to know me. I would hang out in  
38 bars because I didn’t have any friends.” Susan’s life is vastly different now. For more than  
39 a year and a half, she has received supported housing services, living in her own apartment  
40 in what she describes as a “decent neighborhood, safe.” This is the longest period of time  
41 that Susan has had a stable home in her adult life. Susan describes her apartment as  
42 spacious, with a washer and dryer, a garbage disposal, and dishwasher. “I have a lovely  
43 apartment; I love it.” In sharp contrast to being concerned about survival on the streets, she  
44 now describes her efforts to live within her budget (she doesn’t use the dishwasher to help  
45 keep her electric bill low), and she reminded herself to pick up some carpet cleaner because  
46 she had spilled something on her rug. Susan feels that her treatment team affords her dignity  
47 and respect, and describes her very close relationship with an individual providing her with  
48 peer supports. “My life is a miracle,” she says.

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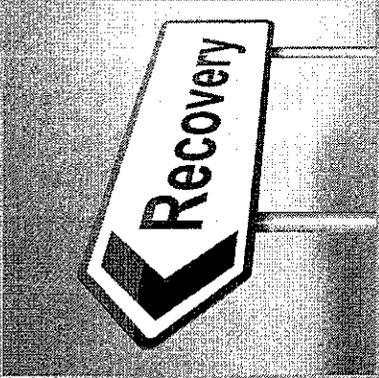
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51 This is the tenth report of the Court Monitor (Monitor) on the implementation by the State of Delaware  
52 (State) of its Settlement Agreement (Agreement) with the U.S. Department of Justice (DOJ) relating to  
53 its services for individuals with Serious and Persistent Mental Illness (SPMI). The Agreement, which  
54 went into effect on July 15, 2011, requires the State to comply with the Americans with Disabilities Act  
55 (ADA), the Supreme Court's decision in *Olmstead v. L.C. (Olmstead)*, and other laws that require public  
56 systems to support individuals with SPMI to live successfully in their communities without being  
57 subjected to unwarranted institutional segregation. In slightly longer than five years of implementing  
58 the Agreement, the State has made dramatic improvements in its services to Delawareans with SPMI.  
59 While this report presents substantial aggregate data in support of the Monitor's finding that the State is  
60 now in Substantial Compliance with the requirements of the Agreement, the stories above speak to its  
61 individual human outcomes. They reflect individuals who have struggled against incredible  
62 challenges—clinically and otherwise—and who are pursuing recovery that might have been unthinkable  
63 not so long ago. Today, these individuals' lives are not dramatic; remembering to pick up some rug  
64 cleaner is a mundane matter. Yet, for these and other members of the Agreement's target population,  
65 that life could become so mundane *is* dramatic. It is also what is at the heart of the ADA, *Olmstead*, and  
66 the Agreement: affording individuals who had been relegated to the margins of society the services and  
67 opportunities they need to live ordinary lives in the community mainstream.

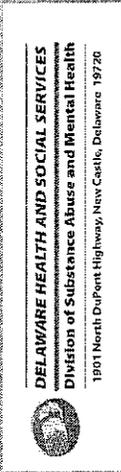
68 This report presents a detailed analysis of Delaware's success in complying with the Agreement and in  
69 achieving the kind of outcomes reported by these three individuals when they were interviewed by the  
70 Monitor in July, 2016. These individuals have made substantial progress and are now on pathways  
71 towards further improving their lives. Likewise, Delaware's service systems affecting these and other  
72 people with SPMI have made substantial progress and are on a trajectory to achieve further progress.  
73 These systems are not perfect, but they are increasingly aligned to promote recovery, self-determination,  
74 and community integration.

75 This report begins with information about the population of individuals targeted as the prime  
76 beneficiaries of the Agreement, followed by information about some cross-cutting systemic changes that  
77 have broadly affected implementation of the Agreement, and then a discussion of the State's compliance  
78 with regard to specific provisions of the Agreement. The State is now in Substantial Compliance with  
79 each of these provisions.

**The PROMISE Program**



**The PROMISE Program**



*The PROMISE Program*

**Consumer Affairs Office**

Also available for qualifying beneficiaries is access to peer support. Certified Peer Support Specialists use their lived experience with mental health and/or substance use recovery to assist and support beneficiaries in their journey toward wellness.

If you or someone you know is currently receiving DSAMH funded services and has questions or concerns relating to a beneficiary's health and welfare, please contact the Consumer Affairs Office at the number below.



**Division of Substance Abuse and Mental Health:  
For Consumer Affairs Office  
Please Call 855-649-7944**

<http://dhss.delaware.gov/dhss/dsamh/contact.html>

**What PROMISE is Not**

Sorry, PROMISE is not a housing program, but your service provider or case manager can assist qualifying individuals with obtaining housing through the SRAP (State Rental Assistance Program), SAP (Supervised Apartment Program), THP (Transitional Housing Program) and the Section 811 programs. Individuals interested in determining if they qualify, please contact their service provider or case manager.

Another thing PROMISE is not, is a one size fits all program. Eligible individuals participating in PROMISE will only receive medically authorized individually focused services, based on their self-directed recovery plans. These plans will be carefully monitored by the DSAMH care managers to provide the beneficiaries with the greatest opportunities for personal success and community integration.

**Division of Substance Abuse and Mental Health:  
For Housing Information Please Call  
302-255-9725**

## What Is PROMISE

The Division of Substance Abuse and Mental Health is committed to supporting individuals living with severe and persistent mental illness and a history of institutionalization to live in the community.

PROMISE (Promoting Optimal Mental Health Through Supports and Empowerment) is a comprehensive individualized behavioral health program for adults 18 and over, designed to provide specialized recovery oriented services for this specific population.

In the PROMISE program, the beneficiary has the key voice with support from their DSAMH care manager, natural supports (friends and family) and ACT/ICM/Grasp/Group Home staff (if applicable); to create their self-directed recovery plan.

The recovery plan functions as a blueprint to their personal recovery story and will support the beneficiary in becoming successful, independent, active and engaged members in their communities.

For more information on PROMISE, please contact the DSAMH Provider Relations Unit at:

**Provider Relations Unit**  
**302-255-9463**

[dsamhpromise@state.de.us](mailto:dsamhpromise@state.de.us) Provider Relations Mailbox

## Qualifying for PROMISE

Interested parties can contact the DSAMH Enrollment and Eligibility Unit (EEU) if they believe they or someone they support might qualify for PROMISE services.

The EEU evaluates candidates for PROMISE through the person's psychiatric and psychosocial assessments, as well as the Delaware-Specific American Society for Addiction Medicine Assessment tool that evaluates for both mental health and Substance Use Disorder conditions.

If the EEU determines that a person qualifies for PROMISE, a DSAMH care manager will be assigned to help the person to choose and create their:

- Self-directed recovery plan
- Assign medically necessary services (please see next page)
- Maintain their health and well-being
- Establish collaborations amongst his/her natural supports: (friends and family) personal relationships and State and community resources.

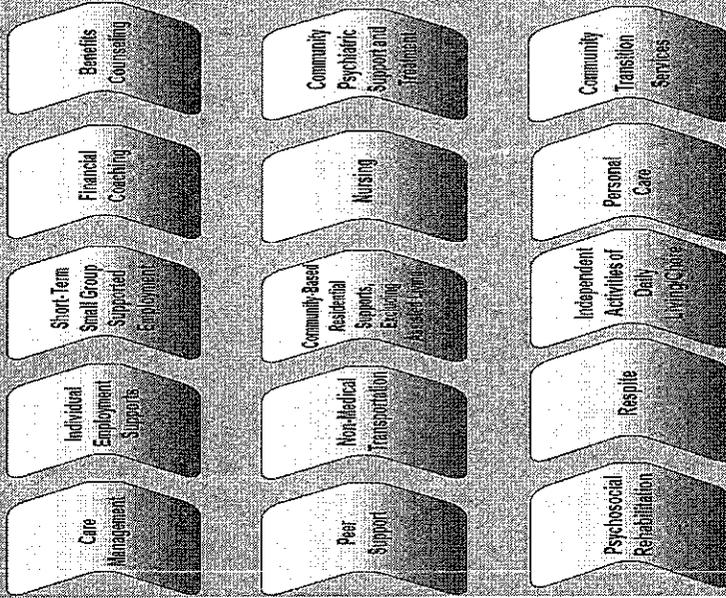
For more information on qualifying for PROMISE, please contact the DSAMH Enrollment and Eligibility Unit at:

**Enrollment And Eligibility Unit**  
**302-255-9460**

<http://dhss.delaware.gov/dhss/dsamh/eeu/home.html>

## The 15 PROMISE Services

The PROMISE program will offer individually-tailored, community-based and recovery-oriented services to help people live independently in the community. They are...



For More Information On PROMISE

See Our Website at:

<http://dhss.delaware.gov/dhss/dsamh/promise>