

Building Inclusive Communities  
in West Virginia



# ANNUAL OLMSTEAD REPORT

## The Year in Review

July 1, 2014—June 30, 2015

STATE OF WEST VIRGINIA  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
OFFICE OF INSPECTOR GENERAL

Earl Ray Tomblin  
Governor

Olmstead Office  
State Capitol Complex  
Building 6, Room 817-B  
Charleston, West Virginia 25305  
Telephone: (304) 558-3287 or (866) 761-4628

Karen L. Bowling  
Cabinet Secretary

August 31, 2015

The Honorable Earl Ray Tomblin  
Governor of West Virginia  
State Capitol Building  
Charleston, WV 25305

Dear Governor Tomblin:

On behalf of the Olmstead Office, and in accordance with the Olmstead Plan, Building Inclusive Communities: Keeping the Promise, I am pleased to submit to you the Annual Report for FY2015.

Please do not hesitate to contact the Olmstead Office if you or your office have any inquiries in the future.

Sincerely,

*Vanessa K. VanGilder*

Vanessa K. VanGilder  
Olmstead Coordinator

## Table of Contents

Remembering David Stewart .....	4
Olmstead Mission, Vision and Guiding Principles .....	6
Introduction: The <i>Olmstead</i> Decision .....	7
The <i>Olmstead</i> Case.....	9
West Virginia Executive Order, Olmstead Office and Olmstead Council .....	10
West Virginia Olmstead Council Legislative Priorities for 2015 .....	11
West Virginia Olmstead Council Membership .....	13
Olmstead Enforcement .....	14
Olmstead on the National Level.....	14
State Examples of Olmstead Enforcement.....	15
Olmstead on the State Level.....	17
West Virginia Successes .....	18
West Virginia Barriers Identified by the Council .....	21
Olmstead Initiatives in West Virginia.....	23
Olmstead Transition and Diversion Program.....	23

## Remembering David Stewart



It is with great sadness that we bid farewell to our long-time colleague and friend, David Stewart, who died June 24, 2015. David was the chairman of the Olmstead Council in FY2015 and had been a member of the council since its inception. Prior to joining the council, David was a member of the Olmstead Task Force. He was a consultant with Mid Atlantic ADA Center, Rockville, Maryland, member of the Fair Shake Network, and former board member of the Mountain State Center for Independent Living in Beckley, the West Virginia Statewide Independent Living Council, and various other disability organizations.

“Power concedes nothing without a demand. It never did and it never will. Find out just what any people will quietly submit to and you have found out the exact measure of injustice and wrong which will be imposed upon them.”

- Frederick Douglass

## Olmstead Mission Statement

The mission of the council is to develop and monitor the implementation of a plan to promote equal opportunities for people with disabilities to live, learn, work and participate in the most integrated setting in the community of their choice through West Virginia's compliance with Title II of the Americans with Disabilities Act.

## Olmstead Vision Statement

The vision of the council is for all West Virginians with disabilities to live, learn, work and participate in the most integrated setting in the community of their choice.

## Guiding Principles

- People with disabilities, regardless of the severity of the disability, can be supported to live in the community and setting of their choice.
- People with disabilities must have choice and control over where and with whom they live.
- People with disabilities must have opportunities to live integrated lives in communities with their neighbors and not subjected to rules or requirements that are different from those without disabilities. Integration does not just mean physical presence in a neighborhood, but valued and meaningful participation in community services and activities.
- People with disabilities must have access to information, education, and experiences that foster their ability to make informed choices while respecting dignity of risk.
- People with disabilities must have opportunities to develop valued social roles, meaningful personal relationships, and activities of their choice.
- People with disabilities must have meaningful opportunities for competitive employment.

## Introduction: The *Olmstead* Decision

In 1995, the landmark case now known as *Olmstead v. L.C.* was brought by the Atlanta Legal Aid Society on behalf of Lois Curtis and Elaine Wilson, who were confined in a state psychiatric hospital in Georgia. Hospital staff agreed that both women should be discharged to supportive community programs, but no such placements were available, and the state of Georgia offered nursing facility placements. Ms. Curtis and Ms. Wilson believed this action violated their rights under Title II of the Americans with Disabilities Act (ADA).



Lois Curtis

The memories of living in institutional settings since the age of 13 will remain with Lois Curtis. Her story did not end after the landmark Supreme Court decision. Ms. Curtis lived in staffed residential settings after her discharge from the institution. She now rents a beautiful home in Stone Mountain, Georgia, with a fellow artist and friend. Ms. Curtis herself is a successful artist. When asked what her artwork means to her, she responded, “My art been around a long time. I came along when my art came along. Drawing pretty pictures are a way to meet God in the work like it is.” On June, 20, 2011, Lois Curtis presented President Obama with a gift of one of her original paintings in the Oval Office. The “Girl in Orange Dress” is one in a series of three pastel self-portraits that Ms. Curtis created because she has no photographs to mark her own childhood.



Elaine Wilson

During her lifetime, Elaine Wilson had 36 stays in mental institutions. At a hearing in Georgia before Judge Marvin H. Shoob, Ms. Wilson testified, "When I was in the institution, I felt like I was in a little box and there was no way out." Her story began when Ms. Wilson was an infant. A 107 degree fever damaged her brain. Her mother tried to provide a normal life. She first sent her to public school, then private school, then an Augusta school for children with disabilities. Ms. Wilson had been shunted among institutions and shelters from age 15 and subjected to shock treatment and psychotropic drugs "that knocked her out and ruined her kidneys," said her mother, Jackie Edelstein of Atlanta. Once Ms. Wilson was placed with a caretaker and given independence, her life changed dramatically. "She blossomed," said Legal Aid attorney Sue Jamieson of Atlanta, who took on the case in 1995. "She took an interest in cooking and church and her personal appearance. She wanted to do advocacy for other people so [she] acquired training in presenting workshops and giving speeches."

"We saw Elaine become very independent and very proud of her independence," said Harriet Harris of Lithonia, executive director of Circle of Support Inc., who provided Ms. Wilson with caretakers. "She loved to shop at Wal-Mart and Kmart and the grocery store. One of her hobbies was to clip grocery coupons in the Sunday paper. She spent hours picking out greeting cards. She loved to visit people and have people come visit her. She was a very social person." Elaine Wilson died in 2004 at the age of 53.

## The *Olmstead* Case

The plaintiffs were successful throughout the judicial process. The Georgia Department of Human Resources appealed to the United States Supreme Court the lower court's decision that Georgia had violated the ADA's integration mandate by segregating Ms. Curtis and Ms. Wilson.

On June 22, 1999, the U.S. Supreme Court issued its ruling that such segregation is a form of discrimination prohibited by the ADA because:

- It perpetuates unwarranted assumptions that people with disabilities are incapable or unworthy of participating in community life, and
- Confinement in an institution severely diminishes the everyday life activities of individuals, including family relations, social contacts, work options, economic independence, educational advancement, and cultural enrichment.

*Olmstead* has been called the *Brown v. Board of Education* for people with disabilities. Like *Brown*, it is forcing change very slowly, and through determined and vigorous advocacy.

*Olmstead v. L.C.* upheld the rights of people with disabilities to live and receive supports in the most integrated setting in their community. Title II of the ADA was the basis for this landmark decision. Title II of the ADA applies to state and local government entities and the programs funded and administered by them. Two regulations under Title II were fundamental to the *Olmstead* decision:

- The integration regulation mandates that states “shall administer services in the *most integrated setting appropriate* to the needs of individuals with disabilities.” The most integrated setting is “a setting that enables individuals with disabilities to interact with non-disabled persons to the fullest extent possible.”
- The reasonable modifications regulation mandates that states “shall make reasonable accommodations in its policies, practices, or procedures when necessary to avoid discrimination, unless modifications would fundamentally alter the nature of the services, programs, or activities.” The Supreme Court stated that, “...if the State were to demonstrate that it had a comprehensive, effectively working plan for placing qualified persons...in [most integrated] settings, and a waiting list that moved at a reasonable pace, not controlled by

the State's endeavors to keep institutions fully populated, the reasonable modification standard would be met."

### West Virginia Executive Order

On October 12, 2005, Executive Order 11-05 was signed by then-Governor Manchin, formally approving and directing the implementation of the West Virginia Olmstead Plan: Building Inclusive Communities. Executive Order 11-05 directs:

- The implementation of the West Virginia Olmstead Plan;
- The cooperation and collaboration between all affected agencies and public entities with the Olmstead Office to assure the implementation of the *Olmstead* decision within the budgetary constraints of the state; and
- The submission of an annual report by the Olmstead Office to the governor on the progress of the implementation of the Olmstead Plan.

### West Virginia Olmstead Office

Vanessa VanGilder was hired in October 2014 as the Olmstead Coordinator. Ms. VanGilder has been an advocate for people with disabilities for 15 years. She is a graduate of Partners in Policymaking and is a member of the West Virginia Statewide Independent Living Council. She was the director of the Fair Shake Network for three and a half years and was previously a member of the Olmstead Council. She has a master's degree in Rehabilitation Counseling and also has a background in emergency services and public safety. The Olmstead Office is located in the Inspector General's Office.

### Olmstead Council

The West Virginia Olmstead Council was established in 2003 to advise and assist the Olmstead Coordinator to develop, implement, and monitor West Virginia's Olmstead activities. The mission of the council is to develop and monitor the implementation of a plan to promote equal opportunities for people with disabilities to live, learn, work and participate in the most integrated setting in the community of their choice through West Virginia's compliance with Title II of the ADA. The council has the following responsibilities as outlined in the *Olmstead Plan*:

- Advise the Coordinator in fulfilling the position's responsibilities and duties;
- Review the activities of the Coordinator;
- Provide recommendations for improving the long term care system;
- Issue position papers for the identification and resolution of systemic issues;  
and
- Monitor, revise, and update the Olmstead Plan and any subsequent work plans.

### West Virginia Olmstead Council Legislative Priorities for 2015

*Priority 1: Implement the West Virginia Olmstead Plan to ensure compliance with Title II of the ADA.*

- Revise the West Virginia Olmstead Plan to address federal enforcement guidelines.
- Establish a formal agreement to ensure the cooperation and collaboration between all affected agencies and public entities with the Olmstead Office to implement the Olmstead Plan, as outlined in Executive Order 11-05.
- Ensure inclusion of the Olmstead Office and council in state processes that affect the institutional and/or community-based long-term care system.
- Improve access to home- and community-based services and supports through the passage of the Community-Based Services Act or equivalent legislation.

*Priority 2: Eliminate the institutional bias in West Virginia's long-term care system.*

- Support the continued development and implementation of the Centers for Medicare and Medicaid Services Money Follows the Person grant "Take Me Home, West Virginia."
- Increase access and availability of home- and community-based services while reducing reliance on institutional settings.

- Issue an annual report that identifies institutional bias and recommendations for change.

Priority 3: *Develop and maintain a statewide, comprehensive transition and diversion program.*

- Obtain additional funding to support other transition and diversion programs throughout West Virginia.

Priority 4: *Implement a formal plan to address the major barrier of affordable, accessible and integrated housing options for people with disabilities.*

- Provide state designation of federal Home Investment Partnership Program funds for tenant-based rental assistance.
- Identify local, state and federal housing resources either under-utilized or unutilized to address the critical housing gap in West Virginia for people with disabilities.

Priority 5: *Ensure people with disabilities have opportunities for employment, transportation and meaningful participation in their community.*

- Reduce reliance on day programs and sheltered workshops.
- Support the development of an "Employment First" initiative.
- Support people with disabilities to participate meaningfully in their communities and to attain valued social roles.
- Support a collaborative and coordinated approach to assure available, affordable and accessible transportation.

## West Virginia Olmstead Council Membership

The membership of the council is comprised of no more than 35 persons from the following groups: eight people with disabilities and/or immediate family members; 10 advocacy or disability organization representatives; eight providers of home- and community-based services and/or supports; seven state agency representatives; and two optional, at-large members.

Elliott Birckhead	DHHR's Bureau for Behavioral Health & Health Facilities
Angela Breeden	Charleston, WV
Marcus Canaday	Money Follows the Person Program
Ardella Cottrill	WV Behavioral Health Planning Council
Joe Cunningham	Charleston, WV
Karen Davis	Charleston, WV
Jan Derry	Northern WV Center for Independent Living
Mark Drennan	Behavioral Health provider
Jeannie Elkins	Ashford, WV
Darla Ervin	Morgantown, WV
Mark Fordyce	Traumatic Brain Injury Waiver provider
Laura Friend	Home Health provider
Nancy Fry	Legal Aid of WV Behavioral Health Advocacy Project
Clarice Hausch	WV Advocates
Brenda Hellwig	Job Squad, Inc.
Roy Herzbach	Legal Aid of WV Long-Term Care Ombudsman Project
Cathy Hutchinson	Huntington, WV
Linda Maniak	Charleston, WV
Ann McDaniel	WV Statewide Independent Living Council
Suzanne Messenger	Bureau of Senior Services
Pat Moss	WVU CED
Lewis Newell	People First of WV
Rebecca Nicholas	DHHR's Bureau for Children & Families
Pat Nisbet	DHHR's Bureau for Medical Services
Michelle Norweck	Fair Shake Network
Kim Nuckles	State ADA Coordinator
David Stewart	Charleston, WV
Richard Stonestreet	AARP
Jenni Sutherland	Aging and Disability Resource Center
Richard Ward	Division of Rehabilitation Services
Steve Wiseman	WV Developmental Disabilities Council

## Olmstead Enforcement

The United States Department of Justice, Civil Rights Division's Disability Rights Section, that enforces Title II and Title III of the ADA, and Special Litigation Section that enforces the Civil Rights of Institutionalized Persons Act (CRIPA), have made Olmstead enforcement a top priority. The first year of the Obama Administration proved to be a landmark year, with a record number of amicus briefs, lawsuits, and intervention into state Olmstead cases.

In addition to stepping up enforcement, investigatory work has significantly changed. In the past, the first questions asked were whether the institutions under investigation are safe, and whether conditions of confinement are constitutional. These are now the second questions asked. The first question asked is whether there are individuals in those institutions who could appropriately receive supports in a more integrated setting.

In 2011, the Civil Rights Division of the Department of Justice released the Statement of the Department of Justice on Enforcement of the Integration Mandate of Title II of the ADA and *Olmstead v. L.C.* This technical assistance guide was created to assist individuals in understanding their rights under Title II of the ADA and its integration mandate, and to assist state governments in complying with the ADA.

## Olmstead on the National Level

Since 1999, there have been four major federal initiatives to assist state compliance with Title II of the ADA and the *Olmstead* decision. Those have been:

- The New Freedom Initiative (2000)
- The Deficit Reduction Act (2005)
- The Year of Community Living (2009)
- The Affordable Care Act (2010)

## Year of Community Living

The *Year of Community Living* is the most recent initiative that had a direct impact on federal enforcement and federal collaboration to assist states in implementing the promise of the *Olmstead* decision.

In 2009, President Obama launched the *Year of Community Living* to commemorate the 10<sup>th</sup> anniversary of the *Olmstead* decision. The *Year of Community Living* was launched to reaffirm the commitment to “vigorous enforcement of the civil rights for Americans with disabilities.” The “Community Living Initiative” was developed to coordinate the efforts of federal agencies and underscored the importance of the ADA and *Olmstead*.

## Administration for Community Living

The Administration for Community Living (ACL) was initially established on April 18, 2012, by bringing together the Administration on Aging, the Office on Disability and the Administration on Developmental Disabilities. Since then, ACL has grown significantly. Through budget legislation in subsequent years, Congress moved several programs that serve older adults and people with disabilities from other agencies to ACL, including the State Health Insurance Assistance Program, the Paralysis Resource Center, and the Limb Loss Resource Center. The 2014 Workforce Innovation and Opportunities Act moved the National Institute on Disability, Independent Living, and Rehabilitation Research and the independent living and assistive technology programs from the Department of Education to ACL.

## State Examples of Olmstead Enforcement

**Indiana — *Maertz v. Minott*** — On March 27, 2015, the United States filed a Statement of Interest in opposition to the State of Indiana’s argument that serious risk of institutionalization or segregation is not a viable claim under the ADA. In *Maertz*, Plaintiffs with developmental disabilities provided evidence that the State of Indiana harmed their health by drastically reducing their home- and community-based Medicaid services, placing them at serious risk of institutionalization.

**Pennsylvania — *Smith v. Department of Public Welfare of the Commonwealth of Pennsylvania*** — On June 12, 2014, the United States filed a Statement of Interest in the case of *Smith v. Department of Public Welfare of the Commonwealth of Pennsylvania*. In *Smith*, the Plaintiffs alleged that the Commonwealth of

Pennsylvania put them at serious risk of institutionalization by reducing funding for Act 150, a state-funded program providing attendant-care services in the community. The Statement of Interest highlights the legal principles governing ADA claims, including the fact that individuals who are at risk of entering an institution because of a state policy need not wait until they enter the institution in order to assert an ADA integration claim. The Statement of Interest also addressed what constitutes a request for a reasonable accommodation for the purposes of bringing an ADA integration claim.

**Rhode Island — *U.S. v. Rhode Island*** — On April 8, 2014, the United States entered into the nation’s first statewide settlement agreement vindicating the civil rights of individuals with disabilities who are unnecessarily segregated in sheltered workshops and facility-based day programs. The settlement agreement with the State of Rhode Island resolves the Civil Rights Division’s January 6, 2014, findings as part of an ADA Olmstead investigation, that the State’s day activity service system over-relies on segregated settings, including sheltered workshops and facility-based day programs, to the exclusion of integrated alternatives, such as supported employment and integrated day services. The settlement agreement provides relief to approximately 3,250 individuals with Intellectual Developmental Disabilities (I/DD) over 10 years. Rhode Island will provide supported employment placements to approximately 2,000 individuals, including at least 700 people currently in sheltered workshops, at least 950 people currently in facility-based non-work programs, and approximately 300-350 students leaving high school. Individuals in these target populations will receive sufficient services to support a normative 40-hour work week, with the expectation that individuals will work, on average, in a supported employment job at competitive wages for at least 20 hours per week. In addition, the state will provide transition services to approximately 1,250 youth between the ages of 14 and 21, ensuring that transition-age youth have access to a wide array of transition, vocational rehabilitation, and supported employment services intended to lead to integrated employment outcomes after they leave secondary school. The U.S. District Court for the District of Rhode Island has entered the settlement agreement as a court-enforceable Consent Decree.

**New York — *U.S. v. New York*** — On July 23, 2013, the United States, individual Plaintiffs, and the State of New York filed a settlement agreement in the U.S. District Court for the Eastern District of New York. The parties filed an amended settlement agreement on January 30, 2014, and the court approved the settlement agreement on March 17, 2014. The agreement remedies discrimination by the state in the administration of its mental health service system and ensures that

individuals with mental illness who reside in 23 large adult homes in New York City receive services in the most integrated setting appropriate to their needs consistent with the ADA and *Olmstead*. Under the agreement, such individuals will have the opportunity to live and receive services in the community such that they are able to live, work, and participate fully in community life.

A summary of all litigation, findings letters, and amicus briefs filed by DOJ on behalf of Olmstead-related legal issues can be located at: <http://www.ada.gov/olmstead>.

### Olmstead on the State Level

The Olmstead Council, through extensive public input, developed 10 Olmstead goals for West Virginia. Each goal has a series of specific objectives.

1. **Informed Choice:** Establish a process to provide comprehensive information and education so people with disabilities can make informed choices.
2. **Identification:** Identify every person with a disability, impacted by the Olmstead decision, who resides in a segregated setting.
3. **Transition:** Transition every person with a disability who has a desire to live and receive supports in the most integrated setting appropriate.
4. **Diversion:** Develop and implement effective and comprehensive diversion activities to prevent or divert people from being institutionalized or segregated.
5. **Reasonable Pace:** Assure community-based services are provided to people with disabilities at a reasonable pace.
6. **Eliminating Institutional Bias:** Provide services and supports to people with disabilities by eliminating the institutional bias in funding and administering long-term care supports.
7. **Self-Direction:** Develop self-directed community-based supports and services that ensure people with disabilities have choice and individual control.
8. **Rights Protection:** Develop and maintain systems to actively protect the civil rights of people with disabilities.

9. **Quality:** Continuously work to strengthen the quality of community-based supports through assuring the effective implementation of the Olmstead Plan, and that supports are accessible, person-centered, available, effective, responsive, safe, and continuously improving.
10. **Community-Based Supports:** Develop, enhance, and maintain an array of self-directed community-based supports to meet the needs of all people with disabilities and create alternatives to segregated settings.

### West Virginia Successes

- The “Money Follows the Person” Program and Olmstead-related activities have similar goals, which are to allow people with disabilities the opportunity to live in integrated community-based settings. This Rebalancing Demonstration Grant helps rebalance the long-term care system by transitioning people from institutions into the community. “Money Follows the Person” is just one strategy that is being used to promote opportunities for people to live in integrated community settings. During FY2015, “Take Me Home West Virginia” received 148 intakes, and 59 individuals were transitioned. During this time, 35 individuals successfully completed 365 days of participation in the community. Since the program began in February 2013, there have been 427 intakes. There have been 114 individuals transitioned, with 40 individuals successfully completing 365 days of participation in the community.
- The Bureau of Senior Services, together with the Bureau for Medical Services, Bureau for Behavioral Health and Health Facilities, Division of Rehabilitation Services and the Developmental Disabilities Council, received a grant to lead a 12-month planning effort to explore ways to transform the multiple access systems for long-term service options into a No Wrong Door (NWD) access system. The outcome will be a three-year plan that details the strategies and action steps the state will need to take to transform processes across its various long-term services and supports (LTSS) programs into a single, integrated system of access that minimizes confusion and enhances consumer choice. The goal is to transform the multiple access systems for LTSS into a fully integrated, person-centered NWD system of access for all programs and populations, regardless of age, income level, type of disability or payer source, and develop a strategic plan for transforming the long-term care system in West Virginia into a single, coordinated system of information which will serve to greatly minimize confusion, enhance consumer choice, support

informed decision making and improve the state's ability to manage resources and monitor the quality of services by 2019.

- Following federal legislation passed in 2014, the West Virginia Legislature passed the Achieving Better Life Experience (ABLE) Act. The purpose of this Act is to allow savings accounts for individuals with a disability and their families to save private funds to support that individual with a disability. These tax exempt savings accounts can be used to help with out-of-pocket costs.
- The West Virginia Legislature passed a bill creating the West Virginia Clearance for Access: Registry and Employment Screening Act. This Act requires state and federal fingerprint-based background checks for individuals who have direct access to residents, members or beneficiaries of covered providers. It sets guidelines to develop a plan and a program for conducting background checks and requires a centralized database to evaluate criminal history record information and make employment fitness determinations. The Act establishes a prescreening process conducted by covered providers and authorizes the West Virginia State Police to retain fingerprints for continuous checks.
- The West Virginia Legislature passed the Caregiver Advise, Record and Enable (CARE) Act, which permits hospital patients to designate a lay caregiver to provide aftercare assistance in the patient's residence.
- The West Virginia Legislature passed a bill to update and define telemedicine and telemedicine technologies and medical services delivery standards.
- The Bureau for Behavioral Health and Health Facilities released an Announcement of Funding Availability for a statewide Behavioral Health Information, Referral & Outreach Call Center.
- The Governor's Substance Abuse Regional Task Force continued to meet around the state.
- West Virginia expanded Medicaid coverage to eligible low-income adults as of January 2015. Medicaid and CHIP (Children's Health Insurance Program) are safety net health benefit programs available to low-income families and adults in West Virginia. West Virginia has adopted a state-federal Partnership model for its health insurance exchange.

- The Bureau for Behavioral Health and Health Facilities is making progress with the Peer Support certification process and anticipates the certification will be made available within the next six months.
- The Olmstead Council provided \$2,300 for a scholarship for the Partners in Policymaking Leadership Program. This program is geared to adults with developmental disabilities and parents of young children with developmental disabilities. Partners become familiar with the policymaking and legislative process at the local, state and federal levels. The program teaches skills necessary for individuals to become advocates who can influence the system of services for people with developmental disabilities.
- The Olmstead Council provided \$2,000 to the Fair Shake Network for its annual training day and Disability Advocacy Day at the Legislature. The training event provided training on legislative priorities, legislative advocacy and community resources. The annual Disability Advocacy Day at the legislature was held to educate legislators, policy makers and the public about disability issues.
- The 2015 Disability Caucus was held June 22-26, 2015. The Olmstead Council was one of many sponsors of the event. The Caucus is a statewide conference for people with disabilities providing training on leadership, self-advocacy, peer support, and disability rights laws. People with disabilities, family members, and advocates statewide attended the Caucus and had the opportunity to develop skills, network, and develop strategies for addressing the issues facing West Virginians with disabilities.
- The Northern West Virginia Center for Independent Living (NWVCIL) has been awarded nearly \$975,000 through a competitive HUD grant program to continue to combat discrimination in housing across West Virginia for the next three years. The competitive grants are funded through HUD's Fair Housing Initiatives Program (FHIP) to help enforce the Fair Housing Act through investigations and testing of alleged discriminatory practices, and to help educate housing providers, local governments and potential victims of housing discrimination about their rights and responsibilities under the Fair Housing Act.

## West Virginia Barriers Identified by the Council

Just as there are successes, the Olmstead Council has identified barriers that impede or prohibit individuals from accessing supports and services that are necessary to maintain their presence in the community. It is important to note that this is not an all-inclusive list of barriers, and that the Olmstead Coordinator is merely reporting the findings of the Council.

- **Nurse Delegation and Exemption.** Delegation and exemption models are not effectively used for medication administration and the performance of health maintenance tasks in the community. In 2013, the Legislature passed the Ken Ervin Community Living Act to add “health maintenance tasks” to the tasks that may be delegated to medication assistive personnel (AMAPs). The health maintenance tasks included: administering glucometer tests; administering gastrostomy tube feedings; administering enemas; and performing ostomy care which includes skin care and changing appliances. The agency or facility is required to maintain liability insurance for the licensed health care provider and AMAP. In 2014, legislation was passed to add to the health maintenance tasks allowed to be delegated the tracheostomy and ventilator care for residents in a private residence who are living with family and/or natural supports and injection of insulin with prefilled insulin or insulin pens. In both statutes, tasks can only be delegated to an AMAP by a registered professional nurse (RPN). All AMAPs must be trained, considered by the RPN to be competent, consult with the RPN or attending physician on a regular basis, and be monitored or supervised by the RPN. Legislative rules were passed for both these statutes.
- **The Eligibility Process:** A restrictive, complicated and lengthy eligibility process is used for Medicaid Waiver Programs when compared to institutional care settings.
- **Medicaid Long-Term Care Budget:** A greater percentage of the overall Medicaid long-term care budget is spent for institutional care when compared to community-based supports.
- **Workforce:** There is a lack of an available, responsive and competent workforce to provide direct services to enable people with disabilities to remain or return to their home and community.

- **Housing:** There is a lack of affordable, accessible, and available housing for people with disabilities. West Virginia has a current wait list for the Housing Choice Voucher (HCV) Program.
- **Alternatives to Nursing Facility Care:** The Aged and Disabled Waiver Program does not provide a comparable or functional alternative to nursing facility care, nor does it provide personal care options.
- **Medicaid Personal Care:** These services are not available to all recipients of the Aged and Disabled Waiver Program.
- **Waiting lists:** These are in place for eligible applicants of the I/DD Waiver Program, the Aged and Disabled Waiver Program, the Lighthouse Program, the Family Alzheimer's In-Home Respite Program and the Community Living Services Program.
- **Informed Choice:** Adequate education on home- and community-based service and support options is not required to be provided prior to institutional placement, or regularly thereafter.
- **Incentives to Provide Institutional Care:** The cost-based reimbursement methodology incentivizes institutional care.
- **Mental Health and Substance Abuse Services:** A fragmented and inadequate service system exists for people with mental illness and co-occurring disabilities.
- **Case Management Services and Transition:** The case management services are not effectively used to support people in transitioning from institutional care to the community.
- **Ventilator Care:** Support options are lacking for adults who need ventilator care. AMAPs can now provide this service, but Medicaid does not cover ventilator care, so it is not an option in West Virginia.

## Olmstead Initiatives in West Virginia

### Revising and Updating the Olmstead Plan

In response to the increased federal Olmstead enforcement and technical assistance, the Council is establishing a process to update the plan.

### Information, Referral and Assistance Program

The Olmstead Office provides information, referral and assistance to West Virginians with disabilities and their families concerning Olmstead-related issues. In addition to information and referral, the Olmstead Office provides residents with assistance on Olmstead-related complaints or grievances. In state fiscal year 2015, the Olmstead Office received 674 contacts for information, referral and assistance. The biggest barrier to providing assistance is the need for systems change to decrease the institutional bias and make community-based services and supports more readily available and accessible.

### Olmstead Transition and Diversion Program

Since 2007, the purpose of the Olmstead Transition and Diversion Program (formerly, the Transition Navigator Program) has been to assist West Virginians with disabilities residing in institutional facilities (or at-risk of institutionalization) to be supported in their home and community. In 2010, the program experienced a major change as a result of the “Take Me Home, West Virginia” Program. The Bureau for Medical Services (BMS) is in the process of expanding this program statewide. The Olmstead Office has provided BMS with \$292,000 in state general revenue funding for program expansion.

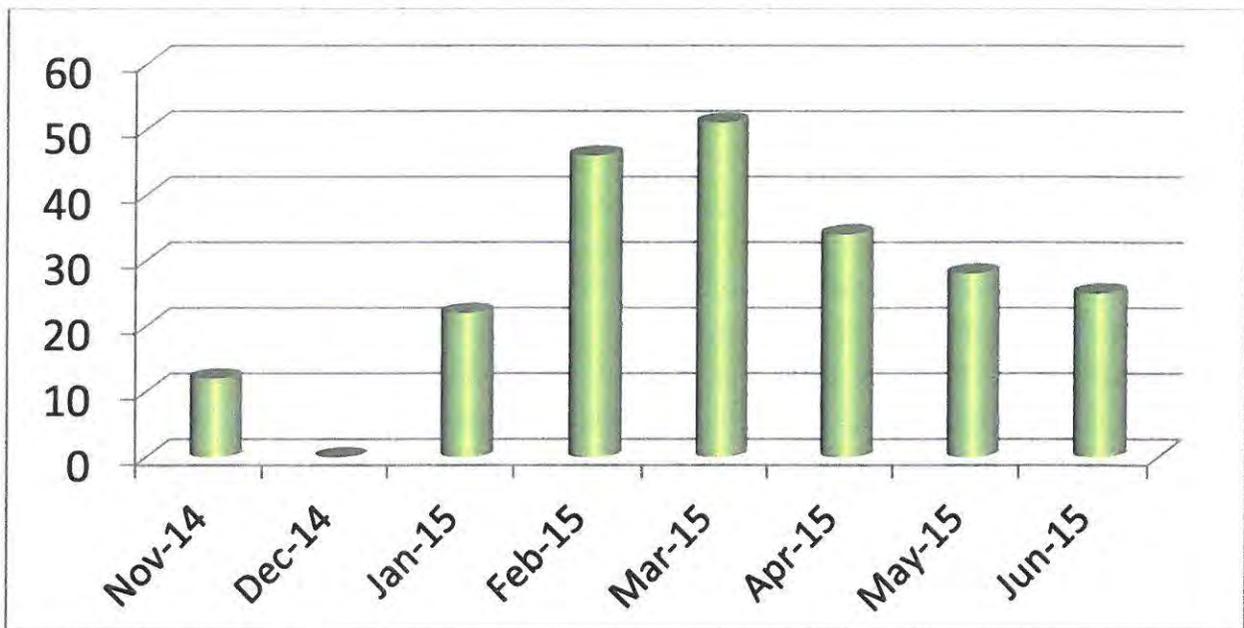
The Olmstead Office continues to offer smaller grants through the Olmstead Transition and Diversion Program. This program will support people for transition and diversion and will focus on those not otherwise supported by the “Take Me Home, West Virginia” Program. During state fiscal year 2015, the program supported 219 people through the transition and diversion process. Each participant is eligible to receive up to \$2,500 to pay for reasonable and necessary one-time start-up costs that may include:

- Security deposits
- Household furnishings

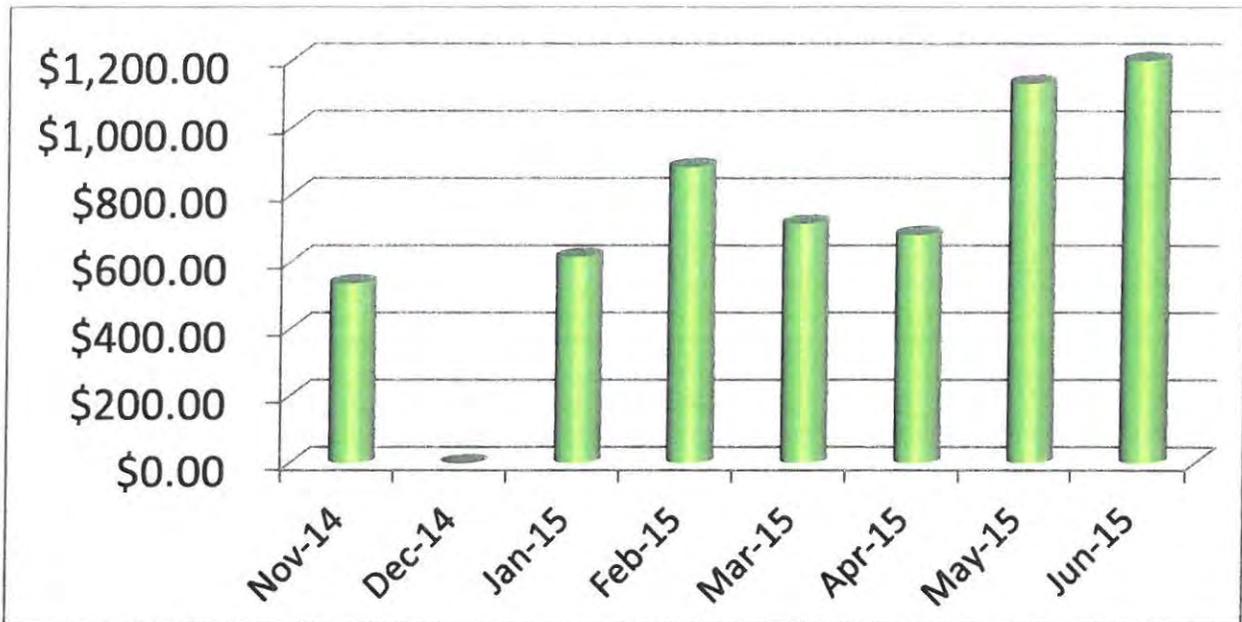
- Set up fees and deposit
- Moving expenses
- Assistive devices or technology
- Home access modifications

The average start-up funding allocated per participant was \$832.06. The Olmstead Transition and Diversion Program has the potential to save the Medicaid Program money each time it transitions or diverts someone from institutional care.

Number of Applications Approved



Funding Allocated



Average Cost Per Person

