

House General and Housing- March 1, 2023

Wrongfully Confined.... Still.

In connection with Disability Awareness Day and the work of this committee, House General and Housing, I would like to offer the following testimony. My name is Lindsey Owen, and I am the Executive Director at Disability Rights Vermont. I have been with the organization for over ten years. I started as an intern doing a semester in practice from Vermont Law School, and was hired on a part time basis while I finished law school the following semester. I worked as an advocate until I was sworn in to the Vermont Bar in November 2013. I served as a staff attorney for the next 8 years or so and was hired as the Executive Director in May 2021.

Disability Rights Vermont is the Protection and Advocacy agency for the State of Vermont. We are federally mandated to investigate and remedy abuse, neglect and serious rights violations impacting individuals with disabilities. DRVT is also appointed by the Governor to serve as Vermont's Mental Health Care Ombudsman.

One in four Vermonters has a disability, and yet there continues to be huge disparities for people with disabilities in accessing different systems, the healthcare system, housing access, employment opportunities and the judicial system. Almost exactly one year ago to the day, DRVT provided testimony to House Appropriations, and almost precisely three years ago DRVT issued a report, in consultation with Melodie Peet, M.P.H., entitled Wrongfully Confined just as the world was hit by the global pandemic COVID-19. Both of these written opinions hold true today, with unfortunately little if any positive progress or change.

DRVT presents to this Committee the testimony provided last year, and encourages you all to not only take these facts into consideration, but to incorporate them into action so that DRVT can present new testimony in the future.

Excerpts from February 2023 Testimony:

Investments in community placements and supports for people with disabilities are required and encouraged by federal law. In 1999, the United States Supreme Court decided *Olmstead v. L.C.*, holding that pursuant to the integration mandate of the Americans with Disabilities Act, the State has a duty to serve people with disabilities in the most integrated setting appropriate to their needs.¹ The Center for Medicare & Medicaid Services recently issued guidance on explaining how the COVID-19 pandemic highlighted “the urgent need to reduce the reliance on institutional services and expand access to high-quality home and community-based services (HCBS) to improve outcomes for people with long-term services and supports (LTSS).”²

DRVT would support further development of crisis community services to divert people away from using emergency rooms as a last resort. Similarly, DRVT would support further development of peer services and short-term stabilization services for people experiencing a mental health crisis. Currently, staffing shortages are crippling these agencies and community placements are closing due to lack of staff and resources. Not only does that need to be addressed but it is clear that Vermont needs more residential programs and more crisis placements and services.

Between 1980 and 2010, the number of inpatient and residential beds in Vermont climbed from 602 to 737, an increase of 31%, while the rates in other states dropped by 34%.³ These numbers indicate a system that is too focused on the treatment of inpatients, rather than community supports, an approach that is neither fiscally responsible nor legally appropriate.

The lack of community supports and resources has an effect on all Vermonters. This can be seen in the high volumes of people waiting in emergency departments

¹ *Olmstead v. L.C.*, 527 US 581 (1999).

² Strengthening and Investing in Home and Community Based Services for Medicaid Beneficiaries: American Rescue Plan Act of 2021 Section 9817 Spending Plans and Narratives, MEDICAID.GOV (2021) <https://www.medicare.gov/medicaid/home-community-based-services/guidance/strengthening-and-investing-home-and-community-based-services-for-medicare-beneficiaries-american-rescue-plan-act-of-2021-section-9817-spending-plans-and-narratives/index.html>

³ [DRVT-Olmstead-Report.pdf \(https://disabilityrightsvt.org/wp-content/uploads/2020/06/DRVT-O\)](https://disabilityrightsvt.org/wp-content/uploads/2020/06/DRVT-O), citing National Association of State Mental Health Program Directors, "Assessment #10: Trends in Psychiatric Capacity, United States and Each State, 1970-2014", August, 2017, p. 45.

around the state seeking mental health services and the long wait times for receiving outpatient mental health treatment.⁴ Over the years, DRVT has worked with a number of psychiatric inpatients who are medically cleared to return to the community, but due to the lack of community resources and placements remain stuck in an institutional setting.⁵ Based on snap shot data provided by the Vermont DMH, on various dates from 2020-present, there are anywhere from 10-20 individuals under DMH's purview who are in a locked psychiatric unit who do not need to be there but are simply awaiting community placements of services.⁶ This data confirms that there have consistently been individuals who were not placed in most integrated community setting appropriate to their needs.

When Vermonters are unnecessarily or excessively confined in a hospital instead of receiving services in the community, they lose out on opportunities to further their career, spend time with friends, pets, and family members.

More important in terms of successful treatment outcomes and also fiscal responsibility are the home and community based care and peer supports. The average cost per patient per day in a state-run inpatient psychiatric hospital is \$2,537, a private inpatient setting is \$1,425, while the cost of home placements or community services are approximately \$64 per day according to a 2018 data report.⁷ Community-based settings can help people transition back into a successful life in the community, and keep them out of resource-intensive hospital settings.⁸

Home and community placements can keep individuals with disabilities in a more comfortable environment, thereby decreasing the likelihood that they will need to be admitted into a hospital in the future. Community and home-integrated placements can also help prepare people for independent life after spending time in an institution. Home and Community placements are a clear win-win.

⁴ <https://www.sevendaysvt.com/OffMessage/archives/2021/09/01/state-launches-investigation-into-long-wait-times-for-medical-care>.

⁵ [DRVT-Olmstead-Report.pdf \(https://disabilityrightsvt.org/wp-content/uploads/2020/06/DRVT-O\)](https://disabilityrightsvt.org/wp-content/uploads/2020/06/DRVT-O),

⁶ Public record requests from DMH from 2/20/20, 10/14/21, and 2/16/22.

⁷ Vermont Care Partners 2018 "FY 2018 Outcomes and Data Report"; "Narrowing the Gap in Recovery-Oriented Community Services: A presentation by Alyssum, Another Way Community Center, Pathways Vermont, and Vermont Psychiatric Survivors" October 22, 2019; Vermont Department of Mental Health FY2018 Budget Presentation Melissa Bailey, Commissioner.

⁸ Key Community-Based Services Can Reduce Reliance on Hospital Admissions and Length of Stay, Melodie Peet, M.P.H.

In light of the Integration mandate of the ADA and Vermont Fair Housing and Public Accommodations Act, the Agency of Human Services, and the State of Vermont, needs to prioritize its home and community-based settings, to include affordable, accessible, independent housing options to meet the needs of all Vermonters. An investment in home and community settings will improve outcomes for Vermonters with disabilities and start to bring Vermont into compliance with federal law. This investment must be a stark departure from the status quo, which currently puts a majority of resources into existing, restrictive and institutional settings.

Thank you for your time.

Lindsey Owen