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ONE HUNDRED FIFTEENTH CONGRESS

# Congress of the United States

## House of Representatives

COMMITTEE ON THE JUDICIARY

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December 6, 2017

Attorney General Jeff Sessions  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530-0001

Dear Attorney General Sessions:

On November 18, 2013, this Committee sent a letter to Attorney General Eric Holder regarding the concerns of parents and guardians with the Department of Justice's ("DOJ") handling of cases in which developmentally disabled individuals ("I/DD") were being driven from appropriate care facilities into settings that were providing too little assistance and supervision. I am writing to renew these concerns, and request that DOJ take action.

In recent years, several cases brought by the Civil Rights Division, specifically the Special Litigation Section, have blatantly disregarded the choice requirements set forth in *Olmstead v. L.C.*, 527 U.S. 581 (1999). In *Olmstead*, the Supreme Court ruled that unjustified institutionalization is discrimination under the Americans with Disabilities Act ("ADA"), which, according to the law, encourages states to administer services for people with I/DD "in the most integrated setting appropriate to the needs of qualified individuals with disabilities."<sup>1</sup> The Court held that an individual is unjustifiably institutionalized and community placement is required only "when the State's treatment professionals determine that such placement is appropriate, the affected persons do not oppose such treatment, and the placement can be reasonably accommodated, taking into account the resources available to the State and the needs of others with mental disabilities."<sup>2</sup>

The Court in *Olmstead* specifically affirmed the right of choice by holding that an individual has a right to reject a placement. The Court also recognized that the community is not the most appropriate place for some individuals with I/DD. It stated:

We emphasize that nothing in the ADA or its implementing regulations condones termination of institutional settings for persons unable to handle or benefit from

<sup>1</sup> See *Olmstead v. L.C.*, 527 U.S. 581, 596-607 (1999).

<sup>2</sup> *Id.* at 607.

community settings . . . Nor is there any federal requirement that community-based treatment be imposed on patients who do not desire it.<sup>3</sup>

Nevertheless, there has been a recent national trend towards deinstitutionalization due to the previous Administration's efforts to challenge state systems by submitting briefs, filing lawsuits and entering settlements to reduce the population of Intermediate Care Facilities for Individuals with Intellectual Disabilities ("ICFs/IID") in Virginia, Arkansas, Pennsylvania, New Jersey, and Illinois. Since 2005, DOJ has been involved in over 60 actions across the country to enforce its interpretation of the ADA on the families and the states as well, overriding both the decisions of the state with regard to the best allocation of limited dollars and the desires of families to keep their loved ones in ICFs/IID and geographically close to them.

Today, the Committee continues to hear concerns from many of the family members and legal guardians who have been forced to move their loved ones into settings that don't provide the level of assistance and care that they are receiving at their present facility homes. They have also raised concerns about the adequacy of community-based housing and the lack of specialized care and support services available in them, the pace of transfer, multiple newspaper investigations and studies reporting higher rates of abuse and mortality in community settings, and the adequacy of opportunities for residents to make their views and preferences known throughout the relevant process.

Some families have lost loved ones. Martha Bryant of Lynchburg, Virginia, for example, laid her 23-year-old son, Tyler Bryant, to rest on March 20, 2017. Tyler passed away two months after being displaced from the Central Virginia Training Center ("CVTC"), where he had lived for 20 years. Not only was his new setting several hours away from his previous home near his mother, but it was reported to be "a facility with a lower skill set than CVTC's and in a completely different care environment."<sup>4</sup> Of the 28 people recently transferred to that facility from training centers, according to another report, ten have died.<sup>5</sup>

This is a terrible loss of life, but it is unfortunately a small subset of the deaths resulting from the previous Administration's policies. In 2011, for example, the *New York Times* reported that there have been 1,200 deaths of "unknown or unnatural" causes in group homes over a ten-year period.<sup>6</sup> However, it is unclear whether this number accurately reflects the total because not every state reports such data. It could be much higher.

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<sup>3</sup> *Id.* at 601.

<sup>4</sup> *Why Did Tyler Bryant Die? The State Must Answer*, The News & Advance (Mar. 26, 2017), [http://www.newsadvance.com/opinion/editorials/why-did-tyler-bryant-die-the-state-must-answer/article\\_20a28ef4-10cf-11e7-aa0c-271c0e975847.html](http://www.newsadvance.com/opinion/editorials/why-did-tyler-bryant-die-the-state-must-answer/article_20a28ef4-10cf-11e7-aa0c-271c0e975847.html).

<sup>5</sup> Alex Rohr, *Department of Justice investigating deaths of former CVTC residents*, Roanoke Times (Apr. 6, 2017), [http://www.roanoke.com/news/virginia/departement-of-justice-investigating-deaths-of-former-cvtc-residents/article\\_06205134-5093-53ae-9582-0bbc32c7a1f1.html](http://www.roanoke.com/news/virginia/departement-of-justice-investigating-deaths-of-former-cvtc-residents/article_06205134-5093-53ae-9582-0bbc32c7a1f1.html).

<sup>6</sup> Danny Hakim, *In State Care, 1,200 Deaths and Few Answers*, N.Y. Times (Nov. 5, 2011), <http://www.nytimes.com/2011/11/06/nyregion/at-state-homes-simple-tasks-and-fatal-results.html>.

With this in mind, we ask that the Department of Justice initiate a comprehensive investigation into the causes of the unspeakable number of deaths occurring across the country and suspend activities aimed at displacing fragile Americans from licensed ICFs/IID in good standing.

Sincerely,



Chairman Goodlatte