

2017 New York State Report

This updates our 2016 report, in which we described the then-current status of the “ICF Transition Plan” announced in 2014 by the NYS Office for People with Developmental Disabilities (OPWDD) that revealed New York’s planned closure of most of its developmental centers and the closure or conversion to Home and Community Based Services status of all of the Intermediate Care Facilities (ICFs) operated by private provider agencies under contract to OPWDD.

We explained last year that the Bernard M. Fineson Developmental Center in Queens was slated for closure in 2017, and that the sole remaining developmental centers would be the Sunmount DC in Tupper Lake (a small town in the Adirondack Mountains, 71 miles from the Canadian border) and the Valley Ridge Center for Intensive Treatment in Norwich (a small town 185 miles from NYC). The planned future capacity at these two remaining developmental centers is 105 beds at Sunmount and 45 at Valley Ridge.

We expressed concerns last year, based on press reports, about conditions at Sunmount and Valley Ridge including violence by staff against residents as well as arrests of residents. Subsequently there have been some criminal convictions of staff for abuse of residents as well as for coverups of abuse.

We earlier reported that Sunmount and Valley Ridge have been primarily secure facilities for developmentally disabled individuals referred by the criminal justice system, including sex offenders. This past year, through a Freedom of Information Law request to OPWDD we have secured more information about Sunmount that confirms what we had previously learned from public sources and that reinforces our level of concern about the placement of vulnerable individuals with developmental disabilities there.

OPWDD’s response to the FOIL request revealed that as of September 2016, forty-eight Sunmount residents were sent there through the criminal justice system, thirty-three residents have been charged with crimes but deemed incompetent to stand trial, twenty-two were registered sex offenders, six residents were sent there through applications for involuntary civil commitment, and twenty-seven residents were retained there through applications for involuntary civil commitment.

OPWDD’s FOIL response further revealed that from January-August of 2016 there were 115 reportable incidents of abuse and neglect at Sunmount, forty substantiated findings of abuse and neglect, two substantiated findings of obstruction, and eighteen substantiated findings of neglect, with four open investigations of abuse and neglect. In the first eight months of 2016 there were 1,254 interventions where residents were physically restrained in two-person or three-person supine restraints.

OPWDD claimed to have no records concerning:

- The number of employees fired because of abuse, neglect or other misconduct toward the residents;
- The number of physical assaults by residents against other residents;
- The number of arrests of residents or employees;
- The number of instances where residents filed criminal charges against other residents;

- The number of residents at Sunmount deemed ready by Sunmount for transfer to a less restrictive setting or who have requested transfer to such a setting;
- The average length of stay of Sunmount residents;
- The number of Sunmount residents who smoke or use other tobacco products;
- The number of Sunmount residents who have been convicted of crimes;
- The total number of residents and the number of those spending all or part of the year in a “secure unit”; or
- The number of residents physically removed by the police from Sunmount for any period of time and the destination to which they were taken (e.g., police station, jail or prison, hospital emergency room, other) and the number of those instances where handcuffs, tasers, firearms or other weapons were displayed or used.

We consider these responses highly questionable given the press reports about conditions at Sunmount, as well as information that we secured from families knowledgeable about Sunmount who have a firsthand familiarity with this facility.

In sum, we remain concerned that any developmentally disabled New Yorker wishing to exercise their right under the Medicaid laws and regulations to reasonably prompt placement (not subject to waiting lists) in an ICF where they can receive the “active treatment” mandated under applicable federal laws and regulations is being deprived of a meaningful and realistic opportunity to exercise that right.

First, New York fails to disclose that right to developmentally disabled individuals applying to OPWDD for services and, instead, places them on waiting lists – where some of them remain for many years despite their desperate need -- for community-based services under the Medicaid Home and Community Based Services waiver.

Second, if a developmentally disabled New Yorker is aware of their right to reasonable prompt placement in an ICF and wants to exercise that right, the only “choice” that they are given is placement at Sunmount or Valley Ridge with the heavily criminal-background oriented population at those facilities and their history of abuse, neglect and violence, and their remoteness from the major population areas of the State like New York City so residents there are effectively cut off from their families, friends and circles of support. Not surprisingly, only those most desperately in need of residential services, including individuals that New York’s private provider agencies – who are allowed by OPWDD to “cherry pick” those they will accept into their program – refuse to accept, as well as those transferred by the criminal justice system to OPWDD’s custody, then wind up at Sunmount or Valley Ridge. And while OPWDD claims not to have statistics on how long individuals at Sunmount who are ready to move to a less restrictive setting remain there, based upon anecdotal evidence that we had access to, a significant number of individuals remain trapped there for prolonged periods (if not indefinitely) for want of appropriate alternative placements for them.

Respectfully submitted,

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