

**OFFICE OF THE STATE INSPECTOR GENERAL**  
**Report to Commissioner Debra K. Ferguson**

*FY2014*

*Office of the State Inspector General's Unannounced Inspections  
of the Department of Behavioral Health  
and Developmental Services-Operated Training Centers*

*May 2015*



**June W. Jennings, CPA**  
**State Inspector General**  
**Report No. 2015-BHDS-001**



*COMMONWEALTH OF VIRGINIA*  
*Office of the State Inspector General*

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May 27, 2015

Debra K. Ferguson, PhD, Commissioner  
Virginia Department of Behavioral Health and Developmental Services  
1220 Bank Street  
Richmond, Virginia 23219

Dear Commissioner Ferguson:

The Office of the State Inspector General (OSIG) conducted an unannounced review of the Department of Behavioral Health and Developmental Services' (DBHDS) – operated Training Centers for the fiscal year ending June 30, 2014.

The purpose of the OSIG's unannounced visits was to review the Commonwealth of Virginia's compliance with the Department of Justice Settlement Agreement and each unannounced Training Center inspection focused on discharge planning and outcomes, Enhanced Case Management, and stakeholder opinions on community services development and Training Center closures.

The OSIG sincerely appreciates the cooperation received from DBHDS and the Training Centers' leadership and staff throughout the course of this review.

If you have any questions, please call me at 804-625-3255 or email me at [june.jennings@osig.virginia.gov](mailto:june.jennings@osig.virginia.gov). I am also available to meet with you in person to discuss this report.

Sincerely,

A handwritten signature in black ink that reads "June W. Jennings".

June W. Jennings  
State Inspector General

cc: Paul Reagan, Chief of Staff to the Governor

Suzette Denslow, Deputy Chief of Staff to the Governor  
Dr. William Hazel, Jr., Secretary of Health and Human Resources

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## Executive Summary

In 2014, pursuant to *Code of Virginia (Code)* § 2.2-309.1[B](1)(2), the Office of the State Inspector General (OSIG) conducted a review of the Department of Behavioral Health and Developmental Services (DBHDS)-operated Training Centers. Included in this review was OSIG's second review of the Commonwealth of Virginia's (Commonwealth) compliance with the Department of Justice (DOJ) *Settlement Agreement* and unannounced Training Center inspections focused on discharge planning and outcomes, Enhanced Case Management, and stakeholder opinions on community development and Training Center closures.

In 2008, under the *Civil Rights of Institutionalized Persons Act (CRIPA)*,<sup>1</sup> DOJ announced it would be investigating conditions at Central Virginia Training Center (CVTC) in Lynchburg, Virginia. In 2010 the investigation expanded to include CVTC's and then the Commonwealth of Virginia's compliance with the *Americans with Disabilities Act (ADA)*<sup>2</sup> and the U.S. Supreme Court *Olmstead*<sup>3</sup> ruling.

In lieu of legal action, the Commonwealth and the DOJ negotiated a final *Settlement Agreement*<sup>4</sup> in January 2012. The *Settlement Agreement* requires the Commonwealth to create expanded opportunities for community integration for persons with intellectual and developmental disabilities through 2020 and beyond. The breadth of the *Settlement Agreement* presents challenges for the Commonwealth, particularly related to the building of a more advanced community infrastructure that will assure adequate housing, day programming, and specialized emergency services while planning the downsizing and eventual closing of all but one Training Center. Compliance with the requirements of the *Settlement Agreement* is being monitored by a court-appointed Independent Reviewer.

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<sup>1</sup> U.S. DOJ. 42 U.S.C. § 1997 et seq. *Civil Rights of Institutionalized Persons*. U.S. DOJ website. URL: <http://www.justice.gov/crt/about/spl/cripastat.php>. Accessed February 24, 2015.

<sup>2</sup> DOJ. 28 CFR PART 35. Title II. *Americans with Disabilities Act*. ADA website. URL: <http://www.ada.gov/reg2.htm>. Accessed February 24, 2015.

<sup>3</sup> U.S. Supreme Court. *Olmstead v. L. C.* 527 U.S. 581 (1999). Justia website. URL: <https://supreme.justia.com/cases/federal/us/527/581/case.html>. Accessed February 24, 2015.

<sup>4</sup> U.S. DOJ. *United States v. Commonwealth of Virginia: Settlement Agreement*. ADA website. URL: [http://www.ada.gov/olmstead/documents/virginia\\_settlement.pdf](http://www.ada.gov/olmstead/documents/virginia_settlement.pdf). Accessed February 24, 2015.

## Purpose and Scope of Review

OSIG's review included examination and analysis of:

- Training Center residents' discharge outcomes.
- Enhanced Case Management activities for discharged individuals.
- DBHDS's compliance with the *Settlement Agreement*.
- Stakeholder perceptions of the Training Center closure process and community services and supports.

### *Phase I activities included:*

- Reviewing financial data pertinent to the *Settlement Agreement*.
- Examining progress reports, presentations, and other documents prepared by DBHDS relevant to compliance with the *Settlement Agreement*.
- Interviewing DBHDS's Central Offices of Human Rights and Licensing staff.
- Analysis of the Report of the Independent Reviewer on Compliance with the Settlement Agreement United States v. Commonwealth of Virginia December 08, 2014.<sup>5</sup>

### *Phase II activities included:*

- Unannounced inspections of the DBHDS-operated Training Centers in compliance with *Code § 2.2-309.1 [B](1)(2)*.
- Interviewing 5 Training Centers Directors and 24 mid-managers.
- Conducting surveys and interviews with 145 direct care staff members.
- Reviewing 60 active records and 25 discharge records.
- Observation of four treatment team meetings.
- Observation of 15 residential care units (three per Training Center).

### *Phase III activities included:*

- Interviews with 25 Case Managers from 13 CSBs.
- Interviews with 18 Authorized Representatives and/or family members of randomly selected discharged residents.

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<sup>5</sup> U.S. DOJ. *Report of the Independent Reviewer on Compliance with the Settlement Agreement United States v. Commonwealth of Virginia; United States District Court for Eastern District of Virginia; Civil Action No. 3:12 CV 059; April 7, 2014 – October 6, 2014*. U.S. DOJ website. URL: [http://www.justice.gov/crt/about/spl/documents/va-ada\\_mtrrpt\\_12-06-14.pdf](http://www.justice.gov/crt/about/spl/documents/va-ada_mtrrpt_12-06-14.pdf). Accessed February 24, 2015.

## Background

According to [CRIPA 42 U.S.C. § 1997a](#) guidelines, the United States Office of Attorney General and DOJ may conduct investigations into conditions for individuals confined in state-operated institutions and initiate any consequent litigation from the findings. Under the referenced statute, the Special Litigation Section of the DOJ investigates covered facilities to determine whether there is a pattern or practice of violations of an individual's federal rights related to reasonable safety, including freedom from unreasonable restraints; adequate medical and mental health care; individualized habilitation and education; and the state's obligation to provide treatment in the most integrated setting. Within the statute the term "institution," which applies to all Commonwealth-operated Training Centers, is defined as:

"Any facility or institution (A) which is owned, operated, or managed by, or provides services on behalf of any State or political subdivision of a State; and (B) which is for persons who are mentally ill, disabled, or retarded, or chronically ill or handicapped."<sup>6</sup>

The DOJ is committed to assuring individuals served in institutional settings are provided with the care and treatment they deserve under federal law and examines how states incorporate the *Olmstead* decision.<sup>7</sup> Since 2008 DOJ staff have reviewed where and how services are provided as a key component of their investigations, including whether services are provided in the most integrated setting possible.

The Supreme Court's *Olmstead* decision held that "unjustified [institutional] isolation . . . is properly regarded as discrimination based on disability,"<sup>8</sup> in accordance with Title II of the *Americans with Disabilities Act* (ADA). Specifically, the Supreme Court established that states are required to provide community-based services and supports for individuals with developmental disabilities when:

- The state's treatment professionals have determined that community placement is appropriate.
- The transfer is not opposed by the affected individual.
- The placement can be reasonably accommodated, taking into account the resources available to the state and the needs of others with disabilities.<sup>8</sup>

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<sup>6</sup> U.S. DOJ. 42 U.S.C. § 1997 et seq. *Civil Rights of Institutionalized Persons*. U.S. DOJ website. URL: <http://www.justice.gov/crt/about/spl/cripastat.php>. Accessed February 24, 2015.

<sup>7</sup> U.S. DOJ. Statement of Thomas E. Perez. *The Civil Rights Division of the Department of Justice*. Subcommittee on the Constitution, Civil Rights, and Civil Liberties Committee on the Judiciary United States House of Representatives. Presented December 3, 2009. U.S. DOJ website. URL: <http://judiciary.house.gov/files/hearings/pdf/Perez091203.pdf>. Accessed February 3, 2015.

<sup>8</sup> U.S. Supreme Court. *Olmstead v. L. C.* 527 U.S. 581 (1999). Justia website. URL: <https://supreme.justia.com/cases/federal/us/527/581/case.html>. Accessed February 4, 2015.

## ***DOJ Involvement in Virginia Training Centers***

Pursuant to *CRIPA*, in 2008 DOJ staff began an investigation into CVTC in Lynchburg, Virginia. The initial investigation by the DOJ found that CVTC failed to provide reasonable care and safety for its residents. The DOJ cited the following in their findings letter as evidence in support of their conclusions:<sup>9</sup>

- Inadequate behavioral and psychiatric interventions.
- Inadequate physical and nutritional management supports.
- Repeated accidents and injuries.
- Inadequate discharge and transition planning processes.
- Inadequate quality assurance processes.

The DOJ expanded its review in 2010 to focus on whether individuals at that facility were being served in the most integrated setting appropriate to their needs. After examining DBHDS's admission and discharge policies, procedures, and practices, the DOJ concluded that Virginia systemically failed to "provide services to individuals with intellectual and developmental disabilities in the most integrated setting appropriate in violation of the ADA." In lieu of legal action, the Commonwealth and the DOJ were able to negotiate a 10-year *Settlement Agreement* in 2012, resolving DOJ's findings and ensuring the Commonwealth's compliance with ADA and *Olmstead*.<sup>10</sup> Included in the *Settlement Agreement* are requirements to develop a system of integrated community services, including day activities, supported employment, Case Management services, a statewide crisis system, and a system of quality and risk oversight, among other elements.

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<sup>9</sup> U.S. DOJ. *Investigation of the Commonwealth of Virginia's Compliance with the Americans with Disabilities Act and of Central Virginia Training Center*. 2011. ADA website. URL: [http://www.ada.gov/olmstead/documents/virginia\\_findings.pdf](http://www.ada.gov/olmstead/documents/virginia_findings.pdf). Accessed February 3, 2015.

<sup>10</sup> U.S. DOJ. *United States v. Commonwealth of Virginia: Settlement Agreement*. ADA website. URL: [http://www.ada.gov/olmstead/documents/virginia\\_settlement.pdf](http://www.ada.gov/olmstead/documents/virginia_settlement.pdf). Accessed February 24, 2015.

## DOJ Settlement Agreement Update

As part of the 2012 *Settlement Agreement* between the Commonwealth and the DOJ, a federal judge appointed an Independent Reviewer to monitor Virginia's compliance with the *Settlement Agreement* conditions. The Independent Reviewer has filed five reports thus far, of which the most recent was issued on December 8, 2014, and covers the review period of April 2014 to October 2014. The Independent Reviewer's report asserts the following:<sup>11</sup>

It is the Independent Reviewer's opinion that the Commonwealth has continued to make good faith efforts to implement the requirements of the Agreement. The Commonwealth has achieved compliance with many of the required provisions. Its leaders are meeting regularly and collaborating to develop and implement plans to address other requirements. Despite staff turnover during the transition to a new administration, the Commonwealth has continued its implementation efforts.<sup>12</sup>

Among the areas of compliance noted in the Independent Reviewer's report are:

- Implementing restructured Home and Community-Based Services (HCBS) waivers.
- Hiring additional staff with targeted expertise in HCBS services and areas of cited non-compliance.
- Increasing collaboration among state agencies relevant to supported employment and housing services.

The report cites the following among areas DBHDS is not fully compliant with the *Settlement Agreement*:

- Opportunities to live in the most integrated setting.
- The transition of children from nursing facilities and large Intermediate Care Facilities to community placements.
- Crisis services for children and adolescents.
- Integrated day activities and supported employment.
- Subsidized community living options.

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<sup>11</sup> Independent Reviewer. *Report of the Independent Reviewer on Compliance with the Settlement Agreement United States v. Commonwealth of Virginia*. DBHDS website. URL: <http://www.dbhds.virginia.gov/library/document-library/dds141206%20report%20by%20the%20independent%20reviewer%20312cv059.pdf>. Accessed February 3, 2015.

<sup>12</sup> The new Commissioner was hired in March 2014. Other changes in leadership positions have also occurred, such as the appointment of a new Deputy Commissioner, Associate Commissioner for Quality Management, and the addition of a new Associate Commissioner position. There have also been changes in the Director positions for DBHDS's Offices of Licensing and Human Rights.

- An individual support planning process focused on helping individuals learn new skills in order to become more self-sufficient.
- Quality and Risk Management requirements.

### ***Finding No. 1***

While DBHDS has implemented a number of quality and risk elements required in the *Settlement Agreement*, the Independent Reviewer found that they were not in compliance with the vast majority of those requirements.

#### **RECOMMENDATION NO. 1**

It is recommended that DBHDS develop and publish a work plan specifically geared toward meeting the requirements under Section V.B-I of the *Settlement Agreement* relevant to Quality and Risk Management System. The work plan should include persons responsible for individual sections and target dates of completion.

**DBHDS Response:** DBHDS agrees with the recommendation. A work plan and time line are being developed and should be completed by 5/15/15. It includes several activities that address monitoring, reporting, and follow-up for risk, potential risk, triggers and thresholds, extensive monitoring of providers quality/risk plans, and monitoring and follow up of providers' compliance with Licensing and Human Rights Regulations. Activities are scheduled to be completed by July, 2015.

### ***Fiscal Information***

A Behavioral Health and Developmental Services Trust Fund (Fund) was established in *Code § 37.2-318*. The purpose of the Fund is to:

“... enhance and ensure for the coming years the quality of care and treatment provided to individuals receiving public mental health, developmental, and substance abuse services.”

In FY2012 the Virginia General Assembly approved \$30 million along with an additional \$30 million for FY2013 to be added to the Fund to meet the *Settlement Agreement* requirements.<sup>13</sup> Funds from the sale of state property added an additional \$300,000 to the Fund in June 2014. Approximately \$4 million was scheduled to be added to the Fund in January 2015 in accordance with *Settlement Agreement* requirements; however, \$5.4 million was removed from the Fund in the FY2015-approved budget by the Virginia General Assembly to offset DOJ cost.<sup>14</sup>

In a November 2014 presentation to the DOJ Stakeholders Workgroup, DBHDS projected that the total state and federal costs for implementing the *Settlement Agreement* would be \$2.5 billion, of which

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<sup>13</sup> Presentation to the Health and Human Resources Subcommittee and House Appropriations by the DBHDS Commissioner, February 2012; pages 11-13.

<sup>14</sup> Governor's Budget for the Virginia's Behavioral Health and Developmental Services Presentation, January 2014; page 9.

\$1.4 billion was projected from state General Funds. It was also stated that an additional \$448 million in General Fund dollars would be required beyond the projected General Funds offset and savings of \$795.4 million. This figure contained facility savings and appropriations before the 2012 establishment of the Fund.<sup>15</sup> The table below provided by DBHDS in April 2014 contains information outlining actual and projected costs associated with the implementation of the DOJ *Settlement Agreement*.

Figure 1 - Actual and Budgeted Costs of DBHDS/DOJ *Settlement Agreement* (in millions)

	<b>FY2014 Budget</b>	<b>FY2014 Actuals</b>	<b>FY2015 Budget</b>	<b>FY2016 Budget</b>
Facility Transition ID Waivers <sup>1</sup>	\$19.53	\$9.89	\$29.24	\$35.01
Community ID and DD Waivers <sup>1</sup>	\$27.64	\$16.04	\$36.63	\$46.41
Individual Family and Support	\$3.80	\$2.90	\$3.20	\$3.20
Rental Subsidies <sup>2</sup>	\$0.80	\$0.19	\$0.00	\$0.00
Crisis Stabilization <sup>3</sup>	\$12.23	\$6.80	\$12.15	\$16.25
Facility Closure Costs <sup>4</sup>	\$7.69	\$1.49	\$28.00	\$22.32
Independent Review <sup>5</sup>	\$0.33	\$0.19	\$0.33	\$0.33
DBHDS Administration <sup>6</sup>	\$1.81	\$0.76	\$1.86	\$1.89
Dept. of Medical Assistance Services (DMAS) Administration <sup>6</sup>	\$0.79	\$0.00	\$0.74	\$0.77
Quality Management <sup>6</sup>	\$0.30	\$0.01	\$0.50	\$0.50
Database Warehouse/Licensing	\$2.06	\$0.42	\$0.71	\$0.94
Discharge Monitoring	\$0.14	\$0.09	\$0.40	\$0.14
DMAS (Medicaid Management Information System)	\$0.25	\$0.00	\$0.00	\$0.00
Community Provider Training <sup>7</sup>	\$0.07	\$0.00	\$0.07	\$0.07
Supports Intensity Scale <sup>7</sup>	\$1.21	\$0.00	\$1.13	\$1.79
DD Health Supports Network	\$0.00	\$0.00	\$2.00	\$2.60
Bridge Funding	\$3.15	\$0.00	\$2.75	\$0.00
Facility Savings <sup>8</sup>	(\$19.36)	(\$11.30)	(\$44.47)	(\$59.82)
<b>Total (Including Base Funding)</b>	<b>\$62.43</b>	<b>\$27.49</b>	<b>\$75.23</b>	<b>\$72.41</b>

<sup>1</sup> State match for waiver slots for those transitioning from the Training Centers to the community and for those on the community waiting list. The match for the facility and community slots is transferred to DMAS at the end of the fiscal year. Until the transfer takes place, DBHDS populates the line items with estimated accrued expenses based on average costs generated by DMAS.

<sup>2</sup> A one-time fund to provide and administer rental assistance to increase access to independent living options such as individuals' own homes or apartments.

<sup>3</sup> Crisis stabilization programs offer a short-term alternative to institutionalization or hospitalization for individuals who need inpatient stabilization services.

<sup>4</sup> Separation costs for Training Center employees, such as severance and retention bonuses.

<sup>5</sup> Required Independent Reviewer that reports to the federal judge on DBHDS compliance with the DOJ settlement.

<sup>6</sup> Expenses at DBHDS and DMAS that include licensing and Human Rights positions for community services oversight, and quality service reviews.

<sup>7</sup> DBHDS funds a portion Community Provider Training and SIS online internally. The total amount funded internally per FY is \$120,000.

<sup>8</sup> Direct and indirect savings realized from closing Training Centers.

<sup>15</sup> Budget Update Presentation to the DOJ Stakeholders Meeting, November 2014, page 2.

DBHDS reports that total operating expenses for the Training Centers in FY2014 equaled \$224,204,442. The total funds received from all sources by the Training Centers during the same period were \$216,038,547. The funding sources for the Training Centers in FY2014 included:

Figure 2 - FY2014 Funding Sources for Training Centers

Funding Source	\$ Amount
State General Funds	30,936,493
Federal Funds	39,919
Medicaid	176,299,822
Medicare	2,103,653
Commercial Insurance	5,999
Private Payment	580,990
Other Revenue	6,071,671
<b>Total</b>	<b>216,038,547<sup>16</sup></b>

In an August 8, 2014 memorandum to the Chairmen of the Senate Finance and House Appropriations Committees, DBHDS identified the FY2015 total initial budget appropriations for the Training Centers as \$272,857,099. An itemization of appropriations by Training Center is presented below.

Figure 3 - FY2015 DBHDS Initial Budget for Individual Training Centers

Facility	Maximum Employment Level (MEL)	General Funds (\$)	Non-General Funds (\$)	TOTAL (\$)
Central Virginia	1,305	19,559,492	57,451,125	77,030,617
Northern Virginia	373	19,079,110	13,059,895	32,139,005
Southeastern Virginia	453	918,097	19,247,264	20,165,361
Southside Virginia	0	0	4,375,715	4,375,715
Southwestern Virginia	533	2,993,343	22,222,744	25,216,089
Unallocated Appropriations	0	0	113,930,312	113,930,312
<b>TOTALS</b>	<b>2,664</b>	<b>42, 550,042</b>	<b>230,307,055</b>	<b>272,857,099</b>

Information Provided by DBHDS

### Staffing Information

To assist in the full implementation of the *Settlement Agreement* initiatives, as of April 2014 DBHDS had created 38 additional Central Office positions. The positions included supervisory, programming, oversight; and support services positions, such as information technology (IT) supports. Annual total costs for each position ranges from approximately \$40,000 to \$100,000. DBHDS's Human Resources personnel reported that 12 additional Central Office hires are projected for FY2015. The additional FY15 positions will focus on community integration activities and supports.<sup>17</sup>

<sup>16</sup> DBHDS Annual Fiscal Report (FY2014), December 1, 2014, page 13.

<sup>17</sup> Information provided by DBHDS Human Resources Office on April 10, 2014.

DBHDS submitted the *FY 2014 DBHDS Annual Financial Report* to the Governor and Chairmen of the House Appropriations and Senate Finance Committees in December 2014. The report listed the developmental services staffing numbers depicted in Figure 4 below.

Figure 4 - Developmental Services CSB and Training Centers Staffing

	Direct Care Staff	Peer Support Staff	Support Staff	Total Full-Time Equivalent (FTE)
<b>Training Centers</b>	1,663.40	0	667.60	2,331.00
<b>CSBs</b>	3,509.25	40.66	397.79	3,947.70
<b>System Total</b>	<b>5,172.65</b>	<b>40.66</b>	<b>1,065.39</b>	<b>6,278.70</b>

### ***Programmatic Information***

While there are many relevant programmatic considerations, for this review OSIG staff focused on discharge planning oversight and Enhanced Case Management, which are key factors in successful transitions to integrated community living. Effective discharge planning was one of the first areas undertaken by DBHDS in order to move the system from institutional to community-based care. Planning for the closing of the Training Centers required DBHDS to identify the individual services and supports needed to safely transition residents to community settings and mitigate barriers to the process.

### **DISCHARGE PLANNING PROCESS**

Changes in the Training Centers' discharge planning processes, as required by the *Settlement Agreement*, began in July 2012. All Training Center residents are required to have an individualized discharge plan based on a person's strengths, preferences, healthcare, and other needs. One of the primary functions of individualized discharge plans is to document barriers to community integration and to aid in the development of treatment activities designed to enhance skill development for successful community living.

Individualized discharge plans are completed by the person's Personal Support Team (PST). At a minimum, the PST consists of the individual, the Authorized Representative, Training Center staff, and a CSB Case Manager. All individualized discharge plans must be developed with the informed choice of the individual. The transitional phase of the discharge planning process typically occurs over a 12-week period and includes the selection of potential residential settings, setting tours, a series of site visits, new setting staff training, and at least one final planning meeting with the proposed provider.<sup>18</sup>

Once an individual is discharged, post-move monitoring must occur to ensure the individual's health and safety during the initial and most critical transition period. Initial monitoring visits, completed by staff members from the Training Centers, occur within 3, 10, and 17 days post-discharge. Additional

<sup>18</sup> DBHDS. *Training Center—Community Services Boards: Admission and Discharge Protocols for Individuals with Intellectual Disabilities*. DBHDS website. URL: <http://www.dbhds.virginia.gov/library/document-library/ods-admission-discharge-protocol.pdf>. Accessed February 6, 2015.

monitoring visits are conducted by DBHDS's Offices of Licensing, Human Rights, and Community Supports on the following schedules:

- Office of Licensing completes a follow-up monitoring site visit within 45 days of the admission to community-based residence.
- CSB Case Manager conducts the first site visit within seven days of admission to community-based residence and conducts a face-to-face visit with the individual once every 30 days for a year.
- The Office of Human Rights completes a monitoring visit within 30 to 90 days.<sup>19</sup>

### ***Finding No. 2***

The current discharge planning process within the Training Centers is occurring in compliance with the protocols and procedures established by DBHDS.

- All of the 85 records reviewed contained well-documented discharge plans.
- Interviews with clinical and direct care staff demonstrated staff understanding of need for individualized discharge plans reflective of the strengths and needs of the persons served.
- Record reviews and observations of discharge planning meetings established that individuals and Authorized Representatives were provided multiple opportunities to actively engage in transition planning, as confirmed by all (18) of the Authorized Representatives interviewed during Phase III of the review.
- Of the 25 CSB Case Managers interviewed, 23 reported the discharge process was occurring as established through DBHDS's *Training Center—Community Services Boards: Admission and Discharge Protocols for Individuals with Intellectual Disabilities*. The two CSB Case Managers who noted challenges cited issues such as ineffective communication and the cancelation of scheduled discharge planning meetings without adequate notification.

#### **RECOMMENDATION NO. 2**

No recommendation.

### ***Finding No. 3***

The majority of the individualized discharge plans reviewed for residents in the Training Centers contained clearly defined goals designed to increase independence in preparation for community living in the most integrated setting. However, evidence that these plans were shared via consistent and detailed hand-off processes, understood by direct care staff, and implemented as written was not noted.

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<sup>19</sup> Presentation to the Health and Human Resources Subcommittee and House Appropriations by the DBHDS Commissioner, February 2012; pages 11-13.

- Forty-five of 62 records (73%) contained specific goals for supporting independent skill-building.
- Eighty percent of the direct care staff surveyed (105 of 131) believed the individuals served must have certain skills before being successfully transitioned to community-based settings.
- Interviews with 25 direct care staff revealed that 17 of the 25 (68%) could not articulate the skill-building needs of the individual served as defined in their individualized plans in order to support a successful transition to the community.

**RECOMMENDATION NO. 3**

It is recommended that DBHDS develop formal and consistent processes across Training Centers for hand-off communication that is relevant to individualized support plans and direct care staff in order that direct care staff have the necessary information needed to implement the plan.

**DBHDS Response:** DBHDS agrees with the recommendation and has proactively made changes to the discharge process to address enhancing the handoff process. The Community Integration Project Staff have implemented a formal and consistent process across Training Centers to ensure handoff communication with skill building strategies that can be utilized by the chosen provider in developing an Individual Service Plan (ISP) that is easily understandable and may be implemented by the provider direct care staff.

- a. Skill building recommendations have been added to the Discharge Plan and Discussion Record for all essential support needs.
- b. Provider management staff and direct care staff chosen by the provider agency are trained in all essential support areas utilizing the “train the trainer” model. The provider is informed that they are expected to train all direct care staff in the support needs and implementation of supports for the individual moving to the provider agency home.
- c. The provider ISP is requested for review from the CSB Support Coordinator.
- d. The Post Move Monitoring Process includes review of provider training records to ensure Direct Care Staff are trained in the essential support needs and skill building strategies.
- e. Implementation of strategies are observed during the Post Move Monitoring Process and additional training support is offered as needed and/or requested.

### ***Finding No. 4***

Improvements in the overall status of the individuals discharged from the Training Centers were noted by the CSB Case Managers and the Authorized Representatives.

- Twenty-one of 25 CSB Case Managers interviewed reported the individuals they represent transitioned well into their community settings.
- Fifteen of 18 Authorized Representatives interviewed reported individuals transitioned smoothly from the Training Centers into community settings. The Authorized Representatives attributed this to:
  - Frequency of pre-visit activities
  - Smaller, quieter settings
  - Increased individualized attention
  - Pre-transition and ongoing staff training activities
- Of the three cases with less successful transitions, the Authorized Representative reported being supported by DBHDS and CSB representatives in securing alternate placements.
- Five Authorized Representatives who reported being initially resistant to community placement voiced being pleased with the outcome of the transition.

#### **RECOMMENDATION NO. 4**

No recommendation.

### ***Finding No. 5***

Increased communication between Training Centers' medical personnel and community practitioners is needed to foster improved hand-offs between levels of care.

- Fourteen of the 25 CSB Case Managers (56%) interviewed reported that community medical providers expressed frustration regarding limited opportunities for consulting with Training Centers' medical personnel about individuals' past treatment histories.
- Five of the 18 Authorized Representatives (28%) stated that lack of communication between the Training Centers and community medical providers decreased the effectiveness of community medical care and that community health care providers then had to update and revise care plans in the absence of necessary historical information.

#### **RECOMMENDATION NO. 5**

It is recommended that DBHDS develop standardized hand-off communication expectations for all residents transitioning from Training Centers to community settings between primary care providers. It is also recommended this hand-off

communication be in written form and shared between levels of care prior to discharge to facilitate discussion and opportunities to ask questions.

**DBHDS Response:** DBHDS agrees with the recommendation and has proactively made changes to the discharge process to address enhancing the handoff process. The Community Integration Project staff have implemented a formal and consistent process across Training Centers to ensure increased communication between Training Centers' medical personnel and community practitioners.

1. A written medical discharge summary is provided to the community physician upon the individual's discharge from the training center.
2. A medical representative from the Training Center, usually the attending RN, and sometimes the physician makes phone contact with a medical representative from the community physician's office. When possible the RN will attend the first community medical appointment with the individual who is transitioning to a new home and medical provider.
3. Contact information for the Training Center Physician/s is provided to the community medical provider.
4. DBHDS will review the process for consistency and effectiveness and make changes as needed to improve the distribution and discussion of information.

### ***Finding No. 6***

Limited personnel resources, changes in leadership, and enhanced monitoring responsibilities by DBHDS's Offices of Licensing and Human Rights have created challenges in meeting the responsibilities of these offices.

- There were a number of changes in personnel in the Offices of Licensing and Human Rights, including a change in leadership for both offices during the review period.
- The changes were noted as disruptive to the monitoring activities by the majority (six of eight or 75%) of Licensure Specialists and Human Rights Advocates interviewed.
- Three of the four representatives (75%) from the Office of Licensing expressed concern that increased job responsibilities were making them less effective in assuring the health and well-being of individuals served in the community. Core responsibilities included:
  - Assisting with the initial licensing of a continuously expanding provider pool.
  - Reviewing community critical incidents.
  - Participating in extended monitoring activities.
  - Licensing renewal activities.
  - Conducting routine site visits.

- Conducting complaint investigations.
- Managing expanded data entry requirements.
- Two of the four representatives (50%) of the Office of Human Rights expressed concerns that the interests of the individuals they represent, who were not part of the DOJ process, were not being addressed as effectively as they had been in the past because the individuals transitioning from the Training Centers were viewed as taking priority.

**RECOMMENDATION NO. 6**

It is recommended that DBHDS's leadership review the functions of the offices of Human Rights and Licensing and quantify the additional work load imposed by the *Settlement Agreement*. This information should be utilized to present formal requests for funding in support of adding positions to support current service demands.

**DBHDS Response:** DBHDS has sought additional positions which have not been funded. In addition, an RFP was issued earlier this year to engage a consultant to conduct business process mapping and system re-engineering in the Office of Licensing. Responses are being reviewed and it is expected that a contract will be awarded within the next two weeks. One of the deliverables for this project is to look at operational efficiencies including recommending a new software solution that will more efficiently meet the needs of staff and incorporate the new processes that will be put into place.

### ***Enhanced Case Management***

The CSB Case Manager is the community professional that coordinates the delivery of services impacting well-being of the individual served. These services include, but are not limited to housing, physical and mental health, skills training, and employment. Through comprehensive assessments, the development of individualized discharge plans, and active monitoring, CSB Case Managers support the individuals served and their family members in the community.

In March 2013 CSB Developmental Disabilities Case Managers were required to begin performing Enhanced Case Management for individuals who met certain criteria, such as those recently discharged from a Training Center, those residing in congregate living situations of five or more, and those with behavioral and medical challenges that could present active barriers to successful community living. Enhanced Case Management includes completing a face-to-face contact with the individual served every 30 days, with a visit to the individual's home at least once every 60 days.

Revisions to the 2013 Enhanced Case Management criteria for service delivery occurred in April 2014. The revisions allowed for enhanced services provided to individuals at greatest risk. This currently includes individuals who:

- Receive services from providers having conditional or provisional licenses.

- Have more intensive behavioral or medical needs and are not considered clinically “stable.”
- Have an interruption of service greater than 30 days.
- Encounter the crisis system for a serious crisis or for multiple, less serious events/incidents during a three-month period.
- Have transitioned from a Training Center within the previous 12 months.
- Reside in congregate settings with five or more individuals and are not considered clinically “stable.”<sup>20</sup>

All other individuals are contacted by their CSB Case Manager every 30 days with face-to-face contacts occurring once every 90 days.

### ***Finding No. 7***

Recent changes in Enhanced Case Management allow CSB Case Managers to focus on at-risk individuals.

- Twenty-two of the 25 CSB Case Managers (88%) interviewed reported that concentrating their support on at-risk individuals enabled them to utilize and target resources in a more effective manner.
- Fourteen of the 25 CSB Case Managers (56%) interviewed stated that the 2014 revisions helped to emphasize the importance of normalizing the experiences of the individuals served by allowing them to “just live their lives” instead of being constantly monitored by others, particularly if they were not at risk for institutionalization. These CSB Case Managers maintained that the ultimate goal of supporting independent living and community integration best occurred when support was offered as needed, maintaining there must be a balance between monitoring an individual’s progress in completing individualized goals, while not interfering or being intrusive in the individual’s life.
- All Authorized Representatives interviewed reported the CSB Case Managers they work with were available to provide support services and help identify service options as needed.

#### **RECOMMENDATION No. 7**

No recommendation.

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<sup>20</sup> DBHDS. *Virginia Department of Behavioral Health and Developmental Services Enhanced Case Management Criteria Instructions and Guidance*. April 2014. DBHDS website. URL: <http://www.dbhds.virginia.gov/library/document-library/doj%20vi%20enhanced%20cm%20guidance%20-%20criteria.pdf>. Accessed February 10, 2015.

## Update on Training Center Closures

Southside Virginia Training Center (SVTC) in Petersburg closed in June 2014. According to information provided by DBHDS in July 2014, “Only five of the 408 individuals who moved from training centers returned to another training center and one of those has already been discharged to the community. Only 10 of the 408 changed to another provider within the first year of discharge indicating a very high rate of success in matching individuals to new living situations and providers of services.”<sup>21</sup>

Currently there are plans to close three additional facilities by 2020. Northern Virginia Training Center (NVTC), originally scheduled to close by March 30, 2015, is now scheduled to close by June 30, 2016. The decision to extend the date occurred after careful examination of available community resources and discussions between DBHDS leadership and multiple stakeholder groups.<sup>22</sup> The two remaining facilities scheduled for closure, Southwestern Virginia Training Center (SWVTC) in Hillsville and Central Virginia Training Center (CVTC) in Lynchburg, have closure dates of June 30, 2018 and June 30, 2020, respectively.

While DBHDS remains committed to moving the Commonwealth towards its goal of a fully-integrated community-based system of services and supports for individuals with intellectual and developmental disabilities, they determined that long-term sustainable actions required increased planning and an intentional focus on developing a more comprehensive array of community options, not only in the Northern Virginia region, but also statewide.

Southeastern Virginia Training Center (SEVTC) in Chesapeake is the only Training Center that will remain open indefinitely. In 2012 SEVTC opened 15 new homes that support five individuals each. The expansion of community-based services in the region has allowed SEVTC’s overall census to go from 200 beds to the current 75-bed capacity. It is anticipated that SEVTC’s mission will change to address the short-term services needs of individuals who have significant medical and/or behavioral challenges. During the course of this review, the Training Centers’ total census decreased from 650 in late April 2014 to 564 on December 8, 2014.<sup>23</sup>

### **Parent Concerns**

Interviews were conducted with the Parent Association Chairperson for the four remaining facilities, and consistent concerns were expressed across the Chairpersons. Among these were issues concerning:

- The closure of the Training Centers prior to a reevaluation of community capacity and development of adequate community services and supports.

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<sup>21</sup> DOJ Implementation Update, Item 315 V.I. of the 2011 Appropriations Act, DBHDS, July 25, 2014

<sup>22</sup> DBHDS Commissioner Monthly Communiqué. *Extension of NVTC Closure Date, June 2014*. July 3, 2014.

<sup>23</sup> DBHDS Commissioner Monthly Communiqué. *Training Center Census Data, December 2014*. December 11, 2014.

- The possibility of not having enough community resources to accommodate existing individuals in the community while safely and adequately absorbing additional individuals transitioning from Training Centers over the next several years. Chairpersons cited the existing Home and Community Based Waiver waitlist as evidence for these concerns.
- The possibility that with only one Training Center slated to remain open, there would not be adequate capacity for meeting the needs of those who chose to remain in institutional care or would choose an institutional level of care in the future due to changing health and safety needs.
- The ability of Home and Community Based Waiver funding to adequately address the complex needs of individuals served, particularly as individuals aged.
- The community's ability to provide and sustain services for individuals with severe behavioral challenges and/or complex medical needs and whether the community was ill-prepared to sustain services adequately.

While the Chairpersons were encouraged by the delay in closing NVTC, they unanimously expressed disappointment with the degree of communication that occurred with DBHDS's leadership. Those interviewed expressed frustration that their concerns were not being taken seriously and that they had at times felt "manipulated and lied to by DBHDS officials." As cited examples, the Chairpersons reported DBHDS's leadership has not met with Parent Association members as frequently as originally proposed, and DBHDS's original promises that their family member served would have the right to choose to remain at NVTC, while simultaneously planning its closure.

Three of the four Chairpersons interviewed cited delays in compliance with the conditions contained in the *Settlement Agreement* as further evidence that sufficient progress had not been made by DBHDS to assure long-term services and supports in the community. One representative pointed out that the DOJ took action against NVTC in the 1990s, and, despite the considerable changes that occurred, Virginia did little to assure the changes were sustained. Those interviewed maintained that DBHDS's leadership allowed for considerable "drifting" at NVTC from the requirements of the previous DOJ *Settlement Agreement* because of shifts in resources and a lack of commitment by leaders to sustain the gains made over time. The person interviewed stated, "If DBHDS and Virginia could not maintain its commitment to the previous DOJ requirements, what guarantees do we have that promises being made now will be kept?"

## **SB 627**

During the 2014 General Assembly Session, the legislature enacted SB 627 that required DBHDS, in part, to: "convene a work group of interested stakeholders, which shall include members of the General Assembly, to consider options to expand the number of Training Centers that remain open, in whole or in part, in the Commonwealth."<sup>24</sup> In a presentation to the Joint Commission on Health

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<sup>24</sup> Virginia's Legislative Information System (LIS). *Virginia Acts of Assembly – 2014 Session: Chapter 639*. LIS website. URL: <http://lis.virginia.gov/cgi-bin/legp604.exe?141+ful+CHAP0639>. Accessed February 10, 2015.

on November 5, 2014, DBHDS's Commissioner presented six options that are under consideration.<sup>25</sup>

### **Finding No. 8**

There continues to be opposition to DBHDS's plan to close all but one Training Center by 2020.

- Parents Association Chairpersons unanimously voiced a number of concerns about the Commonwealth's plan to close three more Training Centers.
- Five of the 25 CSB Case Managers (20%) interviewed reported a belief that not everyone currently in the Training Centers was suited for community placement, citing limited regional resources for addressing significant medical and behavioral challenges on a long-term basis.
- Two CSB Case Managers (8%) cited examples concerning individuals who had to return to the Training Centers because community providers did not have the staff or expertise to address the individuals' needs safely and effectively in the community.
- Four of the 25 CSB Case Managers (16%) interviewed reported that the time allowed for closing the Training Centers was not adequate for ensuring the necessary community infrastructure was in place and for measuring the effectiveness of the services and supports being provided.
- Three of the 18 Authorized Representatives (17%) interviewed expressed concerns about the closing of the Training Centers. Even though they reported being pleased with the current situation, they expressed concern that there would not be any "safety net" options if an individual's condition deteriorated, and he or she would come to need a higher level of care in the future.

#### **RECOMMENDATION NO. 8**

It is recommended that DBHDS regularly schedule meetings with members of the Parent Associations for the Training Centers to actively address concerns regarding the plans to close three additional Training Centers.

**DBHDS Response:** DBHDS agrees, in part, with the recommendation of scheduling meetings with parents and authorized representatives. However, DBHDS has learned that not all families and authorized representative are members of these organizations and therefore have engaged in outreach to the broader Training Center community. In addition, DBHDS has participated in and scheduled additional meetings with members of the Parent Associations and other family members to actively address concerns regarding the plans to close the Training Centers. The

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<sup>25</sup> DBHDS. *Senate Bill 627 Workgroup: Development of Options*. Presentation by Commissioner Debra Ferguson. November 2014. DBHDS website. URL: [http://www.dbhds.virginia.gov/library/document-library/dds\\_%20sb%20627%20sa%20presentation%20-%20november.pdf](http://www.dbhds.virginia.gov/library/document-library/dds_%20sb%20627%20sa%20presentation%20-%20november.pdf). Accessed February 10, 2015.

department will plan scheduled meetings to discuss plans to close the additional Training Centers.

- a. Community Integration Managers (CIM's) will schedule regular Quarterly meetings with families and DBHDS staff.
- b. CIM's will continue individualized weekly meetings with families that include, participation of families / ARs with Personal Support Teams in Annual ISP reviews, discharge planning, and pre-move meetings.
- c. Facility Directors and CIM's attend the meetings scheduled by the family associations as invited.
- d. CIM's have hosted provider "meet and greets" with the families at CVTC, NVTC, and SWVTC this year and will continue offering these opportunities.
- e. The Commissioner of DBHDS attends meetings as invited by the family associations. She has attended three such meetings thus far, has scheduled a meeting to occur at NVTC on June 8<sup>th</sup>, and is planning a similar meeting at CVTC.
- f. Families call and come by regularly to ask questions and gather information related to the closures. The Commissioner, Facility Directors, and Community Integration Managers will continue to take every opportunity, planned and impromptu, to meet with and address concerns from families.

### ***Finding No. 9***

Adequate community capacity to address Training Center residents' service and support needs was identified as the biggest barrier to discharge planning by review participants.

- Chairpersons from the Parent Associations voiced their primary concern as the development and sustainability of adequate community capacity to address ongoing and potentially increasing service and support needs of current and future individuals receiving intellectual and developmental disabilities services.
- All of the Training Centers Directors interviewed identified adequate community capacity as the biggest challenge to closure of the Training Centers.
- The majority of mid-managers interviewed (16 of 24 or 67%) reported challenges in providing adequate pre-move training for staff in new provider organizations as a significant barrier to successful community placement.
- Overall, mid-managers reported that direct care staff were overwhelmed with simultaneously providing skill development and other forms of habilitation training, supervising resident safety, and supporting discharge efforts in community settings. The mid-managers viewed this as a barrier to effective discharge planning, particularly as all of these direct care staff requirements were occurring in a constantly changing staff environment.

### **RECOMMENDATION No. 9**

It is recommended that DBHDS assess current community capabilities, identify current and future capacity needs and create specific and public plans to fortify or create services.

**DBHDS Response:** DBHDS agrees with this recommendation and has proactively acted to fortify and create services. DBHDS has and continues to assess current community capabilities and capacity needs and is in the process of working with existing providers operating in Virginia as well as out of state providers to build and increase capacity specifically in Southwest, Northern, and Central Virginia.

- a. A provider forum was held in March 2015 for SWVTC. Approximately 10 providers have moved forward with expansion or development of services in the south west region as a result.
- b. Bi-Monthly meetings are scheduled with providers who are in active process of expansion and development of services in the south west region.
- c. A provider forum will be held on May 19<sup>th</sup> at CVTC to discuss best practices and identify providers who are interested in assisting individuals with complex medical needs.
- d. Additional forums will be scheduled to identify providers for the central Virginia area with expertise in behavioral support and other support areas as needed.
- e. Regular meetings will be scheduled with providers interested in expansion and or development in the Central Virginia Region after the May 19<sup>th</sup> forum.
- f. A provider development forum and provider fair has been scheduled for NVTC on June 8<sup>th</sup> with plans to add additional forums.
- g. Weekly individual meetings have been scheduled with providers who are in active process of expansion and development in the northern Virginia area.
- h. DBHDS provides 'as needed' informational opportunities to parents.

## Appendix I—Reference Resources

- Civil Rights Division CRIPA Statutes:  
<http://www.justice.gov/crt/about/spl/cripastat.php>
- Statement of Thomas E. Perez, Assistant Attorney General, Department of Justice / The Subcommittee on the Constitution, Civil Rights, and Civil Liberties Committee on the Judiciary; United States House of Representatives entitled “The Civil Rights Division of the Department of Justice” presented December 3, 2009,  
<http://judiciary.house.gov/files/hearings/pdf/Perez091203.pdf>
- *Olmstead v. L.C.*, 527 U.S. 581, 597, 600 (1999): Supreme Court Justices’ Ruling, <https://supreme.justia.com/cases/federal/us/527/581/case.html>
- Department of Justice’s Civil Rights Division, Letter of Findings to Governor Robert McDonnell, February 10, 2011, Investigation of the Commonwealth of Virginia’s compliance with the Americans with Disabilities Act and of the Central Virginia Training Center,  
[http://www.ada.gov/olmstead/documents/virginia\\_findings.pdf](http://www.ada.gov/olmstead/documents/virginia_findings.pdf)
- Settlement Agreement – U.S. DOJ vs. Commonwealth of Virginia 2012  
<http://www.dbhds.virginia.gov/library/document-library/dds-doj-fullsettlementagreement.pdf>
- Nondiscrimination on the Basis of Disability in State and Local Government Services; Americans with Disabilities Act, Title II;  
[http://www.ada.gov/regs2010/titleII\\_2010/titleII\\_2010\\_regulations.htm](http://www.ada.gov/regs2010/titleII_2010/titleII_2010_regulations.htm)
- Report of the Independent Reviewer – Compliance with the Settlement Agreement United States vs. Commonwealth of Virginia, April-October 2014;  
<http://www.dbhds.virginia.gov/library/document-library/dds141206%20report%20by%20the%20indendent%20reviewer%20312cv059.pdf>
- Presentation to the Health and Human Resources Subcommittee and House Appropriations by the DBHDS Commissioner, February 2012;  
[http://hac.virginia.gov/subcommittee/health\\_human\\_resources/files/02-06-12/DBHDS.pdf](http://hac.virginia.gov/subcommittee/health_human_resources/files/02-06-12/DBHDS.pdf)

- Presentation to the Health and Human Resources Subcommittee and House Appropriations by the DBHDS Commissioner, January 2014;  
[http://sfc.virginia.gov/pdf/health/2014/010614\\_No1\\_Stewart.pdf](http://sfc.virginia.gov/pdf/health/2014/010614_No1_Stewart.pdf)
  
- DBHDS Budget Update to the DOJ Stakeholder’s Group, November 2014;  
[http://www.dbhds.virginia.gov/library/document-library/dds\\_finance%20stakeholder%20-%20november%20fy15b.pdf](http://www.dbhds.virginia.gov/library/document-library/dds_finance%20stakeholder%20-%20november%20fy15b.pdf)