

***Transformation Coming to a Facility
Near You: Privatization, Contracting
with Independent Management,
Closure of Facilities***

Considerations in a Post-State-Run Facility Era

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Topics For Legal Counsel Consideration

Background For Transformation (State History & Future Vision)

Federal Statues/Regs/Certification-Accreditation

State Statutes/Regs

Employment Cases/Labor Relations

State/Local/Consumer-Family Opposition

Tort Cases

Contracting Process

Background—The Post *Wyatt* Era

- 2000 *Wyatt* Settlement Agreement = Close 300 extended care beds each from the MI and ID Facility Systems
- Resulting Downsizing = Closure of 1 x MI hospital, 2xMI Nursing Homes, and 3 x ICFsMR
- Commensurate Funding Transfer to In-Home and Community-Based Services (ACT & I.H. Spt. Tms, DETA results, LAH Waiver)
- BUT!—Acute Care Crisis Occurred Concurrently

Federal Statutes/Regs/Certification- Accreditation

- Olmstead/ADA Concerns (OCR/DOJ)
- CRIPA
- P&A Concerns
- Waiting Lists
- CMS/JCAHO/Other Accrediting Agencies
- Community Program Certification
- OBRA/Dementia Education

Needed State Statute/Reg/Practice Changes

- Civil Commitment (Probate Courts)
- Juvenile Code (Juvenile Courts)
- Criminal Code/Rules (NGRI/Evals) (Criminal Courts)
- State Application of IMD Exclusion and/or DSH Payments
- Specialty Populations (Deaf Svc's, Immigrants)

Employment Cases/Labor Relations

- Lack of Promotions (EEOC)
- Directed Transfers/Layoffs (Merit System Agency (& Exempt Policy), Employee Assn's/Unions)
- USERRA (Labor VETS/DOJ)
- Resulting Adverse Actions (Sexual Harassment/Hostile Work Environment)
- Recruitment & Retention (Malpractice Coverage, etc.)

State/Local Gov't & Consumer/Family Opposition

- City/County Revenue Loss
- NIMBY problems w/Community Expansion
- Administrative Law/Procedural Challenges
- Combat with Broader Consumer/Advocacy Partnerships (including P & A's & U.S.)

Tort Litigation

- Personal Injury/Wrongful Death
- Negligent Supervision
- Agency/Negligent Certification (Increases with Community Expansion)

Contracting Processes

- Requests for Proposals & Bidding
- Financing for & Issues for Construction & Maintenance for Remaining (Old) Buildings
- Financing for Construction & Development of Community Programs (Bond Issues? Long-Term Leases? Transfers of State Property to Community Service Providers?)

Questions/Discussion

