Summary of Reasons for Reforms of NH's Mental Health System and *Olmstead* Class Action Suit

Introduction

The suit seeks to require the state to re-build its community mental health system and adopt contemporary values and practices which have been severely compromised during the years of decline. Below are some of the critical reasons for this initiative.

First and foremost, the community based services sought in the suit will mean thousands of institutionalized persons and those at risk of institutionalization/re-institutionalization will be able to return or remain in the community and lead healthy and more fulfilling, productive lives.

- New Hampshire was once ranked as a leader in the provision of community services to individuals with mental illness both by NAMI-US and National Institute of Mental Health. **In the early 1990's, NAMI ranked New Hampshire as the leading state in the country in the development of a community based mental health system with an "A" grade.** By 2006, that ranking fell to near the bottom nationally with a grade of "D" due to the state's waning commitment. The downward spiral has only increased since 2006 with continuing and worsening consequences.

- **The repeated or prolonged institutionalization individuals experience is not only unnecessary, but harmful and, ironically, more costly, than community based care**. Like the six named plaintiffs in the case, the thousands of persons who are the victims of this continuing crisis are being robbed of more rewarding, happy and productive lives as well as the coping and community living skills they need to function in society. For most, the lack of services has resulted in hopeless poverty, homelessness, inappropriate incarceration, self–neglect, and for some even suicide.

- **Similarly the impacts of this broken system are seen in the untold stress it is putting on families, local law enforcement, hospital emergency rooms, the court system, and county jails.**

- **The stories of the six named plaintiffs in the suit reflect many of these tragedies:**

  - Mandy, age 22, whose 20 psychiatric hospitalizations at NHH over the past 10 years robbed her of the normal educational and social experiences of adolescence.
  - Ken, a 65-year old gentleman with mental illness, who is also a wheelchair user. He went to Glencliff as a 'temporary residence' in 2005 because no community residential options were available. Yet, he remains stuck at Glencliff seven years later despite his strong desire to return to the community and, among many other things, race in the Boston Marathon, which he did once before.
  - Amanda is a 30-year-old Manchester woman who lost custody of her daughter while she cycled in and out of NHH.
  - Sharon is a 55-year-old woman from Dover who has spent much of the last five years at NHH and Glencliff, where she is so isolated that she rarely sees her mother, children, grandchildren, or siblings.
  - Jeffrey is a 45-year-old Rochester man whose wife was forced to sell their home while he languished at NHH.

- **The numbers sadly show the scope of the problem--**

New Hampshire Hospital

- 10,000 of the roughly 47,000 clients the community mental health centers serve have serious mental illness. Many of them are committed to New Hampshire Hospital (NHH) for prolonged periods of time, sometimes years, or repeatedly cycling in and out of the hospital.

- There were over 1,800 adult admissions to NHH in 2010, nearly 800 of which were readmissions of individuals who had been at NHH within the previous 180 days. More than 17% of adults discharged from NHH in 2010 were readmitted within 30 days. The admission/readmission rate to the State Hospital is higher than the national average and well over twice the number of NHH admissions 20 years ago.

  --While data shows that many of the persons are on a vicious cycle of constant readmissions, 16% are institutionalized for over a year and many much longer.

- At any given time, approximately 125 adults are confined at NHH and 120 adults are at Glencliff. Most of them could be served, and would prefer to be served, in their own community. Hundreds, if not thousands, of individuals risk institutionalization at NHH because they lack access to needed community services, as evidenced by the large number of needless, and often repeated, hospitalizations.

- For most of these individuals, NHH provides little more than custodial care. They suffer a loss of autonomy and choice, have no contact with their non-disabled peers, except for paid staff, and lack privacy in their living and sleeping arrangements. Their most basic rights are curtailed.

- The daily cost at NHH of over $1000, or $400,000 per year, is nearly 10 times the average cost of community based care.

Glencliff

- At Glencliff, prolonged institutionalization is the rule. Individuals at this institution not only experience many of the same deprivations and rights restrictions as residents at NHH, but also are far from family and friends because of the facility's remote location in northern New Hampshire.

  --Few individuals ever return to the community from Glencliff. Between 2005 and 2010, there were only 13 discharges from Glencliff, and 11 of them were to NHH or other facilities; only two people returned to their homes. In recent years, more people have died at Glencliff than have returned to the community.

  --And now, even younger people are being placed in this remote nursing facility. In 2010, 28% percent of the individuals at Glencliff, like one of the named plaintiffs, were in their 40s or 50s.

- The cost at Glencliff is approximately $124,000 per year.

➢ **As all acknowledge, the rise in admission and stays in these facilities can be traced directly to the reduction in community services.**

- New Hampshire reduced by over 600% its regional or local short term, acute care hospitalization capability which had been designed to prevent needless and more remote or long term hospitalization. There are only 24 regional or local acute or residential treatment beds, down from 153 beds[1], with no corresponding increase in community supports.

- There is also a shortage of residential services for individuals with mental illness. Presently, the waiting time for Section 8 housing is more than five years. Simultaneously, the state has been decreasing supportive housing options.

- Other supports such as therapeutic community service teams, known as ACT teams, and the number of case managers, all vital in preventing institutionalization, incarceration, homelessness, and suicide, have been reduced. At the same time there has been a failure to implement or keep pace with accepted or emerging best practices, such as supported employment.

➢ **The human and financial costs of this crisis to other public and private entities is enormous.**

Increased Incarceration of Persons with Mental Illness in Jails and Prisons

- Nationally, over half of prisoners in jails and prisons are mentally ill, according to a 2006 study, a fourfold increase from the previous 8 years. "The severity of these illnesses vary, but … one factor remains steady: with proper treatment, many of these incarcerations could have been avoided. Additionally, about 35 percent of incarcerated men and 50 to 60 percent of incarcerated women may have mental health issues that remain untreated."[2]

- Not surprisingly suicides have become the top leading cause of death in jails and in the top five in prisons.[3]

- In New Hampshire, a 2008 study found that 25% of inmates in jails were on psychotropic medication and were mentally ill, with Strafford County the highest at 41% and Hillsborough County the lowest at 17%.[4] The prevalence of moderate and severe mental illness was likely much higher given that the study only looked at persons on psychotropics.

- Summarizing the toll that this takes, the Rockingham County Jail Superintendent said:

---

[1] The 24 beds that exist now consist of 8 Designated Receiving Facilities (DRFs) and 16 Local Acute Psychiatric Residential Treatment Programs (APRTPs). Those numbers had been 101 and 52 beds respectively (for 153).

[2] The report, "Mental Health Problems of Prison and Jail Inmates" (NCJ-213600) was written by BJS statisticians Doris J. James and Lauren E. Glaze. Following publication, the report can be found at: http://bjs.ojp.usdoj.gov/index.cfm?ty=pbdetail&iid=789. See also attached.

[3] **U.S. Department of Justice** Office of Justice Programs*Bureau of Justice Statistics* Bureau of Justice Statistics · **Statistical Tables**
BJS December 2012, NCJ 239911**Mortality in Local Jails and State Prisons, 2000-2010 - Statistical**

[4] http://rockefeller.dartmouth.edu/library/Mental_Health.pdf, Appendix A.

More severely mentally ill inmates at Rockingham mean more disruptions for the 83 corrections officers, more stress for other inmates and hard times for those who are suffering, said Superintendent Al Wright, who sometimes feels like he's running a psychiatric ward. 'I tell people I'm the superintendent of Rockingham County jail, the biggest provider of services for the mentally ill in the county…'[5]

Suicide Rate in General Population Rising in NH

- 90% of people who commit suicide have mental illness.

- From 2007 to 2011, NH suicide rate increased by over 30% according to NH Medical Examiner to 15.2 per 100,000. [6]

- From 2005-2009 suicide among those aged 15-24 was the second leading cause of death for NH compared to the third leading cause nationally. For individuals age 25-34, it was the second leading cause of death both in NH and nationally.

- Nationally, suicide attempts treated in emergency departments and hospitals represented an estimated $2.2 billion in health care costs in 2005. In NH, suicide deaths where the individual received treatment in a hospital or emergency department and subsequently died resulted in an estimated $379,000 in medical expenses in 2005.[7]

Persons in Mental Health Crises Filling up NH's Emergency Rooms

While there is no official aggregated data showing the alarming increase in use of emergency rooms by persons in crisis, these very recent reports graphically demonstrates the problem.

- December 2012 Union Leader Article, "Mentally Ill Filling up NH's Emergency Rooms"--

    - found that on one mid December 2012 day, 30 individuals in a mental health crisis were boarded in emergency rooms statewide on a waitlist for treatment.

    - 12 of the 27 emergency room beds at Elliot Hospital were occupied by psychiatric patients, stranding other patients in the waiting room who were complaining of chest and stomach pain, head injuries and broken bones…,"

    - One of the admissions, was a 20 year old suicidal young man whose mother described the experience as "pure torture" for her son, reporting that she and her husband stayed with him for three days in an 8-by-10-foot room, lined by three walls and a privacy curtain. Her son was allowed out only to go to the bathroom…"

- A January 8, 2013 AP story revealed--

[5] June 3, 2007, "Locking up mentally ill taxes county jail" EagleTribune
[6] New Hampshire's 2011 Suicide Prevention Annual Report. P. 22
[7] New Hampshire's 2011 Suicide Prevention Annual Report. pp. 46-47

- that 31 people in a mental health crisis around the state were in emergency rooms waiting days and even a week for treatment.

- In referencing these and related statistics, the article quoted Dr. Jeffrey Fetter, president of the New Hampshire Psychiatric Society, as stating: "that days spent idle in an emergency room represent wasted opportunities to prevent suicide, assault and suffering. Someone in the midst of a psychiatric crisis needs to be surrounded by safety, not chaos... We've all been there -- flashing lights, alarms, staff rushing urgently to stabilize a crash victim. These rooms were designed for patients suffering from heart attacks, not hallucinations."

- By February 4, 2012, the number of people boarded in ERs awaiting appropriate psychiatric care had increased to 44 statewide as reported 2/10/13 by the Concord Monitor and in Seacoast online in an article entitled, "Scorecard with no winners: 44 wait for mental health care" --

  - According to Jay Couture, president of the New Hampshire Community Behavioral Health Association and executive director of Seacoast Mental Health Center in Portsmouth who reported the data and authored the piece:

    *"Despite the fact that NHH recently converted four visitation rooms to patient rooms to increase capacity by up to eight beds, our community-based mental health system of care has been eroded so much over the years that we simply cannot keep up.*** It costs far more to get to the point where people in a psychiatric crisis require the acute services of an emergency department and an inpatient bed than it does to provide adequate funding for community-based mental health services. It goes without saying that services provided in a timely manner in the least restrictive environment have the double benefit of being more clinically effective and less costly."*

- See also a February 2013 Foundation for Healthy Communities, HELP Report:[8] "People Seeking Mental Health Care in New Hampshire, which contains additional statistical and anecdotal information about individuals awaiting treatment in emergency rooms and the effects of this development. Here is one such anecdotal account:

  "A middle-age man diagnosed with schizophrenia and bi-polar disease came to our ED. He required an involuntary emergency admission to the state hospital. With no room available for three days, he was required to stay in the Emergency Department. Known to be violent—and became more so punching the walls in his room— the patient was sequestered in a room with no window, a stretcher for a bed, and access to only books and magazines for recreation. A 24-hour police detail (costing $5,184) was required for his security, as well as for the safety of staff and other patients. Additionally, to use the bathroom or shower, he had to be escorted. The very nature of a busy Emergency Department was unsettling to the patient, leading to his violent outbursts which caused further turmoil for staff and other patients. His occupation did cause delays in treating other patients." p.5.

[8] http://mediad.publicbroadcasting.net/p/nhpr/files/201302/Foundation%202013%20Report.pdf

Triggered by the very recent July 8, 2013 incident where an individual, after waiting more than three days for mental health treatment in the Elliot Hospital Emergency room, assaulted a staff person, two medical community leaders expressed these sentiments.

> "*I don't think anybody would tolerate this if it were cancer or heart disease**** *I mean, nobody would think, 'Just wait here for a few days, and we'll find a cardiologist and a place to send you' "* Sean LaFrance, NH Hospital Assoc. Director, WMUR July 10, 2013 source.

> *"Most people suffering from a mental illness aren't predisposed to violence, but there are concerns when manic, suicidal or homicidal patients turn up at emergency rooms in increasing numbers. And the longer that those people stay and not get the treatment they need, the more likely that that type of person would potentially become more violent*," Dr. Travis Harker, NH Medical Society President, WMUR July 10, 2013 source.

➢ **What about the costs of adding more services in the community**? As noted earlier, the cost of institutional care is approximately 10 times as much per person than the cost of effective community care. This case seeks to redirect services from institutions to the community.

- People ask where the money will come from for enhanced community based services. We are paying for it now – in institutional costs, jails, and hospitals. Saving in costs in these areas can be achieved with more effective and long lasting community based treatment. Promoting and sustaining healthy lives results in huge cost savings for individuals, families, organizations and society.

- More effective services, including supported employment, will not only restore human dignity and self worth, but will also make individuals more economically self-sufficient.

➢ **While state officials have clearly acknowledged the problem and its effects, they have displayed a lack of will to comprehensively address it.**

- As indicated, NH was a national leader in community mental health services 20 years ago until they began reneging and backsliding on their commitments for effective community based services.

- As the erosion began to reach crisis proportions, the State did acknowledge the problem and its effects. For example, NH DHHS in releasing its Ten-Year mental health plan in 2008, stated

> *"many individuals are admitted to New Hampshire Hospital because they have not been able to access sufficient [community] services in a timely manner … and remain there, unable to be discharged, because of a lack of viable community based alternatives …*
>
> *"NH's mental health care system is failing and the consequence of these failures is being realized across the community. The impacts of the broken system are seen in the stress it is putting on local law enforcement, hospital emergency rooms, the*

court system and county jails, and, most importantly, in the harm under-treated mental health conditions cause NH citizens and their families."

- While the state has identified and acknowledged the problem, they have done little to correct it. In fact, since the 2008 plan, the crisis has only deepened, prompting not only DRC to consider and then file suit, but the Unites States Department of Justice to initiate an investigation and ultimately join the suit based on their conclusion that:

  NH fails to provide services to qualified individuals with mental illness in the most integrated setting appropriate to their needs, in violation of the ADA. This has led to the needless and prolonged institutionalization of individuals with disabilities who could be serviced in more integrated settings it the community with adequate services and supports. Systemic failures in the State's system place qualified individuals with disabilities at risk of unnecessary institutionalization now and going forward.

  In spite of a challenging fiscal environment, the State has continued to fund costly institutional care of NHH and Glencliff, even though less expensive and more therapeutic alternatives could be developed in community settings.

- And the evidence continues to mount in support of the need for a comprehensive shift to community services. Most recently, national experts found in January 2013, based on sampling of almost 50 persons at NHH and Glencliff, that almost all of those residents could have avoided institutionalization and could be out now if appropriate community services were in place. Here is an excerpt from a Concord Monitor article reporting the findings.

  *Of 25 state hospital patients recently studied by mental health experts, all but one or two could have avoided 30-day hospital stays if there had been adequate crisis counseling and housing in their communities, according t o new filings in a federal lawsuit against t he state. The experts drew a similar conclusion about 20 patients they studied at the state's Glencliff Home….. '**Rather than the modern system . . . I saw a mental health system that was consistently broken, failing (patients) in a similar way regardless of their individual needs or conditions,"** wrote Susan Curran, a Virginia-based expert in community mental health care. "I saw a system reliant on institutionalization, utilizing treatment models and approaches I hadn't encountered in 20 years.*[9] (Emphasis added.)

A <u>second</u> overarching reason why this legal action is needed is that it presents the only opportunity to put in place an <u>enduring</u> remedy to the problem and the effects to individuals, families and society.

- There has been a wide consensus about the nature and scope of the problem and the reforms needed, including by the State who, as indicated, have acknowledged the need to address it. **At the same time, the state has demonstrated a pervasive lack of will to comprehensively remedy the problem.** The adage "actions speak louder than words" certainly applies as the system only continues to worsen.

[9] http://www.concordmonitor.com/home/4143286-95/state-mental-community-health

- **This is hardly the first time a problem has required resort to the judicial branch of government to address unacceptable conditions and wholesale violations of rights**. It seems for disadvantaged groups in our state class action litigation is the only way systemic violations of rights are remedied**. Legal actions have been needed in the past 40 years to correct:**

  - egregious conditions and segregation of persons with developmental disabilities at the Laconia State School in a suit seeking community services in a suit remarkably similar to this one.
  - cruel and unusual conditions to which male prisoners were subjected.
  - poor children for whom the state would not provide coverage for dental care.
  - abused and neglected children who were getting subpar care from DCYF,
  - female prisoners who were being denied equal treatment,
  - children with disabilities found in need of services, adjudicated delinquent, or found abused or neglected being denied an appropriate education
  - and children in poorer communities receiving an inferior education because of where they lived.

- **In fact the improvements in the community mental health system that led to NH's national leadership ranking in the early 1990's was prompted in significant part by the prospect of a class action suit if the state did not make the improvements**. The state had just been ordered to develop community services for person with developmental disabilities as a result of the Laconia State School suit. This threat of another suit against the mental health system for lack of community services and the need for the state to act to head it off was well documented in the 1982 Nardi-Wheelock Report. That report, which had been commissioned by Governor Gallen, called for and set out the blue print for the massive reform of the mental health system which then followed. As noted in the report:

  *In a letter dated July 15, 1982, addressed jointly to [State Health and Welfare Heads], New Hampshire Legal Assistance, which represents numerous clients at New Hampshire Hospital, addressed the possibility of a lawsuit against the state if serious deficiencies at the state hospital were not immediately remedied. * * **

  As a result of a press conference, where the Attorney General requested that no suit be filed, but urged advocates of patients at New Hampshire Hospital including new Hampshire Legal Assistance "to work with state officials in order to remedy serious deficiencies at the institution, "New Hampshire Legal Assistance agreed to postpone the filing of a lawsuit against the State of New Hampshire, conditioned upon assurances being given "that responsible state officials will work with us in developing an overall plan for addressing the needs of patients at the institution, and that funding for such a plan will be actively pursued by all parties involved during the 1983 legislative session."

- **Sadly, as it did over 30 years ago and as has been the case with so many other individuals who are poor or who have a disability, a legal action is once again necessary.**

A third reason this suit is necessary is because what has occurred to this group of citizens is not only tragic but illegal, an obvious prerequisite for the filing of the suit. The rights that have been violated are fundamental. As a society we have come to recognize that persons cannot be treated

differently, segregated, isolated, or stigmatized merely because they have mental illness or serious mental illness. This is exactly what has occurred here and in the process hindered people's ability to rejoin their families, communities, and greater society.

- We would never think of locking up a person with a physical illness for "treatment" for days let alone years if they could be treated in the community. Nor if we did hospitalize someone, would we discharge them without the assurance of quality aftercare. However that is exactly what we are doing for the vast majority of people who end up at the NHH or Glencliff.

- The 1991 Americans with Disabilities Act, the civil rights act for individuals with disabilities, makes what NH had done illegal. The Supreme Court in the 1999 *Olmstead* case ruled that unnecessary institutionalization of individuals with mental illness is discrimination and that treatment and services must be provided to individuals with mental disabilities in the least restrictive setting.

- Based on *Olmstead* and the ADA, law suits around the country have caused states to eliminate unnecessary institutionalization and segregation of individuals with mental illness enabling individuals to live enhanced lives in the community with appropriate supports. As noted, in our own state, and based on many of the same legal and professional principles, the Laconia State School or *Garrity v. Gallen law suit*, resulted in the development of a greatly enhanced community based system for individuals with developmental disabilities.

Fourth, the plaintiffs seek the type of remedies designed to address the problem. This case seeks to compel the State to develop an array of clinically effective community mental health services that have been proven to help persons with serious mental illness recover and become productive citizens again. **These services have been heralded by national professional associations and designated as best-practices by the federal mental health agency. They have been implemented in many other states and proven to be cost-effective alternatives to expensive institutionalization.** These services include:

- **Mobile Crisis Service:** a short-term intervention that is available to individuals in their homes and in the community around the clock on a 24/7 basis. It is designed to prevent unnecessary admissions to psychiatric hospitals, nursing facilities, emergency rooms, homeless shelters, and jails.
- **Assertive Community Treatment (ACT):** a long-term intervention, delivered by a multi-disciplinary team of professionals. The team is available around the clock and provides a wide range of flexible services, including outreach, intensive case management, medication management, and psychosocial rehabilitation. ACT teams are mobile, providing services in individuals' homes and in other community settings. ACT is also a proven method of preventing psychiatric hospitalizations and nursing home stays, as well as needless visits and admissions to emergency rooms, homeless shelters, and jails.
- **Supportive Housing:** a treatment intervention in which individuals are provided with their own apartments along with the services they need to be successful tenants and members of the community. Individuals in supportive housing have access to an array of services, including social skills training, medication management, and medical treatment. Supportive housing services have proven to be very successful at helping persons with serious mental illness to live in the community.

- **Supported Employment**: helps individuals with disabilities, including serious mental illness, find and maintain competitive employment at job sites in the community where they are integrated with their non-disabled peers and earn at least minimum wage. In addition to being therapeutic and reducing the risk of institutionalization, supported employment enables individuals to earn money to support a household and participate in community activities.

Fifth, this law suit and the court order it seeks also offers the only hope for an <u>enduring</u> solution. As the history of community mental health services, as well as other service systems demonstrates, without court involvement, the state can and does easily renege on its commitment. People with mental illness, their families and society cannot afford any short term, temporary or partial fixes. **People's rights are enduring and need to be protected and guaranteed <u>permanently.</u>**

Note also: To help ensure compliance with court orders, as with similar court cases around the country, the relief plaintiffs seek will include comprehensive external and internal monitoring systems to measure and ensure compliance with the requirements of the decree and expected client and system outcomes.

<u>Other Benefits From This Suit</u>

- Will improve the overall system or infrastructure of community based health/mental health services authorized or mandated by federal and state law designed to assist individuals in their recovery and in coping and thriving in society.

- Will have a ripple effect enabling other individuals with mental illness or co-occurring disorders to reap the benefits of this effort because of the overall improvements and enhancements to the services system.

- Because NH has been considered a national leader in the past, the rebuilding of the NH system particularly using best practices could serve an example for many other states.

R. Cohen
2/13