

# DESPERATION WITHOUT DIGNITY: Recommendations

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We invite each reader of this report (<https://www.ndrn.org/resource/desperation-without-dignity/>) to become an advocate for children, and an informed agent of change.

## Federal Level

- a. Congress should:
  - pass legislation to require that all Private Residential Treatment Facilities (PRTFs) be licensed by a state agency in order to receive federal funding
  - pass legislation regarding the use of restraint and seclusion in Medicaid-funded facilities
  - pass legislation to ensure sufficient financing for community-based placements for youth.
  - Private equity investments should be barred in behavioral health care as recommended by the American Economic Liberties Project Legislation; similar to *the Stop Wall Street Looting Act*.
- b. Department of Justice (DOJ) should:
  - strongly enforce the *Olmstead*<sup>1</sup> decision increasing access to community-based placement and mental health care
- c. DOJ and the Department of Health and Human Services (DHHS) must:
  - vigorously pursue Medicaid fraud and violations of conditions of participation
- d. Administration and Congress each should:
  - create a dedicated funding stream to allow all P&A agencies to address the need for independent, knowledgeable, and thorough monitoring and investigation of the care and treatment provided by for-profit facilities
  - use the power of federal grantmaking authority to create incentives for states to expand community-based services and placement in family settings, including effective models of therapeutic foster care

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

# State Level

States should:

- a. vigorously enforce state licensing requirements
- b. evaluate current actions being taken and considered by various states with regard to state relationships with for-profit providers
- c. require more and better-quality financial disclosures by for-profit providers (including private equity) provided to state regulators
- d. suspend Medicaid payments to facilities that have a history of abuse and neglect and investigate violations of applicable Conditions of Participation and other regulatory mandates
- e. invest immediately in community-based services and placements in family settings for all children and youth, removing all financial incentives for institutional care in Medicaid and other state-run funding sources

State youth-serving agencies and all other relevant state agencies should:

- a. place a child or youth who need treatment in a facility only if it is the least restrictive setting for that child or youth based on their individual needs and only if the state can ensure that the facility provides the treatment necessary
- b. launch immediate and comprehensive investigations into allegations of abuse and neglect at all residential facilities that serve children and youth in their state
- c. terminate all contracts with facilities that have a history of abuse and neglect
- d. create an online PRTF complaint system for residents, parents/legal guardians of residents, providers, PRTF staff and the P&A to report abuse and neglect and as well as Conditions of Participation violations
- e. relocate all children and youth currently at facilities that have a history of abuse and neglect to new placements with the involvement of family members and the children/youth themselves. As part of this new placement, the state must conduct an independent review by a licensed mental health clinician and other experts needed to thoroughly review each child's needs, and include other relevant Individualized Service Plan (ISP) team members
- f. audit all out-of-state placements and end contracts with any non-compliant facilities

- g. engage a multi-disciplinary team dedicated to building support plans for the least restrictive placements appropriate to each young person's needs. These teams should:
- develop placements with state providers, family members, foster parents, or other qualified individuals willing to embrace youth in their homes
  - have the authority to negotiate child-specific contracts with in-state providers, arrange evaluations and services for family reunification or placement with foster or non-family supports, and behavioral health professionals with experience and expertise in providing services to youth with histories of complex trauma to review the strengths and needs of each youth who is placed, or is at imminent risk of being placed, out-of-state
  - be charged with conducting intensive case reviews to identify each young person's underlying unmet needs leading to out-of-state institutionalization and to implement strategies to achieve stability and permanency and provide coaching and training to providers and social workers.
  - ensure placements in the least restrictive and most integrated settings for young people to grow into healthy and independent adults

## Local/Facility Level

Local agencies should:

- a. investigate all reports of child abuse in facilities promptly and thoroughly
- b. arrest and prosecute facility staff and administrators in the same manner as would any other adult caring for children
- c. enforce all health and safety codes and inspect these facilities regularly

## Other

Attempts should be made to pierce the corporate veil so that private equity funds can be held liable for serious abuse, neglect, and fraud for more than their initial investment into the facility LLC.

# Applying Policy Recommendations Regarding Nursing Homes to Youth Behavioral Health Facilities

In the wake of the COVID-19 pandemic, the conditions at nursing facilities, have garnered national attention. Certainly, nursing facilities and youth behavioral health facilities have unique characteristics including their resident populations, services provided, and general funding sources. However, many policy proposals for improved oversight and regulation of private equity owned nursing facilities would similarly improve oversight of their youth behavioral counterparts. These recommendations include:

Increase information access to:

- a. create a federal, searchable database based on facility owners, including owners of distinct facilities in multiple states and chain operations, that would include reports regarding the quality of care provided by a particular ownership entity
- b. create a searchable database of facility financial and utilization information, either federally or by individual states

Increase scrutiny of acquisitions by:

- a. publicizing information on proposed transfers of a 3% or greater stake in facility ownership
- b. reviewing sub-contracted parties providing services within the facility to avoid conflicts of interest in ownership transfers
- c. requiring that prospective owners submit a three-year budget proposal with relevant government agencies, which must meet patient loss ratios and staffing level requirements
- d. scrutinizing facility expenditures for its first three years in relation to the pre-acquisition budget proposal
- e. restricting prospective owners from purchasing facilities if they've previously made capital distributions, including dividend recapitalizations, on a residential health care facility in its portfolio for a termed period (3-5 years)