



**A family driven system of care:  
UPDATE ON LITIGATION  
IN MISSISSPPI**

# BACKGROUND

On August 11, 2016 the state of Mississippi was sued by the United States Department of Justice (DOJ). The [lawsuit](#) alleges that Mississippi does not have enough of the right kinds of services in the community for people with mental illness. As a result, too many people are segregated into and receive care in institutions, which is one of the costliest yet least effective forms of mental health care.

The suit goes to trial June 4, 2019 in the courtroom of Judge Carlton Reeves at the Federal courthouse. The address is 501 Court St, Jackson, MS 39201. The trial is open to the public. Please note that cell phones and other electronic devices cannot be taken into the Federal courthouse and security staff will not hold them.



## HOW DID WE GET HERE?

### Lawsuit Timeline

**1990** - President George Herbert Walker Bush signs the [Americans with Disabilities Act \(ADA\)](#) into law, establishing that failure to provide reasonable accommodations for people with disabilities to live in the community is discrimination and against the law.

**1999** – The U.S. Supreme Court case, [Olmstead v. L.C.](#), determines that the ADA applies to people with mental illness and that they are entitled to accommodations to live in the community if they choose to.

**2001** - President George W. Bush signs an [executive order](#) for federal agencies to work with each other and the States to develop the supports people with mental illness need to live outside of institutions.

**2003** - Mississippi develops, but does not fully implement, its [State Olmstead Plan](#).

**2009** – [President Obama Commemorates the Anniversary of Olmstead](#) and announces new efforts.

**December 22, 2011** – The United States DOJ issues a [findings letter](#) about Mississippi’s mental health system, stating that adults, children and people with developmental disabilities in Mississippi do not have the support they need to live in the community, and are unlawfully segregated in institutions.

**August 29, 2014** – The State of Mississippi and US DOJ sign a [temporary letter of agreement](#) stating that the DOJ will forego suing at that time if the State meets certain conditions, including contracting with the [Technical Assistance Collaborative \(TAC\)](#) for independent assessments of the children’s and adult mental health systems. The State declines to make the reports public when it receives them.

**December 17, 2015**- [Negotiations between the US DOJ and State of Mississippi fail and are terminated.](#) (Related documents: [Transcript of telephone conference](#), [Notice of Settlement Termination](#))

**August 11, 2016** - The [US DOJ sues Mississippi](#) for discriminating against adults with mental illness.

**October 11, 2016** - The [State files its initial response](#) to the DOJ lawsuit.

**January 16, 2017** – The [Mississippi Health Agency Reorganization Act of 2017](#) is introduced in the Mississippi senate. The Act places the Department of Mental Health under the office of the Governor rather than its current board. This legislation is in response to a recommendation in the 2014 mandated independent assessments that the Division of Medicaid and the Department of Mental Health should answer to the same entity so that services are more cohesive

and better coordinated (Adult Report, page, 46). (Both mandated assessment reports became available to legislators, but not the public, during the 2017 legislative session).

**February 13, 2017** – The Mississippi Health Agency Reorganization Act of 2017 dies on the calendar after first passing and then being held on a motion to reconsider.

**June 17, 2017** – The TAC [Independent Assessment of the Children’s System](#) is made public in response to a lawsuit filed by the Clarion Ledger and also a related lawsuit ending.

**June 2017** – DMH issues a [response](#) to the Assessment of Children’s System.

**August 2017** – Clarion Ledger reporter Anna Wolfe (now with Mississippi Today) obtains [copy of draft assessment of adult mental health system](#) through a public records request.

**September 2018** – DMH issues [Progress Update on Mississippi’s Public Mental Health System](#).

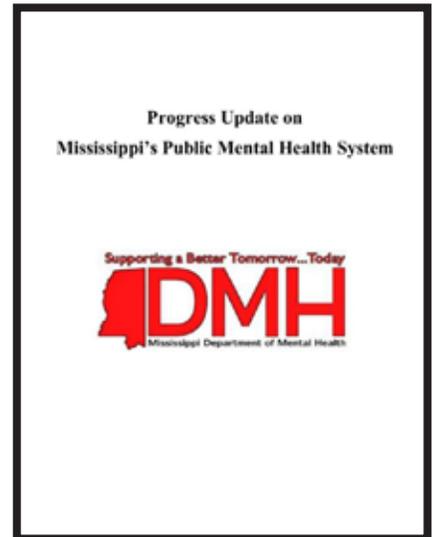
**January 29, 2019** – [State requests that judge dismisses the DOJ lawsuit](#).

**May 13, 2019** – **Judge Carlton Reeves** issues an [order denying dismissal](#) of the suit, including this excerpt:

“*The attorneys representing the State have argued that the United States does not have standing to bring this case and that it has failed to articulate what reasonable accommodations the State should make. Notwithstanding these procedural arguments, the parties seem to agree on one thing: more community-based services would be good for Mississippians.*

*The Department of Mental Health’s own publications and strategic plans support DOJ’s goals for more community-based care. In its own words, the Department of Mental Health “will continue [its] efforts and look forward to a better tomorrow when . . . partnerships improve and support holistic service delivery in the community.” The Attorney General also agrees with this sentiment; he has repeatedly admitted in the press that “community services need to be out-patient where somebody goes by and makes sure [mentally ill adults are] taking their medication. It’s a lot cheaper to put [mentally ill adults] in their home and apartment than it is to put them in an institution.” Outside of this litigation, therefore, the State’s public position is that moving towards more community-based services is necessary for the betterment of the State.*

*Yet, within the confines of this litigation, the State has taken a different position. Indeed, this is a fight over the central claim that Mississippi must provide more community-based mental health services. The contradiction between the State’s public position and its position in this litigation makes it difficult for the Court to imagine what a “win” looks like for the State. In broad terms, the Court assumes that a “win” for the United States is ensuring that Mississippians’ access to mental health care is robust, readily available, and built on the well-supported best practice of community-based care. Based on the Department of Mental Health’s publications, it seems this would also be a “win” for the State. The State, however, apparently believes that it can only get this “win” by having a trial and incurring huge costs in attorney’s fees and expenses and passing those costs on to the taxpayers. This is puzzling. ”*



## WHAT COMES NEXT?

# IMPORTANT TAKEAWAYS AS WE MOVE FORWARD

- People with mental illness should be able to live in the community if they want to. It is discriminatory and a violation of federal law if they cannot.
- Effective services in the community help people with mental illness do the same things that all people do: work, go to school, have friends and enjoy their family. Helpful services focus on employment, housing, peer to peer support and managing crisis, with traditional mental health services added in as needed.
- Many organizations and agencies touch mental health. Yet, there is no umbrella structure in our State that coordinates the Division of Medicaid, the Department of Mental Health and the other related agencies and organizations, even though this type of coordination was a **primary recommendation of the 2014 mandated assessments of our system**. This means that:
  - We have no way to know all the care that is being provided and if it is helpful.
  - Money is likely being wasted and vulnerable people may be falling through the cracks.
  - We cannot determine how all of the beds for psychiatric care in our state are being used and how to maximize them for the people who need inpatient care.
  - Reform efforts to date have typically been agency specific and have not addressed the fundamental overarching infrastructure issues in our system.
- Placing both the Division of Medicaid and the Department of Mental Health under the Governor is one proposal to better coordinate services and is a common model in other states. People who object to this solution need to propose other models that they think will work. Attorney General Hood's own mental health task force would be one place to explore options.
- Civil rights laws are about what **SYSTEMS**, not families or individuals, should do. Our system should be held accountable for a comprehensive system of care that allows people to receive the help they need in small settings near their homes. This is not about placing inordinate burdens on families to care for their loved ones without any support.
- A well-designed system of community-based care should provide opportunities for the dedicated employees currently working in institutions to continue their invaluable work in less restrictive settings.
- We need to first design a responsive and effective system and then determine how to fund it. Discussions about the DMH budget are premature and needlessly divide and distract us.
- We must face the political reality that the way our system is currently designed exerts a tremendous influence on legislators because they are likely to have employees of one of the twelve State-run facilities in their districts. It is imperative that we work together to address this in a way that prioritizes people with mental illness. We also need to thoughtfully consider if and how this issue intersects with AG Hood's gubernatorial campaign.
- Every aspect of reforming our system must be done with all stakeholders at the table and in complete partnership with people receiving services and their families. They know what will help them and have a vested interest in using funds effectively.
- We are all heartbroken when we see a person with obvious untreated mental illness in public with no support. We should not, however, jump to the conclusion that this was caused by a bed being shut down. It more likely reflects that we do not have the continuum of needed services in the community and this creates a domino effect that can leave those most seriously affected by mental illness alone and homeless.
- We should all take to heart how our tax dollars are being used in this lawsuit. In 2016, Attorney General Jim Hood signed an [\\$8.3 million three-year contract with Phelps Dunbar](#) to represent the State in the case that is about to go to trial. Phelps Dunbar has been paid about \$1 million to date.