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United States Senate

COMMITTEE ON FINANCE

WASHINGTON, DC 20510-6200

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October 9, 2024

The Honorable Merrick Garland
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530

Dear Attorney General Garland:

I am writing to share evidence of potential civil rights violations of children and young people uncovered by a two-year investigation by the Senate Committee on Finance into four youth Residential Treatment Facility (RTF)¹ operators: Universal Health Services, Acadia Healthcare, Devereux Advanced Behavioral Health, and Vivant Behavioral Healthcare. This investigation culminated in a Finance Committee hearing and a staff report titled *Warehouses of Neglect: How Taxpayers are Funding Systemic Abuse in Youth Residential Treatment Facilities*. The report synthesizes new information about rampant abuse, neglect, and substandard care experienced by youth in the congregate settings paid to provision their behavioral health care. The report also finds a causal connection between these harms and providers' profit models.

In July 2022, following years of in-depth public reporting and survivors' advocacy efforts, I launched an investigation into allegations of abuse and neglect in RTFs with my Senate Health, Education, Labor, and Pensions Committee counterpart. The Senate Committee on Finance has jurisdiction over many RTF placements funded through the Medicaid program and the child

¹ For the purposes of this investigation, residential treatment facilities are defined as psychiatric residential treatment facilities (PRTFs) (42 CFR § 483.352), qualified residential treatment programs (42 USC § 672(k)(4)), therapeutic boarding schools, therapeutic residential treatment centers, non-medical residential centers, congregate care facilities for youth, wilderness camps or therapy programs, boot camps, and behavior modification facilities—that are intended to address youth's behavioral, emotional, mental health, or substance use needs.

welfare provisions of the Social Security Act.² Each year, taxpayers spend hundreds of millions of dollars on RTF placements.

RTFs are intended to provide intensive, short-term inpatient therapeutic services to a diverse group of high-need youth, including those who are a danger to themselves and/or others. Prior to placement in an RTF, children should be able to access a continuum of community-based behavioral health services to meet their needs. Following short-term, intensive residential treatment, children should be able to progress to lower acuity settings, like outpatient care in the community. A continuum of community-based care enables children to receive residential treatment only when all other in-community options fail to meet their needs.

Unfortunately, the findings of my report reveal a very different reality experienced by children in RTFs. My investigation found that children suffer routine harms inside RTFs, including sexual, physical, and emotional abuse, unsafe and unsanitary conditions, inadequate provision of behavioral health treatment and substandard educational activities. This risk of harm to children in RTFs is endemic to the operating model: to maximize per diem margins, RTF providers often offer minimal therapeutic treatment in deficient physical settings, understaffing and failing to properly train staff.

As a continuation of my efforts, I am referring my investigative findings to the Department of Justice (DOJ) for consideration by the agency to:

1. Investigate whether states are violating Title II of the Americans with Disabilities Act (ADA) by not adequately ensuring access to community-based behavioral health services and by placing children in RTFs when a less restrictive placement is appropriate.

Civil Rights Violations: Failure to Provide Services in the Most Integrated Setting

As outlined in *Olmstead v. LC*, Title II of the ADA and Section 504 of the Rehabilitation Act ensure people with disabilities the right to living in-community where (i) a medical professional has determined that such placement is appropriate, (ii) the individual does not oppose, and (iii) the state may reasonably accommodate the placement.³ This means that states must facilitate access to the most integrated setting possible, appropriate to a child's needs. A state is bound by the ADA even where it contracts with a private entity to deliver services.⁴

² According to company documents and conversations with the Committee cited in *Warehouses of Neglect*, 95 percent of Devereux Advanced Behavioral Health's RTF revenue came from Medicaid dollars and half of Vivant Behavioral Healthcare's facilities rely on public dollars for more than 75 percent of their revenue. See *Warehouses of Neglect* at 23.

³ *Olmstead v. L.C.* (98-536) 527 U.S. 581, 607 (1999).

⁴ 28 C.F.R. § 35.130(b)(1)-(2).

DOJ, often in partnership with the Department of Health and Human Services (HHS), has found that states violate Title II of the ADA where they place children in segregated institutions for behavioral health needs instead of the most integrated settings possible.⁵ This may occur where states over-rely on segregated settings and fail to bolster access to community-based services, which would otherwise avoid the removal of a child from the community for treatment. Across providers surveyed in this investigation, states placed children in private RTFs through child welfare systems, the juvenile justice system, and educational systems. In 2022, 34,000 youth were placed in RTFs through state foster care systems.⁶ Many of these RTF placements result from child welfare agency's inability to identify capacity in the community, rather than the behavioral health needs of the child.

The litany of deficiencies unearthed in the Finance Committee's investigation, as well as in public reporting, warrant review under the integration mandate of *Olmstead* of every state placing children in RTFs named therein. In many instances, this investigation found that children in facilities around the country endured extended multi-year lengths of stay inside RTFs, a total lack of treatment documentation and discharge planning, and fractured communication with their communities and families.⁷ Where state systems remove children to these settings before offering a continuum of in-community services that can meet a child's needs, they may be violating the civil rights and treatment needs of children in their care and other system-involved youth.

Beyond states' overreliance on segregated settings, DOJ has often cited states for their failures to adequately plan for a person's reintegration in-community following discharge from an institution.⁸ My investigation found that RTFs routinely fail to provide the treatment they purport

⁵ DOJ, Department of Justice Reaches Agreement to Resolve Americans With Disabilities Act Investigation of West Virginia's Children's Mental Health System (May 14, 2019) <https://www.justice.gov/opa/pr/departments-justice-reaches-agreement-resolve-americans-disabilities-act-investigation-west>; DOJ, Justice Department Finds Maine in Violation of ADA For Over-Institutionalization of Children with Disabilities (June 22, 2022) <https://www.justice.gov/opa/pr/justice-department-finds-maine-violation-ada-over-institutionalization-children-disabilities>; DOJ, Justice Department Finds Nevada Unnecessarily Segregates Children with Behavioral Health Disabilities in Institutions (Oct. 4, 2022) <https://www.justice.gov/opa/pr/justice-department-finds-nevada-unnecessarily-segregates-children-behavioral-health>; DOJ, Justice Department Finds Alabama's Foster Care System Violates the Americans With Disabilities Act by Discriminating Against Students With Disabilities (Oct. 12, 2022) <https://www.justice.gov/opa/pr/justice-department-finds-alabama-s-foster-care-system-violates-americans-disabilities-act>; DOJ, Justice Department Finds Alaska Unnecessarily Segregates Children with Behavioral Health Disabilities in Institutions (Dec. 15, 2022) <https://www.justice.gov/opa/pr/justice-department-finds-alaska-unnecessarily-segregates-children-behavioral-health>;

DOJ, State of Rhode Island Found to be in Violation of Federal Disability Laws for Over-Hospitalization of Children with Behavioral Disabilities in State Care (May 13, 2024) <https://www.justice.gov/usao-ri/pr/state-rhode-island-found-be-violation-federal-disability-laws-over-hospitalization>.

⁶ GAO, *Child Welfare: Abuse of Youth Placed in Residential Facilities*, Jun. 12, 2024 GAO-24-107625 <https://www.gao.gov/products/gao-24-107625>.

⁷ *Warehouses of Neglect* at 103.

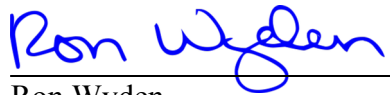
⁸ DOJ, Justice Department Finds Nevada Unnecessarily Segregates Children with Behavioral Health Disabilities in Institutions (Oct. 4, 2022) <https://www.justice.gov/opa/pr/justice-department-finds-nevada-unnecessarily-segregates-children-behavioral-health>; Justice Department Finds Alabama's Foster Care System Violates the Americans With Disabilities Act by Discriminating Against Students With Disabilities (Oct. 12, 2022) <https://www.justice.gov/opa/pr/justice-department-finds-alabama-s-foster-care-system-violates-americans-disabilities-act>.

to, fail to sustain children's community connections, especially in the case of out-of-state placements, and often fail to appropriately plan for children's reintegration in the community, including by failing to produce discharge plans for every child in their care. Additionally, my investigation found instances of inadequate, segregated education at facilities, and Committee staff observed first-hand inadequate, segregated education provisioned at RTFs.⁹ These failures hinder a child's transition from an institutional setting back to the community and perpetuate their segregation.

In light of the seriousness of these facts, I formally refer this matter to DOJ and request that you launch an investigation into potential *Olmstead* violations by states that institutionalize children in RTFs instead of ensuring access to community-based services.

Thank you for your prompt attention to this matter. Please contact Senate Finance Committee staff directly with any questions.

Sincerely,



Ron Wyden
United States Senator
Chairman, Committee on
Finance

Enclosure: *Warehouses of Neglect: How Taxpayers Are Funding Systemic Abuse in Youth Residential Treatment Facilities*

Enclosure: DOJ letter on violations of CMS regulation and violations of the FCA at RTFs where youth are treated, as well as any other violations that DOJ identifies.

⁹ *Warehouses of Neglect*.