

# The ADA, Olmstead, and Medicaid: Implications for People with Intellectual and Developmental Disabilities

By

Charles R. Moseley, Ed.D.

2013

**NASDDDS**

National Association of State Directors of Developmental Disabilities Services

---

113 Oronoco Street, Alexandria, VA 22314  
Tel: 703-683-4202; Fax: 703-684-1395  
Web: [www.nasddds.org](http://www.nasddds.org)

## Table of Contents

<b>The Americans with Disabilities Act and the Olmstead Ruling .....</b>	<b>3</b>
The Americans with Disabilities Act of 1990 .....	3
The Olmstead Ruling: Key Provisions and Implications .....	7
Conditions Under Which Olmstead Applies .....	11
Enforcement of the Olmstead Integration Mandate .....	12
Conclusion .....	20
Annotated References .....	21

Support for this product development came from a cooperative agreement from the National Institute on Disability and Rehabilitation Research, U.S. Department of Education (#H133B080005) and a contract from the Minnesota Department of Human Services (#H5532310) with the Research and Training Center on Community Living (RTC) at the Institute on Community Integration, University of Minnesota.

# The Americans with Disabilities Act and the Olmstead Ruling

The preference in federal policy for home and community-based services for persons with disabilities was advanced by the U.S. Supreme Court's ruling in 1999 in the case of *Olmstead v. L.C.* (527 U.S. 581 Amended 2008 (P.L. 110-325)). The Olmstead decision established that the unnecessary segregation of people with disabilities in institutions is a form of discrimination under Title II of the Americans with Disabilities Act of 1990 (ADA) and set the responsibility of states to provide services to individuals with disabilities within "the most integrated setting" appropriate to their needs. An executive order signed by President Bush in 2001 launched the "New Freedom Initiative" affirming the nation's commitment to the provision of publicly financed community-based services and supports to individuals with disabilities fostering independence and community participation. The federal government's commitment to assure the right of people with disabilities to live, work and receive services in community settings was renewed by President Obama when he declared 2009 to be "The Year of Community Living" and directed the Department of Justice (DOJ) and other federal agencies to "vigorously enforce the civil rights of Americans with disabilities" by ensuring the implementation of the Olmstead ruling as a top priority.<sup>1</sup>

## The Americans with Disabilities Act of 1990

**Background.** The Americans with Disabilities Act (ADA) was signed into law by President H. W. Bush on July 26, 1990. The landmark legislation was passed by Congress to "to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities"<sup>2</sup> Noting that the historical isolation and segregation of people with disabilities continued to be "a serious and pervasive social problem,"<sup>3</sup> Congress acted to prohibit such discrimination by any public entity through the enactment of legislation that ensured that no qualified individual with a disability would, "... by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity."<sup>4</sup>

---

<sup>1</sup> U.S. Department of Justice. Statement of the Department of Justice on Enforcement of the Integration Mandate of Title II of the Americans with Disabilities Act and *Olmstead v. L.C.* Accessed from [www.ada.gov/olmstead/q&a\\_olmstead.pdf](http://www.ada.gov/olmstead/q&a_olmstead.pdf) November 2012.

<sup>2</sup> 42 U.S.C. § 12101(a)(2).

<sup>3</sup> 42 U.S.C. § 12101(b)(1).

<sup>4</sup> 42 U.S.C. § 12132.

The framework of the ADA was built upon several major pieces of legislation that were passed by the U.S. Congress during the 1960s and 1970s including the Civil Rights Act of 1964, the Voting Rights Act of 1965, the Civil Rights Act of 1968, and the Rehabilitation Act of 1973.

- The Civil Rights Act of 1964 prohibited discrimination by entities receiving public funds, employers, public facilities, and others based on race, religion, and national origin but did not specifically identify people with disabilities as a protected class.
- The Voting Rights Act of 1965 protects the rights of minorities to vote in elections but did not ensure the rights of people with disabilities.
- The Fair Housing Act, Title VIII of the Civil Rights Act of 1968, includes provisions that prohibit discrimination on the basis of race, religion, national origin, and sex in the sale and rental of housing, but it was not until 1988 that the act was amended to afford protections to people with disabilities and families with children.
- Section 504 of the Rehabilitation Act of 1973 prohibits discrimination on the basis of a disability towards otherwise qualified people with disabilities by recipients of federal financial assistance. The legislation represents the first time that people with disabilities as a group were identified as a separate class – rather than as separate diagnoses.<sup>5</sup> No protections, however, were afforded for people with disabilities from discrimination by employers, by public accommodations in the private sector, by publicly funded programs and by those providing federal financial assistance.

Although each of these measures addressed significant civil rights issues, and had some impact on people with disabilities, none were specifically designed nor intended to address the barriers to full inclusion faced by people with disabilities in U.S. society. In its review of the need for legislation in this area Congress noted several national research findings on the status of people with disabilities in the U.S., and the challenges they faced in fully accessing and participating in the mainstream of community life. Congress found that more than 50 million Americans had one or more physical or mental disabilities, and the prevalence rate was increasing as the nation's population

---

<sup>5</sup> Mayerson, A. (1992) *The History of the ADA: A Movement Perspective. Disability Rights Education and Defense Fund*, Berkley CA.

grew. It was also noted that discrimination on the basis of a person's disability existed throughout American society in housing, public accommodations, education, transportation, communication, recreation, health services, voting, and access to public services. Furthermore, in contrast to the experiences of individuals who faced discrimination on the basis of race, color, sex, origin, religion, or age, people with disabilities were not as a class generally covered by existing civil rights legislation and often had no remedy in the law to redress such discrimination. Congress noted that the continuing existence of unfair and unnecessary discrimination and prejudice denied people with disabilities the opportunity to compete and pursue opportunities on an equal basis with the non-disabled population, and that the costs of discrimination in terms of national expenditures resulting from unnecessary dependency and unproductiveness reached the billions of dollars.

**Defining Disability.** Coverage under the ADA is provided to individuals with disabilities who meet the three-part definitional criteria included in the act. Under the ADA an individual with a disability is defined as a person who: (a) has a physical or mental impairment that substantially limits one or more major life activities; or (b) has a record or history of such an impairment; or (c) is perceived or regarded as having such an impairment.<sup>6</sup>

The phrase "major life activities" is defined as the ability to carry out key activities or functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working. The determination of "impairment" and the extent to which the impairment substantially limits a major life activity is made on an individual basis. The determination is not related to the presence or absence of a particular condition but rather to the impact that the condition or impairment has on the person and his or her ability to function in society. The extent to which an impairment "substantially limits" a major life activity is based on the conditions, manner, or duration under which the life activity can be performed by the individual as compared to others in society.

**Structure.** The ADA prohibits discrimination on the basis of disability in the areas of employment, public services provided by state and local governments, public services operated by private entities, transportation, certain commuter authorities such as AMTRAK, and telecommunications. The act is divided into three titles.

Title I Employment. Employment provisions apply to private employers, state and local governments, employment agencies, and labor unions. Title I prohibits discrimination

---

<sup>6</sup> 29 CFR Section 1630.2(g): Disability. 76 FR 16980 Page 16980.

against "qualified individuals with disabilities" in all employment practices, including job application procedures, hiring, firing, advancement, compensation, training and other terms, conditions, and privileges of employment. Title I additionally covers recruitment, advertising, tenure, layoff, leave, fringe benefits, and all other employment-related activities.<sup>7</sup>

Title II - Public Accommodations by State and Local Governments. Title II covers programs, activities, and services of public entities and is divided into two subtitles. Subtitle A provides protections from discrimination on the basis of disability to people with disabilities in the services, programs, or activities of all state and local governments and extends the prohibition of discrimination on the basis of disability established by section 504 of the Rehabilitation Act of 1973, to all activities of state and local governments, including those that do not receive federal financial assistance. Subtitle B clarifies the requirements of section 504 for public transportation entities that receive federal financial assistance and extends coverage to all public entities that provide public transportation, whether or not they receive federal financial assistance.

The Title II regulations require public entities to "administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities."<sup>8</sup> The preamble discussion of the "integration regulation" describes "the most integrated setting" is one that "enables individuals with disabilities to interact with nondisabled persons to the fullest extent possible . . . ."<sup>9</sup>

Public entities are required under Title II to conduct a self-evaluation of current policies and practices and must ensure that individuals with disabilities are not excluded from services, programs, and activities because of building inaccessibility. The "program accessibility" standard does not require that public entities must make each of their existing facilities accessible. Covered entities may ensure access by modifying existing facilities, building or acquiring new facilities, relocating programs or services utilizing alternative sites or approaches to service delivery.

In order to receive protections under Title II, a "qualified" individual with a disability must meet the essential eligibility requirements for receiving or participation in services or programs furnished by a public entity with or without: (a) reasonable modifications to a public entity's rules, policies, or practices; (b) removal of architectural,

---

<sup>7</sup> About the Americans with Disabilities Act of 1990 (ADA) Martin County Florida [www.martin.fl.us](http://www.martin.fl.us).

<sup>8</sup> 28 C.F.R. § 35.130(d) (the "integration mandate").

<sup>9</sup> 28 C.F.R. Pt. 35, App. A (2010).

communication, or transportation barriers; or (c) provision of auxiliary aids and services.<sup>10</sup>

Title III Public Accommodations by Private Business. A "public accommodation" refers to a privately operated entity that owns, leases, leases to, or operates a place of public accommodation. Title III prohibits discrimination on the basis of disability in all public accommodations operated by private businesses including, but not limited to hotels, restaurants, theaters, retail stores, museums, libraries, parks, private schools, and day care centers and other such entities. Places of public accommodation are required to remove barriers in existing facilities where it is "readily achievable," that is, where it can be "easily accomplished and able to be carried out without much difficulty or expense." Such readily achievable modifications include making structural changes to provide access around a few steps via a ramp or other means, lowering sinks in bathrooms, repositioning telephones, and other adjustments of this nature. Public accommodations may need to make alternative changes if the physical removal of a barrier is not possible or practicable such as furnishing direct assistance to people with disabilities to help them access items that are located on high shelves that are out of their reach, or assistance in finding items in stores.

## **The Olmstead Ruling: Key Provisions and Implications**

Since the ADA was signed into law in 1990 the act has resulted in positive changes in the lives and aspirations of people with disabilities across each of its four main policy goals: ensuring equality of opportunity, full participation, independent living, and economic self-sufficiency. Improvements in architectural design and construction, transportation, and communication accessibility brought about by the ADA have enable people with disabilities to experience greater independence and increasing levels of inclusion, employment, and community participation.

Among the most noteworthy outcomes of the ADA to date have been changes in the delivery of publicly financed services and supports that occurred as a result of the U.S. Supreme Court's decision in *Olmstead v. L.C.* in 1999. The case involved two women diagnosed with mental illness and developmental disabilities receiving voluntary treatment at a psychiatric unit in the state-funded Georgia Regional Hospital. In spite of the fact that their medical treatment had concluded and state mental health professionals had determined that each person was ready to move to a community-

---

<sup>10</sup> *The Americans with Disabilities Act Title II Technical Assistance Manual. The Americans with Disabilities Act Title II Technical Assistance Manual Covering State and Local Government Programs and Services.*  
[www.ada.gov/taman2.html#II-1.3000](http://www.ada.gov/taman2.html#II-1.3000)

based setting, the women were not permitted to leave the facility. The two women brought suit against the state under the ADA for their release from the hospital. In June, 1999 the Supreme Court determined that the unjustified segregation of persons with disabilities constitutes discrimination and is in violation of Title II of the ADA. In this decision the court ruled that individuals with mental disabilities have the right to live in the community rather than in institutions and "that public entities must provide community-based services to persons with disabilities under three conditions when: (a) such services are appropriate; (b) the affected persons do not oppose community-based treatment; and (c) community-based services can be reasonably accommodated, taking into account the resources available to the public entity and the needs of others who are receiving disability services from the entity."<sup>11</sup>

**Integration Mandate and States' Obligations.** The Supreme Court noted that its finding "reflects two evident judgments." First, "institutional placement of persons who can handle and benefit from community settings perpetuates unwarranted assumptions that persons so isolated are incapable or unworthy of participating in community life." And second, that "confinement in an institution severely diminishes the everyday life activities of individuals, including family relations, social contacts, work options, economic independence, educational advancement, and cultural enrichment."<sup>12</sup> The court held that to comply with the ADA's integration mandate, public entities must make "reasonable accommodations" to their policies, procedures, or practices when necessary to avoid such discrimination. The obligation to make reasonable modifications may be excused only where the public entity demonstrates that the requested modifications would "fundamentally alter" its service system.<sup>13</sup> The Supreme Court's *Olmstead* ruling noted that if "a State were to demonstrate that it had a comprehensive, effectively working plan for placing qualified persons with mental disabilities in less restrictive settings, and a waiting list that moved at a reasonable pace not controlled by the State's endeavors to keep its institutions fully populated, the reasonable-modifications standard would be met." This means that, for a state to mount a fundamental alteration defense, it must have developed a comprehensive effectively

The *Olmstead* decision interprets public entities' obligations under Title II of the ADA and the parameters through which qualified individuals with disabilities are not subjected to discrimination, denied benefits, or excluded from participation in services, programs, or activities of a public entity.

---

<sup>11</sup> U.S. Department of Justice. Statement of the Department of Justice on Enforcement of the Integration Mandate of Title II of the Americans with Disabilities Act and *Olmstead v. L.C.* Accessed from [www.ada.gov/olmstead/q&a\\_olmstead.pdf](http://www.ada.gov/olmstead/q&a_olmstead.pdf) November 2012.

<sup>12</sup> *Olmstead v. L.C.*, 527 U.S. at 600-01 and 607.

<sup>13</sup> 28 C.F.R. § 35.130(b)(7).



working plan to end unnecessary segregation of individuals currently living in segregated programs and to furnish supports to individuals on waiting lists at a "reasonable pace" with the goal of integrating individuals with disabilities into mainstream society to the fullest extent possible.

Olmstead Plan. A state's Olmstead Plan provides the framework through which it intends to comply with its obligation to ensure people with disabilities have access to opportunities to live, work, and receive supports in integrated settings. The plan should provide an assessment of the state's current efforts to ensure individuals with disabilities receive services in the most integrated settings appropriate to their needs, identify policies and practices that may hinder the movement of people and services from segregated to integrated settings and the steps necessary to address waiting lists and other related policy goals. The plan must describe the state's commitments to expand integrated opportunities according to a reasonable timeframe and include measurable goals, specify the resources necessary to meet those goals, and identify the groups of people with disabilities who are to be covered by plan activities. Guidance from the DOJ Civil Rights Divisions suggests that plans should include specific commitments for each group of individuals with disabilities who are receiving segregated services and be able to demonstrate that progress toward effectively meeting its goals. It is important to note that states may use alternative strategies that accomplish the goals of an Olmstead plan. As of 2010, 26 states had written Olmstead plans while 18 states had published alternative strategies. The remaining seven states were reported to have neither an Olmstead plan nor an alternative response to Olmstead (DC, FL, ID, NM, RI, SD, and TN).<sup>14</sup> (See the PAS Personal Assistance Center's website for a listing of state Olmstead Plans at [www.pascenter.org/olmstead/olmsteadcases.php](http://www.pascenter.org/olmstead/olmsteadcases.php)).

States are obligated to comply with the ADA's integration mandate and may be found in violation of the act if the state funds, operates or administers its programs and services to individuals with disabilities in a way that results in their unjustified segregation or exclusion from society through its: (a) direct or indirect operation of facilities, programs or services; (b) financing of the delivery of services in private facilities; or (c) because it promotes or relies upon the segregation of individuals with disabilities in private facilities or programs through its planning, service system design, funding choices, or service implementation practices.<sup>15</sup>

---

<sup>14</sup> Ng, T., Wong, A., and Harrington C. (April 2012). *Home and Community-Based Services: Introduction to Olmstead Lawsuits and Olmstead Plans*. National Center for Personal Assistance Services University of California at San Francisco.

<sup>15</sup> 28 C.F.R. § 35.130(b)(1).

The integration mandate obligates states to:

- Furnish supports and services to individuals with disabilities in integrated settings that offer choices and opportunities to live, work, and participate in community activities along with individuals without disabilities at times and frequencies of the person's choosing.
- Afford choice in their activities of daily life and the opportunity to interact with non-disabled persons to the fullest extent possible.
- Provide individuals with an assessment of their needs and the supports necessary for them to succeed in integrated settings by professionals who are knowledgeable about the variety of services available in the community.
- Enable people with disabilities to make informed choices about the decision to reside in the most integrated settings by furnishing information about the benefits of integrated settings, facilitating on-site visits to community programs and providing opportunities to meet with other individuals with disabilities who are living, working and receiving supports in integrated community settings, with their families, and in other arrangements.
- Protect people with disabilities from the risk of institutionalization resulting from service or support reductions or reconfigurations as a result of state funding reductions through the provision of support alternatives that do not result in institutionalization.

Integration Mandate Prevails. It is important to note that a state's obligations to comply with the ADA integration mandate are independent and in addition to and separate from any regulations or requirements of Medicaid programs under Title XIX of the Social Security Act. A state could, for example, decide to address its wait list for developmental disabilities services by increasing placements in Medicaid funded institutional ICF/ID facilities and expanding the use of segregated institutional programs for all people with autism. This approach would not necessarily run afoul of Medicaid financing or operational guidelines but would violate the ADA's integration mandate by unnecessarily segregating people through the lack of more integrated support options and by providing certain services only in segregated settings. Requiring the state to change its policy would not be considered a "fundamental alteration." Similarly, under Section 1915(c) of the Social Security Act states are allowed to place a cap on the number of eligible individuals with disabilities they will serve

through their home and community-based Medicaid waiver programs. While consistent with Medicaid regulations, the presence of such a cap does not remove the obligation of the state under the ADA to serve individuals with disabilities in the most integrated settings appropriate to their needs. To comply in this example, the state may need to submit a waiver amendment to increase the numbers served or take additional steps to reduce its reliance on segregated support alternatives. As above, it is doubtful that such an action would be considered a fundamental alteration of the state's program.

## Conditions Under Which Olmstead Applies

The provisions of the ADA under the Olmstead ruling apply to people of all ages with all types of disabilities (see definition of eligible disabilities above<sup>16</sup>). Under Title II of the ADA, an individual with a disability is "qualified" if he or she meets the eligibility requirements for receiving services or participating in the public program or activity. On an operational level, the Olmstead decision has been interpreted by DOJ to apply to people with disabilities who receive services from segregated institutions or settings, as well as those who are at risk of institutionalization as a result of the lack of the availability or accessibility of publicly funded services and supports in the community. The definition of a segregated setting encompasses: "(1) congregate settings populated exclusively or primarily with individuals with disabilities; (2) congregate settings characterized by regimentation in daily activities, lack of privacy or autonomy, policies limiting visitors, or limits on individuals' ability to engage freely in community activities and to manage their own activities of daily living; or (3) settings that provide for daytime activities primarily with other individuals with disabilities."<sup>17</sup>

Given the broad interpretation of the scope of the Olmstead ruling it is difficult to identify the total number of individuals that are covered under the act's provisions. In 2001, the Government Accounting Office noted that the implementation of the Olmstead ruling was taking place in the context of expanding numbers of aging baby boomers and individuals with disabilities, and that the full extent of the population covered by the ruling was unclear.<sup>18</sup> The estimation of the total numbers of individuals

---

<sup>16</sup> A person with disability under the ADA is defined as a person: (a) with a physical or mental impairment that substantially limits one or more of an individual's major life activities, (b) with a record of such an impairment, or (c) who is regarded as having such an impairment. 42 U.S.C. §12102(2).

<sup>17</sup> U.S. Department of Justice. Statement of the Department of Justice on Enforcement of the Integration Mandate of Title II of the Americans with Disabilities Act and *Olmstead v. L.C.* Accessed from [www.ada.gov/olmstead/q&a\\_olmstead.pdf](http://www.ada.gov/olmstead/q&a_olmstead.pdf), November 2012.

<sup>18</sup> General Accounting Office Testimony Before the Special Committee on Aging, U.S. Senate. (September 24, 2001). *Long Term Care: Implications of the Supreme Court's Olmstead Decision are Still Unfolding* by Kathryn Allen.

to whom the act applies remains challenging in 2012. Existing data on persons with disabilities receiving public supports in institutional and community programs nationwide suggests that the act could be expected to cover approximately 37,853,991 individuals in 2010. This number is based on the following:

- Approximately 1,499,279 people with disabilities resided in institutional settings in 2010. This estimate includes 1,385,251 in nursing facilities,<sup>19</sup> 31,101 people with developmental disabilities in state institutions, 25,927 individuals with developmental disabilities living in publicly funded private residential facilities with greater than 15 beds,<sup>20</sup> and 57,000 people in state mental health facilities.<sup>21</sup> Researchers have long used 15 beds as the size or capacity criteria separating institutional from community-based settings. While this benchmark may facilitate the gathering and reporting of data across states, the figure is arbitrary and makes little sense when placed against the Olmstead integration mandate requiring public entities to support individuals with disabilities in the most integrated settings appropriate to their needs. Including the numbers of persons with disabilities residing in settings of between 4 and 15 beds would significantly increase the total. Furthermore, it is important to note that the provisions of the Olmstead ruling also apply to people living in community settings and with families who might be at risk of institutionalization.
- Approximately 36,354,712 individuals with disabilities ages 5 years and over lived in the community in 2010. Based on a total U.S. population of 304,287,836 this yields a prevalence rate of 11.9 percent. The range among states was between California with 3,640,092 individuals with disabilities and Wyoming, with 65,570 individuals with disabilities. The state with the highest prevalence rate was West Virginia at 18.9 percent; Utah had the lowest prevalence rate, 8.5 percent.<sup>22</sup>

## **Enforcement of the Olmstead Integration Mandate**

---

<sup>19</sup> C. Harrington, H. Carrillo, M. Dowdell, P. Tang, and B. Blank. Table 4, *Nursing, Facilities, Staffing, Residents, and Facility Deficiencies, 2005 Through 2010*, Department of Social and Behavioral Sciences, University of California, San Francisco.

<sup>20</sup> Larson, S.A., Ryan, A., Salmi, P., Smith, D., and Wuorio, A. (2012). *Residential Services for Persons with Developmental Disabilities: Status and trends through 2010*. Minneapolis: University of Minnesota, Research and Training Center on Community Living, Institute on Community Integration.

<sup>21</sup> Ibid. General Accounting Office Testimony

<sup>22</sup> Institute on Disability. (2011). American Community Survey. In 2011 Annual Disability Statistics Compendium: Disability Statistics and Demographics Rehabilitation Research and Training Center. University of New Hampshire.

Enforcement of the Olmstead integration mandate is a central priority of the Obama Administration and a focus of the Year of Community Living initiative launched in 2009. Department of Justice officials note that the Olmstead ruling encompasses more than requiring that people with disabilities move out of institutions and that enforcement efforts have been organized around three broad goals designed to ensure that people with disabilities have the services and supports that they need to live and thrive in the community. Focus is on ensuring people with disabilities: (a) have opportunities to live life like people without disabilities; (b) have opportunities for integration, independence, recovery, choice and self-determination in all aspects of life – in the settings in which they live, the activities that occupy their time during the day, their work, and in their access to the community; and (c) receive quality services that meet their individual needs.<sup>23</sup>

In carrying out its responsibilities to ensure compliance with the ADA and the Olmstead ruling, DOJ utilizes an array of administrative and legal tools, including: (a) direct investigations of state policies and practices; (b) the preparation and issuance of Findings Letters reporting on the results and conclusions of their investigations, leading to; (c) Settlement Agreements with states on an acceptable course of action to bring illegal policies and practices into compliance with the ABA; and (d) litigation for system reform. DOJ additionally offers technical assistance and guidance to states on Olmstead requirements and expectations, and provides information and materials for interested parties on its website, [www.ada.gov/olmstead](http://www.ada.gov/olmstead).

Samuel Bagenstos, Principal Deputy Assistant Attorney General of the Department of Justice Civil Rights Division, noted in remarks to the University of Cincinnati in 2010, that the U.S. Department of Justice had brought, intervened in, or participated as an amicus or interested party in Olmstead litigation in an increasingly large number of states nationwide. Since that time, actions brought by the Civil Rights Division has expanded to over 40 matters in 25 states (see [www.ada.gov/olmstead/index.htm](http://www.ada.gov/olmstead/index.htm))

The initial focus of Olmstead enforcement was on enabling people with disabilities who were unnecessarily segregated in institutions to receive needed services and supports in the most integrated community settings appropriate to their needs. In recent years, however, enforcement patterns have expanded to include the extent to which the availability, quality and responsiveness of existing publicly funded community-based service delivery systems protected individuals with disabilities from unnecessary segregation. This trend can be seen in the language and focus of the comprehensive

---

<sup>23</sup> Thomas E. Perez Assistant Attorney General Civil Rights Division Department Of Justice before the Senate Committee on Health, Education, Labor and Pensions, U.S. Senate titled "Olmstead Enforcement Update: Using The Ada To Promote Community Integration" Presented on June 21, 2012.

settlement agreements that the DOJ entered into with states during the past several years.

**Georgia.** DOJ settled with the state of Georgia, for example, in October 2010 to resolve the complaint that Georgians with developmental disabilities and individuals with mental illness were being unnecessarily and unconstitutionally institutionalized and subjected to conditions that would harm their lives, health, and safety in violation of the ADA and the U.S. Constitution. The agreement requires Georgia officials to change policies and to take a number of very specific operational steps to ensure people with developmental disabilities and those with mental illness receive appropriate services in the most integrated settings appropriate to their needs. Regarding people with developmental disabilities, Georgia agreed to take several significant actions including:

- End all admissions to state-operated institutions by July 1, 2011, and transition all individuals to the most integrated setting appropriate to their needs by July 1, 2015.
- Expand its home and community-based waiver program to serve at least 1,100 individuals with DD in the community to: (a) furnish supports to people in their own or their family's homes, (b) provide family supports to 2,350 families, (c) create 6 mobile crisis teams to all communities, and (d) establish 12 crisis respite homes.<sup>24</sup>

The state agreed to enact similar reforms for people with mental illness agreeing to serve 9,000 individuals with serious and persistent mental illness in the community who are "currently served in State Hospitals; frequently readmitted to State Hospitals; frequently seen in emergency rooms; chronically homeless and/or being released from jails or prisons." Furthermore, the state agreed to:

- Establish a range of community services and supports including: 22 Assertive Community Treatment teams; 8 Community Support teams to provide services in individuals' own homes; 14 Intensive Case Management teams; 45 Case Management service providers; 6 Crisis Services Centers; 3 additional Crisis Stabilization Programs; 35 community-based psychiatric beds; and an array of mobile crisis teams, crisis apartments, supported housing, supported employment, and peer support services.

---

<sup>24</sup> *U.S. v. State of Georgia* Civil No. 1:10-CV-249-CAP October 2010 Settlement Agreement fact sheet.

- The agreement also provides for a state-wide quality management system for community services.<sup>25</sup>

**Virginia.** The emphasis on states' the establishment of a community-based service delivery infrastructure in DOJ's enforcement activities was underscored in a landmark settlement with the commonwealth of Virginia aimed at ending the unnecessarily institutionalization of people with intellectual and developmental disabilities throughout its service delivery system. The DOJ's broad based approach to the enforcement of the Olmstead integration mandate is outlined in the letter from Thomas Perez, Assistant Attorney General of the DOJ Office of Civil Rights to the governor of Virginia reporting the department's findings of the Investigation of the Commonwealth of Virginia's Compliance with the American's with Disabilities Act and of Central Virginia Training Center dated February 10, 2011. In this correspondence, and in the subsequent settlement with the state,<sup>26</sup> DOJ cited a number of "systemic failures" in the Commonwealth's service delivery system "causing unnecessarily institutionalization" throughout the system including:

- The failure to develop a sufficient number of community-based institutional alternatives, especially for people with complex needs.
- The failure to use available resources to expand community services and re-align existing resources to prioritize investments in non-institutional settings.
- The presence of a flawed process for discharge planning that identified discharge barriers, individual's needs, and services necessary to meet those needs.
- The failure to develop sufficient numbers of services in the community to meet waiting lists and address the needs of persons at immediate risk of institutionalization.
- The failure to develop the crisis response and respite capacity necessary to prevent people with disabilities in crisis from being institutionalized due to the lack of alternatives.<sup>27</sup>

---

<sup>25</sup> *Ibid.* *U.S. v. State of Georgia* above.

<sup>26</sup> *U.S. v. Commonwealth of Virginia* - 3:12CV059 (E.D. VA 2012).

<sup>27</sup> Thomas E. Perez (2011). Letter to Governor Robert McDonnell Re: Investigation of the Commonwealth of Virginia's Compliance with the American's with Disabilities Act and of Central Virginia Training Center (see [www.ada.gov/olmstead/olmstead\\_cases\\_list2.htm#va](http://www.ada.gov/olmstead/olmstead_cases_list2.htm#va)).

DOJ entered into a comprehensive settlement agreement with the commonwealth of Virginia designed to make sweeping changes in the state's service delivery system for persons with disabilities. The state agreed over the next 10 years to expand the 1915(c) Medicaid waiver program in order to: (a) move 800 individuals with I/DD from state training centers to community programs, (b) furnish supports to 3,000 adults and youth with intellectual disabilities who on the state's "urgent" waitlist and/or are being served in private institutions, and (c) provide program supports to 450 adults and youth with developmental disabilities currently being served in private institutions. Additional provisions of the settlement call for the development of comprehensive and coordinated strategies to ensure families of children and adults with disabilities have access to resources, supports and services; the development of mobile crisis teams, community-based crisis stabilization and respite services, and a 24 hour 7 day per week crisis hotline. Under the settlement, the state also agreed to expand: the availability of integrated housing supporting people in their own homes, in small settings of four or fewer individuals with disabilities, or with their families; access to integrated employment and day activity opportunities under the 1915(c) Medicaid waiver and institute an employment first policy; improve access to case management and provide enhanced case management for people with complex needs, who are experiencing crisis living in congregate settings and are being discharged for state training centers.<sup>28</sup>

**Other States.** As noted above, the obligations of states to furnish services to individuals with disabilities in the most integrated settings applies to individuals with disabilities receiving all types of public support not just those living in segregated institutional settings. DOJ's Olmstead enforcement activities have extended beyond publicly operated institutional facilities to include people receiving public supports that result in their inappropriate and illegal segregation in privately owned and operated nursing homes, day programs, and other facility based alternatives. A summary of Olmstead litigation activities in the 12 U.S. Circuit Courts of Appeals is available from the Department of Justice' website at [www.ada.gov/olmstead/olmstead\\_enforcement.htm](http://www.ada.gov/olmstead/olmstead_enforcement.htm).

**State Operated Facilities.** The DOJ Civil Rights Division has issued Findings Letters and involved in Settlement Agreements regarding people with disabilities who are living in, or at-risk of entering state-operated facilities in several states including:

- *U.S. v. State of Georgia* expanding community services and supports for more than 1,000 people in state I/DD facilities and on waitlist for services (see above).

---

<sup>28</sup> See [www.justice.gov/crt/about/spl/virginia-ada.php](http://www.justice.gov/crt/about/spl/virginia-ada.php) for the settlement agreement, fact sheet, complaint, and investigative findings.



- *U.S. v. Commonwealth of Virginia* resulting in the broad expansion of community support options for more than 4,200 people with I/DD disabilities in state and private facilities and on the state's waitlists (see above).
- *DOJ's Findings Letter State of Mississippi* identifying violations on behalf of adults and children in public and private DD facilities and concluding that the state is violating the ADA's integration mandate in its provision of services to adults and children with developmental disabilities and mental illness by unnecessarily institutionalizing persons with mental illness or DD in public and private facilities and failing to ensure that they, as well as people on wait lists for services, are offered a meaningful opportunity to live in integrated community settings consistent with their needs.
- *U.S. v. State of New Hampshire (Lynn v. Lynch)* addressing the needs of people with mental illness who reside in or are at risk of entering the state psychiatric hospital and state-operated nursing facility for people with mental illness.

Private Facilities. The Civil Rights Division has intervened to prevent the unnecessary segregation of people with disabilities in private facilities receiving public support.

- *Nursing Homes and Private Facilities*
  - i. Texas - Intervention in *Steward v. Perry*, DOJ was granted a request to intervene in a pending lawsuit against the state alleging violations of Title II of the ADA and Section 504 of the Rehabilitation Act for unnecessarily segregating individuals with developmental disabilities in nursing facilities. The intervention addressed the needs of thousands of people with I/DD in and at-risk of entering private nursing homes in the state with the Arc of Texas as an organizational plaintiff.
  - ii. Virginia - Investigation regarding children with DD in nursing homes, relief was included in the VA agreement (see above).
  - iii. Florida – Findings Letter issued in September 2012 concluded the state of Florida was violating the ADA's integration mandate in its provision of services and supports to children with medically complex and medically fragile conditions. DOJ found that the state of Florida plans, structures, and administers a system of care that has led to the unnecessary institutionalization of children in nursing facilities and places children

currently residing in the community at risk of unnecessary institutionalization.

- iv. New York – DOJ intervened in *DAI v Cuomo* regarding people with mental illness living in adult homes in New York City who were seeking integrated supported housing and community supports.
- *Private Intermediate Care Facilities*. Statement of Interest was issued in private litigation.
  - *Day Programs and Services*. Civil Rights Division activities have made it clear that the provisions of the ADA and the Olmstead ruling are not limited to the settings where people live but also apply to the supports and services that people with disabilities receive during the day.
    - i. Oregon - *Lane v. Kitzhaber* Statement of Interest and, Findings Letter concluding that the state of Oregon violates the ADA's integration mandate in its provision of employment and vocational services because it plans, structures, and administers employment and vocational services for individuals with I/DD primarily in segregated sheltered workshops rather than in integrated community employment settings. This causes the unnecessary segregation of individuals in sheltered workshops that are capable of, and not opposed to, receiving employment services in the community. DOJ recommended that the state implement remedial measures, including the development of sufficient supported employment services to enable those individuals unnecessarily segregated, or at risk of unnecessary segregation, in sheltered workshops to receive services in individual integrated employment settings in the community.
    - ii. Virginia - Settlement of *U.S. v. Commonwealth of Virginia* and Olmstead settlements in Delaware, North Carolina, and Georgia resulted in expansions of supported employment and integrated day activities in each of those states.
  - *Community Services*.
    - i. Delaware – Settlement of *U.S. v. State of Delaware* resulting in the expansion of community services. for more than 3,000 people with mental illness residing in or at risk of entering state psychiatric hospitals and private Institutes for Mental Disease (IMD) facilities. The settlement also

expanded access to ACT services, crisis services, and supported employment, intensive case management, peer and family supports. The settlement expanded the availability of integrated scattered site housing, rental vouchers and subsidies and assurance that housing complexes would have no more than 20 percent people with disabilities in residence.

- *At Risk Cases.* In a significant number of instances the DOJ Statements of Interest filed in support of private plaintiffs have included reference to practices and policies that result in the unnecessary segregation of individuals with disabilities as a result of:
  - i. State cuts to critical services without individualized assessments of impact or an exceptions process for those with special conditions or treatment needs.
  - ii. Policies requiring people with disabilities to enter an institution to move to top of a waiting list for community services rather than being furnished with services in an integrated setting in the first instance.
  - iii. Provisions limiting the delivery of needed services to persons living in an institution but not in the community
  - iv. State budgetary reductions to critical community mental health services supporting private litigation in California to prevent cuts to services for people with mental illness who had been determined to be at risk of out-of-home placements without those services.
  - v. The lack of intensive, community-based and "wrap-around" services for children with mental/behavioral health conditions.

## Conclusion

The Olmstead ruling in 1999 established that the unnecessary segregation of people with disabilities in institutions is a form of discrimination under Title II of the Americans with Disabilities Act of 1990. In this decision, the Supreme Court reviewed the definition of disability under the ADA and clarified the relationship between the presence of a particular physical or mental condition and the extent to which such an "impairment" substantially limits major life activities. The Olmstead ruling established the role and responsibilities of states and public entities with respect to their obligations under Title II of the ADA to ensure that eligible individuals with disabilities receive public services within "the most integrated setting" appropriate to their needs. The Olmstead integration mandate provides a framework through which qualified individuals with disabilities are not subjected to discrimination, denied benefits or excluded from participation in society through the delivery, provision or funding of services, programs, or activities by a public entity.

The provisions of the ADA as interpreted by the Olmstead ruling are comprehensive and apply to all services and supports furnished or funded by or through public entities. In the distant past, publicly financed services were provided in facility-based programs, segregated away from society. Since that time service delivery methods, designs and strategies have changed significantly in response to individual and family advocacy, progressive legislation at the federal and state levels, improved instructional and support methodologies and a growing understanding of the deleterious impact that segregation and exclusion from society has on the lives of individuals with disabilities. Although service delivery approaches have changed, reflecting a greater emphasis on integrated community-based services, federal funding mechanisms and states' systems of support for people with disabilities have continued to be anchored in traditional service models that result in unnecessary segregation of individuals with disabilities and their exclusion from society. The passage of the ADA and the Olmstead ruling recognizes in law the obsolescence of traditional non-integrated approaches and provides a broad system change framework for public entities to follow to improve service delivery and the lives of people receiving supports and carry out Congress' "comprehensive national mandate for the elimination of discrimination against individuals with disabilities."<sup>29</sup>

---

<sup>29</sup> 42 U.S.C. § 12101(b)(1).

## Annotated References

1. About the Americans with Disabilities Act of 1990 (ADA) Martin County Florida  
[www.martin.fl.us/portal/page?\\_pageid=352,830377&\\_dad=portal&\\_schema=PORTAL](http://www.martin.fl.us/portal/page?_pageid=352,830377&_dad=portal&_schema=PORTAL)
2. DOJ website on Olmstead  
[www.ada.gov/olmstead/index.htm](http://www.ada.gov/olmstead/index.htm)
  - DOJ Website on ADA enforcement and Technical Assistance materials:  
[www.ada.gov/publicat.htm](http://www.ada.gov/publicat.htm)
  - DOJ website on Litigation and Enforcement  
[www.ada.gov/olmstead/olmstead\\_enforcement.htm](http://www.ada.gov/olmstead/olmstead_enforcement.htm).
3. Statement of the Department of Justice on Enforcement of the Integration Mandate of Title II of the Americans with Disabilities Act and *Olmstead v. L.C.* U.S. Department of Justice Civil Rights Division.  
[www.ada.gov/olmstead/q&a\\_olmstead.pdf](http://www.ada.gov/olmstead/q&a_olmstead.pdf)
4. *Olmstead: Reclaiming Institutionalized Lives* (August 2003). National Council on Disability. Accessed from the NCD website November 2012.  
[www.ncd.gov/publications/2003/Aug192003](http://www.ncd.gov/publications/2003/Aug192003).

In this report, the National Council on Disability (NCD) assesses the nation's response to the U.S. Supreme Court's ruling in *Olmstead v. L.C.*, 527 U.S. 581 (1999) that the unjustified institutionalization of people with disabilities is a form of discrimination. NCD examines the federal government's implementation efforts and the strategies states and key stakeholders are using to (1) develop consensus on a coordinated action plan, (2) identify and commit the necessary resources for community-based service options, and (3) sustain collaborative action toward creating real choice for people with disabilities living in institutions.

5. Ng, T., Wong, A., and Harrington C. (April 2012). *Home and Community-Based Services: Introduction to Olmstead Lawsuits and Olmstead Plans*. National Center for Personal Assistance Services University of California at San Francisco. For a state by state summary of Olmstead lawsuits see  
[www.pascenter.org/olmstead/olmsteadcases.php](http://www.pascenter.org/olmstead/olmsteadcases.php).

6. U.S. Equal Employment Opportunity Commission Fact Sheet on the EEOC's Final Regulations Implementing the ADAAA.  
[www.eeoc.gov/laws/regulations/adaaa\\_fact\\_sheet.cfm](http://www.eeoc.gov/laws/regulations/adaaa_fact_sheet.cfm)
7. The Americans with Disabilities Act Title II Technical Assistance Manual. The Americans with Disabilities Act Title II Technical Assistance Manual Covering State and Local Government Programs and Services.  
[www.ada.gov/taman2.html#II-1.3000](http://www.ada.gov/taman2.html#II-1.3000)

This technical assistance manual addresses the requirements of Title II of the Americans with Disabilities Act, which applies to the operations of state and local governments. This manual presents the ADA's requirements for state and local governments in an easily accessible format providing a focused, systematic description of the ADA's requirements.