



# ***Olmstead* Enforcement: Impact on Community Services and Housing**

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# *Olmstead* is a top priority for the Administration

- “Year of Community Living”
  - “The *Olmstead* ruling . . . articulat[ed] one of the most fundamental rights of Americans with disabilities: Having the choice to live independently. [T]his initiative reaffirms my Administration’s commitment to vigorous enforcement of civil rights for Americans with disabilities and to ensuring the fullest inclusion of all people in the life of our nation.” President Obama June 22, 2009
- DOJ *Olmstead* enforcement efforts
  - Over 40 matters in 26 states since Year of Community Living initiative began

# Interagency Collaboration

- Unprecedented inter-agency partnerships around *Olmstead*, including:
  - DOJ and HHS input to HUD *Olmstead* guidance
  - DOJ and HUD input on HHS settings regulations
  - HHS and HUD technical assistance to states implementing DOJ settlement agreements
  - HHS, HUD and DOJ participating in *Olmstead* Academy

# **Legal Background**

# Title II of the ADA

- Prohibits discrimination by public entities in services, programs and activities
- Integration regulation requires administration of services, programs and activities **in the most integrated setting** appropriate
- Most integrated setting is one that enables people with disabilities to **interact with people without disabilities to the fullest extent possible**

# *Olmstead v. L.C.*: Unjustified segregation is discrimination

- Supreme Court held that Title II prohibits unjustified segregation of people with disabilities
- Set out “two evident judgments” about institutional placement:
  1. “perpetuates **unwarranted assumptions** that persons so isolated are incapable or unworthy of participating in community life”
  2. “**severely diminishes the everyday life activities of individuals,**” including family, work, education and social contacts

# ***Olmstead v. L.C. (cont'd)***

- Held public entities are required to provide community-based services when:
  - Such services are appropriate; and
  - Affected persons do not oppose community-based treatment; and
  - Community-based treatment can be reasonably accommodated, taking into account the resources available to the entity and the needs of others receiving disability services

# When is the ADA's Integration Mandate Implicated?

- Not limited to state-run facilities/programs; also applies to private facilities/programs
- Applies when government programs result in unjustified segregation by:
  - Operating facilities/programs that segregate people with disabilities
  - Financing the segregation of people with disabilities in private placements
  - Promoting segregation through planning, service design, funding choices, or practices.



# **When** is the ADA's Integration Mandate Implicated? (cont'd)

- **Not limited to residential segregation**
- Integration mandate applies to ALL government programs, including:
  - Segregated employment (eg, sheltered workshops)
  - Segregated day activities
  - Segregated educational programs

# Who Does the Integration Mandate Cover?

- ADA and *Olmstead* are not limited to individuals in institutions or other segregated settings
- They also extend to people **at serious risk of institutionalization or segregation**
  - Example: people with urgent needs on waitlists for services or people subject to cuts in community services leading to the person's unnecessary institutionalization.

**DOJ *Olmstead***  
**Enforcement Activities**

# Range of DOJ “Tools”

- Investigations & Findings Letters leading to Settlement Agreements or Litigation for system reform
- Intervention in private *Olmstead* litigation
- Statements of Interest practice in private litigation on many *Olmstead* issues
- *Olmstead* Technical Assistance Guidance
- *Olmstead* website ([www.ada.gov/olmstead](http://www.ada.gov/olmstead))

# Scope of Matters

- Investigations and cases involve individuals in public and private institutions/congregate settings (both residential and day) and those at risk of entering them
- Investigations and cases involve a range of disability groups (DD, MI, physical disabilities)
- Remedies to ensure supports and services for individuals to be in the community
- Measurable, concrete and outcome-driven remedies; court enforceable with monitoring

# Lessons Learned

- Not just about moving people out of segregated settings; focus on creating quality community alternatives and ensuring informed choices
- Not just about where people live, but also where they spend their days
- Both community services and integrated housing options are essential
- Lack of affordable housing is a big barrier; many people are in segregated settings because that is their only “housing” option

# Lessons Learned (cont'd)

- Medicaid is critical to *Olmstead* implementation, including new opportunities like MFP, BIP, and CFC
- Rebalancing funding for community services much easier than for housing: Medicaid covers services both in institutions and the community but only covers room and board in institutions and cannot be used to pay for community housing
- HHS and HUD have a critical role; they can help states understand how federal funds can be used to facilitate *Olmstead* implementation
- Engagement of a range of stakeholders – consumers, families, advocates, providers – is essential to the success of this work

# Settlement Remedies: Expansion of Critical Community Services

- Expansion of critical community services, often through rebalancing and better leveraging Medicaid:
  - HCBS waivers
  - Range of crisis services
    - Mobile crisis teams, walk-in centers, hotline, and crisis stabilization programs
  - Case Management
  - Supported e-ment and integrated day activities
  - Assertive Community Treatment (ACT)[MH]
  - Family supports [ID/DD]



# Settlement Remedies: Expansion of Integrated Housing

- Opportunity to live in own home, family home, or small community settings
  - In mental health settlement agreements focus on expanding integrated, supported housing:
    - Primary scattered-site , not people with disabilities concentrated together in housing complexes
    - Affordable (no more than 30% of income towards housing costs); housing subsidies often necessary
    - Rights of tenancy
    - Range of flexible services and supports available but not mandated as a condition of tenancy
    - Choice of housing and roommates

# Settlement Remedies: Expansion of Integrated Housing (cont'd)

– In developmental disability settlement agreements, focus on expanding opportunities for living in:

- Own home (often need rental subsidies)
- Family home (family supports are critical)
- Supported apartments
- Host homes
- Small group homes (4 or less)

# Guidance and Website

- 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.* (June 22, 2011)
- Website: [www.ada.gov/olmstead](http://www.ada.gov/olmstead)
  - All settlement agreements, findings letters, briefs, guidance, testimony, speeches, etc.
- Faces of *Olmstead*: People impacted by DOJ's *Olmstead* enforcement work

# Contact Information

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