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Department of Justice
Olmstead Enforcement and
the case for Supported
Housing

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What is Olmstead?

- Olmstead v. L.C., 527 U.S. 581 (1999)
 - *In Short*: The principle that every individual with a disability has the **RIGHT** to participate in or receive state/locally-administered or state/locally-financed services, programs, or activities in *the most integrated setting appropriate to his or her needs*.
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Olmstead Enforcement Objectives

- Help people with disabilities live like people without disabilities
 - Help people with disabilities have true integration, independence, choice and self-determination in all aspects of life – where people live, how they spend their days, and real community membership
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The Integration Mandate

Legal Background



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The Integration Mandate

Derived from ADA Title II's Prohibition on Disability Discrimination

- “[N]o qualified individual with a disability shall, 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.” 42 U.S. C. § 12132
 - “The Attorney General shall promulgate regulations ... that implement this part.” 42 U.S.C. § 12134(a)
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The Integration Mandate

The Attorney General's Integration Regulation (1991)

“A public entity shall administer services, programs, and activities **in the most integrated setting** appropriate to the needs of qualified individuals with disabilities.”

28 C.F.R. § 35.130 (d)



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The Integration Mandate

The Attorney General's Integration Regulation (1991)

The “most integrated setting” is one that “*enables individuals with disabilities to interact with non-disabled persons to the fullest extent possible.*”

1991 Preamble to 28 C.F.R. Part 35
28 C.F.R. Part 35, App. B at 673 (2010).



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Olmstead v. L.C.

- 1999 Supreme Court decision holding that title II prohibits unjustified segregation of people with disabilities
 - Said this holding reflects “two evident judgments:”
 - 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**”
 - “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”
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Olmstead v. L.C.

- Supreme Court held that public entities are required to provide community-based services when:
 - a) Such services are appropriate; and
 - b) The affected persons do not oppose community-based treatment; and
 - c) Community-based treatment can be reasonably accommodated, taking into account the resources available to the entity and the needs of others receiving disability services
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Segregated vs. Integrated Settings



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What is a *Segregated* Setting?

Has *institutional* qualities, including:

- ***Congregate*** in nature with primarily or exclusively people with disabilities
 - ***Regimentation*** in daily activities, lack of privacy/autonomy, limits on ability to freely engage in community activities
 - Settings that provide for activities ***primarily with other people with disabilities***
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What is a *Segregated* Setting?

Examples: psychiatric hospitals, nursing homes, adult care homes, sheltered employment workshops, congregate housing for people with disabilities without interaction of those without disabilities



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What is an *Integrated* Setting?

Integrated settings:

- Provide the opportunity to work, live, and receive services in the greater community
- Are located in everyday society
- Offer access to community activities
- Offer choice in daily life activities

Example: Scattered-site, permanent supportive/ed housing



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Who Does the Integration Mandate Cover?

- The ADA and Olmstead are not limited to individuals currently 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 *reductions* in community services that could lead to the person's institutionalization
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DOJ Olmstead Enforcement

- Investigations
 - Technical Assistance
 - Litigation/Settlement
 - Statements of Interest/Amicus Briefs
 - Supporting Preliminary Relief
 - Opposing Dispositive Motions
 - Supporting Class Certification
 - Supporting Relief
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Olmstead & Oregon's Community Mental Health Services

- (2010) ADA Investigation opened
 - (2012) Letter Agreement signed
 - (2016) Oregon Performance Plan approved
 - Individuals with SPMI
 - Plan Expands Service System in 10 specific areas (see next slide)
 - Independent Consultant hired as “monitor” of progress
 - Annual Meeting of Parties
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Oregon Performance Plan

10 Performance Outcome Service Areas:

Assertive Community Treatment

Crisis Services

Supported Housing

Peer-Delivered Services

Oregon State Hospital

Acute Psychiatric Care

Emergency Departments

Supported Employment

Secure Residential Treatment Facilities

Criminal Justice Diversion



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Oregon Performance Plan Website

<https://www.oregon.gov/oha/HSD/BHP/Pages/Oregon-Performance-Plan.aspx>



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Supportive vs. Supported Housing*

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|--|--|
| <ul style="list-style-type: none"><input type="checkbox"/> Not defined in Performance Plan, but not prohibited<input type="checkbox"/> May be congregate housing<input type="checkbox"/> Does not “count” towards State’s performance. | <ul style="list-style-type: none"><input type="checkbox"/> Defined in Performance Plan<input type="checkbox"/> Must be scattered site housing<input type="checkbox"/> Choice of Roommate and Private BR<input type="checkbox"/> Cap on #s of persons referred with SPMI<input type="checkbox"/> No denial due to medical need/SA History |
|--|--|
- *See IC Report #1 for side by side compare



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Supported Housing Measures*

Performance Plan

In year one (July 1, 2016 to June 30, 2017), at least 835 individuals will live in supported housing.

In year two (July 1, 2017 to June 30, 2018), at least 1,355 individuals will live in supported housing.

In year three (July 1, 2018 to June 30, 2019), at least 2,000 individuals will live in supported housing.

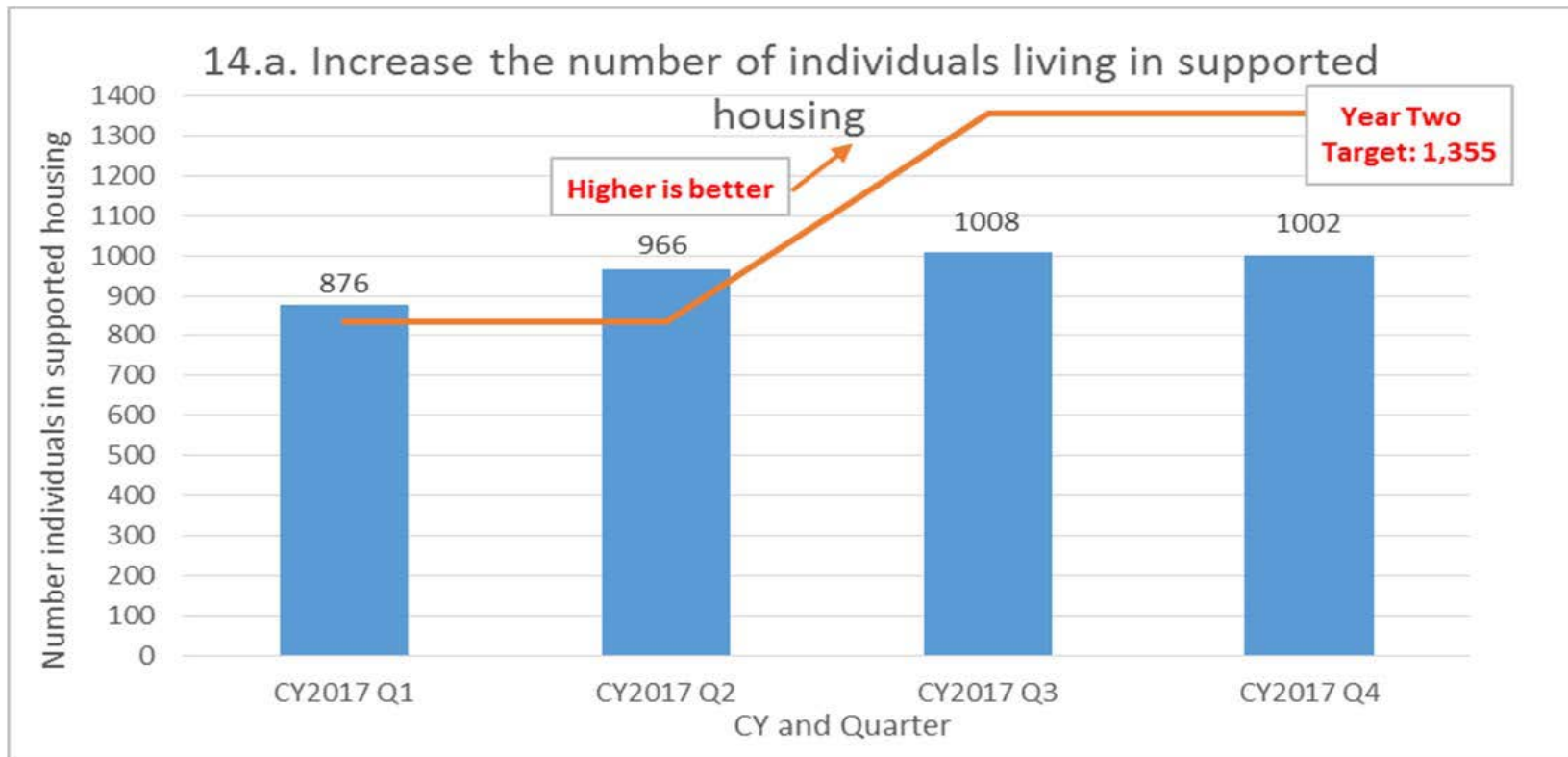
*2015 baseline number was 442 individuals were in SH.



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Supported Housing Data*

Performance Plan





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*Supportive Housing Data

As of 12/31/17, OHA reported 1,361 individuals with SPMI were living in *Supportive* Housing in addition to those living in Supported Housing.



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Additional Information

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)

Olmstead guidance, settlement agreements, findings letters, and statements of interests available at:

www.ada.gov/olmstead



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Filing an ADA complaint

- Person should provide us with the details of the discrimination and mail, fax, or e-mail the information to:

**U.S. Department of Justice
Disability Rights Section – NYA
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530
Fax: (202) 307-1197
ADA.complaint@usdoj.gov**

- Questions about filing an ADA complaint can be directed to the ADA Information Line:
 - 800-514-0301 (voice) or 800-514-0383 (TTY).
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Questions?



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