Department of Justice
Olmstead Enforcement and the case for Supported Housing

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Oregon Housing Conference
October 15, 2018
What is Olmstead?


• 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.**
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
The Integration Mandate

*Legal Background*
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)
"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)
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
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”
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

Olmstead v. L.C.
Segregated vs. Integrated Settings
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*
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
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
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
DOJ Olmstead Enforcement

- Investigations
- Technical Assistance
- Litigation/Settlement
- Statements of Interest/Amicus Briefs
  - Supporting Preliminary Relief
  - Opposing Dispositive Motions
  - Supporting Class Certification
  - Supporting Relief
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
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
Oregon Performance Plan Website

https://www.oregon.gov/oha/HSD/BHP/Pages/Oregon-Performance-Plan.aspx
Supportive vs. Supported Housing*

- Not defined in Performance Plan, but not prohibited
- May be congregate housing
- Does not “count” towards State’s performance.

- Defined in Performance Plan
- Must be scattered site housing
- Choice of Roommate and Private BR
- Cap on #s of persons referred with SPMI
- No denial due to medical need/SA History

*See IC Report #1 for side by side compare
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.
Supported Housing Data* Performance Plan

14.a. Increase the number of individuals living in supported housing

<table>
<thead>
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<th>Number of individuals in supported housing</th>
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Higher is better

Year Two Target: 1,355
*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.
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](http://www.ada.gov/olmstead)
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).
Questions?
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