

Making Your Life Your Own

How Olmstead Expands Rights and Opportunities for People with Serious Mental Illnesses

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On June 22, 1999, the U.S. Supreme Court ruled in *Olmstead v. L.C.* that unnecessary segregation of people with disabilities violates the Americans with Disabilities Act (ADA). On the 12th anniversary of that ruling, the U.S. Department of Justice (DOJ) issued guidance that clarifies the meaning of the *Olmstead* decision and how DOJ is working to assure that people with disabilities benefit appropriately.¹ This paper describes the highlights of that guidance.

Olmstead has very important implications for people with mental illnesses who receive services through state mental health programs, community mental health, Medicaid or other public programs. This is particularly the case because historically, people with mental illnesses have been segregated in hospitals and various other facilities. In its *Olmstead* decision, the Supreme Court ruled that unnecessary confinement in such settings is a form of discrimination. In summary, federal law (including the ADA and the *Olmstead* decision) requires that public service systems help people with disabilities to live in their own home, to pursue employment and education of their own choosing, and to spend time with family and friends as they wish.² In other words, people with disabilities should not have to move into group settings -- such as nursing homes, board and care homes, and group homes -- to obtain the services they need to live and thrive in society like anyone else.

What Is the Integration Mandate?

The ADA is a comprehensive civil rights law, and just like other such laws -- for example, relating to race or gender -- it is intended to end discrimination and segregation. One type of discrimination that the ADA forbids is the needless segregation of people with disabilities, including mental illnesses. The ADA requires state and local governments to “administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.”³ This means that publicly funded programs to help people with mental illnesses must deliver services in ways that do not discriminate, such as by needlessly keeping people with mental illnesses away from the mainstream of their communities. This is ADA's "integration mandate."

What Is the Most Integrated Setting?

The “most integrated setting” is a setting that “enables individuals with disabilities to interact with non-disabled persons to the fullest extent possible.”⁴ This allows people with disabilities to

¹ U.S. Department of Justice, Questions and Answers on the ADA's Integration Mandate and *Olmstead* Enforcement. http://www.ada.gov/olmstead/q&a_olmstead.pdf Later footnotes refer to this as the “Statement.”

² Statement at 3.

³ 28 C.F.R. § 35.130(d).

⁴ 28 C.F.R. pt. 35 app. A.

live as much as possible like people without disabilities.⁵ For example, in a group home, people with mental illnesses live with other people who have mental illnesses, have routine contact mostly with other residents and staff of the facility, and often go to day programs where their interactions are similarly limited. These residents are living lives that are segregated, even though they are not in a hospital.

Supportive housing is an example of a more integrated setting that often serves the same population. In supportive housing, people with disabilities live in their own apartments scattered throughout the community, in buildings without unusual concentrations of people with disabilities, receiving the support they need to be successful tenants and members of society.⁶ They live in *their own* homes -- not a “placement” -- and choose who, if anyone, they want as roommates, when they eat their meals, and how they spend their day. Rarely is a setting “the most integrated” when it congregates individuals with disabilities, has a list of facility rules, lacks privacy, or offers activities primarily for or with other people with disabilities.⁷

When Does the Integration Mandate Apply?

The integration mandate applies to everything a state or local government does, including how it plans, designs, and funds its service systems. It applies when state or local government funds private service providers, including nursing homes, board and care homes, and group homes.⁸ It also applies to community mental health programs and vocational programs that are funded through Medicaid and other government programs.

There are several ways that people with mental illnesses can show that they are needlessly segregated. A treating professional can determine that an individual could receive services in a more integrated setting, such as supportive housing instead of a board and care home. People can also point to others with similar disabilities who receive services in more integrated settings. People can also rely on the opinion of a community organization, a professional or provider of the person’s choosing, or any credible source.⁹

What About Choice?

Olmstead does not force people with disabilities to be served in integrated settings, but in order to make meaningful decisions people must understand their options. In the past, the preferences of people with mental illnesses were often ignored -- they were *told* what they needed -- or they were asked to pick between staying in the hospital or going to a congregate facility. A home they could call their own was not even mentioned as a possibility. To enjoy their rights under *Olmstead*, people with mental illnesses must have information that allows them to make *informed* choices.

For instance, they must have information about the benefits of integrated settings and the opportunity to visit integrated settings and meet people like themselves who are thriving there. They must also have information about the assistance that will be available to them to allow

⁵ [Statement](#) at 3.

⁶ Id.

⁷ Id.

⁸ Id.

⁹ Id. at 4.

them to live in their own home. Their concerns should be identified and addressed.¹⁰ Generally, people are relieved to learn that desired and needed supports will be available when they move into the integrated setting of their choice.

What About People At Risk?

The ADA protects people at serious risk of being segregated. A person need not wait to be segregated before seeking the protections of the ADA.¹¹ In other words, people receiving public mental health services do not need to be in a hospital or other segregated setting in order to qualify for the protections provided by the ADA. In fact, the two individuals with mental disabilities who were the subject of the *Olmstead* lawsuit were not in a hospital when the Supreme Court heard their case; they were at *risk* of being re-hospitalized and segregated because they were not receiving services allowing them to live successfully in the community.

How Does Olmstead Affect Medicaid?

Medicaid pays for the majority of public mental health services in this country.¹² To comply with *Olmstead*, a state may have to change its Medicaid program. In the past, Medicaid had a bias towards providing services in segregated settings, but many recent programs under Medicaid pay for services that support individuals with mental illnesses living in integrated community settings. When necessary to meet *Olmstead's* requirements, a state may have to expand its home- and community-based waiver programs or modify eligibility for particular services.¹³

The Fundamental Alteration Defense

There are limits to what *Olmstead* requires states to do. In court, states and localities may argue that they cannot provide the community supports that an individual with a mental illness needs because to do so would be a fundamental alteration” of their public programs. Usually, their argument is that serving people in integrated settings would be too expensive. The good news is that *it is usually less expensive to serve individuals in integrated settings*, particularly if states take full advantage of funds available through Medicaid and other federal programs that support community living. States can also decide to shift funds that are now being spent on segregated services and reinvest these funds in integrated housing and supports.

How Do We Fix Olmstead Violations?

For people with mental illnesses, remedies for *Olmstead* violations typically include: enabling people to live in their own homes, including supportive housing; assertive community treatment (ACT) teams; crisis services; peer supports; and supported employment.

Getting Help

The Protection and Advocacy system helps enforce *Olmstead*. Contact information for the Protection and Advocacy agency in your state is available at <http://www.ndrn.org>. You can file a complaint with DOJ, whose positions we have summarized here. Complaint forms are available at <http://www.ada.gov/t2cmpfrm.htm>. Help is also available from the Department’s ADA Information Line at 1-800-514-0301 or 1-800-514-0383 (TTY).

¹⁰ Id. at 4-5.

¹¹ Id. at 5.

¹² Source: <https://www.cms.gov/MHS/>

¹³ Id.