

***Olmstead* Discussion:
National Picture and
North Carolina Settlement
Agreement with the
U.S. Department of Justice**

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Background

- 1990: The Americans with Disability Act (the ADA)
 - Prohibits discrimination against people with disabilities 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.
- 1999: U.S. Supreme Court Decision in *Olmstead*
 - held that states have an affirmative obligation to ensure that individuals with disabilities live in the least restrictive, most integrated settings possible.

Most Integrated Setting

DOJ 2011 guidance and court decisions:

- A setting that enables people with disabilities to interact with non-disabled persons to the fullest extent possible;
- Provides individuals opportunities to live, work and receive services in the greater community, like individuals without disabilities;
- Offers access to community activities and opportunities at times, frequencies and with persons of an individual's choosing; affords choice in daily life activities.
- Congregate settings are settings populated exclusively or primarily by people with disabilities.

Segregated Settings

- Segregated settings are typically state-run facilities/programs but can be private facilities/programs that are financed by or promoted through state's planning, service design, funding choices, or practices.
- Examples:
 - Psychiatric facilities
 - Adult Homes/Personal Care Homes
 - Nursing Homes
 - Segregated day programs

HUD and CMS: Have Weighed in with Guidance

- HUD issued guidance in 2013
 - HUD grantees must administer programs and activities in the most integrated setting appropriate for people with disabilities
 - Integrated settings enable individuals with disabilities to live independently with individuals without disabilities and without restrictive rules that limit their activities or ability to interact with individuals without disabilities.
- CMS Issued Rules in 2014 and again 2016
 - Sets requirements for “community-based settings” similar to “integrated settings” and prohibits services in settings that are similar to “segregated settings” under *Olmstead*;
 - Clarified allowable supportive services in housing settings.

Olmstead Agreements Examples

- Adult homes: *U.S. v. North Carolina*; *U.S. v. New York/O'Toole v. Cuomo*
- Psychiatric hospitals: *Oregon Performance Plan*; *U.S. v. New Hampshire*; *Amanda D. v. Hassan*, *U.S. v. Delaware*, *U.S. v. Georgia*, *Disability Rights New Jersey v. Velez*
- Nursing homes : *Williams v. Quinn* and *Colbert v. Quinn* (IL), *Joseph S. v. Sullivan* (NJ), *Steward v. Perry* (TX); *OPA v. Connecticut*
- Day services: *U.S. v. Rhode Island*

North Carolina Agreement

- Settlement Agreement signed in 2012 and extends to June 30, 2018;
- Investigation focused on Adult Care Homes but Settlement Agreement defines Priority Populations as individuals with serious mental illness (also defines SPMI) in or at risk of Adult Care Home placement, who are or will be discharged from State Psychiatric Hospitals and who are homeless or at risk of homelessness;
- Settlement Agreement includes 103 provisions;
 - Threshold requirements for new services and housing;
 - The development and implementation of effective measures to fund and implement services in accordance with requirements.

North Carolina Agreement

- Threshold Requirements:
 - Establish 3,000 Supportive Housing Slots, using existing or new programs;
 - Increase number of individuals served by ACT to 50 teams, meeting fidelity to the TMACT model, serving 5,000 individuals; provide the array of individualized services necessary for an individual to live in the community;
 - Provide Supportive Employment meeting fidelity to the IPS-SE model 2,500 individuals; and
 - Assist an individual to transition from an Adult Care Home within 90 days upon identification and request of the individual to move.

North Carolina Agreement

- Definitions and effective measures:
 - In Reach;
 - Transition and Discharge Planning;
 - Supportive Housing, Array of Services, including Crisis and Peer Services;
 - Supportive Employment;
 - Delegated Responsibilities to the LME/MCOs;
 - Pre-Admission-Screening and Diversion;
 - Quality Assurance and Performance Improvement.

Other State Examples

- New Jersey
 - Individuals on “CEPP” status in State Psychiatric Hospitals
- Georgia
 - Individuals being served in or frequently re-admitted in State Hospitals, who are frequently seen in emergency rooms, who are chronically homeless and/or are being released from jails and prisons
- Oregon
 - Plan to improve mental health services for adults with SPMI

Olmstead is a “Tool” For Systemic Change

- Using *Olmstead* to create statewide, system change to expand alternatives for people in segregated settings:
 - Increasing the capacity of community services that are critical for a successful, healthy, safe life in the community ;
 - Expanding the supply of affordable, permanent supportive housing available to people with disabilities;
 - Increasing investment in community services and housing; and
 - Better leveraging existing funding streams.

Contact Information

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