



Housing for People with Disabilities: A Civil Rights Lens

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Evolution of Housing for People With Disabilities

Traditional Housing Models: Large Institutions

- Until the 1980s, most people with significant disabilities were institutionalized in large, state-operated institutions
 - Psychiatric hospitals
 - Institutions for people with developmental disabilities
- Medicaid only funded institutions at that time and there was no funding for community services.

Movement Away from Institutions

- Movement away from institutions starting in the late 1970s due to a range of factors:
 - Serious concerns with the horrible conditions, abuse and neglect in large institutions (rising to the level of constitutional violations)
 - Medicaid began paying for community services
 - Early civil rights laws for people with disabilities (Rehabilitation Act of 1973)
 - More children with disabilities growing up in the community because they had access to public school (right first established in late 1970s)

Early “Community” Housing Models

- “Step-down” housing models
 - People “progress” through housing, going from more to less restrictive models
 - People have to move as their service needs change
- Group homes for people with disabilities
 - A provider owns the housing and provides the services
 - People live together with other people with disabilities; typically little autonomy and regimented daily activities

Early “Community” Models (cont’d)

- Board and care homes
 - Congregate settings for people with disabilities, ranging in size from a dozen to hundreds of people
 - These settings typically have characteristics very similar to institutions
 - Lack of privacy, regimented schedules, no choice of roommates, no autonomy
 - Many people leaving institutions ended up in these settings because a lack of alternatives

Today's Models: Integrated Housing in the Community

- People with disabilities live like people without disabilities
- Movement away from congregate, disability-specific housing to people living in their own apartments or homes scattered in the community.
- Flexible services are available to people in their own homes and communities. People do not have to move when their needs change.

Supportive Housing

- Housing First: Range of flexible services and supports available but not mandated as a condition of tenancy
- Permanent housing; no time limit for residency
- Rights and responsibilities of tenancy
- Affordable (no more than 30% of income towards rent); rental subsidy usually necessary
- Primarily non-disability-specific, scattered site housing (Melville Act's changes to 811 have 25% limit; some states limit to 10-20%)
- Choice of housing unit and roommate, if want one

Supportive Housing (cont'd)

- Consensus that supportive housing is the most integrated and most effective housing for people with mental illness (including people who are homeless with mental illness)
 - Mental health community (see Bazelon “Key Principles” endorsed by 26 major disability groups)
 - Federal government (HUD, HHS, DOJ)

**The Problem: Too Many People
With Disabilities are Still
Unnecessarily Segregated**

People Unnecessarily Segregated

- Lack of community-based services and housing leading to people with disabilities **unnecessarily in institutional or segregated settings:**
 - Psychiatric facilities
 - Adult Homes
 - Nursing Homes
 - Jails/prisons

People “At-Risk” of Segregation

- People with disabilities being placed **at risk of unnecessary institutionalization or segregation** due to a lack of or inadequate housing and services. “At-risk” population may include people who:
 - Repeatedly use emergency rooms for crises
 - Interact with police or the criminal justice system because of a mental health crisis
 - Are homeless with serious mental illness
 - People who receive an insufficient level of services
 - People on waiting lists for services

The Causes

- **Lack of affordable housing** in the community available to people with disabilities, causing:
 - Lack of housing stability and high homelessness rates (particularly people with mental illness)
 - People with disabilities remaining in institutional settings because there is no other housing alternative

The Causes (cont'd)

- **Lack of critical community services** that can help people with disabilities stably live in the community and retain housing, including:
 - Community crisis services
 - Intensive case management
 - Assertive Community Treatment
 - Supported employment
 - Home and Community Based Services (HCBS) waivers

The ADA as a “Tool” to Address These Problems

- Using the **Americans with Disabilities Act** to create **statewide, systemic reform activities**:
 - Increasing the capacity of community services that are critical for successful community tenure
 - Expanding the supply of affordable, permanent community housing available to people with disabilities
 - Increasing investment in community services and housing
 - Better leveraging existing disability service and housing funding streams

What Does the ADA and *Olmstead* Require?

Title II of the Americans with Disabilities Act

- 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**

What is the Most Integrated Setting?

- 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**

Example: scattered site housing with supportive services (including private rental housing or units be scattered in LIHTC or public housing)

What is a Segregated Setting?

- Congregate settings **populated exclusively or primarily by people with disabilities**
- Congregate settings characterized by **regimentation in daily activities, lack of privacy or autonomy, policies limiting visitors, limits on ability to engage in community activities or manage own ADLs**
- Settings that provide for daytime activities primarily with other people with disabilities

Example: psychiatric hospitals, adult homes, sheltered workshops

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 unjustified segregation:
 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;
 - 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 segregation in state-run facilities/programs**; also applies to segregation in private facilities/programs that are financed by or promoted through state's planning, service design, funding choices, or practices:
 - Psychiatric facilities
 - Adult Homes
 - Nursing Homes
 - Segregated day programs or sheltered workshops

Who Is Covered by *Olmstead*?

- *Olmstead* is not limited to people currently in institutions or other segregated settings but also applies those **at serious risk of institutionalization or segregation**
 - People with significant disabilities who are homeless, many of whom experience cycles of short-term institutionalization and homelessness
 - People who repeatedly use emergency rooms or interact with police/criminal justice system due to a MH crisis
 - People who receive an insufficient level of services or on waiting lists for services

What is an *Olmstead* Plan?

- A **comprehensive, effectively working plan** to come into compliance with *Olmstead*:
 - Must contain an analysis regarding opportunities for living, working and receiving services in the most integrated setting for all types of services and housing and for all disability populations
 - Must have **concrete and reliable commitments** to expand integrated opportunities, with **specific and reasonable timeframes and goals and funding** to support the plan
 - Is a prerequisite to raising a “fundamental alteration” defense

***Olmstead* and Federal Housing**

How Does *Olmstead* Apply to Federally-Funded Housing?

- Federal funding for housing for people with disabilities has evolved:
 - Historical funding had been programs to build single-site, disability-specific housing for people with disabilities (old 811 program)
 - 811 program modernized through Melville Act to allow rental subsidies for scattered site housing (no more than 25% concentration)
 - Other programs for scattered site housing: housing choice vouchers, low income housing tax credits,

HUD *Olmstead* 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.
 - For communities that have historically relied heavily on institutional settings and housing built exclusively or primarily for individuals with disabilities, the need for additional integrated housing options scattered throughout the community becomes more acute.

HUD *Olmstead* Guidance (cont'd)

- Examples of integrated settings:
 - scattered-site supportive housing apartments
 - tenant-based rental assistance enabling individuals with disabilities to lease housing in integrated developments
 - apartments for individuals with various disabilities scattered throughout public and multifamily housing developments
- Segregated settings are occupied exclusively or primarily by people with disabilities

New Medicaid Rules that Further *Olmstead* and Impact Housing Models

New Medicaid HCBS

“Settings” Rules

- New rules, effective March 2014, set requirements for settings that can be funded by Medicaid home and community-based services (HCBS) programs
 - HCBS is an alternative to institutional services
 - HCBS programs include 1915c waivers, 1915i state plan services, and 1915k Community First Choice
- Intent of the rule is to ensure that all HCBS settings provide people the full benefits of community living and to further compliance with *Olmstead*

Requirements for All HCBS Settings

1. Is integrated in and supports access to the greater community;
2. Provides opportunities to seek employment and work in competitive integrated settings, engage in community life, and control personal resources
3. Is selected by the individual from among setting options, **including non-disability specific settings**

Requirements for All Settings (cont'd)

4. Ensures the individual receives services in the community to the same degree of access as individuals not receiving Medicaid HCBS
5. Ensures an individual's rights of privacy, dignity, respect, and freedom from coercion and restraint
6. **Optimizes individual initiative, autonomy, and independence** in making life choices
7. Facilitates individual choice regarding services and supports, and who provides them

Additional Requirements for Provider-Owned Residential Settings

- A lease or other legally enforceable agreement
- Privacy in his or her unit and lockable doors
- Choice of roommate
- Freedom to furnish or decorate the unit
- Control of his or her schedule, including access to food at any time
- Right to visitors at any time
- Physical accessibility of the setting
- Any modification of these conditions must be supported by a specific assessed need and justified in the person-centered plan; must first attempt alternative strategies and have periodic reviews

***Olmstead* Enforcement and Implementation Activities**

Major Themes from *Olmstead* Activities

- Not just about moving people out of or preventing their entry into segregated settings; **focus on creating quality community alternatives**
- 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 community housing is one of the biggest barriers; people on SSI “priced out” of most housing without a rental subsidy

Major Themes (cont’d)

- Both **Medicaid-funded community services and federal affordable housing programs are critical** to *Olmstead* implementation. Housing must comply with Medicaid rules to tenants can access community services.
- **Rebalancing funding for community services easier than for housing**: Medicaid covers services both in institutions and the community but only covers room and board in institutions and cannot pay for rent in the community. Affordable housing critical.
- Need to **bring together and engage all relevant players and stakeholders** – state disability and Medicaid agencies, state and local housing authorities, disability and homeless providers, housers, consumers, families, and homeless and disability advocates

Settlement Remedies: Expansion of Integrated Housing

- Ensure all people transitioning from segregated settings have an **option to live in the most integrated setting** in the community:
 - Agreements require the creation of new permanent, supportive housing
 - Focus on expansion of scattered site supportive housing. The amount and mix of models depends on the existing housing capacity and needs in the state
 - Agreements **set requirements for NEW housing**
 - Does not require existing community housing to be taken offline (but may require people in less integrated housing to be given a choice)

Housing Remedies (cont'd)

- Mental health agreements include expansion of scattered site supportive housing
 - States typically create a state-funded rental subsidy program to bridge people to mainstream affordable housing programs (funded by cost savings from institutional care)
 - Includes outreach not only to people in institutions but also to people at risk of institutionalization (e.g., homeless populations)
 - In many settlement agreements, approximately 1/3 to ½ the people placed in supportive housing had been homeless

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

- In developmental disability settlement agreements, focus on expanding opportunities for living in:
 - Own home/apartment
 - In some agreements, the state creates a rental subsidy program, like in MH agreements
 - Family home (family supports are critical)
 - Supported apartments
 - Host homes
 - Very small group homes (4 or less) when no other options possible

Housing Remedies (cont'd)

- Ensuring that individuals are given a **meaningful choice for the most integrated housing**
 - Ongoing **“in reach”** to people in segregated settings:
 - Education about supportive housing and services
 - Visits to supportive housing
 - Virtual tours
 - Engagement with peers
 - **Presumption** that scattered site supportive housing is the most integrated setting (but people can choose other types of housing)

Settlement Remedies: Expansion of Critical Community Services

- **Expansion of critical community services**, often through rebalancing and better leveraging Medicaid, including:
 - HCBS waivers
 - Range of crisis services
 - Mobile crisis teams, walk-in centers, hotline, and crisis stabilization programs
 - Intensive case management
 - Supported employment and integrated day activities (volunteer, recreation, comm activities)
 - Assertive Community Treatment (ACT)

Olmstead Settlement Examples

- **Psychiatric hospitals**: *U.S. v. New Hampshire/ Amanda D. v. Hassan, U.S. v. Delaware, U.S. v. Georgia, Disability Rights NJ v. Velez*
- **Adult homes**: *U.S. v. North Carolina; U.S. v. New York/O'Toole v. Cuomo*
- **Nursing homes** : *Williams v. Quinn and Colbert v. Quinn (IL), Joseph S. v. Sullivan (NJ), Steward v. Perry (TX); OPA v. Connecticut*
- **Institutions for people with developmental disabilities**: *U.S. v. Virginia, Ligas v. Hamos (IL)*
- **Sheltered workshops**: *U.S. v. Rhode Island*

Resources

- DOJ's *Olmstead* website (guidance, findings letters, settlements and briefs):
www.ada.gov/olmstead
- Bazelon materials on *Olmstead* enforcement and integrated housing: www.bazelon.org
- HUD's *Olmstead* guidance:
<http://portal.hud.gov/hudportal/documents/huddoc?id=OlmsteadGuidnc060413.pdf>
- Materials on CMS' HCBS regulations:
www.medicaid.gov and
www.hcbsadvocacy.org

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