




**WebEd: Professional Development  
&  
ADA National Network Legal Webinar Series**

**March 21, 2012**  
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**Olmstead Planning:  
Litigation, Collaboration, and  
Improving Community Services**

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## Learning Outcomes:

- 1. The participant will state when an individual receiving state funded disability services has a right to receive such services in the most integrated setting.
- 2. The participant will briefly describe what an Olmstead Plan is.
- 3. The participant will identify three examples of quality community supports that resulted from the Olmstead decision.
- 4. The participant will identify three examples of assistive technology that could be used to provide quality community supports for people returning to an integrated community setting.

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## Olmstead v. L.C. (1999)

- 2 women (Lois and Elaine) in and out of Georgia Regional Hospital (psychiatric institution) over 30 times each.
- Most important civil rights court decision for people with disabilities. Often called the *Brown v. Board* for people with disabilities
- Qualified Right to Live in Community



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## Olmstead based on Americans with Disabilities Act

(1990)

- Congressional Findings of Historical Discrimination and Segregation of People with Disabilities
- Applies to Qualified Individuals with a Disabilities
- Broadly, it prohibits discrimination and requires reasonable accommodations and reasonable modifications in many situations



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## Title II of ADA

- **Covers Public Entities (state and local governments, agencies of government)**
- **No Refusal to Provide Services Due to Disability**
- **Must provide services in most integrated setting appropriate to needs**
- **Requires Reasonable Accommodation but not a Fundamental Alteration**

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## What is the ADA 'Integration Regulation?'

- (a) A federal regulation from the United States Justice Department that requires public entities to administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.
- (b) A federal regulation that requires schools to teach students in the least restrictive environment.
- (c) It is another term for the Olmstead decision.
- (d) A requirement in the Americans with Disabilities Act that no children should receive disability services in an institution.
- (e) All of the above

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## Answer

- A federal regulation from the United States Justice Department that requires public entities to administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.

28 CFR 35.130(d) (2011).

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## Supreme Court's Olmstead test

1. When Treatment Professionals Determine that Community Placement is Appropriate.
2. When individual does not oppose move to community.

- When placement is reasonable accommodation when balanced with the needs of others with similar disabilities.

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## Olmstead: Fundamental Alteration

"Sensibly construed, the **fundamental-alteration [defense]**. . . would allow the State to show that, in the allocation of available resources, immediate relief for the plaintiffs would be inequitable . . ."

"If, for example, the State were to demonstrate that it had a **comprehensive, effectively working plan** for placing qualified persons with mental disabilities in less restrictive settings, **and a waiting list that moved at a reasonable pace** . . ."

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## Fundamental Alteration Defense

- Budgetary constraints alone do not create a fundamental alteration defense. *Pennsylvania P&A* (3<sup>rd</sup> Cir. 2005)

*Or put another way...*

- Bad economic times for a state alone does not create a fundamental alteration defense. *Fisher* (10<sup>th</sup> Cir. 2003).

*Also... Burden of fundamental alteration on state. Benjamin* (M.D.Pa. 2010).

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## Olmstead Plan

- Term comes from fundamental alteration discussion in *Olmstead*
- No universal meaning
- At a minimum, (1) comprehensive, (2) effective, (3) working plan (4) with waiting lists moving at a reasonable pace for all of its individuals with disabilities

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## Olmstead Plan

- **Frederick I** (3<sup>rd</sup> Cir. 2004) plan must be communicated in some manner and a “commitment to action in a manner for which [state] can be held accountable by the courts.”
- **Frederick II** (3<sup>rd</sup> Cir. 2005)
  - A “vague assurance” not enough.
  - at a bare minimum should specify the time-frame for discharge, # to be discharged, and general description of community coordination/services necessary.

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## To Whom Does Olmstead Apply?

- Individuals in institutions and nursing facilities.
- Those at risk of institutionalization (don't have to be in institution) *Fisher* (10<sup>th</sup> Cir. 2003)
- Individuals in state funded large institution-like group homes *DAI* (S.D.N.Y. Sept. 2009) (currently on appeal)

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## To Whom Does Olmstead Apply?

State may have obligation to assess individuals in institutions to see who is eligible for community supports. *Messier* (D. Conn. 2008).

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## An Example: Georgia's Olmstead Planning

- Multiple attempts at plans, but still no state adopted *Olmstead* Plan.
- Planning process from 2009 through 2012 has brought all interested parties to the table (including advocates, self-advocates, state department for mental health/developmental disabilities, Governor's office, budget planners, and providers).
- Parts of Georgia's draft (unadopted) plan were used in Georgia/Department of Justice *Olmstead* Settlement in October 2010.

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## Talley's Essential Elements of a Good Olmstead Plan

- Strong Leadership of Planning Committee.
- Quality data and comprehensive understanding of need.
- Commitment from state leaders, providers, advocacy community.
- Everyone at the table (including housing departments/authorities, providers, advocates/self-advocates, Medicaid agency, other departments).
- Expert knowledge of supports needed for population.

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## Talley's Essential Elements of a Good Olmstead Plan

- Budget expertise to create budgets/costs.
- Specialists on maximizing funding from HUD, Medicaid/Medicare, and state funds.
- Commitment to Integration.
- Ambitious/realistic plan with attainable goals, measurable outcomes, a quality improvement mechanism, and real consequences if goals not achieved.

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## Concrete Tools for Implementing Olmstead

- Increased Housing (Section 8, state funded housing, Section 811 etc.)
- Medicaid Waivers
- Quality Mental Health Supports through Medicaid and State Funded.
- Peer Support
- Money Follows the Person and Other Bridge Funding
- Supported employment/customizable employment
- Assistive Technology

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## Technology to Support Olmstead Integration

- Environmental controls
- Home modifications
- Health sensors for medical conditions
- Any assistive technology necessary to ensure or to support an individual to be able to live in the community rather than in an institution

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Question: Select the three assistive technologies that would be most appropriate to assist someone to return to an integrated community setting funded directly by the MFP.

- A. Home modifications to increase accessibility
- B. Personal emergency response device
- C. Communication devices for use in a skilled facility or hospital
- D. Home video monitoring support system
- E. Bladder catheter supplies

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### Answer (A, B, D)

- A. Home modifications to increase accessibility
- B. Personal emergency response device
- C. Communication devices for use in a skilled facility or hospital – (Not in the community)
- D. Home video monitoring support system
- E. Bladder catheter supplies (not assistive technology)

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### Future of Olmstead

- Department of Justice is requiring states to implement.
- More and more tools from federal government, including Money Follows the Person, Balancing the Incentives, HUD/HHS collaborations.
- Continue to need to change perspectives/biases.
- We must celebrate successes/stories to ensure continued buy in.
- Increased Peer Support and Involvement.

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## Challenges Going Forward

- Managed Care: While financial incentives sometimes encourage community, there is also incentive to not serve or not adequately serve highest needs.
- Medicaid Waivers still allowed to have waiting lists under federal law, but this may contradict Olmstead.
- Not consensus on what certain populations need/want.

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## Challenges Going Forward

- Systems lack funds.
- Lack of Quality Providers.
- Lack of Sufficient Professional Training.
- Lack of inclusion of people with disabilities in decision making, planning, providing.

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## Final Thought

- Olmstead is a modern civil rights movement that is transforming America for people with disabilities. It is giving thousands of Americans new opportunities to live meaningful lives in our community. While it is a difficult journey forward, it is one of the most important transformations happening in our country and in our local communities today.

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Questions/Discussion

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Thank you for participating in today's session

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