

The Olmstead Decision
U.S. Supreme Court
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Enabling Individuals with Disabilities to Live in the Most Integrated Setting Appropriate to Their Needs

The Case

- * Brought by two women with mental retardation and mental illness living in State-run institutions.
- * Plaintiffs asserted institutionalization was a violation of the ADA.
- * Treatment professionals had determined they could be appropriately served in the community.

What does Olmstead do?

- * Interprets title II of the ADA and its implementing regulations which oblige States to administer their services, programs and activities "in the most integrated setting appropriate to the needs of the qualified individuals with disabilities." (28 CFR 35.130(d)).

What does Olmstead do?

- * This Supreme Court decision provides a legal framework for Federal/State efforts to enable individuals to live in "the most integrated setting appropriate to their needs."
- * Challenges us to develop more opportunities for disabled individuals through more accessible systems of cost-effective community-based services.

What did the Court say about institutionalization?

- * "Unjustified isolation...is properly regarded as discrimination based on disability."
- * "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."

What did the Court say about institutionalization?

- * "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."

What did the Court say States are required to do?

- * States are obliged to "make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modification would fundamentally alter the nature of the service, program, or activity."

The Supreme Court indicated that the test of "fundamental alteration" takes into account three factors:

- * The cost of providing the services to the individual in the most integrated setting appropriate;
- * The resources available to the State; and,
- * How the provision of services affects the ability of the State to meet the needs of others with disabilities.

The Court suggests a State could establish compliance with Title II of the ADA if it demonstrates it has:

- * A comprehensive, effectively working plan for placing qualified persons with disabilities in less restrictive settings, and
- * A waiting list that moves at a reasonable pace not controlled by the State's endeavors to keep its institutions fully populated.

Who is affected?

* All individuals with disabilities protected from discrimination by title II of the ADA. The ADA defines "disability" as:

- a physical or mental impairment that substantially limits one or more of the major life activities of an individual;
- a record of such an impairment; or
- being regarded as having such an impairment.

Who is affected?

- * Not limited to persons with Medicaid;
- * Not limited to the SSA/SSI definition of disability;
- * Not limited to persons with mental illness;
- * Not limited to persons in an institution.

States must...

- * Be responsive to institutionalized individuals who request their situation be reviewed to determine if a community setting is appropriate.
- * Redress such a situation, subject to limits outlined by the Court and ADA.

What are States required to do?

- * To provide community-based services for disabled persons who would otherwise be entitled to institutional services when:
 - professionals determine such placement is appropriate; 2) affected persons do not oppose such treatment; and, 3) placement can be accommodated allowing for available resources and the needs of others receiving disability services.

In addition, States are...

- * Obligated to "make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program or activity." (28 CFR 35.130(b)(7)).

States demonstrate compliance with ADA by:

- * Having a comprehensive, effectively working plan for placing qualified disabled persons in less restrictive settings; and,
- * Having a waiting list that moves at a reasonable pace not controlled by the State's endeavors to keep its institutions fully populated.

Comprehensive, Effectively Working Plans

- * One way the Court said a State could meet its ADA obligation.
- * No single model plan.

- * Can be one plan or several plans which are coordinated to produce a comprehensive, effectively working plan.

Comprehensive, Effectively Working Plans

- * Involve individuals with disabilities and their representatives in development and follow up;
- * Ensure the availability of community integrated services;
- * Afford individuals with disabilities and their families the opportunity to make informed choices;

Comprehensive, Effectively Working Plans

- * Take steps to ensure that quality assurance, quality improvement and sound management support implementation of the plan.

DHHS Role

- * To work with States:
 - To integrate people with disabilities into the social mainstream, promote equality of opportunity and maximize individual choice.
 - To craft responsible solutions that comply with the Americans with Disabilities Act of 1990 (ADA).

DHHS

- * OCR
- * Investigates complaints related to violation of ADA
- * Provides technical assistance ot States on meeting requirements of ADA

HCFA

- * Oversees State Medicaid programs
- * Provides technical assistance to States on their Medicaid programs.

DHHS Strategy

- * Training to HCFA and OCR staff
- * Education
 - Website
 - Conferences
 - Identification of effective practices

DHHS Strategy

- * Policy guidance
 - further SMD letters
 - other
- * Investigations
- * Technical assistance to States
- * Policy review
- * Data development/evaluation

Medicaid

- * Is a tool States can use to meet responsibilities under the ADA.
- * Plays a critical role in making community services available.

National Statistics

- * 39 states are working on an Olmstead document

- * 213 Open complaints
- * 90 Closed complaints
- * 15 states have no Olmstead complaints
- * 24 states have the stakeholders involved in planning
- * 14 states with an Olmstead Website information

Region VI Statistics

5 States

- * 5 states are working on an Olmstead document
- * 56 Open complaints
- * 6 Closed complaints
- * All states have Olmstead complaints
- * 4 states have the stakeholders involved in planning
- * 1 state with an Olmstead Website information

Region VIII Statistics

6 States

- * 5 states are working on an Olmstead document
- * 75 Open complaints
- * 10 Closed complaints
- * 1 state has no Olmstead complaints
- * 5 states have the stakeholders involved in planning
- * 2 states with an Olmstead Website information

