

State Responses to Olmstead Decision

What is the Olmstead Decision?

On June 22, 1999, the U.S. Supreme Court ruled in *L.C. and E.W. v. Olmstead* that it is a violation of the Americans With Disabilities Act (ADA) to discriminate against people with disabilities by providing services in institutions when the individual could be served in a community-based setting.

States are required to provide community-based services for people with disabilities if treatment professionals determine that it is appropriate, the affected individuals do not object to such placement, and the State has the available resources to provide community-based services.

The Court suggests a State can comply with the Americans with Disabilities Act if it has 1) a comprehensive, effective working plan for placing qualified people in less restrictive settings, and 2) a waiting list for community-based services that ensures people can come off the list at a reasonable pace and receive services.

On January 14, 2000, the Centers for Medicare and Medicaid Services (then the Health Care Financing Administration—HCFA) issued a guidance letter to States. That letter contains an enclosure entitled *Developing Comprehensive, Effectively Working Plans, Initial Technical Assistance Recommendations*.

How are States responding?

The National Conference of State Legislatures (NCSL) conducted a 50-State survey to determine initial State responses to the *Olmstead* decision. The purpose of the study was to help State policymakers understand the options that are available to meet the needs of people with disabilities.

- ↪ At the time of the study, 36 States had created task forces or commissions to assess current long-term care systems and to develop plans; 17 of the task forces were created by governors.
- ↪ In the majority of States, the lead agency for the commission is either the health and human services department or the Medicaid agency.
- ↪ Governors, legislators, agency representatives, people with disabilities and their representatives, and the federal government have played strong roles in the planning process.
- ↪ State agencies participating in the planning process often include Medicaid, health and human services, mental health, aging, housing, education and rehabilitation services.
- ↪ People with disabilities are participating in process by working on task forces, attending forums across the State, and providing feedback to draft copies of the plan.
- ↪ A few States have finalized their plans, but most will complete them in 2001. In the meantime, some States have issued significant papers that are not intended to be comprehensive.

What are some of the States' barriers to planning and implementation?

Task forces are working on complex issues that go beyond Medicaid and health care; the issues extend to transportation, education, housing and other supports. The biggest issues of complexity identified are how to:

- Assess people who are at risk for institutionalization;
- Define institutionalization and review and measure placement activities in institutions;
- Develop the service infrastructure within the constraints of the personal care attendant and nursing aide shortage;
- Find accessible, affordable community-based housing;
- Access transportation; and
- Identify sources of funding within State budgets.

In addition, several pending lawsuits are influencing State' efforts, either by making this issue a higher priority for attention or by raising the degree of caution among State officials who are fearful of releasing information.

What is the role of the federal government?

The federal government has taken many actions to implement the *Olmstead* decision including issuing guidance letters, revising its policies, holding meetings with States, and providing more than \$70 million in planning or demonstration grants to States to expand community-based options. See: <http://www.hcfa.gov/medicaid/smd110a1.pdf>.

On June 19, 2001, President George W. Bush signed an Executive Order directing federal agencies to assist States in implementing the *Olmstead* decision and in promoting community alternatives for individuals with disabilities.

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NASHIA is assisting state government in promoting partnerships and building systems to meet the needs of individuals with brain injury and their families.

