



## **A Short Guide to Understanding The Olmstead Decision and Its Impact**

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The purpose of the Americans with Disabilities Act of 1990 (ADA) is to:

- define the rights of people with disabilities,
- end disability-based discrimination, and
- assure that people with disabilities have access to the many benefits and protections available to the rest of the population.

Congress recognized that disabilities do not always take conventional form and may be temporary. Thus, the Act defines an individual with a disability as anyone who has a physical or mental impairment that substantially limits one or more of his/her major life activities; has a record of such an impairment; or is regarded as having such an impairment.

This definition can include individuals who have severe acute illness or almost any form of chronic condition or disease. However, the Act requires individuals asserting ADA claims to prove that their condition substantially limits one or more major life activities, such as seeing, walking, speaking, learning, caring for oneself, or concentrating.<sup>1</sup> All patient advocates should have a working knowledge of the ADA and its provisions and protections.

This article focuses on the so-called “integration mandate” in Title II of the ADA, which requires states to place people with mental and physical disabilities in integrated (community) settings whenever appropriate.

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<sup>1</sup> Successful treatment may affect whether a person is disabled and protected by ADA. Generally, it depends on the nature and extent of limitations on major activities of daily living that remain after successful medication or therapy.

## **What was the Olmstead decision?**

The Supreme Court was asked to decide whether the ADA requires states to provide community placements even if appropriate treatment can be provided in a state institution. Also at issue was the nature and scope of any exceptions that might be available to states as a result of budget constraints and other impediments.

By a 6 to 3 vote, the Supreme Court concluded that: “States are required to place persons with mental disabilities in community settings rather than in institutions when: the state’s treatment professionals have determined the community placement is appropriate; the transfer from institutional care to a less restrictive setting is not opposed by the affected individual; and the placement can be reasonably accommodated, taking into account the resources available to the state and the needs of others with mental disabilities.”

The Court observed that: “...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... [I]nstitutional confinement severely diminishes individuals’ everyday life activities.”

A plurality of the Court (4 Justices), joined in an opinion in which they outlined the boundaries of required state action. For example, States may resist modifications that entail a “fundamental alteration” of the State’s services and programs. A failure to appropriate enough money for community programs would not meet this test.

However, because States are required to maintain systems of care that include many levels and meet many needs, they have some leeway in balancing competing demands. The opinion observes: “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 not controlled by the State’s endeavors to keep its institutions fully populated, the reasonable-modification standard would be met.”<sup>2</sup>

## **Why is Olmstead important?**

The Olmstead decision was groundbreaking in at least two respects:

The Court fully vindicated the “integration mandate” of the ADA, which is among the most far-reaching policies created by the ADA and one that might have seemed to be more rhetorical than real. In enacting the ADA, Congress made clear that institutional care was inherently self-limiting for the human development of people with disabilities.

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<sup>2</sup> The syllabus (headnote) produced by the US Supreme Court and the entire decision can be found at: <http://supct.law.cornell.edu/supct/html/98-536.ZS.html>

Being institutionalized, they miss the opportunity to: interact with people of different backgrounds and experiences, to take responsibility for themselves, to participate in a range of activities, etc. As a result, Congress found unnecessary segregation of individuals in institutions to be a historical form of discrimination.

The Olmstead decision assures that this Congressional intent is realized. It commits government to respect and advance the civil rights and human development needs of mentally and physically disabled individuals.

The Court's decision reinforces the process, started in the 1950's, of making institutional care the least favored form of care for mentally and physically disabled individuals. Community placements, when appropriate and requested by the individual, are now a requirement. While some state institutions will continue to be necessary, States can no longer hide behind the availability of state institutions as an excuse to move slowly or avoid their obligation to provide community placements. In the long-run, this newly-reinforced priority for community placements will: further lessen the focus and resources available to state institutions; and require greater creativity in developing systems and methods of providing community care.

The Olmstead decision also sets the stage for other questions to be explored and ultimately resolved. For example, it is unclear whether the "integration mandate" of the ADA provides widespread protection for community-based individuals attempting to avoid institutionalization.

The Olmstead decision did not address inadequacies in supportive care outside institutional settings. Thus, the requirement of the decision may be of limited value if housing options are inconveniently located or of poor quality. Similarly, the Court in Olmstead did not specify whether states are obligated to provide high quality treatment and services to individuals released from hospitals into the community. Therefore, the extent to which Olmstead establishes a right to community treatment for previously institutionalized individuals or individuals at risk of institutionalization remains unresolved.

### **How has the ruling been implemented?**

The Olmstead decision creates new requirements on States and their mental health and health care systems to: develop new placement opportunities despite the potential cost, and manage these placements in a way that enriches and protects both the disabled and the community.

Consistent with the Court's decision, States are required to develop comprehensive plans to move disabled individuals from institutional to community settings. The plans must incorporate implementation activities that show the State will be proceeding at a "reasonable pace" to completion. There are a vast array of programs that may pay for all or part of the community services an individual receives as a result of ADA and the

Olmstead decision. Among these are: Medicaid services, rehabilitation services, targeted case management funds under Medicaid waivers, federal block grant funds, federal housing assistance programs, federal disability benefits under SSI, and state general fund appropriations for mental health and other health care services.

The federal executive branch has attempted to support the states in carrying out the Olmstead mandate. On June 19, 2001, President George Bush issued an Executive Order committing the federal government to swift implementation of the Olmstead decision. He directed the Attorney General and the Secretaries of HHS, Education, Labor, and Housing and Urban Development, and the Commissioner of Social Security to assess their own activities, as well as support the States.

In particular, the Centers for Medicare and Medicaid Services (CMS; formerly HCFA) has been actively involved in supporting States, including a series of guidance letters at: [www.hcfa.gov/medicaid/olmstead/smdltrs.htm](http://www.hcfa.gov/medicaid/olmstead/smdltrs.htm).

In support of Olmstead and community placements, CMS reminded state Medicaid programs in February of 1998 and again in 1999 of the advantages of using newer medications for persons with schizophrenia who are on Medicaid. States were directed to respond within 24 hours to prescription requests for newer atypical antipsychotic medications. This underscores the importance of improved drug therapies in making the Olmstead decision meaningful for a significantly larger group of individuals with mental illness and a desire to live in the community.

At the same time, states such as Michigan, Maine, and Florida are today attempting to control rapidly rising Medicaid pharmacy costs through cost containment strategies, such as deep supplemental rebates, prior authorization, and restrictive drug formularies. These policies potentially limit access to clinically necessary psychiatric medications and are therefore at odds with CMS' efforts to enhance access to these medications.

## **Conclusions**

The Olmstead decision is now three years old. Thus far, the decision has had a limited impact on the rights of individuals with physical and mental disabilities who are institutionalized or at risk of institutionalization. The impact of the Olmstead decision in the future will depend on a variety of factors, including state funding decisions and further Court opinions clarifying its scope. Patient advocacy groups should familiarize themselves with their state's activities, seek to become involved in statewide Olmstead implementation taskforces, and assess how their members' needs may be affected.

## For more information

In addition to the citations in the article:

- The US Department of Health and Human Services' website on Olmstead is: [www.cms.hhs.gov/Olmstead](http://www.cms.hhs.gov/Olmstead)
- A wide variety of materials are available from the Bazelon Center For Mental Health Law: <http://www.bazelon.org/ada.html>
- The Americans with Disabilities Act Document Center: <http://janweb.icdi.wvu.edu/kinder/>
- The Council for Disability Rights' ADA FAQ for Non-Lawyers: <http://www.disabilityrights.org/adatoc.htm> (excellent summary of ADA).
- The Department of Justice's ADA Web Site: <http://www.usdoj.gov/crt/ada/adahom1.htm>
- Reports from the National Council on Disabilities: <http://www.ncd.gov/>
- Disability Resources on the Internet: <http://disabilityresources.org/>

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