Olmstead Enforcement: Opportunities to Help Address Homelessness

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July 24, 2013
The Problems

• 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
The Problems (cont’d)

• 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 Problems (cont’d)

- 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 Problems (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
DOJ’s “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 is the ADA?
Title II of the ADA

• Prohibits discrimination against people with disabilities by public entities in services, programs and activities
  – ADA defines disability as substantially limited in one or more major life activity (also can qualify if have a record of or are regarded as having a disability)

• 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
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 institutional placement:
  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; and
  – 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
Who Does the Integration Mandate Cover?

• ADA and *Olmstead* are not limited to people with disabilities in institutions or other segregated settings

• They also extend to those at serious risk of institutionalization or segregation
  
  – This includes people with significant disabilities who are homeless, many of whom have experienced cycles of short-term institutionalization and homelessness
When is the ADA’s Integration Mandate Implicated?

- Not limited to state-run facilities/programs; also applies to private facilities/programs

- Applies when government programs result in unjustified segregation by:
  - Operating facilities/programs that segregate people with disabilities
  - Financing the segregation of people with disabilities in private placements
  - Promoting segregation through planning, service design, funding choices, or practices.
When is the ADA’s Integration Mandate Implicated? (cont’d)

• Not limited to residential segregation

• Integration mandate applies to ALL government programs, including:
  – Segregated employment (eg, sheltered workshops)
  – Segregated day activities
  – Segregated educational programs
DOJ *Olmstead*

Enforcement Activities
Lessons Learned

• 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
Lessons Learned (cont’d)

• Both Medicaid and federal affordable housing programs are critical to *Olmstead* implementation,

• 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

• 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 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)
Settlement Remedies: Expansion of Integrated Housing

• We look at the existing housing opportunities for the target group in the community
  – Many state systems/communities primarily have congregate housing (eg, group homes) or all-disability housing (eg, old 811) available

• Agreements create new integrated housing so people can have a real choice to live in the most integrated setting

• Agreements set models for NEW HOUSING for the target group; they DO NOT require existing housing to be taken offline
Settlement Remedies: Expansion of Integrated Housing

• Mental health agreements include expansion of 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 housing (eg, no more than 20% of tenants are people with disabilities known to the state; similar to Melville Act’s changes to 811)
  – Choice of housing unit and roommate, if want one
Settlement Remedies: Expansion of Integrated Housing (cont’d)

– In developmental disability settlement agreements, focus on expanding opportunities for living in:
  • Own home/apartment (often need rental subsidies)
  • Family home (family supports are critical)
  • Supported apartments
  • Host homes
  • Small group homes (4 or less)
EXAMPLES OF IMPACT OF OLMSTEAD SETTLEMENTS ON PERSONS EXPERIENCING HOMELESSNESS

• Georgia
  – State has prioritized reaching people experiencing homelessness in the target group
    • Strong coordination between homeless outreach teams and mental health ACT teams
    • New initiative with the Veterans Administration to reach homeless veterans in the target group
  • As of March 2013, 46% of people receiving supported housing under the agreement were homeless
IMPACT OF OLMSTEAD AGREEMENTS (cont’d)

• Delaware
  – State working with Delaware Homeless Planning Council on outreach
  – Supported housing expansion based in part on point in time count by the Council
  – State MH agency and Housing Authority addressing barriers to housing, like bad credit histories, background checks, and deposits
  – As of February 2013, 44% of people receiving supported housing under the agreement were homeless
Interagency Collaboration on *Olmstead* and Homelessness

- HUD
  - Identifying HUD resources to help address housing barriers to *Olmstead*
  - HUD TA to states implementing *Olmstead*
  - HUD *Olmstead* Guidance

- US Interagency Council on Homelessness
  - Identifying strategies to expand the impact of *Olmstead* for persons experiencing homelessness
  - Place-based DOJ-USICH collaborations

- HHS
  - Guidance on Medicaid funding for critical community svvs.
  - HHS TA to states implementing *Olmstead*
HUD *Olmstead* Guidance

- HUD-funded affordable housing programs are a critical resource for *Olmstead* implementation.
- HUD is committed to ensuring that HUD-funded housing gives choice, self-determination, and opportunities for people with disabilities to live and interact with people without disabilities.
- Provides guidance on how to structure preferences that relate to state *Olmstead* implementation.
- Recommends evaluating housing availability, needs, and demand on a community level.
Guidance and Website

• Statement of the Department of Justice on Enforcement of the Integration Mandate of Title II of the Americans with Disabilities Act and *Olmstead v. L.C.* (June 22, 2011)

• Website:  [www.ada.gov/olmstead](http://www.ada.gov/olmstead)
  – All settlement agreements, findings letters, briefs, guidance, testimony, speeches, etc.

• Faces of *Olmstead*: People impacted by DOJ’s *Olmstead* enforcement work
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