



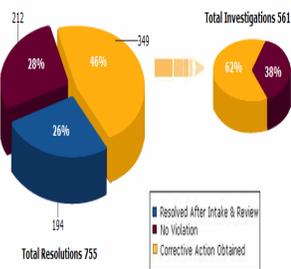
**Volume 3, Issue 1
January 25, 2010**

A Publication of the Office of
Training and Professional
Development

Did you know that...

- During the period from April 2000 through May 31, 2009 755 Olmstead cases were resolved.
- During the same period 561 Olmstead cases were investigated, 62% of investigations resulted in corrective action and 38% resulted in no civil rights violations.

Olmstead Enforcement Results
April 2000 through May 31, 2009



Delaware's Olmstead Plan

http://www.udel.edu/cds/ccba/pdfs/commission/A_Path_Forward.pdf



The Olmstead Decision

“The Year of Community Living”

Serving People with Disabilities in Community Settings

The Year of Community Living:

On June 22, 2009, President Obama launched the “Year of Community Living” in commemoration of the 10th anniversary of the Supreme Court’s landmark decision in *Olmstead v. L.C.*, 527 U.S. 581 (1999). In *Olmstead*, the Court decided that the unjustified institutionalization of people with disabilities is a form discrimination under the Americans with Disabilities Act (ADA).

The President celebrated the anniversary by launching “The Year of Community Living,” to re-affirm the Administration’s commitment to “vigorous enforcement of the civil rights for Americans with Disabilities and to ensuring the fullest inclusion of all people in the life of our nation.” The *Olmstead* decision is known as the *Brown v. Board of Education* for the disabled population.

Olmstead Decision/ Background:

In the *Olmstead* case two women with disabilities, one diagnosed with schizophrenia and the other with an unspecified personality disorder, were voluntarily admitted to the Georgia Regional Hospital (GRH) in Atlanta, where they were confined for treatment in a psychiatric unit.

The women remained institutionalized, despite their treatment professionals concluding

that each woman could be cared for in community-based programs.

After being denied their independent requests for placement in community based programs, the women filed separate lawsuits relying on Title II of the Americans with Disabilities Act (ADA).

Title II of the ADA provides for the following:

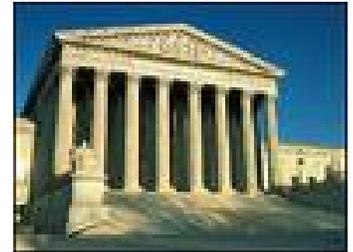
No qualified individual with a disability shall by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs or activities of a public entity or be subject to discrimination by such entity.

Writing for the majority of the



Supreme Court, Justice Ginsberg concluded that Title II of the ADA required states to place people with disabilities in community settings, rather than in institutions, when the State’s treatment professionals deter-

mine that 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 ac-



count the resources available to the state and the needs of others with mental disabilities.

The Court also said that 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 modifications would fundamentally alter the nature of the service, program or activity.”

Moreover, in order for a state to meet the “reasonable modification” standard it must prove that:

“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 place not controlled by

the State's endeavors to keep its institutions fully populated."

The court provided guidance regarding the point at which reasonable modifications would become "fundamental alterations" identifying three factors for consideration:

- (1) the cost of providing the services to the individual in the most integrated appropriate setting; (2) the resources available to the state; and (3) how the provision of the services affects the ability of the state to meet the needs of others with disabilities.

Lastly, the Court placed the burden of proving the existence of a "fundamental alteration" on the state. The Court wrote that the fundamental alteration component of the reasonable modifications test would allow the state to show that in the allocation of available resources, immediate relief for the person with disabilities would be inequitable, given the responsibility the state has undertaken for the care and treatment of a large and diverse population.

What Olmstead Means:
The Court based its decision on sections of the ADA and federal regulations that require states to administer their services, programs and activities, "in the most integrated setting appropriate to the needs of the qualified individuals with disabilities."

Based on the Court's ruling, certain broad principles have emerged in guiding states compliance with Olmstead:

- Unjustified institutionalization of the people with disabilities is discrimination and violates the ADA;
- states are required to provide community-based services for persons with disabilities otherwise entitled to institutional services when the states' treatment professionals reasonably determine that community placement is appropriate; the person does not oppose such placement; and the placement can be reasonably be accommodated, taking into account resources available to the state and the needs of
- others receiving state-supported disability services;

- a person cannot be denied community services just to keep an institution at its full capacity; and,
- there is no requirement under the ADA that community-based services be imposed on people with disabilities who do not desire it.

Olmstead's Long Reach:
The Olmstead case addressed issues involving adults with mental illness. However, the decision has been interpreted to apply to all people with both physical and mental disabilities.

Furthermore, the decision created three separate subclasses of people whose needs must be considered: (1) institutional residents whose needs can be appropriately met in the community with reasonable modifications; (2) residents who require institutional care; and (3) persons who reside in the community and are at risk for institutionalization because of an absence of care.

Delaware and Olmstead:
In order to address the challenges of the Olmstead decision, in 2003 Delaware's Governor Ruth Ann Minner created The Governor's Commission on Community-Based Alternatives For Individuals with Disabilities. The Commission's mission was and is to develop a comprehensive administrative and legislative plan for a diversified individualized, cost effective service and support system that enables individuals with disabilities to live and work in the most integrated setting of their choice.

The Commission is broken up into sub-committees charged with addressing numerous impact areas: Housing, Healthcare, Employment, Transportation, Money Follows the Person and Workplace development.

During the Commissions' first five years it moved forward in meeting its overall goal. Among other accomplishments the Commission assisted in implementing the "Money Follows the Person" initiative, allocated monies for the Medicaid Buy-In program, Expanded and improved transportation options as well as increased training for hiring managers.



The Commission's goals through 2012 include the following:

- Ensure a sufficient number of safe, affordable, integrated, and accessible housing options for individuals with disabilities.
- Continued Implementation of the Money Follows the Person program.
- Establish a Medicaid Buy-In Program.
- Ensure that reliable transportation services and choices are available.
- Develop a comprehensive, flexible, consumer driven healthcare service system that would more effectively facilitate community living.
- Effectively treat mental illness as a medical condition requiring the same quality of care as physical illness.
- Ensure fiscal and human resources necessary to develop and retain a professional workforce.
- Develop common assessment domains for eligibility and care planning.

In moving forward the Commission continues updating its plan, monitoring progress toward achieving its goals and adapting to unforeseen issues.

