Olmstead Planning – Where do we stand?

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Olmstead Planning and Implementation
Topics to be Discussed

• What is Olmstead?
• What does community integration mean?
• What did the U.S. Supreme Court say regarding Olmstead Plans?
• What should an effective Olmstead Plan include?
• How have states approached Olmstead planning?
• What are examples of activities in Olmstead Plans?
• What are some lessons learned in working with states on Olmstead planning?
The Mandate for Community Integration

• In the landmark *Olmstead v. L.C.* decision (1999), the U.S. Supreme Court held that states have an affirmative obligation to ensure that individuals with disabilities live in the most integrated settings possible.

• The regulations implementing Title II of the Americans with Disabilities Act (ADA) define an integrated setting as one that “enables individuals with disabilities to interact with nondisabled persons to the fullest extent possible.”

• 28 C.F.R. § 35.130(d)
Community Integration Defined

“Integrated settings are located in mainstream society; offer access to community activities and opportunities at times, frequencies and with persons of an individual’s choosing; afford individuals choice in their daily life activities; and, provide individuals with disabilities the opportunity to interact with non-disabled persons to the fullest extent possible. Evidence-based practices that provide scattered-site housing with supportive services are examples of integrated settings.”

U.S. Department of Justice. *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.*
“By contrast, segregated settings often have qualities of an institutional nature. Segregated settings include, but are not limited to: (1) congregate settings populated exclusively or primarily with individuals with disabilities; (2) congregate settings characterized by regimentation in daily activities, lack of privacy or autonomy, policies limiting visitors, or limits on individuals’ ability to engage freely in community activities and to manage their own activities of daily living; or (3) settings that provide for daytime activities primarily with other individuals with disabilities.”

U.S. Department of Justice. *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.*
In its decision, the Supreme Court stated that if a state 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 [of the ADA] would be met.”

For an Olmstead Plan to serve as a reasonable defense against legal action it must include, “...concrete and reliable commitments to expand integrated opportunities....and there must be funding to support the plan.”

U.S. Department of Justice. 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.
Olmstead Plan should generally include:

- A description of the state’s current system of providing community-based services and supports to people with disabilities;

- An assessment of the strengths and weaknesses of that system; and

- A description of the state’s plan and goals for expanding opportunities for providing community-based services and supports to people with disabilities.
Institutional or segregated in nature

- State hospitals and Developmental Centers
- Nursing Facilities
- Board and Care (e.g. Adult Homes, Assisted Living, Residential Care)
- Congregate living programs
- Incarceration
- Sheltered employment workshops or day programs

At-Risk of Institutionalization

- Homelessness
- At home with aging parents
- Other substandard living conditions
Examples of Key Olmstead Plan Ingredients

• Populations to be addressed
• Data analysis
• Housing
• Employment
• Wellness and integrated healthcare
• Transportation
• Supports and services
• Funding
• Policies, rules and regulations
• Outcomes
• Training and workforce development, including use of peer workforce
Examples of Data Analysis*

- Populations served (e.g. by disability, age, race/ethnicity)
- Where funding is allocated (i.e. segregated vs integrated settings)
- Where people are served (e.g. hospitals, emergency departments, jails, day programs, employment)
- Where people live (e.g. hospitals, adult homes, homelessness, supportive housing)
- Capacity of services and housing against need
- Reimbursement issues
- Workforce shortages

*This is a non-exhaustive list of examples. There are other types of data that may be considered in Olmstead planning.
Cycle of Olmstead Planning

- Community Integration
  - System Analysis
  - Performance Measurement
  - Olmstead Plan Development and Modification
  - Implementation
State Approaches to Olmstead Planning

- Doing nothing
- Planning with little action
- Proactive planning
- Reactive planning
- Litigation/Settlement Agreements
Examples of Stakeholder Input

• Olmstead Advisory Council or sub-committees
• Existing Statewide and Regional
• Stakeholder Meetings
• Listening Sessions
• On-line Input and Feedback
• Legislative involvement
Successful Olmstead planning requires committed leadership, including from the Governor’s office, Budget offices and other State agencies, legislature.

Planning and implementation usually require cross agency involvement.

It can be a challenge to get other state agencies to the table.

The legislature must be educated about Olmstead and aware of the planning process.

Community Integration/Olmstead takes resources, new and/or re-allocated.
State Experiences and Implementation Issues

- Need to prepare internal staff; not all staff are on board

- Developing an inclusive planning process with stakeholders can be hard

- Anticipate and manage resistance

- Talking about Olmstead is not a good defense, nor is a plan that sits on a shelf
Cautions

• Just because it’s in the community doesn’t mean it’s integrated

• “Choice” may have different meanings to different people

• A plan to plan is not a plan

• Budget cuts and bureaucracy do not trump civil rights
• An Olmstead Plan is a system change document.

• You are defenseless without an Olmstead Plan.

• Be comprehensive, but realistic. A plan should be actionable and achievable.

• Plans must focus on expanding access to integrated settings, not segregated settings.
Takeaways

• Better to have a short, actionable plan than a ZZZ page document that just identifies the issues and barriers to why progress can’t be made.

• The Plan should be developed with stakeholder involvement.

• Have short and long term goals.

• Track and report on progress.
Harvey Rosenthal, CEO
New York Association of Psychiatric Rehabilitation Services (NYAPRS)

New York Olmstead Planning and Implementation
New York’s Olmstead related Policies

- New York’s Most Integrated Setting Coordinating Council (MISCC) was established in 2002 following strong advocacy from physical and psychiatric disability groups.
- Comprised of state agency representatives and 9 public members.
- Intended to meet quarterly and promoted increased access to increased housing, employment and transportation.
Statutorily Defined MISSC Members: State Agencies

- Office of People with Developmental Disabilities
- New York State Office of Mental Health
- Department of Health,
- Office for the Aging
- Education Department
  - Adult Continuing Education Services – Vocational Rehabilitation
- Office of Alcohol and Substance Abuse Services
- Division of Housing and Community Renewal
- Department of Transportation
- Office of Children and Family Services
  - Commission for the Blind
- Office of Temporary and Disability Assistance
- Justice Center for the Protection of People with Special Needs
9 Appointed Public Members

- 3 consumers of services for individuals with disabilities
- 3 individuals with expertise in the field of community services for people of all ages with disabilities
- 3 individuals with expertise in or recipients of services available to senior citizens with disabilities
MISCC 2002-2011

• Formed committees relative to housing, employment, transportation

• 2002-2011 began as quarterly meetings and devolved thereafter

• 1 report

• Little impact
Employment Activities unrelated to the MISCC

• ‘New York Works’: Federal DOL pilot allowing people to keep their SSI and Section 8 payments; promising initial results; discontinued by DOL

• Medicaid Buy In program created in 2003 following strong advocacy by mental health, AIDS/HIV and physical disability advocates

• Medicaid Infrastructure Grant created New York Makes Work Pay in 2011
• Encourage commitment to employment and collaboration among state agencies
• Educate and encourage providers to increase competitive employment outcomes for people with disabilities
• Work with employers to increase hiring levels
• Implement a process to move from sheltered/segregated to competitive/integrated employment
• Encourage entrepreneurship
• Increase access to work incentives planning, health care, & asset accumulation tools and strategies
• Work with schools to increase competitive employment outcomes for youth with disabilities
Cuomo Administration 2011-

- Formed Olmstead cabinet that released an Olmstead Implementation Plan 2012
- Adult Home settlement in 2013
- Created the Justice Center for the Protection of People with Special Needs in 2013 from 1977 Commission on Quality of Care and Advocacy and other agency personnel
- Employment First Executive Order 2014
- Chief Disability Officer to be appointed in 2020
2013 Recommendations of the Olmstead Cabinet

• Provide access to housing
• Provide employment services to afford opportunities for work that is not degrading
• Provide access to transportation services that are not dependent on Medicaid
• Coordinate children’s services so as to provide for a smooth transition from childhood into adulthood
• Work with aging services to avoid needless nursing home placements
• Work with the criminal justice system to promote diversion and appropriate treatment for those who end up in that system
• Increase the employment rate of individuals with disabilities by 5%.
• Decrease the poverty rate of individuals with disabilities by 5%.
• Register 100 businesses as having formal policies to hire people with disabilities as part of their workforce strategy.
Some Employment First Strategies

• Create an Employment First Service Culture
• Maximize federal funding through Ticket to Work program
• Medicaid Buy-In Enrollment
  – Streamline and standardize enrollment process
  – Promote state takeover of Medicaid administration from local districts to centralize and create consistency in determinations
• Expand ACCES-VR self-employment initiatives
Adult Home Settlement Implementation

- Adult Home settlement in 2013
- Very slow movement of residents into the community due to operator resistance and flawed implementation and complex health home processes
- Adult Home Plus Program 1:12 ratio
- $5 million to create 2 Adult Home Peer Bridger initiatives
• Care Management for All
• Behavioral Health:
  – Integration of BH, Medical and Pharmacy benefits into ‘Health and Recovery Plans’
  – Health Home Coordination
  – Access to Home and Community Based Services
• MRT Affordable and Supportive Housing
• $2.2 billion in Medicaid reduction
Medicaid Redesign Team 2

- Cut Medicaid spending by $2.5 billion
  - Restricting access to Consumer Directed Personal Assistance Program
  - Reduce Medicaid transportation spending: transition to a Medicaid Transportation Broker program
  - Discontinue Future Social Determinants of Health Investments
  - Eliminate Health Home Outreach funding
  - Lower Health Home caseload size
  - Increase children’s behavioral health programming
• Increased diversion and re-entry programs
• Crisis Intervention Teams: $5 million from legislature over last 5 years
• Some willingness in NYC to make EMTs and mental health counselors and peers to be first responders
• Very limited reduction in use of solitary confinement; resistance to reducing its use and approving HALT reform legislation; enacting a very limited ban for people with disabilities
Some Lessons from NY

• Relentless advocacy required to press for meaningful implementation across successive Administrations
• Many advances are not connected with and happened outside of the Olmstead body and planning process.
• Measurable outcomes a must, both re MISCC and Medicaid Value Based Payment policies
• Unique focus on employment
• Even legal actions produce limited results
• Criminal justice reforms are essential
• Promising focus on social determinants of health
• Money is a primary factor, e.g. Medicaid investments, cuts and commitment
SAMHSA’s mission is to reduce the impact of substance abuse and mental illness on America’s communities.

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