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## **Assessment #6**

# **Olmstead Risk Assessment and Planning Checklist**

**September 15, 2015**

*This work was developed under Task 2.1.1. of NASMHPD's Technical Assistance Coalition contract/task order, HHSS28342001T and funded by the Center for Mental Health Services/Substance Abuse and Mental Health Services Administration of the Department of Health and Human Services through the National Association of State Mental Health Program Directors.*

## **Introduction**

The 1990 Americans with Disabilities Act (ADA), celebrating 25 years since its enactment, and the implementing Federal regulations that followed have accelerated the movement to eliminate segregation for individuals with disabilities and increase access to community living. In passing the ADA, Congress said it had found that “discrimination against individuals with disabilities persists in such critical areas as ... institutionalization.”<sup>1</sup> The Supreme Court further accelerated the movement toward integrated settings in 1999, with its decision in *Olmstead v. L.C.*<sup>2</sup> The Court found in *Olmstead* that unjustified segregation of persons with disabilities constitutes discrimination in violation of ADA Title II. In the intervening years, the Department of Justice’s Olmstead enforcement activities have expanded the understanding of Olmstead obligations from getting people out of institutions to assisting people to engage in community life. It is now clear that states must take into account the Olmstead implications of decisions regarding not just institutional admissions, but sheltered workshops, congregate day programs, and the very character of the supports they offer to ensure that people with IDD have the opportunity exercise their civil right to participate fully in their communities.

The Olmstead Risk Assessment and Planning Checklist provided in this document is intended to help provide guidance to states seeking compliance with the ADA and *Olmstead* mandates, through and within the context of the ever-growing mass of court decisions, agency regulations, and DOJ settlements. While NASMHPD and the authors make no legal guarantees, states should be able to take a big first step, working through the various elements of this checklist, toward achieving an Olmstead-compliant structure for providing services to individuals with disabilities.

This checklist will take each state through:

1. The various segregated settings and populations in or at-risk of entering those settings,
2. The state’s capacity for community-based integrated services and housing,
3. Funding mechanisms,
4. Alignment of state policies with Federal mandates,
5. State and local agency involvement,
6. Stakeholder involvement, and, finally,
7. Goals, benchmarks, timeframes, and outcomes.

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<sup>1</sup> 2 U.S.C. § 12101(a)(2), (3).

<sup>2</sup> *Olmstead*, 527 U.S. 581 (1999)

## **Background**

Title II of the ADA<sup>3</sup> prohibited state and local government agencies, along with other public entities from discriminating against people with disabilities in their programs, services, and activities.

Title III of the ADA, governing public accommodations and services, made it discriminatory to, directly, or through contractual, licensing, or other arrangement t: (A) deny opportunity to participate in or benefit from goods, services, facilities, privileges, advantages, or accommodations; (B) provide a benefit from a good, service, facility, privilege, advantage, or accommodation that is not equal to that afforded to non-disabled individuals; or (C) provide a benefit different or separate from that provided to other individuals, unless necessary to provide a good, service, facility, privilege, advantage, or accommodation, or other opportunity that is as effective as that provided to others.<sup>4</sup>

Most importantly, the Title II of the ADA regulations required a public entity to administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.<sup>5</sup> The U.S. Attorney General subsequently defined the “most integrated setting appropriate” as “a setting that enables individuals with disabilities to interact with non-disabled persons to the fullest extent possible”.<sup>6</sup>

The *Olmstead* Court held that public entities must provide community-based services to persons with disabilities when: (1) such services are appropriate; (2) the affected persons do not oppose community-based treatment; and (3) community-based services can be reasonably accommodated, taking into account the resources available to the public entity and the needs of others who are receiving disability services from the entity.<sup>7</sup>

Since the *Olmstead* case, courts at all levels have continued to interpret the ADA’s mandates, while various Federal agencies have continued to develop regulations<sup>8</sup> governing how state agencies should provide services for individuals in the most integrated settings possible.

An additional gloss on this considerable volume of regulatory and case law has come from the [various settlement agreements reached by the Department of Justice \(DOJ\)](#) with the various states agencies charged with providing services to individuals with disabilities. Although DOJ settlement agreements do not officially have value as legal precedent, each of those agreements, negotiated independently from the others and involving factual circumstances that vary from agreement to

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<sup>3</sup> 2 U.S.C. §§ 12131 through 12134 (Part A).

<sup>4</sup> 2 U.S.C. § 12182(b)(1)(A).

<sup>5</sup> 28 C.F.R. 35.130(d).

<sup>6</sup> 28 CFR pt. 35, App. A, p. 450 (1998).

<sup>7</sup> *Ibid.*

<sup>8</sup> See e.g. U.S. Dept. of Health and Human Services, Centers for Medicare and Medicaid Services, Final Rule: Medicaid Program; State Plan Home and Community-Based Services, 5-Year Period for Waivers, Provider Payment Reassignment, and Home and Community-Based Setting Requirements for Community First Choice and Home and Community-Based Services (HCBS) Waivers; 42 CFR Parts 430, 431, *et al*; 79 Fed. Reg. 2948-3039 (January 16, 2014).

agreement, provides some insight into how the DOJ perceives the Olmstead mandates, and how it might seek to achieve the Olmstead goals as it negotiates future settlement agreements.

The Olmstead Planning Checklist provided jointly by the National Association of State Mental Health Program Directors (NASMHPD) and the National Association of State Directors of Developmental Disabilities Services Directors is a resource to states as their efforts continue to implement policies and practices that focus on supporting people with disabilities to live fully engaged in their communities.

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## **OLMSTEAD RISK ASSESSMENT AND PLANNING CHECKLIST**

The United States Department of Justice, the federal agency charged with enforcing Title II of the Americans with Disabilities Act, has described the requirements of a state's *Olmstead* plan:

An *Olmstead* plan is a public entity's plan for implementing its obligation to provide individuals with disabilities opportunities to live, work, and be served in integrated settings. A comprehensive, effectively working plan must do more than provide vague assurances of future integrated options or describe the entity's general history of increased funding for community services and decreased institutional populations.<sup>1</sup>

Instead, an *Olmstead* plan must:

- Reflect an analysis of the extent to which the public entity is providing services in the most integrated setting;
- Contain concrete and reliable commitments to expand integrated opportunities;
- Have specific and reasonable timeframes and measurable goals for which the public entity may be held accountable;
- Have funding to support the plan, which may come from reallocating existing service dollars; and
- Include commitments for each group of persons who are unnecessarily segregated (such as individuals residing in facilities for individuals with developmental disabilities, psychiatric hospitals, nursing homes and board and care homes, or individuals spending their days in sheltered workshops or segregated day programs).<sup>2</sup>

A public entity can only rely on its *Olmstead* plan as part of a defense in a lawsuit if it can prove that its plan comprehensively and effectively addresses the needless segregation of the group at issue in the case. To be considered effective, the plan must have demonstrated success in actually moving individuals to integrated settings in accordance with the plan. Any plan should be evaluated in light of the length of time that has passed since the Supreme Court's decision in *Olmstead*, including a fact-specific inquiry into what the public entity could have accomplished in the past and what it could accomplish in the future.<sup>3</sup>

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<sup>1</sup> 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.*" ("DOJ *Olmstead* Guidance") at 6 (June 22, 2011).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

The following are a list of issues states should consider and work through when developing their *Olmstead* plans and assessing their risk of having their compliance with the ADA's integration mandate and *Olmstead* challenged:<sup>4</sup>

## I. Segregated Settings and Populations In or At-Risk of Entering Them

Title II and the *Olmstead* decision apply to all adults and children with disabilities who are in, or are at serious risk of entering, any type of segregated setting. This includes segregated residential, day, and educational settings.

A. What types of segregated settings<sup>5</sup> are operated, funded, or planned for by the state<sup>6</sup>? How many individuals are in each setting?

1. **Residential.** Settings include, for example:

- Publicly operated Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF-IIDs), psychiatric hospitals, and nursing homes
- Privately operated ICF-IIDs, psychiatric hospitals, and nursing homes
- Board and care homes and assisted living facilities
- Single site/disability-specific housing
- Disability farmsteads, campuses, and gated communities
- Residential treatment centers and other out-of-home placements for children and youth with disabilities (including group homes, foster care, shelters, and other transitional housing, or nursing homes)
- Other congregate residential settings
- Jails, prisons, and juvenile justice facilities
- Homeless shelters

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<sup>4</sup> As described above, a state's *Olmstead* plan must cover all populations, including people with intellectual, developmental, psychiatric and physical disabilities, as well as older adults. While the focus of this toolkit is on *Olmstead* planning for individuals with intellectual, developmental, and psychiatric disabilities, states must consider similar issues for other disability and aging populations when developing a comprehensive *Olmstead* plan.

<sup>5</sup> “[S]egregated 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.” DOJ *Olmstead* Guidance Q.1. See also Appendices describing the segregated settings challenged in *Olmstead* matters.

<sup>6</sup> “[A] public entity may violate the ADA’s integration mandate when it: (1) directly or indirectly operates facilities and or/programs that segregate individuals with disabilities; (2) finances the segregation of individuals with disabilities in private facilities; and/or (3) through its planning, service system design, funding choices, or service implementation practices, promotes or relies upon the segregation of individuals with disabilities in private facilities or programs.” DOJ *Olmstead* Guidance Q.2. See also Appendices describing the segregated settings challenged in *Olmstead* matters.

2. **Day services.** Settings include, for example:

- Sheltered workshops
- Day habilitation
- Day treatment
- Psychosocial rehabilitation
- Adult day care

3. **Educational.** Settings include, for example:

- Residential schools
- Segregated schools for students with disabilities
- Segregated educational programs or classrooms for students with disabilities

B. Who is at serious risk<sup>7</sup> of entering these segregated settings? How many individuals are in each “at risk” category? Individuals who may be at serious risk of institutionalization include:

- People who are or have a history of cycling in and out of psychiatric hospitals, jails, emergency rooms, and/or homelessness due to their disability and/or lack of needed community services
- People with serious mental illness who are homeless
- People who have been arrested or incarcerated, or who have otherwise had encounters with the police or criminal justice system due to their disability
- People who have visited the emergency room due to a crisis related to their disability
- People on waitlists for community services
- People with a recent loss or aging family caregiver
- People experiencing cuts or reductions in community services
- Transition age youth who are in a “pipeline” to sheltered workshops or other segregated day programs
- Youth at risk of out of home placements due to their disability, including placement in residential treatment centers, foster care, group homes, shelters/transitional housing, or nursing homes or ICFs
- Students at risk of being placed in segregated schools or programs for students with disabilities

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<sup>7</sup> “[T]he ADA and the *Olmstead* decision extend to persons at serious risk of institutionalization or segregation and are not limited to individuals currently in institutional or other segregated settings. Individuals need not wait until the harm of institutionalization or segregation occurs or is imminent. For example, a plaintiff could show sufficient risk of institutionalization to make out an *Olmstead* violation if a public entity’s failure to provide community services or its cut to such services will likely cause a decline in health, safety, or welfare that would lead to the individual’s eventual placement in an institution.” DOJ *Olmstead* Guidance Q.6. See also Appendices describing *Olmstead* matters involving “at-risk” populations.

## II. Capacity of Integrated Community-Based Services and Housing<sup>8</sup>

- A. Does the state's mental health system have the following essential community-based services? What is the capacity for each service? What additional capacity is needed to ensure that individuals with mental illness avoid needless institutionalization?
1. Supported housing
  2. Assertive Community Treatment (ACT) teams
  3. Intensive Case Management
  4. Case management (including coordinating medical services and medication management for people with co-occurring medical needs)
  5. Crisis services, including crisis hotlines, mobile crisis teams, crisis apartments, and walk-in crisis centers
  6. Supported employment (particularly Individual Placement and Support or IPS)
  7. Supported education
  8. Peer supports and services (including certified peer support specialists in mental health and recovery coaches in substance use)
  9. Medical services for people with co-occurring medical needs, including access to needed pharmaceutical services
  10. Substance use services for people with co-occurring substance use disorders
- B. Does the state's intellectual and developmental disabilities (IDD) system have the following essential community-based services? What is the capacity for each service? What additional capacity is needed to ensure that individuals with IDD avoid needless institutionalization?
1. Home and community-based services (HCBS) (commonly through § 1915(c) waivers, but also through § 1915(k) Community First Choice, § 1915(i) HCBS state plan services, or managed care authorities)
  2. Crisis services, including crisis hotlines, mobile crisis teams, and in-home crisis stabilization services
  3. Supported employment
  4. Wraparound integrated non-work day services (such as mainstream recreational, social, educational, cultural, and athletic activities) for individuals not working full time
  5. Family support programs and services
  6. Medical supports and services for people with complex medical needs
  7. Behavioral supports and services for people with complex behavioral needs

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<sup>8</sup> "Integrated settings are those that provide individuals with disabilities opportunities to live, work, and receive services in the greater community, like individuals without disabilities. 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." DOJ *Olmstead* Guidance Q.1. See also Appendices describing remedies in *Olmstead* settlement agreements.

- C. What types of integrated, affordable housing/residential options are available to people transitioning from, or at risk of entering, segregated settings? What is the capacity for each option?
1. For people with mental health needs:
    - Scattered-site supportive housing
  2. For people with intellectual and developmental disabilities:
    - Scattered-site apartments
    - Supported apartments
    - Shared living arrangements
    - Host homes
    - Small group homes
- D. Does the state have an effective process to ensure that individuals are connected to and able to access needed community services and integrated housing/residential options?
- E. Is there any training of law enforcement (such as Crisis Intervention Team (CIT) training) or of others in the criminal justice system (such as judges, public defenders, or prosecutors) about how to divert individuals with psychiatric disabilities or IDD in crisis by connecting them with the disability and mental health service systems? Is there a formal diversion program?
- F. What type of transportation is available to people with disabilities in the community? Is it readily accessible in all communities? Does it reach the community activities and services that people most frequently need?
- G. How does the state ensure sufficient provider capacity? Are in-person services supplemented through telehealth? Are professional services supplemented through peer support?
- H. What type of quality management/oversight does the state have to ensure that its community services are effective, lead to positive outcomes and recovery, and do not place individuals at risk of failure or harm?

### **III. Funding**

- A. What percentage of the state's funding is spent on integrated settings (see II above)? What percentage of the state's funding is spent on segregated settings (see I above)?
- B. Is the state effectively leveraging Medicaid and other federal funding to expand community-based services?
- To what extent is the state using solely state dollars for services instead of leveraging its state funding on community services that could receive a federal match through Medicaid?

- Is the state taking advantage of available Medicaid authorities, such as the Money Follows the Person program, the Balancing Incentive Program, the § 1915(k) Community First Choice Option, and the § 1915(i) State Plan Home and Community-based Services State Plan Option?
  - Is the state taking advantage of the June 26, 2015 CMS Guidance which promoted community integration by clarifying which housing-related services are reimbursable under Medicaid?
  - Is the state using Medicaid to fund and sustain Certified Peer Support Services, including Youth and Family Peer Services?
  - Is the state using its Mental Health Block Grant to expand integrated services and housing, or to make those services more effective?
- C. Is the state reinvesting cost savings from downsizing institutional or segregated settings into expanding integrated services and housing?
- D. Is the state taking advantage of all federal and state housing resources to expand the capacity of integrated housing, such as the § 811 program, Low-Income Housing Tax Credits, and state housing voucher programs? Is the state using preferences in mainstream affordable housing for people transitioning from or at risk of entering institutional settings?
- E. Is the state taking advantage of federal technical assistance in expanding community services, such as from the Department of Labor’s Office of Disability Employment Policy (ODEP), or the Department of Health and Human Services Centers for Medicare & Medicaid Services (CMS) or Administration for Community Living (ACL)?

**IV. Education and In-reach**

- A. Is the state making effective efforts to educate people with disabilities and their families or caregivers about opportunities to live, work, and receive services in integrated settings?
- B. Is the state actively conducting in-reach to people with disabilities in segregated settings to educate them about alternatives available in integrated settings?
- C. Do the state’s education and in-reach activities include<sup>9</sup>:
- Providing information about alternative settings and the services and supports the individual could access in those settings
  - Providing information about the benefits of community living, working, and receiving services in integrated settings
  - Facilitating visits to integrated settings

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<sup>9</sup> See DOJ *Olmstead* Guidance Q.5. See also Appendices describing education and in-reach activities in *Olmstead* settlement agreements.

- Facilitating meetings with community providers
- Offering opportunities to meet with other individuals who are living, working, and receiving services in integrated settings
- Exploring and addressing individuals' concerns about transitioning to an integrated setting
- Establishing peer-to-peer and family-to-family support groups

**V. Alignment of State Policies**

- A. Has the state aligned policies to further compliance with *Olmstead*? Or do policies exist that are in conflict or could undermine progress?
- B. Does the state's transition plan for implementing the CMS Home and Community-based Services (HCBS) Settings Rule<sup>10</sup> further compliance with *Olmstead*? Is the state using its plan to expand capacity of integrated services and housing (see Section II)? Is the state using its plan to eliminate HCBS funding for, or to phase out, segregated services and housing (see Section I)? Is the state moving toward the goals in its transition plan expeditiously?
- C. Is the state ensuring that it has a robust and effective system for implementing Medicaid's Pre-Admission Screening and Resident Review (PASRR)<sup>11</sup> requirements to ensure that individuals with mental illness or intellectual or developmental disabilities are not needlessly placed in nursing homes, in violation of *Olmstead*?
- D. Is the state ensuring that it is meeting its obligations under Medicaid's Early and Periodic Screening Diagnosis and Treatment (EPSDT) Requirements in a manner that helps children remain in their own homes and communities, consistent with *Olmstead*? For example, does the state provide an array of effective in-home and community-based services and therapies to children with mental health needs<sup>12</sup> or autism<sup>13</sup>?
- E. Is the state prioritizing competitive, integrated employment consistent with *Olmstead*? Does the state have an Employment First Policy or other Executive Order, policy, or plan to prioritize and expand competitive, integrated employment opportunities for individuals with IDD, psychiatric disabilities, and other people with significant disabilities? To what

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<sup>10</sup> For more information on the HCBS Settings Rule, see [www.medicaid.gov/hcbs](http://www.medicaid.gov/hcbs).

<sup>11</sup> For more information on PASRR, see PASRR Technical Assistance Center at <http://www.pasrassist.org/>.

<sup>12</sup> See "Joint CMCS and SAMHSA Informational Bulletin: Coverage of Behavioral Health Services for Children, Youth, and Young Adults with Significant Mental Health Conditions" available at <http://medicaid.gov/Federal-Policy-Guidance/Downloads/CIB-05-07-2013.pdf>.

<sup>13</sup> See "CMCS Informational Bulletin: Clarification of Medicaid Coverage of Services to Children with Autism" available at <http://www.medicaid.gov/Federal-Policy-Guidance/Downloads/CIB-07-07-14.pdf>

extent is the state spending mental health, IDD, and vocational rehabilitation funds to support individuals with disabilities in securing and maintaining competitive, integrated employment, rather than relying on segregated day services? Has the state used implementation of the Workforce Innovation and Opportunity Act (WIOA) to increase opportunities for competitive, integrated employment and reduce reliance on segregated day services, like sheltered workshops, day habilitation, and day treatment?<sup>14</sup>

- F. Is the state committing its education funding, programs, and services to support students with disabilities in learning in typical schools in general education classrooms?
- G. Is the state implementing the Department of Labor's new Home Care Rule in a manner that ensures individuals with disabilities continue to receive the home care services they need to remain in the community? If the state implements any restrictions on overtime or travel time to reduce overtime payments to home care workers, does the state policy allow for reasonable modifications or an exceptions process, as required by *Olmstead*?<sup>15</sup>

## **VI. State and Local Agency Involvement**

- A. Is the state including all relevant state agencies in *Olmstead* planning, such as the:
- State agency for IDD services
  - State mental health agency
  - State agency for aging and physical disabilities services
  - State Medicaid agency
  - State housing agency
  - State vocational rehabilitation agency
  - State workforce boards
  - State educational agency
  - State law enforcement agencies
  - State children's welfare/foster care agencies
  - State children, youth, and family agencies
  - State criminal justice agencies, including juvenile justice agencies?
- B. Is the state including all relevant local agencies in *Olmstead* planning, such as:
- Regional authorities/community service boards (depending on the service system structure)
  - Local housing authorities
  - Local law enforcement agencies
  - Local educational agencies

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<sup>14</sup> For more information on WIOA, see <http://www.doleta.gov/wioa/>.

<sup>15</sup> For more information on DOL's home care rule, see <http://www.dol.gov/whd/homecare/> and guidance on *Olmstead* implications, see [http://www.ada.gov/olmstead/documents/doj\\_hhs\\_letter.pdf](http://www.ada.gov/olmstead/documents/doj_hhs_letter.pdf).

- C. Are the responsibilities of each relevant state and local agency defined? Are they collaborating and effectively working together to implement *Olmstead* plans in a timely and expeditious manner?

## **VII. Stakeholder Involvement**

- A. Is the state including a wide range of stakeholders in the *Olmstead* planning process? This should include, for example:<sup>16</sup>
- The state’s Protection and Advocacy Agency
  - The state’s Developmental Disabilities Council
  - The state’s University Center(s) for Excellence in Disabilities
  - The state’s Center(s) for Independent Living
  - Mental health advocacy groups, statewide consumer networks, statewide family organizations, state and local chapters of Mental Health America, National Alliance for Mental Illness (NAMI), and other peer-owned and peer-run organizations
  - IDD advocacy groups, such state and local chapters of The Arc, Autism Society, Down Syndrome Association/Down Syndrome Society, United Cerebral Palsy,
  - Self-advocacy groups like People First and Self Advocates Becoming Empowered (SABE)
  - Family support groups like Parent To Parent
  - People with disabilities, including people receiving services from the system and those on waitlists/not receiving services
  - Families of people with disabilities
  - Community service providers
- B. Is the *Olmstead* planning process transparent? Are planning documents publicly shared through publication and on public websites? Are there reasonable opportunities for regular and timely public input and comment?

## **VIII. Goals, Benchmarks, Timeframes, and Outcomes<sup>17</sup>**

- A. Does the state’s *Olmstead* plan contain specific goals and concrete commitments to expand opportunities for each population in, or at serious risk of entering, a segregated setting to instead live, work, and be educated in integrated settings (see sections I and II)?
- B. Are there specific timeframes for the goals and commitments?
- C. Is there funding to support the goals and concrete commitments?

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<sup>16</sup> This list includes mental health and IDD stakeholders. State *Olmstead* planning should also include stakeholders from all impacted disability populations, including people with physical disabilities and older individuals.

<sup>17</sup> See DOJ *Olmstead* Guidance Q.12. See also Appendices describing case law regarding *Olmstead* plans.

- D. Are there specific outcomes for measuring successful implementation of the plan? How will the state collect outcome data at the state, regional/local, provider, and individual levels? How will it evaluate the success of *Olmstead* implementation efforts? Are data and outcomes regularly collected and evaluated through a process that is independent and conflict-free? Are system data and outcomes made publicly available?
- E. Is there a process for updating the plan as needed for successful implementation?

# **APPENDIX A**

## *Key Olmstead Matters*

### **Settlement Agreements** (by date)

#### ***State of Connecticut Office of Protection and Advocacy for Persons with Disabilities v.***

***Connecticut*** (privately operated nursing homes; settlement approved 2014):

- Private plaintiffs brought this class action lawsuit, which the Department of Justice joined as an *amicus*. Under the settlement agreement, Connecticut will provide community-based services to individuals with serious mental illness who are institutionalized or at risk of institutionalization in two Connecticut nursing homes. The state must use person-centered planning to determine the most integrated setting appropriate for each class member. Connecticut must give all current eligible residents of the institutions an informed choice of moving to community-based housing, and must facilitate this move in fewer than 180 days if the residents choose this option. Providing an informed choice requires that the state educate class members about housing subsidies, SSI benefits, and other relevant information about housing supports. The state must also facilitate and accompany class members on tours of homes and apartments. The settlement mandates that individuals must receive the services they need to succeed in community-based housing, including Assertive Community Treatment (ACT) teams, crisis services, and supported employment. A remedial expert evaluates compliance with the settlement agreement.

***United States v. Rhode Island*** (day programs and sheltered workshops for individuals with intellectual and developmental disabilities in Rhode Island; settlement approved 2014):

- The Department of Justice filed this lawsuit simultaneously with a Settlement Agreement it reached with Rhode Island. The agreement resolved the Department's findings that the state violated the ADA's integration mandate by failing to serve individuals with intellectual and developmental disabilities (I/DD) in the most integrated day-activity service setting appropriate for their needs, and by placing transition-age youth at serious risk of segregation. Rhode Island will provide supported employment services to approximately 3250 individuals with intellectual and developmental disabilities (I/DD) who are currently served in sheltered workshops or facility-based day programs, or are students leaving high school. The state will also provide school-to-work transition services for approximately 1250 youth with I/DD. The settlement requires outreach and in-reach to

explain the benefits of supported employment and address families' concerns about participating in supported employment. Rhode Island will reallocate resources spent on sheltered workshop and segregated day programs to fund supported employment and/or integrated day services as an individual transitions from segregated to integrated service settings, allowing funding to follow the person without an increase in cost. A court monitor assesses compliance.

***United States v. New York, O'Toole v. Cuomo*** (adult homes in New York; settlement approved 2014):

- Private plaintiffs and the Department of Justice filed separate but coordinated lawsuits, simultaneously with a Settlement Agreement they reached with the State, to resolve more than ten years of litigation. Under this agreement, New York will develop at least 2000 units of scattered-site supported housing for individuals with serious mental illnesses residing in 23 large adult homes in New York City, and as many units as needed to afford all residents of these homes with serious mental illnesses the opportunity to live in supported housing if they are qualified for it and want it. Approximately 4000 individuals with serious mental illnesses reside in the adult homes at issue. The agreement requires in-reach to ensure that adult home residents with serious mental illness are fully informed about supported housing, and have opportunities to visit apartments and speak with peers who live in supported housing. Person-centered plans will identify the housing that is the most integrated setting appropriate for the individual and the services that will support the individual in the community. Individuals will receive the array of services they need to successfully transition to and remain in community-based settings. These services include ACT, crisis services, Personalized Recovery Oriented Services ("PROS"), employment services, personal care services, and care coordination, among other services. An independent reviewer monitors compliance with the agreement. .

***United States v. New Hampshire, Amanda D. v. Hassan*** (state psychiatric hospital and state-operated nursing home for individuals with serious mental illnesses in New Hampshire; settlement approved 2014):

- Private plaintiffs filed this lawsuit, in which the Department of Justice intervened. The resulting settlement agreement provides that New Hampshire will develop more than 600 units of scattered-site supported housing for residents of New Hampshire Hospital and the Glenclyff Home, as well as individuals who, within the last two years, have been admitted multiple times to New Hampshire Hospital, have used crisis or emergency services for mental health reasons, have had criminal justice involvement as a result of a mental illness, or have been unable to access needed community services. The agreement also provides for enhanced community and crisis services, including an expansion of ACT team services and peer and family supports. In addition, the state will provide supported employment services for approximately 1000 individuals. Transition planning must be based on the informed decision-making and self-determination of the class members, and the state will conduct both in-reach and community visits to ensure that the class members' transition goals are met. The State will develop and implement a quality assurance and performance improvement system, with the goals of helping individuals achieve increased independence and greater integration in the community, obtain and maintain stable housing, avoid harms, and decrease the incidence of hospital contacts and institutionalization. An independent expert reviewer assesses implementation of and compliance with the terms of the Agreement, provides technical assistance when asked, and mediates disputes.

*United State v. Texas, Steward v. Perry* (individuals with intellectual and developmental disabilities in privately operated nursing homes; interim settlement approved 2013):

- Private plaintiffs brought this lawsuit, in which the Department of Justice intervened shortly thereafter. Litigation was stayed when the parties entered into an Interim Settlement Agreement, requiring the state to seek funding to expand community-based services to meet the needs of more than 600 individuals with intellectual and developmental disabilities who reside in nursing homes, or are at risk of unnecessary institutionalization in nursing homes. While the parties worked toward a complete settlement, the state committed to providing community-based case management, educational activities about community living options, transition planning for people who want to move to the community, and to putting in place systems and services to transition current nursing home residents to community-based housing and to divert those at risk of

unnecessary institutionalization into such housing. An expert reviewer assisted the parties in developing and achieving the state's obligations.

***United States v. North Carolina*** (privately operated adult care homes for individuals with psychiatric disabilities in North Carolina; settlement approved 2012):

- The Department of Justice filed a lawsuit simultaneously with the Settlement Agreement it reached with North Carolina to resolve the Department's findings that the state violated its Olmstead obligations. North Carolina agreed to develop 3000 units of scattered-site supported housing for individuals with serious mental illnesses who reside in, or are at risk of admission to, large adult care homes. Individuals transitioning to supported housing will receive necessary services as identified in a person-centered plan, including ACT, community support teams, 24/7 crisis services, case management and peer support services, and psychosocial rehabilitation. ACT teams will be prepared to serve 5000 people by 2019. The state must provide in-reach to the target population, offering information about their community-based options, including supported housing, in order to ensure that they are fully informed of their choices. The state must implement a pre-admission screening process to ensure that additional individuals are not needlessly institutionalized in the adult care homes at issue. An independent reviewer assists with implementation and evaluates compliance.

***United States v. Virginia*** (state-operated and private institutions for people with intellectual and developmental disabilities in Virginia; settlement approved 2012):

- Under this agreement, Virginia will provide community-based services (including home and community-based waivers and family supports) for more than 5000 individuals with intellectual and developmental disabilities who are institutionalized in state training centers or private institutions, or at risk of unnecessary institutionalization due to lack of community services. Virginia must also provide housing assistance to facilitate individuals living in their own homes or apartments, a full array of crisis services (including 24/7 mobile crisis teams), integrated employment opportunities, case management services, and other services identified through a person-centered planning process. It must implement a comprehensive quality management system for individuals receiving community services. An independent reviewer evaluates compliance and assists with implementation.

***Colbert v. Rauner*** (privately operated nursing homes in Illinois; settlement approved 2011):

- This class action settlement provides that Illinois will develop sufficient community-based housing and services for Medicaid-eligible individuals with disabilities in skilled nursing facilities to ensure that all such individuals who are interested can transition to the most integrated setting appropriate. The agreement requires outreach to ensure that skilled nursing facility residents are fully informed about their options, and a person-centered planning process for individuals choosing to transition. The state's obligation is limited by a cost-neutrality principle providing that it must not cost more in the aggregate to serve class members in community settings than in skilled nursing facilities. As of June 30, 2015, 882 class members had transitioned from skilled nursing facilities to community settings.

***United States v. Delaware*** (state-operated and private psychiatric hospitals; settlement approved 2011):

- This agreement provides that Delaware will develop scattered-site supported housing and community services for individuals with serious and persistent mental illnesses who are currently served in, or at risk of admission to, Delaware Psychiatric Center or private psychiatric hospitals. In total, the state is required to serve approximately 3000 individuals. In addition to 650 units of supported housing, the state is required to develop certain capacities to provide to this target population with a variety of community services, including a full range of crisis services, peer and family supports, ACT, intensive case management, and supported employment. An independent reviewer assists with implementation and evaluates compliance.

***Ligas v. Norwood*** (privately operated ICF/DDs in Illinois; settlement approved 2011):

- Under this class action settlement, Illinois will provide community-based services in the most integrated setting appropriate to all residents of intermediate care facilities for individuals with intellectual and developmental disabilities who request those services, as well as to individuals on the waiting list for community services. By the end of the settlement period, individuals on the waiting list must receive services such that they move

off of the waiting list at a reasonable pace. The agreement requires outreach to ensure that ICF/DD residents are fully informed about their options, and a person-centered planning process for individuals choosing to transition.

***United States v. Georgia*** (state psychiatric hospitals; settlement approved 2010):

- This agreement provides that Georgia will develop community housing for approximately 9000 state psychiatric hospital residents and individuals who are frequently readmitted to state psychiatric hospitals, frequently seen in emergency rooms, chronically homeless, and/or being released from jails or prisons. The state must offer supported housing to any of these individuals if they need it, and half of this supported housing must be scattered-site. The state must also develop certain capacities to provide this target population with a variety of community services, including ACT teams, community support teams, intensive case management teams, mobile crisis teams, crisis apartments, peer support services, and supported employment. In addition, Georgia will transition all individuals with developmental disabilities out of the state psychiatric hospitals. The state committed to create 1150 home and community based waivers for individuals with developmental disabilities, and to provide an additional 2350 family support waivers. Georgia will provide mobile crisis teams and respite services for class members with developmental disabilities. It will develop a quality management system for the community services delivered under the agreement. An independent reviewer will assess compliance.

***Williams v. Rauner*** (privately operated “Institutions for Mental Diseases” in Illinois; settlement approved 2010):

- This class action settlement provides that Illinois will develop 646 units of scattered-site supported housing for IMD residents over the first two years, and then a sufficient amount of additional units to ensure that all IMD residents with mental illnesses who are qualified for a community-based setting and want it have the opportunity to transition to the most integrated setting appropriate in the community. At the time of the settlement, Illinois IMDs housed more than 4000 individuals with mental illnesses. The agreement requires outreach to IMD residents to ensure that they are fully informed about their rights and options regarding community-based housing and services, and requires person-centered

service plans based on individuals' strengths, needs, and preferences of those individuals who elect to move to a community setting. An independent monitor evaluates compliance with the Decree, identifies actual and potential areas of non-compliance, mediates disputes between the parties, and recommends resolutions of issues to the court.

***Disability Rights New Jersey v. Connolly*** (state psychiatric hospitals in New Jersey; settlement approved 2010):

- This agreement provides that New Jersey will develop 1065 units of supported housing or other community housing for individuals on CEPP (“conditional extension pending placement”) status in the state psychiatric hospitals and individuals at risk of admission to these hospitals. CEPP status indicates that a court has found the person appropriate for discharge but that there is no community placement available. New Jersey will also discharge individuals on CEPP status within certain timeframes. The state will also discharge by a certain date a group of nearly 300 individuals who had been on CEPP status for more than 5 years at the time of the settlement. A consultant assists the state with compliance.

**Pending Litigation** (by date)

***United States v. Florida, A.R. v. Dudek*** (nursing homes in Florida; filed Mar. 2012)

- Private plaintiffs filed this lawsuit, which the court consolidated with litigation the Department of Justice brought a year later. The plaintiffs allege that Florida unnecessarily segregates approximately 200 children with significant medical needs in nursing homes and places other such children at risk of unnecessary institutionalization by failing to provide sufficient home- and community-based services to allow them to live at home with their families. The plaintiffs further allege that the children residing in nursing homes are not receiving age-appropriate educational and social activities and do not interact frequently with individuals without disabilities except for facility staff. The plaintiffs also allege that the state has reduced the availability of in-home care for children with significant medical needs while simultaneously increasing the rates it pays to care for these children in nursing homes.

***Lane v. Brown (formerly known as Lane v. Kitzhaber)*** (sheltered workshops in Oregon; filed Jan. 2012)

- Private plaintiffs filed this lawsuit, in which the Department of Justice intervened. The plaintiffs allege that *Olmstead* applies to non-residential settings like employment, and contend that Oregon unnecessarily segregates individuals with intellectual and developmental disabilities in sheltered workshops. Plaintiffs allege that these individuals spend their days performing mundane tasks in segregated facilities where they have little to no contact with individuals without disabilities and earn far less than minimum wage. The plaintiffs have requested that the court order the state to provide class members with supported employment services to help them obtain and maintain integrated competitive employment.

***Troupe v. Barbour*** (Mississippi's service system for children with mental health disabilities; filed Mar. 2010)

- Private plaintiffs filed this case, in which the Department of Justice joined as an *amicus*. The plaintiffs allege that the state unnecessarily segregates children in psychiatric facilities and places many more children at risk of unnecessary institutionalization by failing to provide them with the home- and community-based services to which they are entitled. The named plaintiffs describe recurrent hospitalizations and multiple disruptive placements with group homes, foster families, residential treatment facilities and detention facilities as a result of untreated or poorly treated mental health conditions. The Department of Justice concluded after its investigation that "Mississippi's service system for persons with disabilities is the most institution-reliant system in the United States. . . . Mississippi also spends more money proportionally on institutional care, and less on community services, than any other state."

***Thorpe v. District of Columbia*** (D.C. nursing homes; filed Dec. 2010)

Private plaintiffs filed this lawsuit, which the Department of Justice joined as an *amicus*. The plaintiffs allege that the District of Columbia unnecessarily segregates individuals with physical disabilities by failing to provide sufficient community-based long-term care services to meet their needs. Residents living in nursing homes allege that they have little privacy, often sharing group

bathrooms and sharing bedrooms with only a curtain separating them from a roommate. Plaintiffs allege they have difficulty securing their belongings, must receive medication publicly, have restricted access to telephones, and frequently sit idle for most of the day. They would prefer to live with family, in their own home, or in permanent supportive housing.

- **Open DOJ Findings Letters** (by date)

***Georgia Network for Educational and Therapeutic Support (GNETS)*** (segregated day schools; issued July 2015)

The Department of Justice issued a Letter of Findings, in which it applied *Olmstead* principles to the education context, concluding that the state unnecessarily segregated thousands of students with behavior-related disabilities in “psycho-educational” centers, limiting “interactions between students with disabilities and their peers in general education, depriving them of the opportunity to benefit from the stimulation and range of interactions that occur there, including opportunities to learn, observe, and be influenced by their non-disabled peers.” The Department also concluded that the segregated facilities provide unequal educational opportunity to students with behavior-related disabilities because the GNETS schools do not offer grade-level instruction, provide access to electives and extra-curricular activities, or give students opportunities to attend school-sponsored social events. The Department found that these students could be “successfully educated . . . if provided with appropriate services and supports in [integrated, general education] settings,” including “individualized behavior intervention plans, crisis plans, mentoring, and other individualized supports . . . .” The Department concluded that “all of those services can and should be provided by the State in general education schools.”

***West Virginia Department of Health and Human Resources*** (West Virginia’s service system for children with mental health disabilities; issued June 2015)

- The Department of Justice issued a Letter of Findings citing West Virginia’s systemic failure to develop a sufficient array of home- and community-based services to allow children with mental illness to remain with or near their families. Because the state has not developed the services these children need, the Department found, behavioral manifestations of children’s disabilities often lead to truancy and other problems at school

and in the community, resulting in court-ordered placement in segregated residential treatment facilities. Indeed, the Department found that “West Virginia has built its entire children’s mental health system, including child welfare and juvenile justice, around placement in segregated residential treatment facilities.” Moreover, the Department found that the state continues to increase its reliance on such settings, despite significant cost savings that could be achieved through more effective treatment in home- and community-based settings.

***Mississippi’s Service System for Persons with Mental Illness and Developmental Disabilities*** (issued Dec. 2011)

- The Department of Justice issued a Letter of Findings in which it concluded that Mississippi unnecessarily segregates thousands of adults and children with mental illness and developmental disabilities who could be better served in home- and community-based settings. The Department found that “Mississippi is the only jurisdiction in the country that serves more than 25 percent of the people with DD in its system in large state institutions,” and that, despite evidence that individuals can be served more effectively and more cost-effectively in the community, Mississippi continues to build new and expensive institutions, in violation of the Americans with Disabilities Act. Specifically, the Department found that the state could serve roughly four individuals in the community for every one individual it serves in institutions.

# **APPENDIX B**

## *Key Olmstead Court Decisions and Guidance* (by topic)

### **The ADA and *Olmstead* Apply to Both State-Operated and Private Segregated Settings:**

The ADA's integration mandate and the *Olmstead* decision apply to the needless segregation of people with disabilities not only in state facilities, but also in private facilities on which states rely as part of their disability service systems. The Justice Department's *Olmstead* guidance notes that a state may violate the ADA when it "finances the segregation of individuals with disabilities in private facilities" or "through its planning, service system design, funding choices, or service implementation practices, promotes or relies upon the segregation of individuals with disabilities in private facilities or programs."<sup>18</sup>

In *Disability Advocates Inc. v. Paterson*,<sup>19</sup> a federal district court ruled that New York violated the ADA's integration mandate and *Olmstead* by administering, planning, and funding its mental health system in such a way that, for thousands of individuals with mental illness, large segregated board and care homes were the only residential option available. The homes in question, known as "adult homes," had at least 120 beds and about 80 percent of the residents were individuals with mental illness. While the adult homes were privately operated, the state was responsible for determining what services to provide to individuals with mental illness in its service system, in what settings to provide them, and how to allocate funds for each program. The state planned how and where services for individuals with mental illnesses will be provided and allocated resources accordingly. The State licensed, monitored, inspected, and regulated adult homes, and had the power to determine their availability.

The district court found that adult homes are institutions that segregate people with mental illness, that supported housing is the most integrated setting for virtually all adult home residents with mental illness, that virtually all adult home residents with mental illnesses are qualified to live in supported housing, and that many would choose to do so if afforded a meaningful choice. Accordingly, the district court held that New York discriminated against DAI's constituents by needlessly institutionalizing them in adult homes. The decision was vacated by a federal appeals court based on a finding that Disability Advocates, Inc. did not have standing to bring the case, but the appeals court did not overturn the findings of fact and conclusions of law concerning the merits of the case.<sup>20</sup>

### **The ADA and *Olmstead* Apply To Both Individuals In and At Serious Risk of Segregation:**

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<sup>18</sup> See *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., and Questions and Answers on the ADA's Integration Mandate and Olmstead Enforcement* (hereinafter "Justice Department *Olmstead* Guidance"),

[http://www.ada.gov/olmstead/q&a\\_olmstead.pdf](http://www.ada.gov/olmstead/q&a_olmstead.pdf), Question 2.

<sup>19</sup> 598 F. Supp.2d 289, 319 (E.D.N.Y. Feb. 19, 2009), *vacated on other grounds, Disability Advocates, Inc. v. New York Coalition for Quality Assisted Living, Inc.*, 675 F.3d 149 (2012).

<sup>20</sup> The adult homes case was ultimately refiled as a class action case, and the United States Justice Department brought its own action against the state. The two cases were filed together with a settlement agreement between the class of adult home residents, the Justice Department, and New York.

The ADA's integration mandate and *Olmstead* decision also apply to individuals who are at not currently institutionalized but are at serious risk of institutionalization. The Justice Department's *Olmstead* guidance makes this explicit.<sup>21</sup> For example, a public entity's failure to provide community services or its cuts to such services may give rise to an *Olmstead* claim if it would likely cause a decline in health, safety or welfare that would lead to institutionalization.<sup>22</sup> Numerous courts have also reached this conclusion. See, e.g., *Pashby v. Delia*,<sup>23</sup> (*Olmstead* applies to state's decision to impose more stringent requirements for in-home personal care services, placing some individuals at risk of institutionalization in adult care homes when they lost in-home personal care services; upholding grant of preliminary injunction to stop implementation of the new requirements); *M.R. v. Dreyfus*,<sup>24</sup> (*Olmstead* applies to state's decision to cut in-home personal care services, placing some recipients at serious risk of nursing home placement); *Fisher v. Oklahoma Health Care Authority*,<sup>25</sup> (*Olmstead* applies to state's decision to stop providing unlimited prescription drug coverage in a community-based Medicaid nursing home waiver program while continuing to provide unlimited prescription coverage to nursing home residents, putting waiver participants at risk of nursing home placement), *Townsend v. Quasim*,<sup>26</sup> (*Olmstead* applies to state's decision not to extend community-based Medicaid waiver services to cover "medically needy" Medicaid recipients, putting such individuals at risk of nursing home placement).

### **The ADA and *Olmstead* Apply To All Types of Segregation, Including In Residential, Employment, Day Service, and Educational Settings:**

Title II of the ADA applies to *all* programs, services, and activities of state and local governments. Accordingly, the ADA's integration mandate applies not only to settings where people live, but also to other settings, such as employment and educational settings. The Justice Department's *Olmstead* guidance states that "[i]ntegrated settings are those that provide individuals with disabilities opportunities to live, work, and receive services in the greater community, like individuals without disabilities." Segregated settings, by contrast, include "settings that provide for daytime activities primarily with other individuals with disabilities."<sup>27</sup> In a case brought by Oregon residents with intellectual disabilities seeking supported employment services in integrated settings rather than services in segregated "sheltered workshops," the court held that the rationales for why needless segregation in residential settings is discriminatory apply equally to needless segregation in employment settings.<sup>28</sup>

A recent Justice Department findings letter also applies the integration mandate to educational settings, concluding that Georgia violated the ADA by needlessly segregating thousands of students with behavior-related disabilities from their peers through its operation and administration of a special program for students with emotional and behavioral disabilities. The program

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<sup>21</sup> Justice Department *Olmstead* Guidance, Question 6.

<sup>22</sup> *Id.*

<sup>23</sup> 709 F.3d 307 (4th Cir. 2013).

<sup>24</sup> 697 F.3d 706 (9th Cir. 2012).

<sup>25</sup> 335 F.3d 1175 (10th Cir. 2003).

<sup>26</sup> 328 F.3d 511, 519–20 (9th Cir. 2003).

<sup>27</sup> Justice Department *Olmstead* Guidance, Question 1.

<sup>28</sup> *Lane v. Kitzhaber*, 841 F. Supp.2d 1199, 1202-06 (D. Or. 2012).

consigns students with disabilities to receive their education in segregated “psycho-educational centers” or in segregated classrooms within general education school buildings.<sup>29</sup> The Department found that the psycho-educational centers “severely restrict interactions between students with disabilities and their peers in general education, depriving them of the opportunity to benefit from the stimulation and range of interactions that occur there, including opportunities to learn, observe, and be influenced by their non-disabled peers.” In addition, many students in the program who are in general education school buildings “are unnecessarily segregated from their peers because the Classrooms are often located in separate wings or isolated parts of school buildings, some of which are locked and/or fenced off from spaces used for general education programs.” The vast majority of the students in this program could, with additional services, participate in general education schools.

### **The ADA and *Olmstead* Do Not Require A Public Entity to Offer Services in Segregated Settings**

The ADA’s integration mandate and the *Olmstead* decision do not require a public entity to offer a person services in a segregated setting that a person chooses over a more integrated one. Numerous courts have rejected *Olmstead* claims brought on behalf of people with disabilities or their guardians seeking to remain in institutions slated for closure, or challenging *Olmstead* implementation plans on the ground that they might result in institutional closures. For example, in *Illinois League of Advocates for the Developmentally Disabled v. Illinois Dep’t of Human Services*,<sup>30</sup> the court denied a preliminary injunction, finding no likelihood of success on ADA and *Olmstead* claims challenging the state’s decision to close a state institution for individuals with developmental disabilities and assess the residents for potential transfer to community living arrangements. The court found that the plaintiffs, guardians and parents of institutional residents, had not identified any significant particular services, programs, or activities that the state failed, or likely would fail, to provide, and as the plaintiffs conceded, the ADA confers no right to remain in the particular institution at issue. Similarly, in *Sciarrillo ex rel. St. Amand v. Christie*,<sup>31</sup> the court rejected arguments that the ADA and *Olmstead* prohibited New Jersey from closing two state developmental centers “until every resident at those facilities consents to a transfer and a treatment professional has determined that another facility—institutional or community-based—is ‘the most appropriate place to receive services.’” As the court noted, it is not discrimination under the ADA to provide community services.<sup>32</sup>

### **An *Olmstead* Plan Must Have Concrete, Specific, and Measurable Goals**

The *Olmstead* decision provides that a state may have a defense to an integration mandate claim if it has a “comprehensive, effectively working plan for placing qualified persons with mental disabilities in less restrictive settings, and a waiting list that move[s] at a reasonable pace not

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<sup>29</sup> Letter of July 15, 2015, from Vanita Gupta, Principal Deputy Assistant Attorney General for Civil Rights, to Hon. Nathan Deal, Governor of Georgia, and Sam Olens, Attorney General of Georgia, available at [http://www.ada.gov/olmstead/documents/gnets\\_lof.pdf](http://www.ada.gov/olmstead/documents/gnets_lof.pdf).

<sup>30</sup> 60 F. Supp.3d 856, 878-884 (N.D. Ill. 2013), *appeal pending*.

<sup>31</sup> 2013 WL 6586569, No. 13-03478 (D. N.J. Jan. 15, 2014), at \*3.

<sup>32</sup> *Id.* at \*4. See also *Richard S. v. Dep’t of Developmental Services*, [No. 97 C 219, 2000 WL 35944246, at \\*3 \(C.D.Cal. Mar.27, 2000\)](#); *Richard C. ex rel. Kathy B. v. Houstoun*, [196 F.R.D. 288, 292 \(W.D.Pa.1999\)](#).

controlled by the State’s endeavors to keep its institutions fully populated.”<sup>33</sup> The Justice Department has made clear that an *Olmstead* plan “must do more than provide vague assurances of future integrated options or describe the entity’s general history of increased funding for community services and decreased institutional populations.”<sup>34</sup> According to the Department, an *Olmstead* plan “must reflect an analysis of the extent to which the public entity is providing services in the most integrated setting and must contain concrete and reliable commitments to expand integrated opportunities,” must have “specific and reasonable timeframes and measurable goals,” and must be supported by funding, which may come from reallocating existing service dollars.<sup>35</sup> The public entity must have demonstrated success in actually moving individuals to integrated settings in accordance with the plan.<sup>36</sup> See also *Frederick L. v. Dep’t of Public Welfare*<sup>37</sup> (an *Olmstead* plan must set forth “reasonably specific and measurable targets for community placement” and must, at a minimum, specify timeframes for placement in a more integrated setting, the approximate number of people to be placed during each time period, eligibility for placement, and a description of the collaboration required between agencies to effectuate community integration).

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<sup>33</sup> 527 U.S. 581, 605-06 (1999).

<sup>34</sup> Justice Department *Olmstead* Guidance, Question 12.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> 422 F.3d 151, 158, 160).

# APPENDIX C

## ***Olmstead Resources***

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30 National Disability Organizations, *Community Integration for People with Disabilities: Key Principles*, available at <http://www.bazelon.org/Where-We-Stand/Community-Integration/Key-Principles-of-Community-Integration.aspx>.

Substance Abuse and Mental Health Services Administration (SAMHA) Olmstead Community Integration Self-Assessment Pilot (FY 12, 13 and 14), available at <http://www.nri-inc.org/#!/olmstead/cd9n>.

U.S. Department of Housing and Urban Development, *Statement of the Department of Housing and Urban Development on the Role of Housing in Accomplishing the Goals of Olmstead* (June 2013), <http://portal.hud.gov/hudportal/documents/huddoc?id=OlmsteadGuidnc060413.pdf>

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