



Health

Health

**O-3
Olmstead –
Institutional
and Community
Placement Decisions**

O-3 *Olmstead* – Institutional and Community Placement Decisions

**Other Health reports
available**

The Supreme Court Decision

**O-1
Health Care
Stabilization Fund
and Kansas Medical
Malpractice Law**

In 1999, the U.S. Supreme Court heard the case *Olmstead v. L.C.*, 527 U.S. 581. This case is now used as the basis for what is required when caring for individuals with disabilities and determining whether to place them in institutional settings or community settings.

**O-2
Kansas Provider
Assessments**

Title II of the Americans with Disabilities Act (ADA) requires that people with disabilities be integrated into the community as much as possible, provided that community placement will serve the needs of the individual. In fact, the ADA identifies unjustified segregation of individuals with disabilities as a form of discrimination. See 42 U.S.C. § 12101(a)(2).

**O-4
Transfer of Kansas
Health Policy
Authority**

In the *Olmstead* case, two unrelated women with mental disabilities from the State of Georgia were in the state hospital system. One woman (L.C.) was deemed stable enough to move into community care in 1993. She was not transitioned into a community setting until 1996. The other woman (E.W.) was deemed able to be treated in the community in 1996. She was not moved into a community setting until several months into 1997. Both women argued that this delay in transitioning them into the community constituted discrimination.

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The Supreme Court, in a 6-3 decision, agreed with this argument, saying, “[t]he State’s responsibility, once it provides community-based treatment to qualified persons with disabilities, is not boundless. The reasonable-modifications regulation speaks of “reasonable modifications” to avoid discrimination, and allows States to resist modifications that entail a fundamenta[al] alter[ation]” of the States’ services and programs. The Court also stated that there is no “requirement that community-based treatment be imposed on patients who do not desire it.”

However, if the patient does qualify for community-based treatment, and that individual desires to be placed in a community setting, the State would be asked to “demonstrate that it had a comprehensive, effectively working plan for placing qualified persons with mental disabilities in less

restrictive settings, and a waiting list that moved at a reasonable pace not controlled by the State's endeavors to keep its institutions fully populated."

The opinion of the Court was delivered by Justice Ginsburg and joined by Justices Stevens, O'Connor, Souter, and Breyer. It should be noted that although he did not join the opinion of the Court, Justice Kennedy concurred in the judgment. Justice Breyer joined this opinion. This means that although he did not support all of the arguments made in the Court opinion, Justice Kennedy supported the ultimate outcome. In addition to joining the opinion of the Court, Justice Stevens wrote a concurring opinion in which he outlined the areas where he differed from the Court opinion, most notably in that the Court did not simply affirm the Court of Appeals decision, but instead vacated that decision in part and remanded that portion for further proceedings.

The dissenting opinion, written by Justice Thomas and joined by Chief Justice Rehnquist and Justice Scalia, argued that "[t]emporary exclusion from community placement does not amount to discrimination...." Most of the dissent focuses on whether or not the harm in this case even amounts to discrimination. The dissent went on to say that limited resources allowed states to make patients "wait their turn" for placement in the community.

It should be noted that since this ruling was handed down four changes have been made on the Court. Chief Justice Rehnquist and Justices Stevens, Souter, and O'Connor have been replaced by Chief Justice Roberts and Justices Alito, Sotomayor, and Kagan.

The Role of the Department of Justice

The U.S. Department of Justice (DOJ) accepts complaints from individuals who believe that they are being discriminated against in violation of the Supreme Court's ruling in *Olmstead*. These complaints can be made directly to the DOJ at http://www.ada.gov/olmstead/olmstead_complaints.htm.

In 2009, President Barack Obama issued a proclamation declaring it the "Year of Community Living." See http://www.whitehouse.gov/the_press_office/President-Obama-Commemorates-Anniversary-of-Olmstead-and-Announces-New-Initiatives-to-Assist-Americans-with-Disabilities/. Since that time, the DOJ has been pursuing *Olmstead* violations much more aggressively.

The DOJ also has posted a statement of enforcement on its website to give some guidance to states in implementing the requirements of the *Olmstead* ruling. See http://www.ada.gov/olmstead/g&a_olmstead.htm.

Recent *Olmstead* Cases

New Hampshire

In April 2011, the DOJ filed a "Letter of Findings" against the State of New Hampshire citing "[s]ystematic failures in the State's system place qualified individuals with disabilities at risk of unnecessary institutionalization now and going forward." See http://www.ada.gov/olmstead/documents/new_hampshire_findings.pdf. The DOJ outlines the steps necessary to remedy the situation.

Mississippi

The DOJ filed a statement of interest in the case of *Troupe v. Barbour*, 10-CV-00153 (S.D.MS 2010). The plaintiffs allege that Medicaid-eligible children are not being provided mental health services that they need. The DOJ filed its statement of interest to assist the plaintiffs in opposing the State's motion for dismissal. As of early September 2011, the case is still pending.

Louisiana

The Federal District Court denied the State's motion for Summary Judgment in the case of *Pitts v. Greenstein*, CV 10-635-JJB-SR (M.D. LA 2010). The plaintiffs allege that the State has proposed to reduce long-term personal care services for disabled individuals for the second consecutive year (from 56 hours to 42 hours in 2009 and from 42 hours to 32 hours in 2010). The plaintiffs' doctors agree that reduction in care for their patients could result in significant harm. As of early September 2011, the case is still pending.

Texas

The DOJ filed a motion to intervene in the case of *Steward v. Perry*, 5:10 CV-1025-OLG (W.D. Tex. 2010). The plaintiffs allege that the State of Texas is segregating disabled individuals in nursing homes. As of early September 2011, the case is still pending.

Missouri

The DOJ filed a statement of interest in the case of *Hiltibran v. Levy*, 10-4185-CV-C-NKL (C.D. Mo 2010). The plaintiffs allege that the State has refused claims for incontinence supplies, which are medically necessary for the plaintiffs to remain in community care settings and avoid placement in institutions. On June 24, 2011, the District Court awarded summary judgment to the plaintiffs, permanently enjoining the State to prevent it from denying incontinence supply claims.

Delaware

The DOJ settled with the State of Delaware to resolve a complaint filed by individuals with mental illness being segregated in institutional settings rather than being integrated into the community as well as complaints about the conditions at the Delaware Psychiatric Center. In the settlement, the State agrees to provide community-based services as outlined in the agreement prior to the deadlines set out in the agreement.

California

In July 2011, the DOJ filed a statement of interest in the case of *Darling v. Douglas*, C09-03798 SBA. This law suit came about as a result of the State of California's proposed elimination of Adult Day Health Care service on September 1, 2011. The plaintiffs sued to prevent the State from eliminating those services until other services that will meet the same needs are put into place to avoid forcing the individuals that depend on those services into institutions. As of early September 2011, the case is still pending.

North Carolina

The DOJ investigated the State of North Carolina for alleged violations of *Olmstead*. In the DOJ report of findings, the DOJ found that the State had not provided the most integrated settings possible for care. The report stated that “[t]he State plans, structures, and administers its mental health service system to deliver services to thousands of persons with mental illness in large, segregated adult care homes, and to allocate funding to serve individuals in adult care homes rather than in integrated settings.” See Summary of Facts, DOJ Letter of Findings to North Carolina. As a result of these findings, the DOJ recommended that the State move more individuals into community care and that those individuals be provided with a support system in the community. The DOJ also recommended that the State to transition individuals with mental illness to community settings with the necessary supports to maintain their mental health.

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