



Deinstitutionalization Toolkit: **LEGAL** – in**BRIEF**

Law and Policy — Deinstitutionalization

To date, three federal statutes govern the rights of individuals who are institutionalized: the Americans with Disabilities Act of 1990 (ADA), the Rehabilitation Act of 1973 (Rehab Act), and the Civil Rights of Institutionalized Persons Act of 1980 (CRIPA). These statutes serve as the bases of legal action for the rights of a person with an intellectual disability or developmental disability (ID/DD) and are critical to the deinstitutionalization process. As noted below, only the Department of Justice (DOJ) can bring litigation under CRIPA, although people with disabilities and their advocates may file complaints with DOJ requesting that DOJ investigate possible CRIPA, ADA, and Rehab Act violations. People with disabilities and their advocates can also file ADA and Rehab Act complaints with their regional Office for Civil Rights within the U.S. Department of Health and Human Services.

Also of critical importance is the 1999 U.S. Supreme Court decision in *Olmstead v. L.C.* In this case, the Supreme Court interpreted the ADA with respect to the right of individuals who are institutionalized to live in the community.

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 2009, the Civil Rights Division launched an aggressive effort to enforce the Supreme Court's decision in Olmstead v. L.C., a ruling that requires states to eliminate unnecessary segregation of people with disabilities and to ensure that they receive services in the most integrated setting appropriate to their needs.

President Obama issued a proclamation launching the "Year of Community Living" and has directed the Administration to redouble enforcement efforts. The Civil Rights Division has responded by working with state and local government officials, disability rights groups, and attorneys around the country, and with representatives of the Department of Health and Human Services, to fashion an effective, nationwide program to enforce the integration mandate of the Department's regulation implementing Title II of the ADA.

Source: <http://www.ada.gov/olmstead/index.htm>



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A technical assistance guide has been created to assist individuals in understanding their rights and public entities in understanding their obligations under the ADA and *Olmstead* (DOJ, June 22, 2011). The guide is available at:

http://www.ada.gov/olmstead/q&a_olmstead.htm

Key Organizational Roles

Department of Justice (DOJ): CRIPA gives the Attorney General the authority to conduct investigations and litigation relating to conditions of confinement in state or locally operated institutions (the statute does not cover private facilities). DOJ typically attempts to negotiate with a state to develop a settlement agreement.

The DOJ has not always focused settlement agreements on community living. In some cases in the past, DOJ has focused on addressing improvements to the institutions. However, recent DOJ CRIPA settlement agreements are including concepts of community integration.

Protection and Advocacy (P&A) Organizations: The P&A system is a national network of congressionally created, legally based disability rights agencies in each state, providing legal representation and other advocacy services to people with disabilities. People with developmental disabilities are served through the Protection and Advocacy for Persons with Developmental Disabilities (PADD) program, funded in part by the federal Administration on Developmental Disabilities. Numerous P&A organizations across the country have brought litigation under the ADA to enforce the rights of people with disabilities to live in the most integrated setting possible. Also, in recent years, P&A organizations and DOJ have worked collaboratively on numerous *Olmstead* cases.

For more detailed information, contact the P&A organization in your state. To locate the P&A organization in your state, visit the following Web site:

<http://www.ndrn.org/>



Legal Perspectives, Interpretations, Decisions, and Advocacy Issues

Lawsuits and the threat of lawsuits can be a powerful tool to change the focus of the deinstitutionalization debate from “whether” to close an institution to “how” to proceed with the closure. In some states, the political or agency leadership believes that all people can be served effectively in the community, and a lawsuit or settlement can require the state legislature to identify the funds necessary to support both the closure of the institution and the development of the community supports and services necessary to provide a quality life in the community.

In other states, legal pressure may be needed to convince politicians and agency leadership that all people can be served in the community. In both cases, the lawsuit creates a resolution to the question of “if” an institution will be closed, and the settlement provides the plan for “how” this will take place. These two actions require the state legislature to provide the resources to meet the agreed-upon stipulations, and a court-appointed monitor oversees the process of implementing the plan. Typically, community integration cases brought under the ADA and the Rehab Act do not explicitly seek closure as a remedy, but simply request that the state ensure that all qualified residents be given the opportunity to live in the most integrated setting possible. However, once people with disabilities take advantage of the opportunity to move into the community, the state often determines that the economic realities require that it close the institution. It should also be noted that in recent years, community integration litigation has increasingly been brought against states on behalf of people with disabilities living in private institutions that are funded by the state. In other words, *Olmstead* litigation is not limited to state-run institutions.

Overview of Relevant Laws and Court Decisions

Litigation regarding institutionalization generally fall under two categories:

Civil Rights of Institutionalized Persons Act (CRIPA): CRIPA authorizes the Attorney General to investigate conditions in public residential facilities and to take appropriate action if the Attorney General sees a pattern or practice of unlawful conditions, such as abuse or neglect, that deprive people confined in the facilities of their constitutional or federal statutory rights. Under settlements based on CRIPA,



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states may be required to deinstitutionalize residents, or they may be required to improve the conditions at the institution.

The Supreme Court *Olmstead* Decision: On June 22, 1999, the U.S. Supreme Court held in *Olmstead v. L.C.* that the unnecessary segregation of people with disabilities in institutions may constitute discrimination based on disability. The court ruled that the ADA requires states to provide community-based services rather than institutional placements for people with disabilities if (a) community placement is appropriate; (b) the transfer is not opposed by the affected individual; and (c) the placement can be reasonably accommodated, taking into account the resources available to the State and the needs of others who are receiving State-supported services (119 S. Ct. at 2181). In the *Olmstead* decision, the Supreme Court found that “unjustified isolation of individuals with disabilities is properly regarded as discrimination based on disability,” and thus violates the ADA. The Court went on to say that a state can meet its *Olmstead* obligations if it has a “comprehensive, effectively working plan for evaluating and placing people with disabilities in less restrictive settings” and “a waiting list that moves at a reasonable pace and that is not controlled by the State’s endeavors to keep its institutions fully populated.” Most of the *Olmstead* litigation has focused on whether the community placement can be reasonably accommodated (as in factor (c) above) or is in fact a fundamental alteration.

The *Olmstead* decision applies to people currently in institutions and those who are at risk of entering an Institution. As a result, advocates can use the *Olmstead* decision to argue not only that people in institutions should receive services in the community but also that cuts in community services that would force an individual into an institution violate the ADA.

The “Right” to Choose an ICF/DD

In the *Olmstead* decision, the Court wrote, “We emphasize that nothing in the ADA or its implementing regulations condones termination of institutional settings for persons unable to handle or benefit from community settings ... Nor is there any federal requirement that community-based treatment be imposed on patients who do not desire it” (119 S. Ct. 2176, 2187 (1999)).



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People who are not supportive of institutional closure claim that some people with ID/DD are so severely disabled that they cannot handle or benefit from community living, and that institutions are the most integrated setting appropriate to their needs. Some argue that *Olmstead* gives people with ID/DD and their guardians the right to choose what setting is most appropriate, including the “right” to choose an institution. However, the *Olmstead* decision says that state facilities “may” remain open without violating the ADA, but does not say that states “must” keep institutions open in order to comply with the ADA. Courts generally agree that the ADA does *not* give people the “right” to institutional care. The detail section includes a description of the current status of legal cases that address this issue.

The Role of Law and Interpretation in Deinstitutionalization

The process of closing an institution involves many governmental units, but at its core, the decision to close an institution is, in most cases, a legal one. Historically, the process of deinstitutionalization is a product of the law and its interpretation with regard to the rights of people with disabilities to choose where they will live. This will likely continue.

The legal process is a powerful tool to utilize as you advocate for your position. In fact, following or initiating cases through the legal system may prove to be the most powerful tool in your advocacy toolkit.

Related Documents

A number of Web sites provide information about the *Olmstead* decision:

List of *Olmstead* litigation:

http://www.ada.gov/olmstead/olmstead_enforcement.htm

List of CRIPA litigation:

<http://www.justice.gov/crt/about/spl/mr.php>



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Resources

Giliberti, M., and R. Frohboese (2011). Federal Enforcement of the *Olmstead* Decision. Presentation to the National Association of States United for Aging and Disability. Accessed August 25, 2011. <http://www.nasud.org/documentation/san/NASUAD%20Presentation%20on%20Olmstead%2003%2021%2011.pdf>

Voice of the Retarded (Web site, undated). *Olmstead* Resources. Accessed August 25, 2011. <http://www.vor.net/olmstead-resources>