

# ***Olmstead* and the Integration Mandate under Section 504 and the ADA**

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# *Olmstead* Housing Planning

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- U.S. Supreme Court's 1999 *Olmstead* decision and Title II of the Americans with Disabilities Act (1990)
- Impact on current housing planning processes and practices in states
- What can you do as veterans providers/advocates?

# Background

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- Section 504 of the Rehabilitation Act of 1973 prohibits discrimination against individuals with disabilities by the federal government and programs receiving federal financial assistance.
- Title II of the ADA (1990) and its implementing regulations extends this integration requirement to all services, programs, and activities administered by public entities.
- The Supreme Court in *Olmstead* affirmed that the unjustified segregation of individuals with disabilities is a form of discrimination prohibited by provisions of Title II.

# Title II of the ADA

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- The Americans with Disabilities Act became law in 1990. Other applicable laws: the Fair Housing Act and Section 504 of the Rehabilitation Act have provisions prohibiting discrimination against persons with disabilities.
- Integration of individuals with disabilities into the mainstream of society is fundamental to the purposes of the ADA.

# Title II of the ADA

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- Title II applies to “public entities“ defined as state or local government and any of its departments, agencies, or other instrumentalities.
- Integration: programs and services must be offered in an integrated setting. An integrated setting is defined as one that “enables individuals with disabilities to interact with nondisabled persons to the fullest extent possible...”.

# Title II of the ADA

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- Equal access: a person with a disability must have equal access to the program and/or activity as other members of the community.
- Communities must identify and remove the barriers that “limit access” or “segregate” people.
- Public entities must reasonably modify their policies, procedures or practices when necessary to avoid discrimination.

# *Olmstead* Decision

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- In 1999, the Supreme Court held in *Olmstead v. L.C.* that Title II prohibits unjustified segregation of individuals with disabilities.
- The Court explained that this holding “reflects two evident judgments”
  - First, “institutional placement of persons who can handle and benefit from community settings perpetuates unwarranted assumptions that persons so isolated are incapable or unworthy of participating in community life.”
  - Second, “confinement in an institution severely diminishes the everyday life activities of individuals.....”.

# *Olmstead* Decision

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- The Supreme Court carefully considered the matter of how states (and their instrumentalities) could reasonably meet the standard set by the ADA.
- The Court suggested states develop a **comprehensive, effectively working plan** for placing qualified persons with mental disabilities in less restrictive settings.
- The Supreme Court did not give specific guidance to states; however, lower court rulings yield information on interpretation and the DOJ has provided further guidance for states.



# *Olmstead* Plans

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- With limited guidance there has been a great deal of variability on how states implemented *Olmstead*:



- Numerous reports cited this variability; 2009 *Year of the Disabled* spurred federal action.

# Report(s) Findings:

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- Community living did not always equate to integration;
- “Choice” appeared to have different meanings;
- Many plans were plans to plan;
- Beliefs and opinions varied on whether a person was ready for more independent living.

# Implementation Variability

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Reviews of the impact of the *Olmstead* decision have revealed:

- Community living does not always equate to integration;
- “Choice” appears to have different meanings;
- Many state plans are plans to plan or merely descriptions of existing programs;
- Beliefs and opinions vary on whether a person is ready for more independent living.

# DOJ *Olmstead* Enforcement

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- In 2009, following these reports, federal agencies were directed to enforce the civil rights of Americans with disabilities.
- Since then, DOJ has made enforcement a top priority and issued a statement on their enforcement and the ADA's Integration Mandate
- 28 C.F.R. § 35.130(d)
- 28 C.F.R. § Pt. 35, App. A (2010) (addressing § 35.130)

# DOJ *Olmstead* Statement

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- Clarified integrated versus segregated settings;
- Defined requirements of an *Olmstead* Plan:
  - a Plan does not protect an entity unless plan is implemented;
  - includes analysis the public entity is providing services in the most integrated setting and evidence of commitment to expanding integrated opportunities;
  - the public entity must comprehensively and effectively address the needless segregation of the group at issue.

# Community Integration Defined

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“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.*

# Community Integration Defined

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“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.”

# Olmstead Plans

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- The DOJ stated that 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.”
- Plans must include facts of what has been accomplished and could be accomplished, be actionable, reasonably timely, have measurable goals and be able to factually show demonstrated success not only in the past but present and future - across all groups unnecessarily segregated or at risk of segregation.



# Assessing Risk

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TAC recommends public entities assess risk of Title II violations:

- Role and use of:
  - Public institutions;
  - Congregate settings exclusively created for use by a single disability group;
  - Nursing homes & board and care facilities;
- Choice;
- Opportunity;
- Funds spent by type of setting/ service.

# Examples of Settlement Agreements

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There are a large number of states with Settlement Agreements across different target groups/ settings. Recent high profile cases in other states include:

- New Jersey
- Georgia
- North Carolina
- Illinois
- Oregon
- Massachusetts
- Kentucky
- Virginia

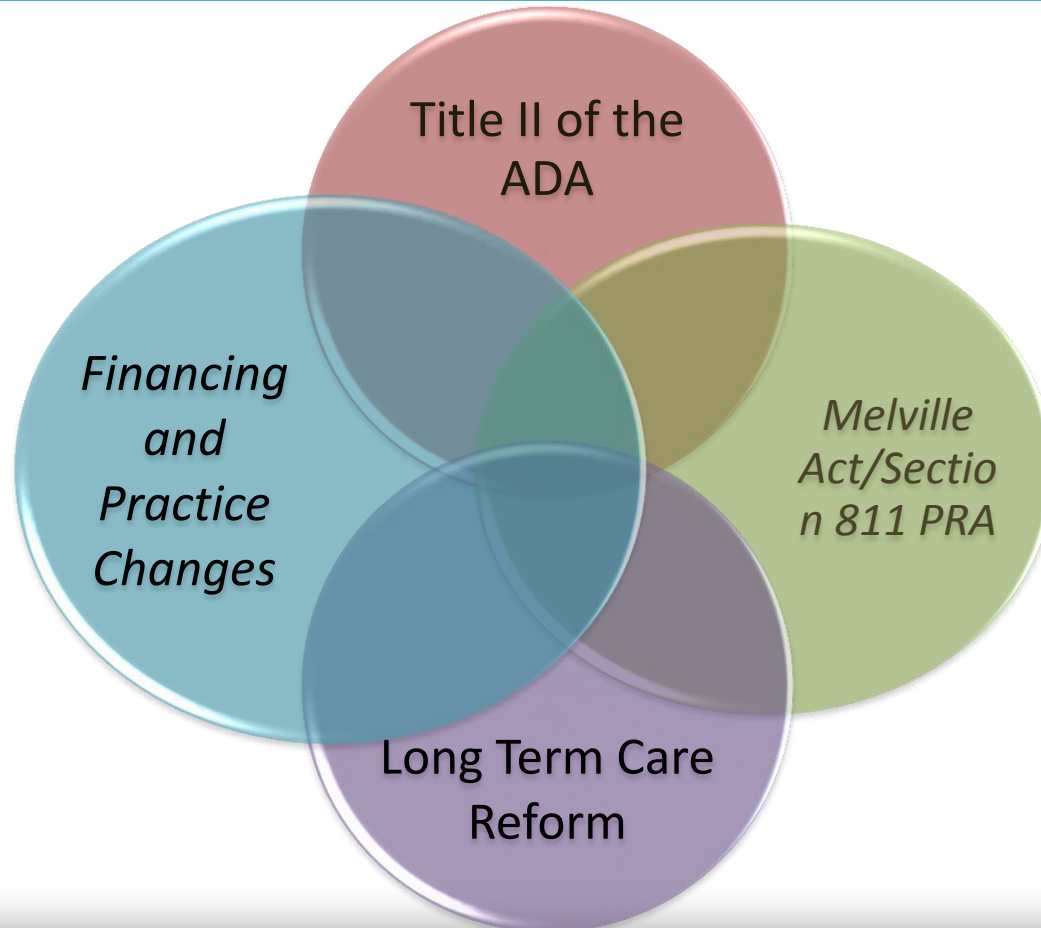
# Federal Agency Response

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- HUD and CMS have responded to DOJ direction with affirmative policies of their own:
  - They are partnering on Section 811 PRA implementation;
  - HUD has issued policy guidance to PHAs on preferences, priorities and a study of housing discrimination of people with mental disabilities;
  - CMS taking strong position on IMDs but also approving changes in state plans, Waiver programs, MFP.

# Converging Policy = Change in Practice

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# Change in Practice

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- More people are exiting or being diverted from institutions, or moving back into their own home or integrated community settings;
- Requires more attention to:
  - intentional individualized treatment and support;
  - recovery and housing support;
  - targeting behaviors that have been identified as reason person can't live in their own home; and
  - crisis intervention, self management and relapse prevention.

# Change in Practice

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- This also requires:
  - A better understanding of and adoption of “Housing First” practices;
    - “Housing First” more than serving persons “who do not agree to participation in services;”
    - It requires Mental Health Authorities to identify what services & supports a person needs to live in their own home and make those services and supports available;
    - It requires staff to have skill and knowledge in motivational interviewing, wellness coaching, relapse prevention, crisis intervention and other interventions.

# Changes in Practice

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- States are changing their service requirements, modifying state plans and approved Waivers; requiring MCOs to purchase services consistent with these approaches and blending services.
- States are changing their certification and licensing requirements.
- States are adopting SAMHSA PSH Fidelity measures and are providing consultation, training and coaching.

# VA Health Care System

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Examples of Congregate Housing Models supported by the VA:

- VA Domiciliary Care for Homeless Veterans
- VA Contract Residential Programs
- VA Grant and Per Diem Program
- Veterans Homes/Soldiers Homes



# What can you do as veterans providers/advocates?

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- Participate in your State's Olmstead Housing Planning discussions
- Engage State Policy Makers as they develop mechanisms to create integrated PSH
- Create a range of permanent supportive housing options in the work you do
- Adopt and implement Housing First practices within across your housing and services

# Contact Us

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