

## **Disability Advocacy Alliance**

### **Olmstead Protects Individual Choice for Individuals with Intellectual and Developmental Disabilities**

The Ohio Department of Developmental Disabilities (DODD) and Disability Rights Ohio (DRO) are claiming that proposed program changes done in the name of “community integration” are necessary so that the State of Ohio can come into compliance with the U.S. Supreme Court’s Olmstead decision and its interpretation of the American with Disabilities Act.

The program changes specifically are:

- A 50% reduction in Intermediate Care Facility beds for Individuals with Intellectual Disabilities (ICF/IID).
- 1,500 individuals with intellectual disabilities transferred from ICFs to small homes.
- A dismantling of the day habilitation programs offered through County Boards of DD and at campus settings and disability farms.

Olmstead’s majority and concurring opinions go to great care to stress that “institutions” such as ICF/IIDs are a critical part of a range of services that a state must provide to meet the needs of the diverse community of people with mental disabilities. Olmstead recognizes that there are individuals who desire and require a higher level of care for whom “institutions” must remain available. Olmstead also states that the wishes of individuals are paramount in determining residential placement.

With this legal foundation as its guide, the DODD must provide a range of residential, habilitation, and employment services to meet the diverse needs of individuals with intellectual and developmental disabilities.

The importance of individual choice, including for some the choice of “institutional” care, is repeated throughout Olmstead’s majority opinion as follows:

*“Such action is in order when the State’s treatment professionals have determined that community placement is appropriate, **the transfer from institutional care to a less restrictive setting is not opposed by the affected individual**, and the placement can be reasonably accommodated taking into account the resources available to the State and the needs of others with mental disabilities.”*  
(Emphasis added.)

*“But we recognize, as well, the States’ need to maintain a range of facilities for the care and treatment of persons with diverse mental disabilities, and the States’ obligation to administer services with an even hand.”*

*“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.”*

*“As already observed...the ADA is not reasonably read to impel States to phase out institutions, placing patients in need of close care at risk...Nor is it the ADA’s mission to drive States to move institutionalized patients into an inappropriate setting...”*

*“For other individuals, no placement outside the institution may ever be appropriate...for these persons, institutional settings are needed and must remain available.”*

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*"For these reasons stated, we conclude that, under Title II of the ADA, States are required to provide community-based treatment for persons with mental disabilities when the State's treatment professionals determine that such placement is appropriate, **the affected persons do not oppose such treatment**, and the placement can be reasonably accommodated, taking into account the resources available to the State and the needs of others with mental disabilities."*  
(Emphasis added.)

Through their push to close ICF/IIDs and facility based habilitation and work settings, Ohio DODD and DRO misinterpret Olmstead in the way Supreme Court Justice Kennedy, in his concurring opinion, warns against. Kennedy states in Part I of his concurring opinion which Justice Breyer joined,

*"It would be unreasonable, it would be a tragic event, then, were the American with Disabilities Act of 1990 (ADA) to be interpreted so that States had some incentive, for fear of litigation, to drive those in need of medical care and treatment out of appropriate care and into settings with too little assistance and supervision."*

Kennedy then quotes from the majority opinion,

*"Justice Ginsburg's opinion takes account of this background. It is careful, and quite correct, to say that **it is not "the ADA's mission to drive States to move institutionalized patients into an inappropriate setting..."**"* (Emphasis added.)

Kennedy concludes,

*"In light of these concerns, if the principle of liability announced by the Court is not applied with caution and circumspection, **States may be pressured into attempting compliance on the cheap, placing marginal patients into integrated settings devoid of the services and attention necessary for their condition.**"* (Emphasis added.)

Kennedy's warning is far too prophetic for the developmentally disabled citizens of Ohio.

Olmstead is not a decision to be feared by individuals seeking specialized services for their unique needs connected to their intellectual and developmental disabilities. Even Congress recognized the importance of considering individual choice based on need in ADA (Olmstead) enforcement activities in this December 2015 Report language to accompany the Consolidated and Further Continuing Appropriations Act of 2015:

*"Deinstitutionalization.-There is a nationwide trend towards deinstitutionalization of patients with intellectual or developmental disabilities in favor of community-based settings. The Department [of Justice] is strongly urged to continue to factor the needs and desires of patients, their families, caregivers, and other stakeholders, as well as the need to provide proper settings for care, into its enforcement of the Americans with Disabilities Act." [Conference Report to accompany the Consolidated and Further Continuing Appropriations Act, 2015 (for [Commerce, Justice, Science, and Related Agencies](#), p. 17) (December 2014)].*

**Olmstead embraces options.** Its careful and responsible findings respect the diversity inherent in the community of people with mental disabilities and seeks to ensure that all people receive safe, appropriate, and individually-driven choices.

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