

Reflecting on *Olmstead*

A Presentation to the Nebraska Olmstead
Stakeholder Advisory Committee

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Implementing Olmstead

- In its decision, the Supreme Court stated that if a state 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 reasonable modification standard [of the ADA] would be met.”
- 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.”

Community Integration Defined

“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.”

Community Integration Defined

“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.”

Re-focused Attention on *Olmstead* Compliance

- *More than 1/3 of COVID deaths, nearly 200,000, were in nursing homes and other institutions (and disproportionately institutions that predominantly serve people of color). Many individuals were there because they lacked access to HCBS.*
Alison Barkov, Acting Director, Administration for Community Living June 22, 2021
- *The Department of Justice continues to enforce the ADA and Olmstead, to stop unnecessary segregation and increase access to community-based services so more people have the opportunity to live fully integrated in their communities...DOJ recognizes the critical role that community services play in preventing unnecessary institutionalization and criminal justice involvement. This work is a priority.*

Department of Justice June 22, 2021

Perspective on Settings

- Institutional Qualities

State Hospitals

State Centers

Adult Care Homes

Incarceration

Group Homes

Community-based ICFs

Nursing facilities

Day Programs

Sheltered Workshops

Segregated
Schools/Classrooms

- At-Risk of Institutionalization

Homelessness

At home with aging parents

Other substandard living conditions

Insufficient community-based services

Approaches to Olmstead and Community Integration

- Proactive planning and implementation
- Reactive planning and implementation
- Planning with some implementation activity
- Litigation/Settlement Agreements
- No Planning

State Experiences

- Successful Olmstead planning requires committed leadership, including from the Governor's office, Budget offices and other State agencies, legislature
- Planning and implementation require cross agency involvement
- It's essential to have an inclusive planning process with active stakeholder engagement
- The legislature must be educated about Olmstead and aware of the planning process
- Community Integration/Olmstead takes resources, new and/or re-purposed

Reminders

- An Olmstead Plan is a system change document.
 - A plan to plan is not a plan
 - Should align existing plans/efforts for Transformation
- A plan should be comprehensive, but realistic; actionable and achievable.
- A plan should have short and long term goals.
 - Track and report on progress.
- Plans must focus on expanding access to integrated settings, not segregated settings.

Quality/Outcomes/Evaluation

- The Olmstead Plan should include an approach to identify and measure outcomes, and drive change based on performance and results.
- What performance measures are you tracking?
 - Are they impactful? Are there consequences for under-performing?
- What outcomes are you tracking?
 - Are there others you should be tracking?
- Benchmarks? **Needed to assess progress**

Cycle of Olmstead Planning

