

# OLMSTEAD AND THE A.D.A



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## *Olmstead v. L.C.*, 527 U.S. 581 (1999)

*Olmstead* involved two women who were diagnosed with intellectual disability. The plaintiffs, Lois Curtis and Elaine Wilson, were hospitalized dozens of times in various mental health facilities. They were repeatedly released without an adequate plan for services, only to be later readmitted.

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## *Olmstead v. L.C.*, 527 U.S. 581 (1999)

Prior to the lawsuit, the women requested that Georgia provide treatment in the community, which they argued would enable them to break the cycle of institutionalization. The women had the support of their doctors, who agreed that they were capable of living in the community with appropriate supports. After years of waiting for community-based supports to be put in place, the Atlanta Legal Aid Society filed suit on behalf of the women, joined by Tommy Olmstead, the then Commissioner of the Georgia Department of Human Resources.

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## *Olmstead* and the Americans with Disability Act



The Court held that the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. §§ 12101-12213, prohibits a state from discriminating against a person based on his or her disability.

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## Olmstead and the Americans with Disability Act



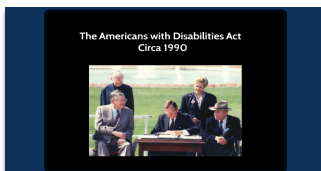
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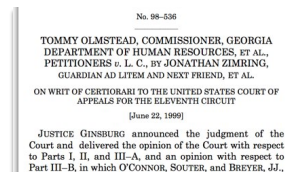
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"Unjustified isolation...is properly regarded as discrimination based on disability" in violation of Title II of the ADA. *Olmstead* at 597.

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Under *Olmstead*, states are required to provide community-based services for people with disabilities who would otherwise be entitled to institutional services when:

**(1) Such placement is appropriate;**

- ▶ "Institutional placements of people with disabilities who can live in, and benefit from, community settings perpetuates the unwarranted assumptions that persons so isolated are incapable or unworthy of participating in community life."

*Olmstead v. L.C.*, 527 U.S. at 600.

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**Practice Tips!**

**(1) Such placement is appropriate;**

Prior to filing a petition and having a hearing, attorneys should discuss with their agency:

- ▶ Whether the client has additional support available to them, including family, neighbors, or other community members who are willing to assist?
- ▶ What Activities for Daily Living (ADLs) can the client participate in? Where is there a need? Consider activities such as bathing, toileting, or preparing meals.
- ▶ What in home services can be provided and will those services address the client's needs?
- ▶ Does the client receive income, including Social Security Income? Is the client covered by insurance, and if so, is it Medicaid/Medicare or private pay?

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Under *Olmstead*, states are required to provide community-based services for people with disabilities who would otherwise be entitled to institutional services when:

- (1) Such placement is appropriate;
- (2) The affected person does not oppose such treatment;

*Olmstead v. L.C.*, 527 U.S. at 603, 607 (1999)

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Under *Olmstead*, states are required to provide community-based services for people with disabilities who would otherwise be entitled to institutional services when:

**Practice Tips!**

- (1) Such placement is appropriate
- (2) The affected person does not oppose such treatment

Prior to filing a petition and having a hearing, attorneys should discuss with their agency:

- ▶ Does the person agree to have in home services come into their place of residence?
- ▶ Will they agree to go to go to day programs?
- ▶ Will they allow collateral points of support to supplement care?
- ▶ Are they willing to learn tools for independence?
- ▶ Will they utilize Medicaid transport if arranged?

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Under *Olmstead*, states are required to provide community-based services for people with disabilities who would otherwise be entitled to institutional services when:

- (1) Such placement is appropriate;
- (2) The affected person does not oppose such treatment;
- (3) The provision of services in the community would be a *reasonable accommodation* when balanced with other similarly situated individuals with disabilities.

*Olmstead v. L.C.*, 527 U.S. at 587, 601, 607 (1999)

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Under *Olmstead*, states are required to provide community-based services for people with disabilities who would otherwise be entitled to institutional services when:

- (1) Such placement is appropriate;
- (2) The affected person does not oppose such treatment;
- (3) The provision of services in the community would be a *reasonable accommodation* when balanced with other similarly situated individuals with disabilities.
  - ▶ The Court in *Olmstead* held that public entities must make reasonable accommodations to their policies, procedures, or practices, to avoid discriminating against people with disabilities by failing to integrate them into the community.
  - ▶ A public entity is only excused from making reasonable accommodations when the entity demonstrates that the requested modifications would *fundamentally alter* its service system. Under *Olmstead*, if "the State were 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 reasonable-modifications standard would be met."

*Olmstead v. L.C.*, 527 U.S. at 584-85, 605-06 (1999)

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- (3) The provision of services in the community would be a *reasonable accommodation* when balanced with other similarly situated individuals with disabilities.

Example of a Reasonable Accommodation under the ADA:

- ▶ In the employment world, Title I of the ADA a reasonable accommodation is a modification or adjustment to a job, the work environment, or the way things are usually done during the hiring process. The modifications should be designed to enable an individual with a disability to have an equal opportunity to both be hired and to successfully perform job tasks to the same extent as people without disabilities.

Charles R. Moseley, Ed.D., *The ADA, Olmstead, and Medicaid: Implications for People with Intellectual and Developmental Disabilities* (National Association of State Directors of Developmental Disabilities Services, 2013), available online at [https://www.nasddds.org/uploads/documents/ADA\\_Olmstead\\_and\\_Medicaid.pdf](https://www.nasddds.org/uploads/documents/ADA_Olmstead_and_Medicaid.pdf)

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## 2010 U.S. Dept. of Justice Investigation

### Dept. of Justice vs N.C.

In 2010, the DOJ investigated the provision of services to individuals with mental illness in North Carolina. The DOJ found that North Carolina unnecessarily placed individuals with mental illness in adult care homes rather than in community-based settings. North Carolina's policies were found to cause an unnecessary risk of institutionalization to individuals with mental illness.

The Olmstead Decision: Compliance and Action in North Carolina (UNC School of Government, 2018). <https://ced.sog.unc.edu/the-olmstead-decision-compliance-and-action-in-north-carolina/>

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### Settlement

In 2012, a settlement was reached, with North Carolina agreeing to:

- (1) increase its community-based services available to individuals with mental illness;
- (2) offer additional supports designed to reduce unnecessary institutionalizations;
- (3) create additional opportunities for individuals with mental illness to live in supported housing, and to create programs to expand employment opportunities;
- (4) to improve community-based mental health services, emphasizing Assertive Community Treatment.

Frank Taylor, *Lack of Housing for Mentally Ill Adults Pits NC Against US Government in Ongoing Legal Battle* (North Carolina Health News, Aug. 2, 2017), <https://www.northcarolinahealthnews.org/2017/08/02/lack-of-housing-for-mentally-ill-adults-pits-nc-against-us-government-in-ongoing-legal-battle/>

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### Continued Noncompliance

In 2017, the DOJ filed a motion arguing that North Carolina failed to comply with its obligations under the settlement and was lagging behind schedule. The DOJ argued that court intervention is the only way to ensure compliance.

After the most recent in a series of extensions, North Carolina now has until July 2023 to comply with the terms of the settlement. Several other states are also involved settlements and lawsuits with the federal government related to the holding in *Olmstead*.

Lynn Bonner, *NC failed to meet court-ordered deadlines for moving people with mental illnesses out of adult care homes. But it got another extension.* (NC Policy Watch, June 10, 2021), <http://www.ncpolicywatch.com/2021/06/10/nc-failed-to-meet-court-ordered-deadlines-for-moving-people-with-mental-illnesses-out-of-adult-care-homes-but-it-got-another-extension/>

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## Least Restrictive Housing Mandate

- ▶ The guardian of the person may establish the ward's place of abode inside or outside this State. In arranging for a place of abode, the guardian of the person shall give preference to places inside this State over places outside this State if in-State and out-of-State places are substantially equivalent. The **guardian also shall give preference to places that are not treatment facilities**. If the only available and appropriate places of domicile are treatment facilities, the guardian shall give preference to community-based treatment facilities, such as group homes or nursing homes, over treatment facilities that are not community-based.
- ▶ Treatment facility. - Has the same meaning as "facility" in G.S. 122C-3(14), and includes group homes, halfway houses, and other community-based residential facilities.

NCGS\_35A-1241; NCGS 1101.16 (16)

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## Transitions to Community Living Initiative (TCLI) Department

### What it Does:

The TCLI Dept. helps ensure that qualifying individuals are

- (1) given a choice in helping to determine where they live;
- (2) provided supports and services to assist with safe and successful transitions into the community;
- (3) and are linked to evidence-and-community-based, person-centered, recovery-focused supports and services.

### Available Services

- Housing slots with financial rental assistance.
- Tenancy support to help with moving, setting up household supplies and furniture, and explaining what to do in an emergency.
- Individual Placement and Support-Supported Employment service (for individuals with mental health and substance use disorders) to obtain competitive employment in an integrated work setting.
- Work Incentives Planning and Assistance (WIPA) (for individuals with disabilities who receive Social Security benefits) to help acquire, retain, and increase meaningful employment with the goal of improving financial independence.
- Special Assistance-In Home provides cash supplement to help low-income adults who are at risk of placement in a licensed residential care setting to reside in a private living setting.

### Eligibility Determined by NCDHHS

Individuals with *severe and persistent mental illness* (SPMI) who

- reside in adult care homes;
- reside in adult care homes licensed for at least 50 beds, and in which 25% or more of the population has a mental illness;
- reside in adult care homes licensed for 20-49 beds, and in which 40% or more of the population has a mental illness;
- are or will be discharged from a State psychiatric hospital, and who are homeless or have unstable housing; or
- are diverted from entry into adult care homes pursuant to the preadmission screening and diversion policies.

Trillium Health Resources, <https://www.trilliumhealthresources.org/regional-operations/transitions-to-community-living-initiative-tcli> (last visited June 29, 2021)

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<b>ADULT SERVICES REFERRAL TO LEGAL</b>			
<input type="checkbox"/> Adult Protective Order	<input type="checkbox"/> Guardian of Person	<input type="checkbox"/> Guardian of the Estate	
<input type="checkbox"/> General Guardian	<input type="checkbox"/> Interim Guardianship	<input type="checkbox"/> Limited Guardianship	
<input type="checkbox"/> Motion to Modify:			
TYPE OF APS: _____			
Located at Vidant Medical Center:	Bill Vidant:	Background Completed:	Check
<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Referral Date:	Social Worker:		
Respondent:			
ALL Diagnoses:			
Social Security Number:	Date of Birth:		
Current address of Respondent:			
Addresses for the last 12 months:			
Does Respondent have a license?			
<input type="checkbox"/> Yes <input type="checkbox"/> No			
If you do not know, what efforts did you use to obtain that information?			
State and Drivers License #:			
Respondent's Banking Institution(s) & Account Number(s):			
1.			
2.			
3.			

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Income, Insurance & Asset Information:									
	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 50%;">VALUE</th> <th style="width: 50%;">LOCATION OF ASSET</th> </tr> </thead> <tbody> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> </tbody> </table>	VALUE	LOCATION OF ASSET						
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Date of First APS Report:	Allegations and Outcome:								
Has there been a previous APS order?									
<input type="checkbox"/> Yes <input type="checkbox"/> No									
If yes, please explain type of order, expiration, social worker and previous GAL:									
The basis for the legal remedy requested above is as follows:									
1. History with DSS:									
2. Collaterals contacted and information gained:									
3. Outcome of investigation related to most recent report:									
4. EXPLANATION OF LEGAL REMEDY REQUESTED (if not asking for limited or temporary legal remedy explain why):									
5. EXPECTATIONS FOR CLIENT IF LEGAL REMEDY IS GRANTED (include plan for living, services that will be offered, collateral participation, wrap around services):									
ATTACH FOLLOWING DOCUMENTATION in support of the relief requested:									
1. Medical evidence and/or medical professional letters									
2. Bank statements, tax information, deeds etc.									
3. Insurance verification/Social Security confirmation									
4. Legal paperwork including P.O.A./Trusts/Wills/Previous guardianship paperwork									

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List information and people that need to be subpoenaed (if necessary):

NAME	ADDRESS	PHONE NUMBER	EMAIL	FAX NUMBER

List ALL the Next of Kin of the Respondent:

NAME/RELATION	ADDRESS	EMAIL	PHONE NUMBER(S)

If no next of kin is locatable, list all efforts taken to locate next of kin:

For Guardianship: Who is the proposed guardian, list their relationship (if any), addresses, email, and phone numbers:


Explain why this family member is recommended over other relatives:

If the proposed Guardian is NOT a family member or next of kin, please explain why:

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Always Remember: These are real people...



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