Agenda Item #3
Olmstead Advisory Committee Meeting
August 26, 2005

The Olmstead Decision: A Primer

The Case: On June 22, 1999, the United States Supreme Court issued a decision in the case of *Olmstead v L.C.,* finding that the unjustified institutional isolation of people with disabilities is a violation of the Americans with Disabilities Act (ADA). The case involved two developmentally disabled women, Lois Curtis and Elaine Wilson. Ms Curtis also had schizophrenia, and Ms. Wilson had a personality disorder. Both women were Medicaid beneficiaries who had been treated in institutions.

In 1992, Ms. Curtis was voluntarily admitted to the Georgia Regional Hospital in Atlanta, confined for treatment in a psychiatric unit. By 1993, her psychiatric condition had stabilized and her treatment team determined that her needs could be met in one of the state's community-based programs. However, Ms. Curtis remained institutionalized. In May 1995, she filed suit in federal court challenging her continued confinement in an institution. Ms. Curtis alleged that the state's failure to place her in a community-based program, after her treating professional determined that such placement was appropriate, violated Title II of the Americans with Disabilities Act. In February of 1996, the state placed her in a community-based treatment program.

Ms. Wilson's claim in the case was similar to Ms. Curtis'. Ms. Wilson was admitted to Georgia Regional Hospital in February of 1995, and was also confined for treatment in a psychiatric unit. In March of 1995, the hospital sought to discharge her to a homeless shelter, but abandoned that plan after her attorney filed a complaint. By 1996, Ms. Wilson's treating psychiatrist concluded that she could be treated appropriately in a community setting. However, she remained institutionalized until a few months after the District Court issued its judgment in this case in 1997.

(Source: The previous section is an excerpt from the Kaiser Commission on Medicaid and the Uninsured, Policy Brief: Olmstead v. L.C., the Interaction of the Americans with Disabilities Act and Medicaid).

Understanding Title II of the Americans with Disabilities Act: Federal regulations implementing Title II of the ADA require that public entities administer programs in “the most integrated setting appropriate to the needs of a qualified individual with a disability. To this end, the rules also require that a covered entity make “reasonable modifications” in programs and activities in order to avoid discrimination, unless it can show that the modification would fundamentally alter the nature of the program or activity. The rule requires the public entity to prove that a proposed modification exceeds reasonable levels and rides to the level of a “fundamental alteration.” At the same time, however, individuals who file claims under Title II carry the initial burden of demonstrating that a proposed modification is reasonable.
(Source: This section is an excerpt from the Center for Health Care Strategies, *The Americans with Disabilities Act and Integration: Understanding the Concept of “Fundamental Alteration”* May 2002).

The Decision: The case focused on whether regulations implementing Title II of the Americans with Disabilities Act (Title II requires states to operate public programs in a non-discriminatory fashion and to furnish services in the most integrated setting appropriate to an individual’s needs) require placement of persons with disabilities in community settings rather than institutions. The Supreme Court’s ruling is summarized as follows:

1. The Court noted that unjustified institutional isolation of people with disabilities is a form of discrimination, noting the history of institutionalization as a means of segregating and demeaning persons with disabilities.

2. The Court ruled that states are required to provide community-based services for persons with disabilities otherwise entitled to institutional services when:
    - The state’s treatment professionals reasonably determine that community placement is appropriate;

- The person does not oppose such placement; and,
- The placement can be reasonably accommodated, taking into account resources available to the state and the needs of others receiving state-supported services for persons with disabilities.

3. The Court indicated that the "state's responsibility is not boundless", noting that the needs of persons who require institutional services have to be weighed against those who reside in the community. The Court also noted that nothing in the Americans with Disabilities Act condones termination of institutional setting for persons unable to handle or benefit from community settings.

4. The Court found that the Americans with Disabilities Act's reasonable-modifications standard does not require states to make "fundamental alterations" in its services or programs. The Supreme Court indicated that the test as to whether a modification entails "fundamental alteration" of a program takes into account three factors: the cost of providing services to the individual in the most appropriate integrated setting; the resources available to the state; and how the provision of services affects the ability of the state to meet the needs of others with disabilities.

5. The Court found that the reasonable-modifications standard would be met if the state has a comprehensive, effectively working plan for placing qualified individuals in less-restrictive settings, and a waiting list that moves at a reasonable pace not controlled by the state's efforts to keep its institutions fully populated.

Direction from the Center for Medicare and Medicaid Services (CMS): CMS has issued letters to State Medicaid Directors related to the Olmstead decision. These letters provide directions to states in understanding the Olmstead decision, populations impacted, and guidance for implementation. In its first letter, CMS points out that the Court suggests that a State could establish compliance with Olmstead and Title II of the Americans with Disabilities Act if it demonstrates that it has a comprehensive, effectively working plan for placing qualified persons with

disabilities in less-restrictive settings, and a waiting list that moves at a reasonable place not controlled by a State's objectives of keeping institutions fully populated. In its letter to State Medicaid Directors (January 14, 2000), CMS indicates that "Olmstead challenges states to prevent and correct inappropriate institutionalization and to review intake and admissions processes to assure that persons with disabilities are served in the most integrated setting appropriate." CMS has encouraged states to develop plans with the active involvement of persons with disabilities and their representatives in design, development and implementation. CMS has also provided some recommendations about key principles and practices for states to consider as they develop plans. In addition, CMS has responded to a series of questions from states regarding implementation, as follows:

- **Who is covered by Olmstead?** The decision involved two women with developmental disabilities and mental illness. Is the decision limited to people with similar disabilities? ANSWER: No. The principles set forth in the Supreme Court's decision in Olmstead apply to **all** individuals with disabilities protected from discrimination by Title II of the ADA. The ADA prohibits discrimination against "qualified individual(s) with a disability." The ADA defines disability as:
  - (A) A physical or mental impairment that substantially limits one or more of an individual's major life activities;
  - (B) A record of such an impairment; and
  - (C) Being regarded as having an impairment.

To be a "qualified" individual with a disability, the person must meet the essential eligibility requirements for receipt of services or participation in a public entity's programs, activities or services. For example, if the program at issue is open only to children, and that eligibility criterion is central to the program's purpose, the individual must satisfy this eligibility requirement.

- **What about the elderly and children- are they covered by Olmstead?** ANSWER: Yes, but the issue is always based on a person's disability. CMS indicates "no matter what specific impairment or group of people is at issue—including elderly and children – each must meet the same threshold definition of disability in order to be covered by the ADA. The question is "Does the person have an impairment, have a record of impairment, or is s/he being regarded as

having an impairment, that substantially limits a major life activity?" Regarding the elderly, age alone is not equated with disability. However, if an elderly individual has a physical or mental impairment that substantially limits one or more of his or her major life activities, has a record of such impairment, or is regarded as having such impairment, he or she would be protected under the ADA.

Other Federal Efforts

Real Choice Systems Change Grants: Established by Congress in 2000, grants of more than $158 million have been awarded to states from 2001-2004 to create infrastructure and service options necessary for long-term community integration. California currently has six Real Choice grants in operation, including the Money Follows the Person/California Pathways project, the Bay Area Quality Enhancement Initiative, the IHSS Enhancement Initiative, the Transitions Independent Living Partnership Grant, the California Study on a New Respite Benefit for Caregivers of Adults With Cognitive Impairment, and the Aging and Disability Resource Center Initiative (See Attached "California Real Choice Grants" for more information).

New Freedom Initiative: In 2001, as part of the New Freedom Initiative, President Bush issued Executive Order 13217 requiring all Executive Branch agencies to take steps to comply fully with the requirements of the Olmstead decision. The Executive Order required federal agencies to promote community living for persons with disabilities by providing coordinated technical assistance to states; identifying specific barriers in federal law, regulation, policy and practice that impede community participation; and enforcing the rights of persons with disabilities.

Community Responses

People with disabilities have filed Olmstead-related complaints in situations where they believe they have not received services in the most integrated setting. As of May 2004, an estimated 627 Olmstead-related nationwide complaints have been filed with the Federal Health and Human Services Office for Civil Rights, which has responsibility for enforcing Title II of the Americans with Disabilities Act and ensuring compliance with the Olmstead Decision. Of these cases, 459 had been resolved or closed and 168 were still open as of May 2004.

One notable Olmstead-related case in California was the Laguna Honda Hospital and Rehabilitation Settlement, filed in 2000 against Laguna Honda Hospital and Rehabilitation Center (Davis v. California Health and Human Services Agency) on behalf of plaintiffs with mental illness, developmental disabilities, and physical disabilities. The plaintiffs alleged that the City of San Francisco and State of California violated the integration mandate under Olmstead by unnecessarily institutionalizing the plaintiffs in Laguna Honda Hospital and Rehabilitation Center, a nursing home that houses more than 1000 individuals. The case was settled in March of 2003 when the state defendants agreed to modify the Department of Mental Health's Pre-Admission Screening and Resident Review (PASRR) program for individuals with psychiatric disabilities to ensure that the revised assessment process identify community resources for which the persons would qualify, and to consider whether the person's goals and needs could be met with the full range of community-based alternatives to nursing home care. The defendants for the City of San Francisco agreed to set up a Targeted Case Management unit to screen and assess the needs of Laguna Honda residents, individuals on waiting lists for admission to Laguna Honda, and individuals in San Francisco hospitals eligible for discharge to Laguna Honda. The city would use Targeted Case Management to assist these individuals with service and discharge planning and creating linkages with community-based resources. (Source: National Council on Disability and Clearinghouse Review Journal of Poverty Law and Policy, "Where are We Five Years After Olmstead?" January-February 2005)

Olmstead and the Medicaid Program

Medicaid is affected by the Olmstead decision because it is the major source of public financing for long-term services and supports for people with disabilities.

Historically, Medicaid covered only institutional long-term care services, but over the past two decades, the proportion of long-term care financing directed to community-based services and the number of persons receiving services in the community has grown considerably. Sixty-eight percent of federal Medicaid long-term service spending remains institutionally based, while 32% of Medicaid long-term spending is directed to the community. The Medicaid law requires states to provide institutional services to all eligible persons as a mandatory benefit, and permits (but does not require)

states to make services available in the community. This federal government policy is referred to as the "institutional bias."

The three ways state Medicaid programs can provide home and community-based services are 1) through the home health benefit (a mandatory Medicaid benefit that historically has emphasized skilled, medically-oriented services in the home, but states have the discretion to cover a number of therapeutic services); 2) through one of several optional state plan services (including personal care, rehabilitation services, private duty nursing, physical therapy, occupational therapy, and transportation services); and 3) through home and community-based services waivers. (Source: Kaiser Commission). Some of California's Medi-Cal home and community-based services include the In Home Supportive Services program (a state plan benefit), the Adult Day Health Care Program (a state plan benefit), the six 1915(C) waivers including the AIDS waiver, the developmentally disabled waiver, the In-Home Medical Care waiver, the Nursing Facility A/B waiver, the Nursing Facility Subacute waiver, and the Multipurpose Senior Services Program waiver.