

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

The United States Supreme Court decided in an Opinion issued on June 22, 1999 that a State is required under Title II of the Americans with Disabilities Act (ADA), 42 U.S.C. § 12132, to provide community-based treatment for persons with mental disabilities 1) when the State's treatment professionals determine that such placement is appropriate, 2) the affected persons do not oppose such placement, and 3) the placement can be reasonably accommodated, taking into account the resources available to the State and the needs of others with disabilities. The Court further stated that nothing in the ADA or its implementing regulations requires community placements for persons unable to handle or benefit from community settings.

The Court upheld the Eleventh Circuit decision that Georgia had violated the ADA by forcing two mentally retarded women to remain in a state mental hospital after their treating professionals had determined them ready for discharge, but remanded the case to the District Court for further consideration of the appropriate range of relief available. Although the *Olmstead* case involved two individuals with a mental disability, the decision is broad in its scope and can be read to apply to all persons with disabilities covered under the ADA.

The Court held that under the ADA, a State must provide community-based services to qualified individuals and must make "reasonable accommodations" in its programs to do so, unless such alterations would constitute a "fundamental alteration" in the services provided. The Court found that the Eleventh Circuit's determination that "a cost justification was permissible only in the most limited of circumstances" was too restrictive and would leave the State practically defenseless. The Court instead found that if a State could demonstrate that it has a comprehensive, effectively working plan for placing qualified persons with mental disabilities in less restrictive settings, and a waiting list that moves at a reasonable pace not controlled by the State's endeavors to keep its institutions fully populated, the fundamental alteration prong of the reasonable-modifications standard would be met.

In evaluating a State's fundamental alteration defense, the District Court must consider, in view of the resources available to the State, not only the cost of providing community-based care to the litigants, but also the State's responsibility for maintaining a range of facilities for the care of persons with diverse mental disabilities, and its obligation to mete out those services equitably. The Court specifically recognized that a simple comparison of the cost for providing care for the litigants in the community with the cost of that care in an institution was not sufficient. A State may experience increased overall expenses by funding community placements without being able to take advantage of the savings associated with the closure of institutions.

## **President Bush's Executive Order dated June 18, 2001 Community-Based Alternatives for Individuals with Disabilities**

President Bush issued his Executive Order on Community-Based Alternatives for Individuals with Disabilities on June 18, 2001 finding that "[u]njustified isolation or segregation of qualified individuals with disabilities through institutionalization is a form of disability-based discrimination prohibited by Title II of the Americans with Disabilities Act of 1990." The President further stated that the federal government must assist the States and localities to implement swiftly the *Olmstead* decision to help ensure that all Americans have the opportunity to live close to their families and friends, to live more independently, to engage in productive employment, and to participate in community life.

The President ordered the Attorney General, the Secretaries of Health and Human Services, Education, Labor, and Housing and Urban Development, and the Commissioner of Social Security to work cooperatively together and with the states by providing technical assistance to help them assess compliance with *Olmstead* and achieve the goals of Title II of the ADA. The Secretary of Health and Human Services is designated as the lead secretariat in these efforts.

Each of the above federal agencies was required to evaluate their own policies, programs, statutes and regulations to determine whether any should be revised or modified to improve the availability of community-based services. This preliminary review, *Delivering on the Promise: Preliminary Report*, was completed January 2, 2002 and may be found along with other information at [www.hhs.gov/newfreedom](http://www.hhs.gov/newfreedom).

Finally, the Attorney General and the HHS Secretary are ordered to fully enforce Title II of the ADA, including investigating and resolving complaints filed on behalf of individuals, working whenever possible cooperatively with the States and using alternative dispute resolution to resolve the complaints.

The Department of Health and Human Services' Office of Civil Rights has been investigating complaints of violations of the ADA since the *Olmstead* decision in 1999 and offering to provide technical assistance to the states in the development of *Olmstead* plans. The *Olmstead* decision itself does not require an *Olmstead* plan, but the Supreme Court held that a State could successfully defend itself if 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 pace not controlled by the State's endeavors to keep its institutions fully populated.