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The Intersection of Housing Policy and Health: Olmstead is the Mandate, Affordable Care Act the Opportunity

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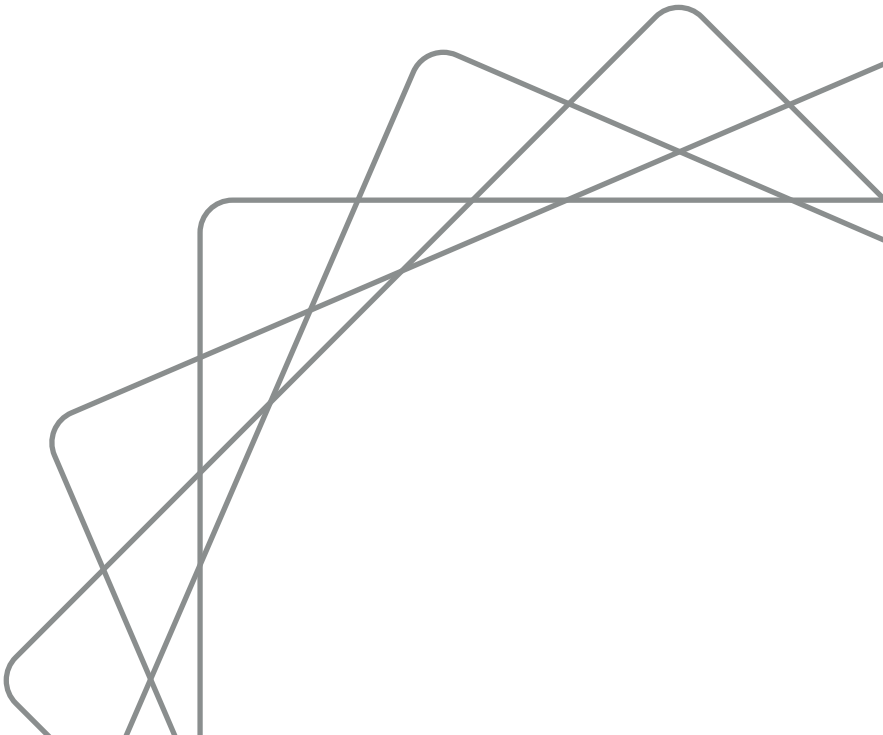

The Supreme Court's 1999 decision in Olmstead v. L. C. created a mandate to ensure that people with disabilities of all ages live in the least restrictive setting possible that meets their needs. The Court ruled that, under Title II of the Americans with Disabilities Act, people with disabilities must be afforded opportunities to live in a setting appropriate to their abilities with freedom to choose their daily life activities and to interact with people who are not disabled.

States are responding to the Olmstead mandate in a variety of ways, sometimes – but not exclusively – in response to litigation. The challenges states face include the Medicaid program's historical bias toward delivering long-term care for seniors and people with disabilities in institutional settings. Another key challenge has been the limited supply of affordable and appropriate housing and supports in community-based settings.

In response to these challenges, the Centers for Medicare and Medicaid Services (CMS) has created financial incentives and administrative mechanisms to encourage "rebalancing" long-term care approaches to expand options for community-based living. The recently enacted Affordable Care Act (ACA) has added to the tools available to states. Using these tools, states are developing creative approaches tailored to their resources and systems. But there is still much work to do to fulfill the promise of the Olmstead mandate.

In January 2014, Abt Associates sponsored a webinar featuring nationally recognized speakers who addressed the opportunities and challenges posed by the Olmstead decision and the Affordable Care Act. This policy brief highlights themes raised in the webinar and in the policy arena.

Supports for Community Living

The Olmstead decision applies to people who have been limited by gaps in home and community-based services to having their needs met in segregated, institutional settings, as well as those who may be at risk of entering institutional care. Those who would prefer to live in a community setting need resources for transitions from institutions to community-based housing or for stabilizing their current living situations to avert institutionalization. They may need assistance to find and move into an appropriate community-based housing unit. They may need a temporary or ongoing subsidy to afford the housing and tenancy supports to maintain it. To live independently, they may also require supports such as personal care; home health care; medical, habilitative or rehabilitative services; meal preparation; or transportation assistance.

The Medicaid program has traditionally funded long-term care in institutional settings. As long term-care systems are rebalanced, Medicaid is a critical source of funding for supports that people of all ages with special health care needs or disabilities need to live in community settings. Cost savings from rebalancing may provide resources to expand community-based services. Mechanisms for community-based supports include **Home and Community-based Services (HCBS)** that can be provided under Medicaid waivers, as well as services under the **Medicaid Rehabilitation Option**. The ACA amended and strengthened **CMS's Money Follows the Person initiative** and enacted the **Community First Choice State Plan Option**; both can help with transitions to community-based settings. **The Balancing Incentive Program** is a new mechanism under the ACA that offers enhanced federal matching funds to states for long-term services and supports (LTSS) that are provided in non-institutional settings.

Housing Options

Equally important to successful transitions is the availability of appropriate affordable housing in a setting of the person's own choice. It is widely recognized that the need for housing available to low income renters far surpasses the supply of suitable housing. People with disabilities whose incomes are limited to Supplemental Security Income (SSI) often face particular difficulty finding housing they can afford and that meets their needs. Housing availability has been a significant challenge to transitions from institutions to community under the various Medicaid options, waivers and initiatives, including the Money Follows the Person program.

Traditional sources of affordable housing are HUD's rental voucher program, the public and assisted housing stock, and the agency's stock of housing developed specifically for seniors and people with disabilities under the Section 202 and Section 811 programs. The state-administered **Low Income Housing Tax Credit Program** develops and rehabilitates affordable housing with rents that may be affordable for some people with disabilities and can be made affordable to people with very limited incomes in combination with other subsidies.

But housing funding systems have not always been well-coordinated with systems that provide services and supports.

Beyond the issues with the supply of affordable housing, the notion of "integrated settings" has inspired much debate among people with disabilities and their families, advocates, and policy-makers. The key question is, "If a housing setting houses only people with disabilities, is it truly an 'integrated' setting, even if it is in the community?" To address this question and offer more choices, a number of states mandate or encourage incentives for set-asides in rental properties that are produced using the Low Income Housing Tax Credit, priorities on waiting lists for assisted housing, or bridge subsidies for people with disabilities waiting for community-based affordable housing to become available. To supplement and coordinate with these efforts, HUD launched the Section 811 Project Rental Assistance demonstration program in 2012. The demonstration will provide subsidies for scattered site units targeted to people with disabilities and located in affordable housing developments financed by other funding sources and occupied by a mix of people with and without disabilities.

CMS recently provided guidance on defining "integrated settings" that focuses on outcomes such as ensuring privacy and freedom from coercion and restraint, as well as offering access to the broader community and opportunities for employment and engagement in community activities. CMS cites the evidence base for scattered site housing, in which a small number of people with disabilities live in settings where they are free to engage in broader community life. A large, congregate setting populated mostly by persons with disabilities where life is characterized by regimentation and segregation of daytime activities does not constitute an integrated setting.

Questions for Policy and Practice: How do we ensure the goals of Olmstead are met?

The Olmstead mandate has spurred a variety of efforts to expand options for community-based living for people who need long term services and supports. There are still a number of areas of policy and practice where further efforts are needed. Some examples of promising strategies were described during the Abt webinar and are briefly highlighted here.

Chipping away at the silos. Continued efforts are needed to break down the silos and improve coordination across housing and services systems and providers. Webinar speakers Kevin Martone from the Technical Assistance Collaborative (TAC) and Dan Burke from HUD's Multifamily Housing office in the Chicago region highlighted HUD's Section 811 PRA Demonstration as one such effort. Applicants for the HUD housing subsidies must demonstrate the collaboration of housing development agencies and the state's Medicaid agency. The demonstration is still in the early stages, but may provide lessons on how such collaborations can work effectively.

States and localities are coming up with strategies as well. In Illinois, Mr. Burke cited legal agreements that require PHAs to affirmatively market their programs to persons in institutional settings. In response, public housing authorities were granted approval to establish wait list preferences or set asides of units or subsidies for Olmstead class members. Mr. Martone noted that housing finance agencies in a number of states, including North Carolina, Texas, and Pennsylvania, have developed strategies to ensure that set-asides of LIHTC units are linked to health services and community supports and are targeted to persons with disabilities who need the services.

Boosting the signal for integrated settings. The ACA offers a number of tools to help states fulfill their obligations under Olmstead, but those provisions are a small subset of the Act's obligations and implications for states. State Medicaid agencies have a tremendous amount of work to do to implement the ACA's goals for expanding health care. Stakeholders who are concerned about expanding community-based living options will need to compete for the attention of policy-makers whose attentions are understandably focused on the mechanics of the ACA. Litigation can bring attention, but it shouldn't be the only way to bring the resources and coordination necessary to ensure people with disabilities have the levels of choice and independence to which they are entitled.

Voluntary planning efforts should include increasing capacity to provide community-based services and expanding affordable housing opportunities using new and existing funding streams. It may also save the state money and improve service provision. For example, webinar speaker Chuck Milligan, Maryland's Medicaid director, described how the Community First Choice initiative under the ACA spurred Maryland to merge two HCBS waivers (one for non-elderly disabled adults and another for elderly adults), resulting in more efficient services for all adults over age 18 under one waiver.

Defining the role of housing for people with specific disabilities. What is the proper role, if any, for housing targeted specifically to people with disabilities? Is there a place for it? Existing housing developed under several HUD programs – particularly Section 811 capital grants and permanent supportive housing programs for formerly homeless people – have traditionally been targeted to people with disabilities in general, and often to people with particular disabilities such as physical disabilities, intellectual or developmental disabilities or mental health conditions. CMS's recent final rule addressing "settings" helped clarify the definition of "integrated settings" and, by extension, the role of these housing programs in meeting goals for community integration. As webinar speaker Alison Barkoff from the U.S. Department of Justice described it, the rule calls for housing that offers residents the opportunity to live, work and receive services in the greater community. Integrated housing is located in mainstream settings, offers access to and choice in daily and community activities, when and with whom the person chooses. And it offers the ability to interact with people without disabilities to the fullest extent possible. In our view, these outcomes are not inconsistent with the design and operation of many housing developments that historically reserved or set aside units for people with disabilities.

Addressing the needs of people with complex conditions. Housing and services strategies must address the needs of people with complex and interacting conditions, especially people whose conditions include mental illness and substance use disorders. Without active treatment and recovery support services, these individuals are at risk for institutional care. Meeting their needs requires integrated care, often provided by teams of professionals. Stable housing with supports can facilitate such approaches to care. Health homes, enacted under the ACA, provide enhanced Medicaid matching funds to allow states to provide comprehensive care management, care coordination, and individual and family supports for people with multiple chronic conditions.

Addressing equity. The Olmstead mandate to expand options for community living for people with disabilities is appropriate and laudable. States have an affirmative obligation to assure that people with disabilities who choose to live in integrated community settings have maximum opportunities to do so consistent with the resources available to the state. Compliance efforts have created tensions in some communities where Olmstead class members are provided preferred access to supportive housing units that are also in great demand by people who are not Olmstead class members, such as homeless individuals and families. Olmstead mandates provide a remedy to individuals who for too long have been segregated in institutions. At the same time, the urgency of meeting the needs of homeless individuals and families in poverty has created competing demands for scarce affordable housing units.

State and federal governments must consider initiatives to expand the supply of affordable housing to mitigate detrimental effects of this competition for resources. Strategies could include expanding the Housing Choice Voucher program and encouraging state incentives for serving people with disabilities in tax credit properties. Expansion of the Section 811 PRA demonstration should be considered as well, if supported by evaluation evidence of its early implementation. Technical assistance should be targeted to affordable housing providers on how best to serve people with disabilities —both Olmstead class members and others.

Additional resources:

Webinar: Olmstead is the Mandate, ACA the Opportunity
http://www.abtassociates.com/Conferences/2014/1-24-Webinar--Olmstead-is-the-Mandate,-ACA-the-Opp.aspx

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