

## **WHAT IS *OLMSTEAD* AND WHY SHOULD YOU CARE?**

In 1999, the United States Supreme Court, in a case called "*Olmstead v. L.C.*," ruled that unnecessary segregation of people with disabilities in institutions is a form of discrimination in violation of the Americans with Disabilities Act (ADA), which requires that people with disabilities receive services in the most integrated setting possible.

## **WHAT DID THE SUPREME COURT SAY?**

THE COURT FOUND THAT UNJUSTIFIED ISOLATION IN INSTITUTIONS IS DISCRIMINATION BECAUSE INSTITUTIONAL PLACEMENT OF PERSONS WITH DISABILITIES WHO CAN HANDLE AND BENEFIT FROM COMMUNITY SETTINGS "PERPETUATES UNWARRANTED ASSUMPTIONS" AND "SEVERELY DIMINISHES THE EVERYDAY LIFE ACTIVITIES OF INDIVIDUALS." IN OTHER WORDS: "NO ONE SHOULD HAVE TO LIVE IN AN INSTITUTION OR A NURSING HOME IF THEY CAN LIVE IN THE COMMUNITY WITH THE RIGHT SUPPORT." (JANUARY 14, 2000 LETTER FROM HCFA TO THE STATES.)

## **WHOM DOES *OLMSTEAD* AFFECT?**

The ADA and the *Olmstead* decision apply to people with all disabilities, including seniors and children, living in, or at risk of being placed in, all kinds of public and private institutions.

## **WHAT DOES *OLMSTEAD* REQUIRE?**

The *Olmstead* decision requires that people with disabilities receive services in community settings rather than institutions when:

- (a) the person prefers or does not oppose community services;
  - (b) professionals determine that community services could be appropriately provided; and
- community placement or services could be reasonably accommodated.

**WHAT IS HAPPENING IN  
CALIFORNIA TO IMPLEMENT  
*OLMSTEAD?***

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## **WHAT DOES *OLMSTEAD* REQUIRE?**

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- (d) professionals determine that community services could be appropriately provided; and
- (e) community placement or services could be reasonably accommodated.

# How Many Californians Reside In Institutions Or Are At Risk Of Institutionalization?

California houses more people with disabilities, including seniors, in institutions than any other state.

- 160,000 nursing home beds; approximately 95,000 occupied daily.
- Possibly 25,000 children with disabilities in out-of-home placements.\*
- 10,000 Californians are confined in state hospitals for people with developmental or psychiatric disabilities and other public or private institutions.
- “At risk of institutionalization” may include people whose services are inadequate, who are homeless and who do not qualify for existing community-based programs.

\*Extrapolated from foster care # and % of disability overall.

## **WHAT IS AN *OLMSTEAD* PLAN? WHY DO WE NEED ONE?**

A State can demonstrate compliance with its ADA obligations by showing 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 pace not controlled by the State's endeavors to keep its institutions fully populated.

## **OLMSTEAD BUDGET TRAILER BILL LANGUAGE**

CHHS Agency shall develop a comprehensive plan describing the actions which California can take to improve its long term care system so that its residents have available an array of community care options that allow them to avoid unnecessary institutionalization. The plan shall respond to the decision of the United State Supreme Court in *Olmstead v. L.C.*, 527 U.S. 581 (1999) and shall embody the six principles for an "Olmstead Plan" as articulated by the federal Center for Medicaid and Medicare Services (the Health Care Financing Administration at the time the principles were first articulated). The plan is due to the Legislature by no later than April, 2003.

# **PRINCIPLES FOR THE OLMSTEAD PLAN**

- (1) A comprehensive, effectively working plan;
- (2) A plan development and implementation process that provides for the involvement of consumers and other stakeholders;
- (3) The development of assessment procedures and practices that prevent or correct current and future unjustified institutionalization of persons with disabilities;
- (4) An assessment of the current availability of community-integrated services, the identification of gaps in service availability, and the evaluation of changes that could be made to enable consumers to be served in the most integrated setting possible;
- (5) Inclusion in the plan of practices by which consumers are afforded the opportunity to make informed choices among the services available to them; and
- (6) Elements in the plan that provide for oversight of the assessment and placement process in order to help ensure that services are provided in the most integrated setting appropriate, and to help ensure that the quality of the services meets the needs of the consumers.

After the 1999 *Olmstead* decision, California took no action. In 2000, several organizations, including PAI, banded together to form the Coalition of Californians for Olmstead, dedicated to the implementation of the Olmstead decision in California. COCO now has 35 member organizations from around the state.

In 2000, Governor Davis said that Long Term Care Council (of the California Health and Human Services Agency) had the central role in implementing *Olmstead* in California.

For two years, PAI and COCO tried to get the state to start implementing *Olmstead*, through a series of meetings, letters and advocacy.

In April 2002, COCO and other advocates testified at a special legislative Hearing on *Olmstead* implementation which was chaired by Assemblywoman Dion Aroner and others. Many consumers told their stories very powerfully.

In April 2002, after the Senate and Assembly passed budget bill language requiring an *Olmstead* plan, the Long Term Care Council voted that the Health and Human Services Agency should produce an *Olmstead* plan by April 2003.

In July 2002, the Agency staff presented its process for developing an *Olmstead* plan. COCO, PAI, other advocates and consumers objected to the process, saying it did not include significant consumer participation (or ANY participation from consumers residing in institutions), put all the responsibility on community agencies to gather input and did not involve the State players in collaboration with the community.

In August 2002, the Governor signed the budget bill which requires the Agency to deliver an *Olmstead* Plan to the legislature by April 1, 2003.

In September, the first of many *Olmstead* forums was held to gather opinions about *Olmstead* implementation. COCO distributed its own survey as an alternative to the state-produced materials.

In October, the state decided to change and extend the *Olmstead* planning process, including more consumers and advocates in every phase. With leadership from Agnes Lee, newly appointed Deputy Secretary of Health and Human Services, Agency discarded the original schedule and the Steering Committee concept.

In November 2000 through January 2003, the Work Group met in

- Sacramento on Principles for the Olmstead Plan,
- San Diego on Assessment Strategies,
- Fresno on Crisis Services Service Coordination and Advocacy,
- Los Angeles on Community Capacity, and
- Oakland on Quality Assurance.

Deputy Secretary Lee called on an informal Advisory Committee, including COCO, PAI and consumer members, for help with the content for the Work Group meetings.

Using the information from the forums, surveys and work group meetings, Agency:

- RELEASED THE FIRST DRAFT OUTLINE OF AN OLMSTEAD PLAN ON JANUARY 28.
- RELEASED THE SECOND DRAFT OUTLINE ON FEBRUARY 10, AFTER RECEIVING COMMENTS FROM COCO AND OTHERS.
- HELD A FEBRUARY 13<sup>TH</sup> WORK GROUP MEETING to discuss the Plan
- RELEASED THE THIRD DRAFT ON FEBRUARY 26
- HELD A FEBRUARY 28<sup>TH</sup> WORK GROUP MEETING to discuss the Plan
- IS FINISHING THE PLAN DRAFT NOW

State Olmstead Planning materials are @ <http://www.chhs.ca.gov/olmstead.html>.

