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COLLABORATIVE, INC. (TAC)
AND THE CONSORTIUM FOR
CITIZENS WITH DISABILITIES
(CCD) HOUSING TASK FORCE

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The *Olmstead* Decision and Housing: Opportunity Knocks

Introduction

On June 22, 1999, the Supreme Court of the United States issued its decision in *Olmstead v. L.C.* This important lawsuit against the State of Georgia questioned the state's continued confinement of two individuals after the state hospital's physicians had determined that they were ready to return to the community. The Supreme Court described Georgia's action as "unjustified isolation," and determined that it violated these individuals' rights under the Americans with Disabilities Act (ADA). The impact of this decision on people with disabilities who are in institutions, or who are at risk of institutionalization, has already prompted a great deal of activity by advocates, states, and the federal government.

Although *Olmstead* confirmed the ADA's integration mandate, the word "housing" does not appear in the decision. Instead, the Supreme Court uses terms such as "community placements" and "less restrictive settings." For people with disabilities, including many people ready for discharge from institutions, these terms can and should mean affordable housing of their choice in communities of their choice – including apartments, condominiums, and even single family homes.

Researchers and practitioners have demonstrated repeatedly that people with severe disabilities living in institutions can live successfully in the community. To

succeed, they need decent, safe, and affordable housing as well as access to the supports and services they want and need to live as independently as possible. Unfortunately, people with disabilities are disproportionately poor – particularly those individuals who must rely on Supplemental Security Income (SSI) benefits. For low-income people with disabilities, affordable housing means subsidized housing that is either developed or rented through government housing programs. Because most funding for these programs comes directly or indirectly from the U.S. Department of Housing and Urban Development (HUD), there are potentially significant implications for federal housing policies and programs in the *Olmstead* decision. Thus far, however, the affordable housing issues raised by the *Olmstead* decision have received scant attention.

To date, only health and social service agencies have responded to the *Olmstead* decision. The U.S. Department of Health and Human Services (HHS) has been working with state Medicaid agencies to inform them about *Olmstead*, and to help them incorporate the ADA "integration mandate" into their delivery of medical and other support services for people with



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Opening Doors

A housing publication for the disability community

OPENING DOORS is published as a joint effort by the Technical Assistance Collaborative, Inc., Boston, MA and the Consortium for Citizens with Disabilities Housing Task Force, Washington, DC.

The Technical Assistance Collaborative, Inc. is a non-profit organization that provides state-of-the-art technical assistance and training to housing and human service organizations so that they may achieve positive outcomes in their work on behalf of people who are disadvantaged and/or disabled. For more information, please contact Emily Miller, Marie Herb, or Ann O'Hara, Technical Assistance Collaborative Inc., One Center Plaza, Suite 310, Boston, Massachusetts 02108. Phone: 617-742-5657 or Fax: 617-742-0509 or e-mail: info@tacinc.org.



The Consortium for Citizens with Disabilities (CCD) is a national coalition of consumer, advocacy, provider, and professional organizations who advocate on behalf of people of all ages with disabilities and their families. CCD has created the CCD Housing Task Force to focus specifically on housing issues that affect people with disabilities.

CCD HOUSING TASK FORCE Co-CHAIRS

Suellen Galbraith
American Network of Community
Options & Resources (703) 642-6614
Kathy McGinley
The Arc (202) 785-3388
Andrew Sperling
National Alliance for the Mentally Ill (703) 524-7600

CCD HOUSING TASK FORCE MEMBERS

American Assoc. on
Mental Retardation (202) 387-1968
American Council of the Blind (202) 467-5081
Autism Society of America (301) 657-0881
Bazelon Center for
Mental Health Law (202) 467-5730
Brain Injury Assoc. (202) 236-6000
Indiana Neighborhood Housing Project (202) 312-7401
International Assoc. of Psychosocial
Rehabilitation Services (410) 730-7190
National Assoc. of
Developmental Disabilities Councils (202) 347-1234
National Assoc. of Protection
and Advocacy Systems (202) 408-9514
Easter Seals (202) 347-3066
National Mental Health Assoc. (703) 838-7530
NISH (703) 641-2747
Paralyzed Veterans of America (202) 416-7707
Rehabilitation Engineering & Assistive
Technology Society of North America (703) 524-6686
United Cerebral Palsy Assoc. (800) 872-5827

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FROM THE EDITORS

The topic of this issue of *Opening Doors* is the United States Supreme Court's *Olmstead v. L.C.* decision – a decision which some have called the Magna Carta of the disability community. *Olmstead* is a very important case because it affirms the community integration mandate within the Americans with Disabilities Act (ADA). The ADA and related federal civil rights laws provide that programs and services for people with disabilities be delivered in “the most integrated setting appropriate” to their needs. How much the *Olmstead* case will actually help people with disabilities live in communities of their choice – and obtain decent and affordable housing of their choice – remains to be seen.

Readers of this publication know that, whenever possible, *Opening Doors* is written in “lay terms.” We do this in order to help the disability community decipher complicated government housing bureaucracy. However, because of the importance of the *Olmstead* decision, the authors and editors of this article were careful to use words and phrases that we felt most accurately conveyed the Supreme Court's written opinion.

Readers will also note that we do not draw definitive conclusions from the case regarding what the impact of *Olmstead* will be in states. Only future case law will do that. However, the editors of *Opening Doors* do believe that the *Olmstead* decision provides more “ammunition” for the disability community to use with government housing officials. *Olmstead* represents an opportunity to educate the housing system about the housing needs of people with severe disabilities and their ability to live successful lives in the community.

In some states, *Olmstead* may provide the impetus for state human service officials and disability housing advocates to “claim” their fair share of the billions of dollars in federal housing funds that HUD distributes to state and local government housing agencies. This “claim” can be made not necessarily because of what the Supreme Court has said, but rather because people who are potentially covered by the *Olmstead* decision should have a high priority for housing assistance.

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disabilities who are ready to move from institutions into the community or who are at-risk of institutionalization.

It is clear that more affordable community-based housing for people with disabilities will be needed as a result of the *Olmstead* decision. However, HUD was not involved in the *Olmstead* lawsuit, and has not been an active player in *Olmstead*-related planning activities. Yet HUD's role in funding housing programs and encouraging states and cities to create a sufficient supply of affordable housing for people with disabilities is critical if the ADA's integration mandate is to become a reality.

This issue of *Opening Doors* highlights key federal housing policy issues that may be relevant to the *Olmstead* decision, including several housing programs that can be used to facilitate the development of housing for people with disabilities who are leaving institutions or who are at-risk of being institutionalized.

Olmstead v. L.C. and E.W.

Both of the *Olmstead* plaintiffs – identified as L.C. and E.W. to protect their privacy – were diagnosed with mental retardation and mental illness. Both women voluntarily admitted themselves to Georgia's state mental hospitals. After a period of time, they and their treatment team decided that they were ready for "community-based care." Unfortunately, they remained in the state hospital because Georgia had no available community-based housing or services for them and no funding to generate more housing and community services to accommodate them.

E.W. and L.C. based their lawsuit on the ADA. They argued that the ADA required Georgia to administer its mental health program "in the most integrated setting appropriate to the needs of qualified

individuals with disabilities." Georgia argued that its continued hospitalization of the plaintiffs was the result of a funding decision, not a decision to discriminate. The Supreme Court rejected the State's argument, and interpreted the ADA to mean that states could not legally require people with disabilities to remain institutionalized in order to receive health care services.

The Court explained that unjustified isolation was a form of discrimination. It reflected two judgments:

"First, institutional placement of persons who can handle and benefit from community settings perpetuates unwarranted assumptions that persons so isolated are incapable or unworthy of participating in community life... Second, confinement in an institution severely diminishes the everyday life activities of individuals, including family relations, social contacts, work options, economic independence, educational advancement, and cultural enrichment."

Nonetheless, the Supreme Court was careful to say that the responsibility of states to provide health care in the community was "not boundless." States were not required to close institutions nor were they to use homeless shelters as community placements. Without imposing specific requirements, the Court said that 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 [of the ADA] would be met."

The Court also defined the standards for states to follow in releasing people from institutions. The state's treatment professionals must determine that the

“ . . . No person should have to live in a nursing home or other institution if he or she can live in his or her community.”

placement is appropriate; the individual must not object to being released from the institution; and the state is able to provide a community placement and services without displacing others on a waiting list for similar benefits and without unduly burdening the state’s resources.

As a result of their lawsuit, L.C. and E.W. are now living in the community with foster families. Each is receiving health and support services through the Medicaid program. According to their lawyers, both are very happy, are enjoying their new homes, and are engaged in community programs that had previously been unavailable to them.

As a result of the *Olmstead* decision, states are reviewing whether current policies and practices in their health care and service delivery systems are in compliance with the ADA. Where people with disabilities will live, and how their housing will be made affordable, are topics which should be included in these discussions. It is also the right time to include government housing agencies, and the programs they administer, within these *Olmstead* planning activities.

HHS Actions

Olmstead is a case about de-institutionalization. Not surprisingly, the majority of commentators and public officials have discussed it in terms of a state’s responsibility to provide long-term health services to people with disabilities. Two agencies within HHS – specifically the Health Care Finance Administration (HCFA) that administers the Medicaid program for the federal government and the Office for Civil Rights (OCR) – are responsible for providing information and guidance to the states on how to comply with the ADA mandates in *Olmstead*.

On January 14, 2000, HHS sent a letter to every state governor citing *Olmstead* as

affirming the “shared belief that no person should have to live in a nursing home or other institution if he or she can live in his or her community.” The letter encouraged the governors to develop and implement the kinds of comprehensive working plans that the Court had suggested, “[to ensure] that individuals with disabilities receive services in the most integrated setting appropriate to their needs.”

Letters were also sent to state Medicaid directors encouraging them to work together with the state human service agencies towards the shared goal of integrating individuals with disabilities into the social mainstream, promoting equality of opportunity and maximizing individual choice. HHS has also issued numerous policy clarifications designed to help Medicaid beneficiaries transition to “less restrictive settings” and expedite Medicaid funding for community-based services.

Housing Implications – Where Will People Live?

Where does housing fit into the state planning activities that may occur as a result of the *Olmstead* decision? Thus far, the housing issues implicit in the *Olmstead* decision have received very little attention. For example, HHS guidance to States does not address where people will live. However, the term “less restrictive setting” usually means some kind of community-based housing option linked with Medicaid or other publicly funded supportive services.

In the 1970s and 1980s, efforts to reduce the number of people with disabilities living in institutions produced the first community-based housing programs for people with disabilities. For the most part, these housing options did not resemble the types of conventional housing (i.e., apartments, small single family homes) that non-disabled people live in. Instead,

they were large congregate settings with a “package” of support services that, in some instances, residents were required to accept in order to live there. People were usually required to share a bedroom with others, were not given rights of tenancy under landlord/tenant laws, and were typically required to pay all but \$30 or \$40 per month of their SSI benefits to live in these types of residential settings. It can be argued that people with disabilities living in some of these arrangements were still segregated from – rather than fully integrated into – community life.

Fortunately, people with disabilities now have more choice in where they live, who they live with, and the services they will receive. These changes came about because of: the advocacy of people with disabilities, their families and service providers; the use of innovative Medicaid policies; and new federal fair housing laws which made it illegal to discriminate against people with disabilities seeking housing in the community. During the past decade, “community-based housing” for people with disabilities has been redefined and now means rental and homeownership options linked with voluntary services and supports.

Housing Affordability and Policy Implications

HHS’s *Olmstead* planning guidance also does not address how housing for people with disabilities moving into the community will be funded. Because of the extremely low incomes of people with disabilities, they have increasingly relied on government housing programs – particularly the programs provided through HUD – to obtain decent and affordable housing. At this time, there is no guidance from the federal government summarizing how federal housing policies and programs might intersect with the need to expand

community-based housing options for people with disabilities leaving institutions.

To disability housing advocates, the *Olmstead* decision clearly has potential implications for federal, state, and local government housing policies. Most people with disabilities affected by the *Olmstead* decision will be receiving SSI benefits – which nationally are equal to only 24 percent of median income. TAC’s *Priced Out in 1998* study confirmed that people with disabilities receiving SSI couldn’t afford decent and safe housing in any housing market area in the country without government housing assistance. Because of their low incomes, all SSI recipients are income eligible for HUD’s housing programs.

Unfortunately, the housing needs of people with disabilities have not been a top priority for HUD, nor are they a top priority for most state and local housing officials that distribute HUD funds. A recent TAC report titled *Going It Alone: The Struggle to Expand Affordable Housing for People with Disabilities* documents the poor track record of government housing officials and their failure to target federal housing funding to people with disabilities. In a few states, housing advocates for people with disabilities are beginning to overcome the institutional barriers separating government housing and human services agencies. However, for the most part, the disability community has not been able to sustain successful working partnerships with federal, state, and local housing officials.

Housing Not Mentioned

The question of whether states will see new opportunities within the *Olmstead* decision to target more federal and state government housing funding for people with disabilities has yet to be answered. It is very possible that without a significant

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investment of government housing funding, the “community based settings” developed as a response to the *Olmstead* decision will resemble outdated models from the past rather than the rental and homeownership strategies that have been successful during the past few years.

Of the 22 *Olmstead*-related plans that states have sent thus far to HHS for review, not a single one mentions housing. None of the state plans reflect discussions or partnerships with state housing or community development departments. As of September 2000, none of the committees formed, Executive Orders issued, or legislation enacted by states in response to *Olmstead* mentions housing or includes housing officials or experts.

On the bright side, the majority of states have begun to take some action as a result of the *Olmstead* decision. Many states are developing *Olmstead* -related plans. A few states have Executive Orders or legislative resolutions requiring that a plan be developed by a certain date. Nine states thus far have declared that their programs are adequate to meet the *Olmstead* test and that no new action is necessary.

The Importance of Affordable Housing and *Olmstead*

Some legal advocates suggest there are mandates within federal housing policies that could require some direct linkage between federal housing resources and *Olmstead*-related activities. Others aren't so sure. However, the housing issues raised by *Olmstead* do create an important new opportunity to engage federal, state, and local government housing officials in *Olmstead*-related planning discussions. These officials control billions of dollars of new federal funding which could be used to expand affordable housing for people with disabilities who may be moving into the

community as a result of the Supreme Court's decision.

Unfortunately, because there are millions of low-income households in need of housing assistance, the demand for federal housing funds is much greater than current funding levels. Since 1980, the federal government has reduced funding for housing programs, while the number of low-income families has grown. For example, between 1985 and 1995, such families increased by 2 million. In contrast, affordable housing units increased by only 700,000. People with disabilities – particularly those people with severe disabilities whose monthly SSI benefits are only \$512 a month – have been the most severely affected by this housing crisis.

To what extent will the housing needs of people with disabilities – including those potentially affected by the *Olmstead* decision – be given a priority by government housing officials who control affordable housing resources? Most government housing officials are very uninformed about the housing needs of people with disabilities and, as mentioned earlier, don't consider their housing needs a high priority. They also lack good information about the fair housing and civil rights laws that protect people with disabilities – including the *Olmstead* decision and its potential relevance to future government housing policies.

Housing Officials Not Involved

Housing officials' lack of involvement in *Olmstead*-related planning activities is not surprising. Very few state health and human services agencies are engaged in affordable housing planning with their state housing agency. State and local housing agencies have virtually no knowledge or information about the *Olmstead* decision.

Even in states with a history of housing and service agency partnerships, the partnerships typically do not include state Medicaid officials. Without help from the housing system, state health and human services officials often do not have enough knowledge of government housing programs to judge how the housing programs could be used, who controls the funding and decision-making, and what types of housing can be created.

State housing officials are frequently not responsive to inquiries from human services agencies or are reluctant to fund housing for people with disabilities. Some are deterred by community siting and Not In My Back Yard (NIMBY) issues. Others assume that Medicaid or other human services funding streams will be used to pay for housing – as was the case when housing and services funds were “bundled” within one residential services contract. New funding for affordable housing is always in short supply for all populations groups (e.g. elderly households, family households, disabled households) so it is easy for housing officials to say “no.”

Existing affordable housing programs desired by people with disabilities – such as Section 8 vouchers, housing developed with HUD Section 811 Supportive Housing for Persons with Disabilities funding, or high quality public housing – have long waiting lists. There is also a serious shortage of affordable housing that has accessible features that are often necessary for people with disabilities with mobility or sensory impairments. And there is no “quick fix” that will address this shortfall overnight.

Where to Begin?

The connection between *Olmstead* and government affordable housing policies will need to be initiated by those agencies and groups that are directly concerned about where people with disabilities will

live. For these discussions to be productive, however, housing advocates must have a good understanding of the opportunities and mandates that exist within government housing policies to leverage new affordable housing for people with disabilities – including those with the most severe disabilities who may be moving from institutions to the community as a result of the *Olmstead* decision. These opportunities include: (1) state and local affordable housing plans required by the federal government; (2) billions of dollars of new federal housing resources appropriated by Congress each year; and (3) federal fair housing laws which reinforce the ADA mandates included in the *Olmstead* decision.

Federally Mandated Housing Plans and Federal Housing Programs

Currently, there are three housing plans required by the federal government that are prepared at the state and local level and then approved by HUD. Government housing officials use these plans to make decisions about who will benefit from federal housing funding that HUD provides to states and local communities. In the aggregate, these plans directly or indirectly influence the use of billions of dollars of funding for more than 20 HUD programs. These plans are:

- The Consolidated Plan (ConPlan)
- The Public Housing Agency Plan (PHA Plan)
- The Continuum of Care Plan (Homeless Assistance)

Although each plan is a “stand alone” document, the plans do have some relationship to one another. For example, the housing activities to be funded through PHA Plan and the Continuum of Care Plan

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must be “consistent” with the housing needs and strategies described in the ConPlan.

Each plan requires some degree of community input before it is submitted to HUD. However, the community process used to develop each plan – and the components of the plans – are complicated. Nonetheless, these plans are extremely important to state agencies and housing advocates involved in *Olmstead*-related planning, because they determine exactly what types of housing activities will be funded and which low income groups (i.e., families with children, elderly households, people with disabilities) will receive priority. Issue 8 of *Opening Doors* provides further details regarding these strategic housing plans. Having a basic understanding of these plans and the federal housing programs covered by these plans is a good first step towards expanding affordable housing options for people with severe disabilities who are in institutions or at-risk of institutionalization.

The ConPlan and *Olmstead*

The ConPlan is the “master plan” for affordable housing development in states and local communities. Each year, Congress appropriates billions of dollars (approximately \$7 billion in FY 2001) that HUD distributes by formula to all states, most urban counties, and communities “entitled” to administer certain federal housing programs on HUD’s behalf. Before states and communities can receive these funds, they must have a HUD-approved ConPlan.

The ConPlan is intended to be a comprehensive, long-range planning document that describes housing needs, market conditions, and housing strategies. It also includes an Action Plan which specifies how the state or locality will spend the money provided through four

Fair Housing Laws and

In addition to the ADA integration mandates upheld in the *Olmstead* decision, there are two federal fair housing laws that provide additional protections for people with disabilities, including their rights to fully participate in federal housing programs.

Section 504

Section 504 of the Rehabilitation Act of 1973 was the first civil rights law for people with disabilities. Before this law was passed, it was legal to discriminate against someone just because they had a disability. The impact of Section 504 was widespread since it requires recipients of federal funds – including state and local housing agencies that receive federal housing funds from HUD – to make their programs and activities accessible to people with disabilities.

One of the central themes of the federal government’s Section 504 regulations is that recipients of federal funds – including state and local housing officials administering federal programs – must ensure that their programs, as a whole, both meet the needs of people with disabilities and do not discriminate against them. The regulations require that program benefits and services be delivered in “the most integrated setting appropriate to the needs of qualified individuals with handicaps.” The reference to integrated settings is a powerful parallel to the ADA mandates in the *Olmstead* decision.

The Fair Housing Act Amendments

Several aspects of the Fair Housing Act Amendments (FHHA) of 1988 may also be

Olmstead

critical to *Olmstead*-related activities. The law as it applies to people with disabilities has three purposes:

- To end segregation of the housing available to people with disabilities;
- To give people with disabilities the right to choose where they wish to live; and
- To require reasonable accommodation to their needs in securing and enjoying appropriate housing.

The FHAA requires that all new multifamily housing that was built after March 1991 must include the universal features of accessible design that are listed in the Act. These include doors wide enough for wheelchair users to pass through; the absence of stairs; and kitchens and bathrooms large enough for a wheelchair user. Unfortunately, compliance with the FHAA access requirements has been very problematic. Better enforcement could lead to the creation of many more housing units that are fully accessible to people with disabilities.

The FHAA also requires zoning and land use laws to allow unrelated individuals with disabilities to live together, either in group homes or in multi-bedroom houses in all residential neighborhoods. Such zoning ordinances and statutes must explicitly provide such opportunities or be interpreted to do so if these approaches are necessary to help people with disabilities live independently in housing of their choice. See issues 5 and 10 of *Opening Doors* for more information about these housing laws.

federal programs, specifically the Community Development Block Grant program, the HOME program, the Emergency Shelter Grant program, and the Housing Opportunities for Persons with AIDS program.

The ConPlan must catalogue housing needs by income categories and by housing type. Several of the elements required to be in the ConPlan housing needs assessment are relevant with respect to *Olmstead*. Perhaps the most important requirement is that the state or locality quantify and discuss the need for supportive housing including persons with disabilities, persons with alcohol or other drug addiction, persons with HIV/AIDS and their families, and any other category the state or locality may specify. The plan must also describe the nature and extent of homelessness (including the needs of specific groups of homeless people) and address the need for facilities and services for homeless individuals and homeless families. Finally, housing officials preparing the ConPlan must consult with public and private agencies that provide health and social services to people with disabilities, among others.

These ConPlan requirements are directly relevant to the housing needs of people with disabilities who may be institutionalized unnecessarily; who are at-risk of being institutionalized; or who may be homeless as a result of being discharged from an institution. For example, human service agencies could propose that a special category of supportive housing should be included in the ConPlan for people with disabilities who may be affected by the *Olmstead* decision.

Anecdotal evidence suggests that most ConPlans do not accurately describe the housing needs of people who may be living in state institutions or facilities or who are

Several of the elements required to be in the ConPlan housing needs assessment are relevant with respect to *Olmstead*.

at-risk of institutionalization. Housing strategies adopted in most ConPlans do not typically target federal housing funding to people with disabilities who are waiting to leave institutional settings. At the present time, there is little meaningful consultation occurring between health and human service agencies and government housing officials regarding either the housing policy issues raised by *Olmstead* or the housing resources which could be directed towards more community-based housing for people with disabilities.

Amending the ConPlan

Fortunately, HUD's rules for the ConPlan provide that the document can be "substantially amended" at any time. The importance of this requirement should not be underestimated for states submitting *Olmstead* plans to HHS. Changes that can qualify as "substantial amendments" include (1) a change in priorities for spending funds controlled by the ConPlan; (2) a change in the purpose or scope of a ConPlan housing activity; or (3) a decision to carry out a housing activity not previously described in the ConPlan.

It can be argued that state and local ConPlans should assess the housing needs of different groups of people with disabilities including: people in institutions who are ready for discharge, people at-risk of institutionalization or who became homeless upon discharge, and people who are on residential waiting lists. Housing advocates for people with disabilities can request that ConPlans lacking this information be amended. The ADA community integration mandate affirmed by the *Olmstead* decision – and the extreme poverty of people receiving SSI benefits – should compel government housing officials to target a "fair share" of ConPlan funding to people with disabilities.

The ConPlan and the HOME Program

A thorough discussion of the potential use of HUD housing funds is well beyond the scope of this article. However, the federal HOME program, which this year will provide \$1.8 billion in housing funding to state and local governments through the ConPlan process, is a key program to target for people with disabilities leaving institutions. This year, Congress increased the HOME program appropriation by \$200 million. These new funds could make it easier for states and communities to undertake new housing initiatives for people with disabilities while continuing to support housing that is targeted to other groups.

The HOME program could fund the acquisition, rehabilitation, or new construction of housing for people with disabilities or could fund 2-year rental assistance subsidies for individuals leaving institutions. However, the HOME program can also be used for rental or homeownership strategies that benefit higher income households who are employed but still considered low income. How HOME funds are used by states and localities is decided through the ConPlan process, which is why the ConPlan is so critical to *Olmstead*-related planning.

The PHA Plan

Most federally subsidized housing for people with the lowest incomes – including people with SSI benefits – is still controlled by Public Housing Agencies (PHAs). These resources fall into two primary categories: (1) public housing units; and (2) Section 8 rental vouchers.

For many years, the federal government debated what to do about PHAs. Finally, in 1998, Congress enacted public housing reform legislation that gives PHAs more

control and flexibility to decide how certain federal resources – specifically public housing and Section 8 vouchers – should be used in their communities. For example, PHA officials can now decide to create “elderly only” public housing; to direct Section 8 voucher assistance to higher income households who are saving to purchase a home; or to provide Section 8 vouchers to people with disabilities who have Medicaid Home and Community Based waivers.

PHAs make these decisions through the preparation of a PHA Plan, which is then submitted to HUD for approval. Similar to the ConPlan, the PHA Plan is intended to describe the agency’s overall mission for serving low-income and very low-income individuals and families and describe the activities that will be undertaken to meet their housing needs. The preparation of the PHA Plan requires the input of a Resident Advisory Board, but not the extensive public process and consultation requirements that apply to the ConPlan.

New Section 8 Vouchers

The PHA Plan process offers several creative opportunities to expand housing for people with severe disabilities. For example, for the past four years, new Section 8 vouchers have been appropriated by Congress exclusively for people with disabilities. These vouchers help people with disabilities rent housing of their choice in the private rental market, including housing owned by non-profit organizations.

For FY 2001, Congress has appropriated \$40 million in new Section 8 funding which will fund at least 6,000 new vouchers targeted to people with disabilities. A PHA application to HUD for these vouchers must be consistent with activities outlined in the PHA Plan. HUD recently awarded PHAs

On November 1, 2000, TAC announced the creation of its new **Housing Center for People with Disabilities**. The Housing Center for People with Disabilities is a TAC program of technical assistance, training, and knowledge dissemination on the affordable housing issues that are critically important to people with disabilities, their families, housing advocates, and service providers. The goals of the Housing Center for People with Disabilities are to create and strengthen the capacity of the disability community to influence state and local affordable housing policies and practices as well as to increase access by people with disabilities to subsidized and affordable rental and home-ownership resources. For more information about TAC’s new Housing Center for People with Disabilities visit www.tacinc.org and click on News.

thousands of new Section 8 vouchers for people with disabilities from last year's (FY 2000) budget. Many of these awards "set-aside" vouchers for people with disabilities in several categories, including a special set-aside for people receiving Medicaid funded Home and Community Based waiver services (see Washington Bulletin on page 14).

New policies enacted by Congress this year will make it easier for PHAs to "project base" some of their Section 8 vouchers. This means that the PHAs can work directly with disability organizations and other non-profit groups to develop rental housing in the community and "attach" Section 8 vouchers to units in the project. PHAs can also use Section 8 vouchers to implement the "shared housing" option, which permits unrelated people with disabilities to live together in one dwelling with on-site staff, if appropriate. This approach has been very successful in coordinating housing resources for people with disabilities who want on-site supportive services.

The Continuum of Care Plan

Unlike the ConPlan and the PHA Plan, the Continuum of Care Plan is not mandated by federal law. Instead, the Continuum of Care is a HUD policy which encourages communities and states to develop a plan to organize and deliver housing and services to meet the specific needs of people who are homeless as they move to stable housing and maximum self-sufficiency. The HUD housing and services programs funded through the Continuum of Care Plan also differ from those in the ConPlan and the PHA Plan, because they are targeted exclusively to individuals and families that meet HUD's definition of homeless for HUD's Homeless Assistance programs (at right).

HUD has required communities and states competing for Homeless Assistance funds to prepare Continuum of Care plans as part of the annual process for awarding \$1 billion in housing and supportive services funding. There are very few rules regarding how the plan is prepared and how funding priorities are established for housing and services projects included in the plan. HUD mandates that the process should be "inclusive" and involve stakeholders in homeless programs and services as well as government agencies and the private sector. This year, Congress explicitly directed HUD to coordinate and integrate Homeless Assistance funding with "other mainstream health, social services, and employment programs for which homeless populations may be eligible, including Medicaid ... and services funding through the Mental Health and Substance Abuse Block Grant."

The Continuum of Care and Discharge Planning

This year, Congress also stipulated that any government entity applying for Homeless Assistance funding must agree "to develop and implement, to the maximum extent practicable and where appropriate, policies and protocols for the discharge of persons from publicly funded institutions or systems of care (such as health care facilities...or institutions) in order to prevent such discharge from immediately resulting in homelessness for such persons." Congress is concerned that there is little relationship between state health and human service agency discharge planning and federal policies that affect the delivery of housing and services for homeless individuals. Improvements in this area would reduce the incidence of homelessness among people with disabilities.

HUD's Homeless Assistance funds are in great demand in part because they are so flexible. However, there are several issues to consider when targeting Homeless Assistance programs for people with disabilities leaving institutions. HUD rules do provide that, under certain circumstances, people with disabilities leaving institutions can be considered homeless. But HUD's eligibility guidelines also take into consideration state discharge policies that vary from state to state.

It is important to remember that HUD's Homeless Assistance programs controlled by the Continuum of Care are part of a "safety net" to address the problems that result after people with disabilities become homeless, and cannot be used for homeless prevention. For this reason, they should not be the foundation of a comprehensive state plan to ensure that people in institutions who are ready for discharge have affordable housing made available to them.

HUD'S Section 811 Program

Of all the federal housing funding available from HUD, the Section 811 Supportive Housing for Persons with Disabilities program (Section 811) is the only one intended by law to be used solely for low-income people with the most severe disabilities. Since its inception, the Section 811 program has provided funds to non-profit organizations to acquire, develop, or rehabilitate rental housing with supportive services for very low-income people with severe disabilities. A relatively new tenant based rental assistance component of Section 811 provides funding for new Section 8 vouchers for people with disabilities through the Section 8 Mainstream Housing Opportunities for Persons with Disabilities program.

HUD considers a homeless person* someone who:

- Is living in places not meant for human habitation (streets, cars, parks, etc);
- Is living in an emergency shelter;
- Is living in transitional or supportive housing but originally came from the streets or shelter;
- Is living in any of the above but spending up to 30 consecutive days in an institution;
- Is being evicted within a week and has no subsequent residence;
- Is being discharged within a week from an institution (e.g., mental health or substance abuse facility or jail/prison) in which the person has been a resident for more than 30 consecutive days and no subsequent residence has been identified and the person lacks the resources and support networks needed to obtain housing; or
- Is fleeing a domestic violence situation and no subsequent residence has been identified.

*As defined for the McKinney-Vento Homeless Assistance programs.

Each Section 811 project must have a supportive services plan designed to meet the needs of people with disabilities, although the supportive services do not have to be delivered on-site. Services in Section 811 projects vary from 24 hour on-site services to in-unit call buttons and planned activities. The Section 811 program has the potential to provide housing resources for significant numbers of individuals with severe disabilities, including those who will be leaving institutions and those on residential services waiting lists. Unfortunately, funding for the program is extremely limited. For FY

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RECENT HUD FUNDING ANNOUNCEMENTS

Section 8. In October of 2000, HUD awarded approximately 64,000 new Section 8 vouchers, including at least 9,000 targeted exclusively to people with disabilities. The awards were as follows:

1. 600 vouchers awarded to eight non-profit disability organizations under the Section 8 Mainstream Housing Opportunities for Persons with Disabilities program (Mainstream program).
2. Approximately 3,520 Section 8 Mainstream vouchers awarded to 54 Public Housing Authorities (PHAs) exclusively for people with disabilities
3. Approximately 60,000 Section 8 Fair Share vouchers awarded to 499 PHAs, including at least 5,000 that certain PHAs have agreed to set-aside for people with disabilities. Fair Share vouchers are usually given out on a “first come, first served” basis to any household on the PHA waiting list (e.g., elderly households, family households, and disabled households.) This year, at least 5,000 of the new Section 8 “Fair Share” vouchers will be given to people with

disabilities by the 224 PHAs that agreed to dedicate the vouchers for this purpose. These 224 PHAs also agreed to give a percentage of these vouchers (approximately 1,000 total) to people with disabilities who have Medicaid Home and Community Based waivers.

Section 811. Awards for the Section 811 Supportive Housing for Persons with Disabilities program were announced by HUD on October 5, 2000. HUD received 235 Section 811 applications and awarded funding to 144 non-profit organizations in 39 states to create housing for approximately 1,600 people with disabilities. See the HUD website at <http://www.hud.gov/pressrel/pr00-281.html> for more information about these awards.

FY 2001 BUDGET HIGHLIGHTS

During this fiscal year (October 2000-September 2001) new federal housing funding will include:

- **Section 811:** \$217 million for the Section 811 Supportive Housing for Persons with Disabilities program – an 8 percent increase from last year. 75 percent of the funding will be used to buy, rehabilitate, or construct housing and 25 percent will be used for tenant based rental assistance through the Section 8 Mainstream program (see #2 above).

Non-profit organizations that received Section 8 Mainstream funds in 2000

		SUBSIDIES
AZ	Behavioral Health Corporation	75
CO	Bluesky Enterprises	75
FL	Housing Partnership Inc.	75
LA	Pilgrim Rest Community Development	75
NH	Harbor Homes	75
NJ	Collaborative Support Programs	75
NY	New York Society for the Deaf	75
OR	Northwest Oregon Housing Association	75

- **Section 8:** \$40 million for new Section 8 vouchers for people with disabilities affected by the “elderly only” designation of federal public and assisted housing developments.
- **Homeless Assistance:** \$1 billion for McKinney-Vento Homeless Assistance funding including a 30 percent set-aside for permanent housing for people with disabilities. These new funds will be made available through a HUD Notice Of Funding Availability (NOFA) usually published in February or March. Congress also appropriated an additional \$105 million in Homeless Assistance funding to renew expiring Shelter Plus Care projects.
- **HOME, CDBG, and HOPWA:** Congress appropriated \$1.8 billion for the HOME program, \$5.057 billion for the Community Development Block Grant program, and \$258 million for the Housing Opportunities for Persons With AIDS program. All three programs received an increase in funding this year. Funding from these programs is made available by state and local government housing officials through the Consolidated Plan process. See *Opening Doors* issue 8 for more information on the Consolidated Plan.



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2001, Congress appropriated \$217 million for the Section 811 program. This amount is actually an increase of \$16 million over the previous fiscal year, but will only support the development of approximately 1,600 new units of housing.

Conclusion

At this time, it is unclear whether the Supreme Court's *Olmstead* decision will affect federal housing policies and help direct more federal housing funding to people with disabilities. Housing advocates for people with disabilities do agree, however, that the *Olmstead* decision is one more opportunity to emphasize that extremely low-income people with disabilities – particularly those who rely exclusively on SSI benefits – cannot possibly

afford to live in the community without some type of government housing assistance. They also agree that any housing created as a result of the *Olmstead* decision must respect and support the housing preferences and choices of people with disabilities and truly fulfill the mandates of the ADA with respect to community integration. Finally, state *Olmstead*-related planning activities offer an ideal opportunity for state health and human service agencies to establish partnerships with state and local housing agencies and housing providers. The goal of these collaborations should be to develop interagency strategies that would increase affordable, community based, integrated housing options for people with disabilities that meets their preferences and needs.

Authored by Emily Miller, Bonnie Milstein, and Ann O'Hara.

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One Center Plaza, Suite 310

Boston MA 02108