

DON'T BE MISLED ABOUT WHAT THE OLMSTEAD SUPREME COURT DECISION SAYS

(1) What Olmstead is Not:

"Olmstead" is not a federal act or statute. Rather, it is a U.S. Supreme Court decision which reinforced the rights of individuals with mental retardation and their parents and guardians to choose the residential setting that is best for these persons.

(2) How Olmstead is misused:

In support of their objective to downsize and close ICF/MR (Intermediate Care Facilities for the Mentally Retarded), certain advocates are emphasizing portions of the Court's opinion regarding "unjustified institutionalization" and ignoring important parts of the Court's decision.

(3) The Olmstead decision supports facility-based (institutional care) for those individuals whose severe impairments require the close care found in such settings.

A majority of Justices in Olmstead recognized an ongoing role for publicly and privately-operated institutions:

"We emphasize that nothing in the Americans with Disabilities Act or its implementing regulations condones termination of institutional settings for persons unable to handle or benefit from community settings . . . Nor is there any federal requirement that community-based treatment be imposed on patients who do not desire it." 119 S. Ct. at 2187

"Unjustified isolation, we hold, is properly regarded as discrimination based on disability. But we recognize, as well, the States' need to maintain a range of facilities for the care and treatment of persons with diverse mental disabilities, and the States' obligation to administer services with an even hand." 119 S. Ct. at 2185.

The plurality opinion in Olmstead stated:

"Each disabled person is entitled to treatment in the most integrated setting possible for that person - recognizing on a case-by-case basis, that setting may be an institution." 119 S. Ct. at 2189.

(4) Olmstead encourages a continuum of service options for disabled persons - home, community and institutional:

In addressing the issue of when a disabled person's care may be changed from institutional placement to community placement, the Olmstead decision set forth a three part test to determine if community placement is appropriate:

- "(a) the State's treatment professionals have determined that community placement is appropriate;
- (b) the transfer from institutional care to a less restrictive setting is not opposed by the affected individual; and
- (c) the placement can be reasonably accommodated, taking into account resources available to the State and the needs of others with mental disabilities." 119 S. Ct. at 2181

(5) People with mental retardation, especially individuals with severe and profound mental retardation, and their families have vastly different support requirements than those with physical disabilities. As families age, their abilities to be the primary care givers (and fiscal intermediaries) will also change. Arkansas should continue its continuum of services for each stage of care-giving.

We are families and friends of disabled persons who support the full continuum of residential options required by the disability community and addressed by Olmstead. For many years, states have offered competent and compassionate care through its state-operated and private intermediate care facilities. In recent years, the state has also offered support for families who care for their disabled children at home and has steadily increased its support of community-based services (through the home and community-based waiver).

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