

OLMSTEAD - A BALANCED DECISION

OLMSTEAD = CHOICE

***PROTECTS INSTITUTIONAL CARE FOR THOSE WHO REQUIRE IT**

***GUARANTEES FAMILY / GUARDIAN CHOICE**

***REQUIRES COMMUNITY CARE *ONLY* WHEN IT IS APPROPRIATE AND THE INDIVIDUAL'S / GUARDIAN'S CHOICE**



***Olmstead does not require
deinstitutionalization***

Some legislators may believe, incorrectly, that there is a mandate from the United States Supreme Court in its *Olmstead* decision to move developmentally disabled persons being served in State Operated Developmental Centers (SODCs) to community based settings. **This is not true.** Rather, *Olmstead* requires that those who are removed to the community from institutional care meet criteria for appropriateness and choose that placement. There is no *Olmstead* mandate to deny access and place at risk those who need and choose institutional care. Some advocacy groups misrepresent or refuse to acknowledge the actual holding of *Olmstead* which supports institutions for those who need that level of care and guarantees individual guardian choice.

The *Olmstead* Supreme Court clarified its holding to ensure that those who need institutional care would continue to receive institutional care.

The majority opinion holds:

"We emphasize that nothing in the ADA 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." Olmstead v. L. C., 527 U.S. 581, 601-602 (emphasis added)

"Consistent with these provisions, the State generally may rely on the reasonable assessments of its own professionals in determining whether an individual 'meets the essential eligibility requirements' for habilitation in a community-based program. Absent such qualification, it would be inappropriate to remove a patient from the more restrictive setting." Olmstead v. L.C., 527 U.S. 581, 602

A plurality of Justices concurred:

"As already observed [by the majority], the ADA is not reasonably read to impel States to phase out institutions, placing patients in need of close care at risk. . . Some individuals . . . may need institutional care from time to time 'to stabilize acute psychiatric symptoms'. . . For other individuals, no placement outside the institution may ever be appropriate." Olmstead v. L.C., 527 U.S. 581, 604-605 (emphasis added)

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The majority opinion holds:

Three conditions must be met before the State is required to move individuals to the community:

"[U]nder Title II of the ADA, States are required 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 treatment*, and [3] *the placement can be reasonably accommodated, taking into account the resources available to the State and the needs of others with mental disabilities.*" *Olmstead v. L. C.*, 527 U.S. 581, 607 (*emphasis added*)

The Supreme Court recognizes the need for States to maintain a range of facilities for the diverse needs of persons with developmental disabilities:

"*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." *Olmstead v. L. C.*, 527 U.S. 581, 597 (*emphasis added*) (*pdf p.12*)



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