Nevada and Olmstead

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Executive Summary

The 1999 Olmstead decision by the U.S. Supreme Court established that the unnecessary segregation of people with disabilities in institutions is a form of discrimination under Title II of the Americans with disabilities Act of 1990 (ADA) and set the responsibility to states to provide services to individuals with disabilities in the most integrated setting appropriate to their needs. In 2001 the "New Freedom Initiative" affirmed the nation's commitment to the provision of publicly financed community based services and supports to individuals with disabilities fostering independence and community participation.

Nevada consumers, family members, advocates and government entities became very involved in driving toward implementation of community based services and supports for individuals with disabilities. In 2003, the Nevada Strategic Plan for People with Disabilities was submitted and approved for implementation to the Nevada Department of Health and Human Services. The Plan, also known as the Nevada Olmstead Plan, included nine primary goals and more than 200 strategies to resolve the numerous barriers to the provision of appropriate community supports and services to Nevadans with disabilities.

Nevada has participated in compliance reviews of their adherence with Title II of the Americans with Disabilities Act (ADA) and the Olmstead decision periodically throughout the last twelve years with recommendations provided to the oversight committees. The Nevada Strategic Planning and Accountability Committee and the Commission on Services for Persons with Disabilities monitor and review the plan implementation and issue annual reports regarding progress and obstacles to providing integrated services.

The purpose of this report is to provide an update to the 2003 Nevada Strategic Plan for People with Disabilities and Older Adults to set the foundation for a new Strategic Plan for People with Disabilities across the Lifespan. The report provides a review by Tony Records of compliance to the federal ruling, a review of current legal perspectives regarding the inclusion of seniors under the Olmstead decision, and additional recommendations for seniors, behavioral health populations and service gaps that create inclusion barriers for Nevada citizens.

Context of the Report

The state's Olmstead Plan provides the framework through which it intends to comply with its obligation to ensure people with disabilities have access to opportunities to live, work and receive supports in integrated settings. The integration mandate obligates the state to:

- Furnish supports and services to individuals with disabilities in integrated settings that offer choices and opportunities to live, work and participate in community activities along with individuals without disabilities at times and frequencies of the person's choosing.
- Afford choice in their activities of daily life and the opportunity to interact with non-disabled person to the fullest extent possible.
- Provide individuals with an assessment of their needs and the supports necessary for them to succeed in integrated settings by professionals who are knowledgeable about the variety of services available in the community.
- Enable people with disabilities to make informed choices about the decision to reside in the most integrated settings by furnishing information about the benefits of integrated settings, facilitating on-site visits to community programs and providing opportunities to meet with other individuals with disabilities who are living, working and receiving supports in integrated community settings, with their families, and in other arrangements.
- Protect people with disabilities from the risk of institutionalization resulting from service or support reductions or reconfigurations as a result of state funding reductions through the provision of support alternatives that do not result in institutionalization.

In 2015, Aging and Disability Services Division undertook the task of updating the 2003 plan and created an Olmstead Subcommittee. The Olmstead Subcommittee, a collaboration of members of the Commission on Aging and the Commission on Services for Persons with Disabilities embraced the Olmstead decision as a key component of achieving a better Nevada for all Nevadans, and strive to ensure that Nevadans with disabilities regardless of age will have the opportunity, both now and in the future, to live close to their families and friends, to live more independently, to engage in productive employment and to participate in community life. This includes:

- The opportunity and freedom for meaningful choice, self-determination, and increased quality of life, through: opportunity for economic self-sufficiency and employment options; choices of living location and situation, and having supports needed to allow for these choices.
- Readily available information about rights, options, and risks and benefits of these options, and the ability to revisit choices over time.
- Systemic change supports self-determination, through revised policies and practices across state government and the ongoing identification and development of opportunities beyond the choices available today.
- Services and Supports are available at the time the person requests the service. Funding and the availability of a choice of service providers requires the state address the

approach used to fund services sufficiently as to eliminate wait time and engage quality provider organizations.

The Olmstead Subcommittee desires to be inclusive of all ages and populations and thus has added to the recommendations provided by Mr. Tony Records. The additional recommendations have been provided by consumers, family members, community advocacy groups, professionals in fields supporting the aforementioned consumers and information gleaned from the review of recent reports on Nevada's system of care.

The Olmstead Decision of 1999 definition of qualified individuals has expanded over the last 16 years. Individuals have challenged states regarding who is covered by the mandate to provide services in the least restrictive setting. Nevadans of any age who require assistance in their daily activities due to a disability are included as a covered individual.

Aging and Disability Services Division, Elder Rights Attorney, Sally Ramm has researched cases brought by the United States Department of Justice, Civil Rights Division involving older people and provided a legal perspective.

THE OLMSTEAD DECISION OF 1999 – A CURRENT LEGAL PERSPECTIVE BASED ON AGE, Prepared by Sally Ramm

The Americans with Disability Act of 1990 (ADA) prohibits discrimination against what it terms a "qualified person with a disability." The term "disability" means, with respect to an individual: "a physical or mental impairment that substantially limits one or more major life activities of such individual; a record of such an impairment; or being regarded as having such an impairment. Major life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.[1]

The legal requirements of the ADA and the United States Supreme Court Olmstead decision of 1999, which is based on the ADA, contain no exclusions based on age. While the Olmstead decision was about a case involving institutionalization of two people who were in a mental health institution, the decision does not pertain only to mental health issues and developmental disabilities. It specifically requires states to provide integrated community services and supports for people with disabilities who are otherwise entitled to segregated services under the definition contained on page one of Mr. Tony Records' report entitled "Nevada and Olmstead – A Continuous Examination."

[1] ADA.gov website: US Department of Justice, Civil Rights Division

Therefore, Nevadans of any age who require assistance in their daily activities due to a disability are entitled to those services required by the Olmstead decision, and must be included in any Olmstead planning that is required by the federal government.

Additionally, since 1999 courts have been finding that Olmstead applies to individuals living in the community who are at risk of institutionalization. A federal appellate court decision from the 10th Circuit held that the protections in Olmstead would be meaningless if men and women with disabilities "were required to segregate themselves by entering an institution before they could challenge an allegedly discriminatory law or policy that threatens to force them into segregated isolation." In that case, the individuals stated that they would rather die than enter nursing facilities.[2]

Following are cases involving older people that were brought by the United States Department of Justice, Civil Rights Division: [3]

United States v. Marion County Nursing Home District - (E.D. Mo. 2013)
On March 14, 2013, the parties in *United States v. Marion County Nursing Home District d/b/a Maple Lawn Nursing Home* filed a Settlement Agreement. The Agreement addresses whether residents of the nursing home are being served in the most integrated setting appropriate to their needs. The Agreement also addresses basic elements of residents' care and treatment. Maple Lawn is required to develop numerous improvement measures. An independent monitor has been selected to monitor the Settlement Agreement.

Darling v. Douglas – 09-CV-3798 – (N.D. Cal. 2009) (Formerly Cota v. Maxwell-Jolly)
The United States filed a Statement of Interest on July 12, 2011 and October 31, 2011 in support of Plaintiffs' challenge to the manner in which the State plans to eliminate the Adult Day Health Care (ADHC) service, which enables elderly individuals and individuals with physical and mental disabilities to live in the community and avoid hospitalization and institutionalization. The United States argued that the State's plan to eliminate ADHC without ensuring sufficient alternative services are available will place thousands of individuals who currently receive ADHC services at serious risk of institutionalization, in violation of the ADA. Approximately 35,000 Californians would be affected by the proposed ADHC elimination.

Hiltibran v. Levy – 10-CV-4185 – (W.D. Mo. 2010)
In a suit brought by individuals who need incontinence supplies to live in the community, the court issued an order on June 24, 2011 requiring the State of Missouri to provide Medicaid-funded incontinence supplies to individuals who need those supplies to prevent their placement in nursing facilities. The United States filed a Statement of Interest supporting Plaintiffs' Motion for Preliminary

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[2] Disability Integration Project; OlmsteadRights.org; "From Olmstead to the Present."
[3] ADA.gov website: US Department of Justice, Civil Rights Division

Injunction and Motion for Summary Judgment arguing that Missouri's policy not to provide the necessary supplies placed individuals at risk of institutionalization in violation of the ADA.

Lee v. Dudek – 4:08-CV-26 – (N.D. Fla. 2008)
This class of plaintiffs—consisting of all Medicaid-eligible adults with disabilities who currently, or at any time during the litigation, are unnecessarily confined to a nursing facility and desire to and are capable of residing in the community—claims that the State of Florida's refusal to provide services in the community to these individuals violates the ADA's integration mandate.

In a 2011 case in Georgia, the U.S. Department of Health and Human Services Office for Civil Rights (OCR) investigated a complaint filed by Atlanta Legal Aid on the part of an "Affected Party," and concluded that the Department of Community Health (DCH) violated Title II of the ADA based on its failure to place a 79 year old person in the most integrated setting appropriate to this person's needs and its refusal to make reasonable modifications in its policies, practices or procedures to avoid discrimination on the basis of disability. A synopsis of the facts:

The affected party was admitted to a nursing facility for rehabilitation services 17 years before the complaint was filed. This person never intended to stay there, and has persistently sought to leave the facility and live in a community setting. This person has left-side paralysis which affects speech. A February 2011 medical assessment found the person oriented to person, place and time of day, able to self-feed with supervision, and to propel the wheelchair using the right leg and arm. This person did not need skilled nursing other than medication administration.

In 2009, DCH had noted the resident's longstanding desire to move into the community, but noted that there might not be a personal care home able to care for the resident because the reimbursement for such homes was only $12,789.60 a year. All nine providers declined to accept the resident for various reasons, including that the reimbursement rate does not match the level of service required.

OCR found that DCH violated the ADA based on its failure to place the affected party in the most integrated setting appropriate to needs and its refusal to make reasonable modifications in its policies, practices or procedures to avoid discrimination on the basis of disability. The full text of the findings and recommendations can be found at the U.S. Department of Health and Human Services website (link below).[4]

There are numerous other cases from around the country that have been decided in the last five years that prove that the legal provisions of the ADA and the Olmstead decision

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[4] U.S. Department of Health & Human Services; Office for Civil Rights; OCR Olmstead Enforcement Success Stories; "Georgia Department of Community Health" Letter of Findings
http://www.hhs.gov/ocr/civilrights/activities/examples/Olmstead/successstoriesolmstead.html

apply to people of all ages and forms of disability. People are successfully bringing suits against states that do not acknowledge this.

Nevada and Olmstead – A Continuous Examination

July 17, 2015

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Introduction

This report is submitted at the joint request of the Nevada Department of Human Services, Aging and Disability Division and the Olmstead Subcommittee of the Committee on Strategic Planning and Accountability. TRA, Inc. (hereinafter referred to as the Consultant) is the contractor. Tony Records, President of TRA, Inc. performed all of the tasks and activities associated with this report.

On June 22, 1999, the US Supreme Court ruled in the landmark Olmstead v. L.C. decision that unnecessary segregation and institutionalization of people with disabilities is a form of discrimination and prohibited under the Americans with Disabilities Act (ADA). To remedy or avoid such discrimination, states are required to provide integrated community services and supports for people with disabilities who are otherwise entitled to segregated services, when:

1. The state treatment professionals reasonably determine that community placement is appropriate;
2. the person does not oppose such placement; and
3. that placement can be reasonably accommodated, taking into account resources available to the state and the needs of others receiving state disability services.[1]

This civil rights ruling has resulted in numerous federal initiatives and policy changes nationwide designed to increase services and supports in the

[1] US Supreme Court (1999) Olmstead v. L.C. (98-536) 527

community for people with disabilities living in segregated settings, such as institutions and nursing facilities. More recently, there has also been increased emphasis of ensuring that non-residential supports are also provided in the most integrated setting.

In response to the Olmstead decision, most states, including Nevada, have engaged in developing statewide plans to address the need for community supports for those people with disabilities who are in segregated settings and to prevent future unnecessary segregation. Specifically, Nevada, over a two year period, developed the October 2002 *Strategic Plan for People with Disabilities*. A broadly representative stakeholder task force of people with disabilities, service providers, advocates, national consultants, state and county officials and state legislators were involved in this planning process. The meeting planners held 45 meetings and training sessions and three public hearings to develop and review the plan. Members and participants initially identified 185 perceived barriers to community services, independence and inclusion. The Consultant also provided technical assistance and training to the planning group on Olmstead related issues. This plan was approved by the state legislature in 2003. The ten-year timeframe for implementation of this plan expired in 2013.

This report provides a narrow snapshot at how well Nevada's efforts to support people with disabilities in the community over the past nine years comport with the basic principles, as well as the basic requirements of Olmstead and the community integration mandate of the ADA. This report is not to be in anyway considered as legal findings of fact or opinion of law. Rather, it is designed to provide a broad assessment of Nevada's efforts in providing services and supports to people with disabilities in the most integrated setting.

Although a preliminary overview of the findings and recommendations was provided to the Olmstead Subcommittee on April 30, 2015, no prior draft of this report was provided to the Committee or anyone else.

Methodology

In order to obtain information and viewpoints from a variety of sources, the Consultant used several methods toward collecting a broad set of information to formulate the findings and recommendations. These methods included the following:

- **Stakeholder Interviews.** The Consultant made five trips to Nevada (two trips to southern Nevada and three trips to northern Nevada) to facilitate face-to-face interviews with various stakeholders, including people with disabilities, families, advocacy organizations, community service providers, state and county administrators and policy staff, as well as advocacy professionals. These interviews included one-on-one interviews as well as six "town-hall" meeting formats in northern and southern Nevada. There were also observations and interviews with people with disabilities in programs and facilities in southern Nevada.

- **Document Review.** More than 100 various plans, reports and documents were reviewed to obtain a broad analysis of information, to facilitate interview questions and clarify conflicting information.

- **Internet Research**. Extensive internet research from federal agencies, Nevada websites, as well as national and state disability research agencies was conducted to obtain the most up-to-date and accurate information available.

Evaluation Questions. The Consultant approached this review utilizing the following evaluation questions:

1. Is there a statewide effectively working plan to ensure that people with disabilities are being, and will be, served in the most integrated setting?

2. Are policies and procedures in place or being proposed that promote and facilitate services in the most integrated settings?

3. Is Nevada making effective efforts to identify and assess people with disabilities who may be unnecessarily served in segregated settings?

4. For people who are waiting for community living supports and services, are they receiving these services with reasonable promptness?

5. Are there activities or initiatives occurring to adequately expand community supports and services in order to avert unnecessary segregation?

Acknowledgements

The Consultant experienced full cooperation and support from all individuals and organizations involved in the review. There were also numerous individuals with disabilities, and their families, that took time off of their busy schedules to participate in one-on-one interviews.

There were also numerous advocates and service organizations that participated in this review. In particular, the Consultant would like to thank the following organizations and for their invaluable contributions to this review.

Northern Nevada Independent Living Center

Southern Nevada Independent Living Center

Nevada Partners in Policy Making

Nevada Center for Excellence in Disabilities, UNLV

People First of Nevada (Las Vegas and Reno Chapters)

State of Nevada: Department of Human Services

- Aging and Disability Services Division
- Mental Health and Developmental Services
- Division of Health Care Financing and Policy
- Sierra Regional Center
- Department of Employment, Training and Rehabilitation

Clark and Washoe County Administration

Governor's Council on Developmental Disabilities

Nevada PEP

Nevada Disability Advocacy and Law Center

Sierra Nevada Quality Care

Southern Nevada Health District

Washoe Legal Services

Life Planning Services of Nevada

Leadership Education Advocacy Designs

Opportunity Village

American Association of Retired Persons, Nevada Chapter

A Nationwide Look at Olmstead

Although the Olmstead decision is nearly 16 years old, the Obama administration has continued to demonstrate heightened attentiveness to monitoring and enforcement of the ADA integration mandate and how well states offer services to people with disabilities. In 2009 the President marked the 10th anniversary of Olmstead by launching "The Year of Community Living," which included several initiatives through many federal agencies and departments over a five year period. These initiatives were designed to enhance interagency coordination and provide structures to better understand the needs of people with disabilities.

In addition, the US Department of Justice (DOJ) has demonstrated a renewed commitment to ADA and Olmstead enforcement. DOJ has intervened on numerous federal cases involving people with disabilities to ensure that Olmstead compliance is given high priority. DOJ has also transformed the manner in which it is enforcing the Civil Rights of Institutionalized Persons Act (CRIPA) by placing high priority on questioning the appropriateness of the presence of people with disabilities in publicly operated institutions. DOJ has also demonstrated that they will seek remedies through CRIPA by making Olmstead claims only, and not being necessarily dependant upon claims about conditions of the institution. DOJ has taken a much more aggressive attitude in enforcing the ADA and Olmstead decision as a matter of civil rights. In the past two years, for example, DOJ has entered in to settlement agreements with Oregon and Rhode Island to ensure that these states are providing work programs and daytime supports in the most integrated settings.

Another example of the new federal attitude and perspective is the recently (2014) promulgated rulemaking by the US Centers for Medicare and Medicaid Services (CMS) regarding its Home and Community-Based Services (HCBS) program. These new rules are designed to ensure that individuals receiving long-term services and supports through home and community based service (HCBS)

programs under the 1915(c), 1915(i) and 1915(k) Medicaid authorities have full access to benefits of community living and the opportunity to receive services in the most integrated setting appropriate. These new requirements also establish an outcome oriented definition that focuses on the nature and quality of individuals' experiences. The requirements maximize opportunities for individuals to have access to the benefits of community living and the opportunity to receive services in the most integrated setting.

Despite these efforts, however, states across the country have continued to struggle mightily in their attempts to keep up with the rapidly growing need for community integrated supports and services. Collective lists of people nationally waiting for services are measured in the hundreds of thousands. Many states, including Nevada, are facing unprecedented budget problems and deficits at levels never experienced before. Competition for any available funding is fierce. In some states, current services are being reduced. In others, new services are only made available to people who are in a crisis situation. Sadly, some states are now admitting people into institutions that are appropriate for community services because "that's where the money is." There are, however, many pockets of notable progress across the country.

What does the Olmstead decision mean for states?

Olmstead is often misunderstood by the public to have many different meanings. Some see Olmstead as an entitlement to community services. Others see it as a Medicaid requirement for states to maintain a "continuum" of residential services and supports. In most states, however, the impetus of Olmstead has resulted in: 1) fewer people with disabilities being admitted to public and private institutions; 2) substantial growth in community residential and non-residential services and supports and; 3) reductions in the number of people with disabilities in public and private institutions. Many of these changes are the direct result of statewide collaborative planning. In some instances these changes were the direct result of litigation, or the threat of litigation.

The Olmstead decision made it quite clear that, under Title II of the ADA, states have an affirmative responsibility to operate programs and provide services in a manner that ensures that people with disabilities receive services in the most integrated setting appropriate to their needs. The Olmstead decision established this integration premise as a minimum standard and benchmark for publicly supported programs. The Olmstead decision also established a firmly grounded expectation that states have a clear and unambiguous responsibility to assist people with disabilities in transitioning from segregated settings to community supports.

The Consultant has visited twenty-three states and reviewed their activities pursuant to Olmstead. Although it is clear that much has been accomplished as a result of these activities, it is also clear that no state has completely fulfilled its obligations under Olmstead, to serve people with disabilities in the most integrated setting in accordance with individual need. In many instances, states are working diligently to serve some segments of the disabilities groups while almost ignoring others. In other states, funding problems and state budget deficits have compelled them to curtail previous planning actions due to lack of resources.

Over the past 15 years, federal agencies have provided states with several new funding mechanisms and tools to assist people with disabilities in the community. In order to utilize these tools, however, the state legislative branch, as well as the executive leadership within the state, must work together to embrace the fundamental principles and commitment to community that Olmstead requires.

Overall Findings

Since the beginning of the development of its *Strategic Plan for People with Disabilities* fifteen years ago, in 2000, it is the opinion of the Consultant that Nevada has been one of the leading states in the country in its commitment to Olmstead. It is important to note here that the development of this plan is not the primary reason for this opinion. More important , was the continuous diligence of the state to implement the plan and, when necessary and appropriate, to modify the plan to achieve its primary goals and objectives. Throughout the full ten years of plan life, close attention was given to implementation strategies and achievement of its objectives. The Consultant believes that this is exactly what the US Supreme Court intended when they indicated compliance might be demonstrated through the development of a "comprehensively working plan to increase community based services and reduce institutionalization, and by ensuring that waiting lists for services move at a reasonable pace.[2]"

Like many states, Nevada found many barriers to implementation of it plans and promoting integration of people with disabilities. Funding constraints and biases, regulatory barriers, local political considerations and disparities between geographic regions have often interfered with solid plans and intentions. These barriers notwithstanding, however, Nevada has indeed taken the Olmstead mandate seriously. It is clear that most of the goals and action plans led to the reduction of unnecessary institutionalization and maintaining many people in community settings.

Paradoxically, Nevada historically allocated few new resources for people with disabilities. One positive result of this history is the fact that significant resources were not allocated to statewide institutional care as had been the case in many other states. As a result Nevada did not need to "undo" a large system of institutional care. On the negative side, this situation also required Nevada to

[2] US Supreme Court (1999) Olmstead v. L.C. (98-536) 527 U.S. 581

provide new funding and structural resources to support the much needed growth in community service. The strategy of shifting resources from institution to community, used by many states, was not a viable one for Nevada. Below are more specific findings of strengths and areas of concern as well as corresponding recommendations designed to address the needs to more fully comply with the Olmstead requirements.

Strengths in Nevada

With an overall population of 2,839.098 people,[3] Nevada is the lowest (50th) of federal per capita spending of any other state at $7,580.[4] Yet, despite this low spending rate, Nevada is among the leaders in the country in minimizing unnecessary segregation.

With regard to people with developmental disabilities for example, Nevada has continued to reduce the number of people in institutional settings. Between 1988 to 2014, Nevada reduced the number of people in facilities larger than 16 people by more than 70%, which is a higher than average rate nationwide. Today, Nevada has fewer than 50 people with developmental disabilities remaining in one remaining state facility. Conversely, the number of people with developmental disabilities living at home, or in small community homes, increased by more than 700% during the same period[5]. Nevada is heading in the direction to be an institution-free state for people with developmental disabilities. There are currently only 13 states, most of which have a smaller population base than Nevada, in that category currently.

For adults with mental illness, Nevada also has among the nations lowest number of people in public long term psychiatric hospitals and other large

[3] Resident estimated populations as of July 1, 2014, US Census Bureau
[4] US Census Bureau, Consolidated Federal Funds Report for Fiscal Year 2014.
[5] Lakin, K.C., Larson, S.A. , Salmi and Scott, *Residential services for persons with developmental disabilities: Status and trends through 2012*, University of Minnesota, 2014

institutions. The average length of stay at state hospitals remains among the lowest in the nation. There are also continued efforts to reduce the number of long term hospital beds statewide.

For people in nursing facilities, Nevada has a proactive program to identify people who want to live in the community, as well as a support system to assist them in moving to the community. Through a collaborative effort between the Centers for Independent Living and the FOCIS program, hundreds of people with disabilities statewide have transitioned from nursing facilities to the community over the past ten years.

The positive indicators listed above are attributable to several factors. First and foremost has been the planning activities developed over the past 15 years that focused heavily on increasing community capacity and the reduction of the size of institutional settings. This success is not just attributable to the planning documents themselves, but, most importantly, to the commitment of the state to implement the plan and, in many instances revising the plan to address specific needs as they change. The wisdom of the planners to continue with the Strategic Planning Accountability Committee (now the Nevada Commission on Services for Persons with Disabilities) has made a difference, which is unmatched in most state Olmstead plans and plan implementation.

Areas of Concern

Statewide Understanding of Olmstead

While some of the stakeholders demonstrated a clear understanding of Olmstead during the review, many did not. Olmstead remains to be one of the most misunderstood US Supreme Court decisions and has often been used to support different social agendas. In interviews with various stakeholders across the state, the understanding of Olmstead and its requirements were varied and inconsistent. It is important for state policy makers, as well as advocacy organizations, to have a clear understanding of Olmstead and the integration mandate.

Also, it is clear that public human services agencies conduct informal self evaluations of Olmstead compliance, but most do not. It is important for the decision makers to be proactive on an ongoing self assessments to ensure that the ADA integration requirements are being followed, and when they are not, take steps to remediate the situation.

People with Disabilities Living in Institutions in Nevada

As stated earlier, Nevada is among the states with the lowest per capita number of people with disabilities in long-term public institutions. There are still many Nevadans with disabilities, however, who may be unnecessarily in large private institutions. These include private nursing facilities and out-of-state placements.

Primary Barriers to Increasing Community Capacity

The Consultant found the primary barriers to expansion of community capacity for people with disabilities to include deficiencies, or lack of adequate quantity in at least the following areas:

1. **Lack of Available and Accessible Transportation -** Transportation was, by far, the number one concern expressed by people with disabilities and their families as a barrier to accessing the community. This sentiment was expressed across the state and in urban, suburban and rural settings. Reported problems included non-accessible vehicles, limited bus routes, Para-transit schedule limitations and overall unreliable bus services.

2. **Lack of Affordable and Accessible Housing -** A large number of adults with disabilities expressed the need to expand affordable housing opportunities. In some instances, funding for services and supports was available, but the lack of housing resulted in the individual staying in a nursing facility or another in appropriate setting.

3. **Inadequate Employment Supports and Opportunities -** Among young adults with disabilities, particularly those who recently left the school system, this was a widely reported problem. This includes the need for supported employment funding, as well as job training and job development supports.

4. **Lack of Community Behavioral Health/Psychiatric Supports Capacity** This problem was reported as particularly acute in rural and frontier regions, but was listed as a concern statewide.

5. **Growing Waiting Lists that Move Slowly -** Many people reported that funding for community supports was made available, but there was no service provider who was willing to support the individual.

6. **Insufficient Person-Centered Planning Supports -** There was broad concern that there is a lack of infrastructure and support to implement the person-centered planning that is now required by Federal rules.

7. **Shortage of Skilled Staff and Clinicians -** Families reported an insufficient supply of Home health aides, personal support professionals, nurses and physical therapists, even when funding for these services is available. Reportedly, this shortage of help is particularly problematic.

8. **Lack Community Dental Supports -** This problem was reported statewide and focused on the unwillingness of community dentists to accept Medicaid and, in some instances, treat a person with severe disabilities.

9. **Shortage Sign Language Interpreters and other Supports for People who are Deaf or Hard of Hearing -** Many deaf adults simply cannot access the community and are significantly isolated without the needed communication and other ancillary supports.

10. **Lack of Specialized Services to Children and Adults with Autism -** Many families of children and adults with Autism expressed frustration with how few specialized services are available for this rapidly growing population.

11. **Insufficient Services for People who are Blind or Visually Impaired -** These services include orientation and mobility training, assistive technology, transportation, life skills and employment.

12. **Proposed possible budget cuts!** The Consultant has reviewed several documents describing significant, and, in some instances, devastating budget cuts for the upcoming biennial cycle. While it is impossible to measure the impact of these budget cuts until they are finalized, it is clear that, if enacted, these budget cuts will have a significant negative impact on providing adequate supports for people with disabilities in the community.

    Since the specific proposed budget cuts have not yet been finalized it is not possible that any specific analysis can be conducted at this time. The Consultant recommends, therefore, that the Olmstead Subcommittee keep a vigilant watch on the state budget, and its implications, and maintain this review as part of the ongoing planning process. The likelihood of any major positive change in the budget crisis over the next several years is small. It appears that the Committee has already given the budget cuts a high priority. The Consultant recommends that its impact on compliance with Olmstead and the ADA be considered on an ongoing basis.

Recommendations

As stated earlier, Nevada has maintained a statewide commitment to follow the basic tenants of the ADA and Olmstead decision for the past ten years. As a result, the overall picture of residential supports in the most integrated setting is positive, especially in comparison to the rest of the country. The state of Nevada should be congratulated for its accomplishments in this regard.

That does not mean however, that 100% compliance has been achieved. There is still much to be done. The following recommendations are offered to support continuous improvement in offering services and supports in the most integrated setting consistent with the ADA and Olmstead.

Recommendation #1: Nevada should develop at 10-year community integration plan for Nevadans with disabilities and those with age-related conditions. The plan should include:

- Gubernatorial and Legislative Support
- Statewide Comprehensive Stakeholder Involvement
- Measurable Strategies and Outcomes
- Long-Term Budget Assumptions and Projections

Recommendation #2: Nevada public agencies should establish an internal mechanism to evaluate ongoing compliance with Olmstead and the ADA integration mandate.

Recommendation #3: Nevada should develop policies and oversight mechanisms for waiting lists prioritization and corresponding reasonable pace standards.

Recommendation #4: Nevada should develop mechanisms to directly engage consumers and families in planning and designing supports.

Recommendation #5: Nevada should conduct a specialized needs assessment in rural and frontier areas in order to identify services gaps in these areas, and develop a plan to address these gaps.

Additional Recommendations and Service Gaps

1. Eliminate all inappropriate out-of-state placements by seeking remedies to keep people in the least restrictive setting that is person centered. Each case where a person is placed out-of-state, such as a person with mental health or behavioral health issues, should be reviewed quarterly with the intent the person will return to a local community placement.

2. Services and support are provided at the time the service need is identified. Providing services and supports early will prevent or delay the costly chronic illnesses which develop when individuals are forced on lengthy wait list.

3. "Resources available" is not adequate reasoning for not funding state services to keep from placing people in the most restrictive settings.

4. Wait Lists need to move at a reasonable pace, accessed frequently, and across all demographics.

5. Budget cuts that force institutionalization are discriminatory. Eliminating services without ensuring sufficient alternative services are available that will place people at serious risk of institutionalization is an Olmstead violation. (Darling v. Douglas – 09-CV-3798 (N.D. Cal. 2009)

6. Increase the number of providers skilled with caring for individuals with high need. Adjust the reimbursement level based on the needs of the individual.

7. Elimination of Medicaid services because they are optional in the state plan that put people at risk of institutionalization is an Olmstead violation. (Hiltibran v. Levy – 10-CV-4185- W.D. Mo. 2010)

8. If one is living in an institutional and they are able and agree to transition to a community setting, efforts must be undertaken. (Lee f. dudek – 4:08 – CV – 26 – (N.D. Fla. 2008)

9. Support the development of affordable, available housing for all populations. Both temporary and permanent supportive housing must be obtained and maintained especially for persons with mental illness.

10. Increase the Evidenced-Based Practices available across Nevada. This will require the collaboration of licensing boards and higher education to work with community to expand the number of persons skilled in the delivery of evidenced-based practices.

11. Develop multiple types of programs that allow a person to receive the level of service required without being placed in a nursing facility. Acute psychiatric hospitals are meant to be

temporary; a drop down program would allow individuals to receive support while they recover.

12. Establish a statewide workgroup to ensure planning, support, and evaluation of on-going efforts to address community integration to include individuals with behavioral health disabilities.

13. Request technical assistance from SAMHSA to ensure efforts to address BH within State Olmstead Plan is consistent with other states.

14. Develop an environmental survey to determine the strengths and challenges in implementing community integration precepts within the community behavioral health system of care across settings including residential, educational, employment/vocational, recreational, treatment, and support settings. Include individuals with lived experience, family members, providers, policy makers, and community stakeholders.

15. Coordinate efforts with Medicaid to ensure equal access to Long Term Services and Supports (LTSS), habilitation, and rehabilitation services and supports available under the current state plan to assist individuals to live as independently as possible in their communities and prevent unnecessary institutionalization. Disseminate knowledge about access to LTSS, habilitation, and rehabilitation options to community providers, individuals needing services, and family members/primary support providers.

16. Promote core concepts of cultural competency, person-centered care planning, and trauma-informed care across the behavioral health field and continuum of care.

17. Support local and regional efforts to develop and provide individuals with behavioral health disabilities opportunities for meaningful participation in their communities.

18. Support the Governor's Office to assure the Insurance Division has sufficient authority to oversee and enforce parity in employer sponsored plans.

19. Assure that Medicaid takes steps to enforce parity in any managed care contracts.

20. Develop a program for individuals who are blind or visually impaired which supports adaption to living and working in integrated community settings. This is a major service gap in Nevada and will require a commitment in funding, service types and supports for all ages.

21. Address the communication needs for individuals that are Deaf or hard of hearing. The needs for individuals living with a hearing impairment must begin early and continue across the lifespan to address the changing needs of the person. This will include the development of highly trained educators and communication specialist, interpreters and medical providers. A

special emphasis must be made to educate the public on communicating with individuals who are Deaf and/or hard of hearing.

22. Support the implementation of the system of care for Nevada's Children's Mental Health system. Create outcomes to ensure services and supports are available in the most integrated setting based on the needs of the individual child and family.

23. Support a comprehensive supported employment program across all disability groups.

24. Implement a No Wrong Door approach to service access. Assess the needs of the individual and wrap all needed services around the person and their support system.

25. Assure that all services and supports available in the Nevada system of care support the needs of veterans. This includes medical, mental health, work supports, housing and life skills.