

Legal Obligations for Behavioral Health Services: **What's at Stake for North Dakota?**

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“Most Integrated Setting Appropriate”

Values:

- Equal Opportunities
- Ending Prejudice

Outcomes:

- Employment
- Citizenship
- Good Neighbors
- Avoiding Expensive Institutionalization, Incarceration

Applies to ALL People with Disabilities!



What Does the Law Require? **For Adults**

- Scattered-Site Supported Housing
 - Assertive Community Treatment (ACT)
 - Intensive Case Management (ICM)
 - Mobile Crisis Services
 - Supported Employment
 - Peer Supports
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What Does the Law Require? **For Kids**

- Intensive Care Coordination (“Wraparound Services”)
- Child and Family Team - **Individualized Assessment**
- Intensive Home- and Community-Based Services:

Skills Training

Mobile Crisis Services

Respite Services

Trauma-Informed Counseling

Supported Employment

Mentoring


Family and Youth Peer Support

Family Education and Training

Substance Abuse Services

Flex Funds for Customized Services

Legal Discussion

- Americans with Disabilities Act (ADA)/Rehabilitation Act/*Olmstead*
 - Medicaid/EPSTD – ***what North Dakota can do!***
 - Mental Health Parity
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Olmstead

- *Olmstead v. L.C.* (1999)
- Lois Curtis vs. Georgia
- ADA regulation: People with disabilities must receive services in **the most integrated setting appropriate.**
- Supreme Court holds:
 - Unnecessary segregation is disability discrimination. **Why?**
 - **Prejudice:** “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.”
 - **Different Treatment:** “[C]onfinement in an institution severely diminishes the everyday activities of individuals, including family relations, social contacts, work options, economic independence, educational advancement, and cultural enrichment.”

Olmstead

Under the ADA,

“States are required to provide community based treatment for persons with mental disabilities when

- the State’s treatment professionals determine that such placement is appropriate,
 - the affected persons do not oppose such treatment, and
 - the placement can be reasonably accommodated, taking into account the resources available to the State and the needs of others with mental disabilities.”
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The Law after *Olmstead*

“At Risk” people are protected, too.

“At Risk” = people with disabilities who live in the community but who have under-treated behavioral health conditions that place them at serious risk of institutionalization.

- *Olmstead v. L.C.*, 527 U.S. 581 (1999)
- *Fisher v. Okla. Health Care Auth.*, 335 F.3d 1175 (10th Cir. 2003)
- *Radaszewski v. Maram*, 383 F.3d 599 (7th Cir. 2004)

The Law after *Olmstead*

Not just state institutions.

Olmstead applies to privately owned and operated facilities in the state's service delivery system.

- *Disability Advocates, Inc., v. Paterson*, 653 F. Supp.2d 184 (E.D.N.Y. 2009)
- *Williams v. Quinn*, 748 F. Supp.2d 892 (N.D. Ill. 2010)
- *State of Connecticut Office of Protection and Advocacy for Persons with Disabilities*, 706 F. Supp.2d 266 (D. Ct. 2010)

Department of Justice *Olmstead* Enforcement

DOJ Settlement Agreements:

- *U.S. v. Georgia* (2010)
 - *U.S. v. Delaware* (2011)
 - *U.S. v. North Carolina* (2012)
 - *U.S. v. New Hampshire* (2014)
 - *U.S. v. New York* (2014)
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U.S. v. Georgia

Target Population: 9,000 individuals with Serious and Persistent Mental Illness (SPMI) who are

- Currently being served in state hospitals;
- Frequently readmitted to state hospitals;
- Frequently seen in hospital emergency rooms;
- Chronically homeless; or
- Being released from jails or prisons.

Individuals with SPMI on forensic status are included “if the relevant court finds that community service is appropriate.”

Target population includes people with SPMI who have co-occurring conditions like substance abuse disorders or traumatic brain injuries.



U.S. v. Georgia

Georgia must provide community services.

- Assertive Community Treatment (ACT)
- Community Support Teams (CST)
- Intensive Case Management (ICM)
- Case Management Services
- Crisis Services:

Crisis Service Centers

Community Hospital Beds


Mobile Crisis Services

Crisis Stabilization Programs

Crisis Call Center


U.S. v. Georgia

Georgia must provide Supported Housing (“Housing First”):

- Integrated housing = scattered-site housing (no more than 20% of units in apartment building)
 - Permanent housing = tenancy rights = person is leaseholder
 - Services available but not required
 - No Group Homes
 - Bridge Funding
 - Voucher-based vs. Project-based
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U.S. v. Georgia

Georgia must provide community services

- Supported Employment
 - Peer Support Services
 - Identify Community Mental Health Providers, Private and Public
 - Transition Planning
 - Quality Management
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Medicaid

States can pay for community services with Medicaid

Many community services are in Medicaid state plans:

IL: Assessment/Screening, Evaluation, Crisis Intervention, Medication Administration/Monitoring/Training, Therapy/Counseling, CS, CST, ACT, Case Management

ND: Evaluations, Inpatient Services, Individual/group/family psychotherapy, Partial hospitalization

Medicaid


1915(c) Mental Health Waiver

CT: Community Support Program (team approach), Peer Support, Recovery Assistant, Supported Employment, Transitional Case Management, Brief Episode Stabilization, Community Living Support Services (live-in companion), Transportation Services

But . . . Must be cost neutral – cannot cost the federal government more to provide services in the community than it would to provide services in an institution.

Medicaid

1915(i) State Plan Option:

- Same services as 1915(c) waiver.
 - No cost neutrality requirement.
 - No institutional level of care requirement - state can offer services and supports before institutionalization.
 - States can target population, with flexible service packages.
 - No waiting list – no caps on enrollment.
 - No geographic limits – entire state covered.
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Children's Behavioral Health

Medicaid: The EPSDT Mandate

States must provide “early and periodic screening, diagnostic, and treatment” (EPSDT) services to Medicaid eligible children and youth under age 21.

States must provide any “necessary health care, diagnostic services, treatment and other measures . . . to correct or ameliorate . . . physical and mental illnesses and conditions” regardless of whether such services are specifically covered in the state’s Medicaid plan.

- *J.K. v. Eden* (2001)
- *Rosie D. v. Romney* (2006)
- *Katie A. v. Douglas* (2011)

Children's Behavioral Health

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Children's Behavioral Health

The ADA Applies to Kids Too! The failure to provide intensive home-based services violates the Medicaid Act and the ADA/Olmstead.

Troupe v. Barbour – Statement of Interest (2011)


West Virginia Dep't of Health and Human Resources – Letter of Findings (2015)

Mental Health Parity

Mental Health Parity and Addiction Equity Act (2008): If private insurance plans cover services for people with mental health or substance use disorders, coverage must be equitable with coverage for other health conditions:

- Limits on coverage (e.g., frequency of treatments, days of coverage) cannot be stricter for behavioral health services than for other services.
- Co-payments and deductibles cannot be higher for behavioral health services than for other services.
- If out-of-network coverage for physical health care, out-of-network coverage for behavioral health care.

Affordable Care Act (2010): Extends parity to plans available through state exchanges, plans available to Medicaid expansion population, Medicaid managed care programs, CHIP plans.




What North Dakota Can Do

Short Term:

- Vouchers for Scattered-Site Supported Housing
- Appropriations for Assertive Community Treatment (ACT), Mobile Crisis Teams
- Better coordination between 911 and Crisis Services (or, temporarily, CIT training?)
- Workforce regulation: Advance Practice Nurses?

Long Term:

- Apply to CMS for a 1915(i) Medicaid state plan option or 1915(c) Medicaid waiver
 - Apply for a Medicaid 1115 demonstration project
 - Workforce development: Recruiting out-of-state providers, devoting resources to in-state professional education and development
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Questions?

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