

## **DOJ Convening – Olmstead Issues**

### **I. Introduction**

- A. I would like to address two central areas for the Department’s ADA Title II Olmstead enforcement efforts: challenges to segregated employment and challenges to unnecessary institutionalization in nursing facilities

### **II. Segregated Employment**

- A. ADA Challenges to Segregated Employment for People with IDD
  - 1. Together with disability advocates like CPR, DOJ signed two landmark settlement agreements in 2014-2015 with the States of Oregon and Rhode Island to end the segregation of people with intellectual and developmental disabilities (IDD) in sheltered workshops
  - 2. These agreements have created national precedents for developing integrated employment services and for transforming employment service systems for people with IDD
  - 3. While several states (IN, NC, MD, CA) have followed these precedents and plan to close their sheltered workshops, many other states continue to fund,

administer, or operate segregated employment programs for people with IDD

4. We urge the Department to resume its enforcement efforts to challenge segregated employment for people with IDD, so that its recent achievements and successful ADA activities are not perceived as isolated or dated.

B. ADA Challenges to Segregated Employment for People with Psychiatric Disabilities

1. Equally importantly, we urge the Department to expand these efforts to challenge segregated employment programs for people with serious mental illness (SMI)
2. We recognize that these employment programs are not as clearly demarcated, not as uniformly operated, and may be referred to by different names – like day treatment programs, wellness programs, clubhouses, or pre-vocational services
3. But for people with SMI, they are equally segregated, equally isolated, and equally result in the denial of opportunities to work in competitive integrated employment
4. We know that people with mental illness want to work in competitive employment, but are being denied the

opportunities and supports that they need to work in real jobs for real pay

5. And we know that people with mental illness, and their advocacy organizations are eager to provide information and otherwise support a DOJ investigation

### III. Nursing Facilities

- A. The Department, together with local advocacy organizations like CPR, has challenged the unnecessary institutionalization of people with certain disabilities in nursing facilities
  1. It has joined cases in NH and Tx and conducted its own investigations in a few other states on behalf of people with mental illness or people with IDD
- B. But nursing facilities are not limited to people with those two disabilities
  1. Nursing facilities are inherently cross-disabilities institutions that equally confine people with a wide range of disabilities, including physical disabilities, medical conditions, and older adults with disabilities
- C. Nursing facilities are not only segregated institutions, but they are dangerous institutions, especially as evidenced by the impact of the pandemic.

1. In my state, 1 in every 7 COVID deaths were for people in nursing facilities
  2. And the danger of nursing facilities and the impact of COVID disproportionately impact communities of color
  3. Under-resourced and under-performing nursing facilities are the institutions that predominantly serve Black and Brown people with disabilities
- D. Particularly given the lessons of pandemic, we urge the Department to substantially expand its enforcement efforts to initiate cross-disability investigations in several states and to move forward with its open investigation in Massachusetts
1. These investigations should specifically identify the disproportionate impact of unnecessary institutionalization on people with all disabilities from communities of color
  2. And they should seek culturally-competent remedies and reforms that address the unique needs, preferences, and services relevant to the relevant these communities
- E. Finally, DOJ's successful Olmstead cases have included, but never elevated, exactly what the ADA requires from public entities to ensure that people with disabilities can make informed choices whether to remain in, or leave, segregated institutions.

1. We know, from experience, that simply providing written or even oral information and some in-reach or education about community options is not sufficient
2. For people who have been institutionalized for years, and who have been denied the opportunity to make choices even about simple things, like what to eat, what to wear, and where to go during the day, public entities must make specific accommodations to both their disabilities and the vestiges of their institutionalization
3. A cross disability nursing facility case presents an excellent and timely opportunity for DOJ to develop the criteria and elements of an effective informed choice process that is consistent with the ADA, and then require the public entity to implement that process as part of the remedy to any ADA violation