



Supportive Housing & *Olmstead* The Dialogue

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Introduction

As states and communities across the country continue their efforts to meet the mandates of the U.S. Supreme Court's *Olmstead v. L.C.* decision, supportive housing is playing a major role by creating opportunities for people with disabilities to live in the community; providing them with safe, decent housing and offering a wide-array of voluntary support services.

Supportive housing is housing without limits on length of stay, affordable to people with extremely low or no income. It is a proven model that works for people facing severe obstacles to housing stability, including those with disabilities, because services are tailored to meet individual needs. Supportive housing designed to serve the people impacted by *Olmstead* focuses on those with disabilities who have long been institutionalized or are at-risk of institutionalization.¹

Three recent federal actions provide context and guidance for supportive housing's role for this population:

1. In 2013, the U.S. Department of Housing and Urban Development (HUD) released guidance to HUD-assisted housing providers, supportive housing providers among them, on how they can support state and local endeavors to meet *Olmstead* obligations.
2. Additionally, in 2014, the Centers for Medicare and Medicaid Services (CMS) issued guidance defining the appropriate setting in which Home and Community Based Services (HCBS) should be delivered.² The settings definition established by CMS closely aligns with the main tenets of high quality supportive housing.
3. Then in 2015, CMS published an Informational Bulletin encouraging states to redesign Medicaid programs to deliver housing tenancy services that allow *Olmstead* populations to transition into the community or remain in the community with services intact.³

¹ It should be noted not all supportive housing is targeted to people with disabilities (in some cases supportive housing targets homeless and at-risk subpopulations such as youth exiting the foster care system, victims of domestic violence, people exiting correctional systems after years of incarceration, and families involved with the child welfare system. Supportive housing creation also should take these populations' needs into account.

² <http://www.medicaid.gov/medicaid-chip-program-information/by-topics/long-term-services-and-supports/home-and-community-based-services/downloads/hcbs-setting-fact-sheet.pdf>

³ <http://www.medicaid.gov/federal-policy-guidance/downloads/CIB-06-26-2015.pdf>

As the national leader in the supportive housing movement, CSH is uniquely positioned to assist states, communities and providers as they explore housing options that ensure people with disabilities have the opportunity to live and thrive in the community. CSH is firmly committed to the central mandate of *Olmstead* — *to provide people with disabilities the housing and support they need to live in the most integrated setting possible in a community of their choice.*

CSH’s efforts are shaped by three guiding principles:

- 1. Providing people the opportunity to live independently in the most integrated setting.**
- 2. Expanding access and the range of housing options.**
- 3. Ensuring and promoting tenant choice.**

CSH believes *Olmstead* court settlements and implementation plans must address key issues from the outset of their formulation, including:

- Speed with which appropriate housing options can be identified and provided;
- Cultivation of necessary partnerships between service and housing providers; and
- Identification of resources to finance housing and services in the community.

Purpose of This Brief

This paper describes the basic information and issues policy-makers and advocates must understand about supportive housing to ensure that the supply of housing and services meet both demand and tenant choices.

Supportive Housing

For nearly 25 years, CSH has worked to promote the creation of supportive housing at the highest levels of quality. Based on its expertise, and following focused conversations and field testing with supportive housing tenants, providers, funders and stakeholders, CSH created a comprehensive set of resources describing quality in supportive housing — the [Dimensions of Quality Supportive Housing \(DOQ\)](#)⁴. These materials were extensively updated in 2013 to more fully incorporate best practices related to ensuring supportive housing and its tenants are fully integrated into their communities.

CSH recognizes not all housing currently in operation declaring itself “supportive housing” meets DOQ. Nonetheless, it is important to hold all supportive housing providers to a high

⁴ To find full text of CSH’s Dimensions of Quality Supportive Housing publications - <http://www.csh.org/quality>.

standard of quality. To this end, CSH developed the Supportive Housing Quality Certification program with the goal of identifying and recognizing quality supportive housing as well as providing a collaborative process through which organizations can identify areas of strength and opportunities for improvement. We continuously encourage states and localities to develop quality assurance processes to assess and monitor supportive housing and its quality.

Comparing Supportive Housing & Other Options

Unlike residential programs such as group and boarding homes for people with disabilities, tenants of supportive housing have the rights and responsibilities of tenancy, and the ability to live independently. The following table highlights some of the differences.

Supportive Housing Tenants	Group or Board and Care Residents
<ul style="list-style-type: none"> • Sign a lease (or sublease if master-leased) with landlord, have rights & responsibilities of tenancy under state & local law, are free to come & go or have guests 	<ul style="list-style-type: none"> • Do not have leases, have no rights under landlord-tenant law, have restrictions on coming & going, as well as guests
<ul style="list-style-type: none"> • Have no restrictions on length of tenancy, can remain in apartment as long as complying with lease terms & desires to remain in apartment 	<ul style="list-style-type: none"> • Do not determine their own length of stay (home decides length of stay)
<ul style="list-style-type: none"> • May participate in accessible, usually comprehensive, flexible array of services tailored to needs of each tenant, with a case manager on call 24/7 	<ul style="list-style-type: none"> • Service availability varies from home to home, without choice in services
<ul style="list-style-type: none"> • Are not required to participate in services as a condition of tenancy, of admission into housing, or of receipt of rental subsidies 	<ul style="list-style-type: none"> • Are required to participate in services, or cannot remain in home or access subsidy
<ul style="list-style-type: none"> • Have rent based on income, in compliance with federal affordability guidelines (30-50% of income). 	<ul style="list-style-type: none"> • Must pay rent based on home's guidelines, not based on federal affordability guidelines
<ul style="list-style-type: none"> • Clients request case management services and supports from staff and seek health care and specialty services from community providers. Separate property management staff engage to resolve issues to prevent eviction 	<ul style="list-style-type: none"> • Often have no advocate for resolving issues that may lead to eviction, as service providers usually the same as staff running home

Supportive Housing Tenants	Group or Board and Care Residents
<ul style="list-style-type: none"> • Live in housing that meets federal, state, and local quality standards for safety & security 	<ul style="list-style-type: none"> • May live in substandard conditions
<ul style="list-style-type: none"> • Usually occupy own bedroom, bathroom, and kitchen &, if sharing common areas, choose own roommates 	<ul style="list-style-type: none"> • Have no choice over housemates, usually share bedroom with at least one (usually multiple) other tenants
<ul style="list-style-type: none"> • Are protected by Fair Housing law 	<ul style="list-style-type: none"> • Not necessarily protected

Supportive Housing Models

Supportive housing can be structured in a variety of ways to meet the needs and preferences of tenants as well as the community.

Strategies for integrating supportive housing units within a community involve both the physical setting as well as how the housing is operated. Property owners, managers, and service providers all play key roles in identifying the connections and supports supportive housing tenants desire to integrate into the community and meet the tenant’s needs. It should be noted there are variations on these core strategies, but in each approach supportive housing relies generically on primary care coordination, case management, long-term care, in-home and behavioral health services. Services are designed to support continued tenancy and improve health and well-being.

In all of these contexts, supportive housing enables tenants to live independently and integrated in the community with the ability to access tailored services on a voluntary basis, and associate with people of their own choosing. Additionally, each of these approaches ensures people have the rights and responsibilities of tenancy, including privacy and the ability to come and go as they please. Other common integration strategies include universal accessibility features, proximity to community resources, involvement in neighborhood initiatives, and use of space in a development by local groups or neighborhood events.

CSH believes people should have the opportunity to choose among multiple housing options. Scattered site housing and set-aside units in larger buildings should be the primary approach, but there are instances in which people will choose a single-site setting where a majority of people with disabilities reside. Some tenants prefer the benefits, including a sense of community and peer support, availability of services onsite, and newly constructed units, that a single site setting often provides. In short, *it should be the quality of the tenancy experience that is important, not the configuration or number of units.*

Broadly speaking, there are three models of supportive housing. Communities should determine the appropriate balance of these three housing models and ensure people have options for housing integrated into the community. The three models include:

- **Scattered site housing** in which the units are distributed throughout multiple buildings and/or locations across a neighborhood or community. Tenants are connected with mobile service providers that can provide services in a tenant's home or in another location of the tenant's choosing. Tenants are also supported in accessing additional services in the community as needed and desired.
- **Mixed-affordability housing** where supportive housing units are set aside and interspersed within an affordable housing development. Some services may be available on-site and connections to other community resources are facilitated as desired by the tenant.
- **Single site housing**, in which a majority of tenants - and in some projects all tenants - are people with histories of homelessness, disability (although not necessarily the same one) and/or chronic behavioral health conditions. Some, but usually not all, services are provided onsite. Housing is located in the community, providing consumers with access to community services and supports, opportunities to interact with non-disabled individuals and families, and access to employment.

***Olmstead* & Guiding Principles for Supportive Housing**

CSH promotes interrelated principles for guiding state and local efforts to create supportive housing opportunities in accordance with the *Olmstead* decision. Together, these principles provide a framework for creating supportive housing for all people with disabilities and help address the three key issues outlined above.

#1: Provide Opportunity for People to Live Independently in Integrated Settings

Any discussion of the Supreme Court's *Olmstead* case must begin with the obligation of states, communities and housing providers to promote the right of every person with a disability to live in the most integrated setting appropriate to meet their needs.⁵ The Court declared that the Americans with Disabilities Act (ADA) recognizes people with disabilities have historically been excluded from society, and integrated settings generally allow people with disabilities to interact with people without disabilities. A recent Department of Justice (DOJ) brief identified the following criteria of integrated settings:⁶

⁵ *Olmstead v. L.C.*, 527 U.S. 581 (1999) (*Olmstead*).

⁶ US Department of Justice. Statement of the Department of Justice on Enforcement of the Integration Mandate of Title II of the Americans with Disabilities Act and *Olmstead v. L.C.* (June 22, 2011) (DOJ brief).

Integrated Settings	Restricted Settings
<ul style="list-style-type: none"> • Located in mainstream society 	<ul style="list-style-type: none"> • Located in congregate setting, occupied primarily by people with disabilities
<ul style="list-style-type: none"> • Offering community activities of person's choosing with people of individual's choosing 	<ul style="list-style-type: none"> • Restricts or provides for daily activities to activities with people with disabilities
<ul style="list-style-type: none"> • Allows person's choice in daily activities 	<ul style="list-style-type: none"> • Regimentation in daily activities with little or no autonomy in the individual ability to choose
<ul style="list-style-type: none"> • Provides opportunities to interact with people without disabilities 	<ul style="list-style-type: none"> • Lacks privacy or autonomy

Supportive housing, in almost every instance, incorporates the Supreme Court defined key elements for “integrated settings”. In fact, courts have recognized supportive housing as advancing the right of people with disabilities to live independently in integrated settings.⁷ It is the case that some supportive housing buildings are occupied primarily by people with disabilities; however, these supportive housing providers still meet all of the central tenets of integrated settings, and do not fall under the federal definition of “congregate setting.”

Supportive housing is designed to allow people with disabilities to live in the most integrated setting appropriate to meet their needs.

- Supportive housing, even in a single site, is not “congregate” housing, since tenants have their own apartments with their own bathrooms and kitchens.⁸
- Supportive housing is located near community services, transportation, employment opportunities and other housing and is not segregated from the larger community
- Supportive housing employs best practice in service paradigms/modalities, promoting choice and voluntary services

While navigating the creation of integrated settings, it can sometimes be difficult to understand guidance from federal agencies. For example, HUD regulations explain that state housing providers should not offer housing solely based on a specific disability yet acknowledge housing offered exclusively or primarily to people with disabilities may be necessary to provide equal access to housing that is available to people without disabilities.⁹ HUD needs to continue to work to align federal housing rules with the goals of *Olmstead*. CMS has established regulations for appropriate settings where Medicaid Home and Community-Based Services can be delivered. These regulations explain that consumer experience must drive any determination on integration, which is the same approach embraced by CSH's Dimensions of Quality Supportive Housing.

⁷ *Disability Advocates, Inc. v. Paterson*, Civil Number 03-CV-3209 (ED NY 2009).

⁸ *Olmstead* at 599.

⁹ <http://portal.hud.gov/hudportal/documents/huddoc?id=OlmsteadGuidnc060413.pdf>

#2: Expand Availability & Diversity of Housing Opportunities

Federal, state and local policies should advance supportive housing as a means of furthering the right of people with disabilities the opportunity to live, work and receive services in the greater community, like individuals without disabilities.¹⁰ The policies and the programs funded to implement *Olmstead* should concentrate on expanding the overall supply of affordable housing, as well as variety and choice. This includes creating rental subsidy programs, working with public housing authorities to prioritize people with disabilities, creating development incentives through state tax credit Qualified Allocation Plans (QAPs), and building community-based services capacity.

#3: Ensure & Promote Consumer and Tenant Choice

In carrying out and implementing *Olmstead* decisions, promoting and ensuring consumer and tenant choice must be paramount. Policies should further tenants' rights to choose where and with whom to live, as well as whether to engage in services. In discussing the issue of choice, the *Olmstead* decision states a person with a disability should not be required to accept an accommodation if the individual chooses not to do so.¹¹

Supportive housing offers choice:

- Tenants are not “placed” or coerced to live in supportive housing. They are offered housing options. That said, choice is limited to some extent by the lack of availability of affordable, supportive housing units in a community.
- Tenants choose whether to participate in services and which service provider to use.
- Service providers engage tenants, asking tenants about his/her needs, and using motivational interviewing or and critical time intervention methods.
- Tenants are not required to meet threshold criteria (i.e., sobriety or a stay in shelter or transitional housing) before being admitted into supportive housing. Supportive housing embraces “housing first,” not requiring people who are disabled to overcome more obstacles than people without disabilities to obtain housing.¹²

Collectively, the key elements of supportive housing - in a variety of settings – provides tenants choices about where they live, what services they choose to access (or not), and who they choose to associate with in the community.

#4: Strengthen Housing Based Services Financing

The federal agencies that separately fund the components of supportive housing - HUD and HHS – have worked to provide the requisite guidance on how to finance community-based supportive housing opportunities for *Olmstead* populations,

¹⁰ US Department of Justice. *Statement of the Department of Justice on Enforcement of the Integration Mandate of Title II of the Americans with Disabilities Act and Olmstead v. L.C.* (June 22, 2011).

¹¹ *Olmstead* at 599.

¹² *Olmstead* at 597 (one hallmark of discrimination based on disability is requiring people with disabilities to sacrifice more to obtain needed services by virtue of their disability).

which includes both long-term care populations as well as those experiencing chronic homelessness. States taking advantage of expanding or adapting Medicaid programs to allow housing tenancy supports, as supported by CMS' Informational Bulletin referenced in the introduction of this document, will help supportive housing providers end the practice of using their limited resources for services, allowing them to redirect those resources to pay for housing costs.

In addition, partnerships between state Medicaid agencies and housing providers are essential. Medicaid agencies can play a significant role in building design, location and general operations governing supportive housing. For example, CMS guidance is clear that residents must hold their own lease, have choice of roommates and have choice of service provider. Housing cannot be dependent upon the service provider or tenants engaging in services. In order to adhere to CMS guidance, state Medicaid agencies must communicate these requirements to local housing partners so they can be taken into account when projects and budgets are being developed. Finally, strengthening services financing through Medicaid will increase service provider capacity and increase the overall availability of supportive housing.

The Way Forward

Supportive housing allows people with disabilities who are exiting institutions and/or homelessness to live independently in integrated settings. The combination of safe, decent, affordable housing with voluntary supports that consumers choose provides a solid foundation for people to live independently and thrive in our communities. As such:

- CSH will continue our engagement with states and communities across the country, assisting with the design and implementation of *Olmstead* strategies to expand supportive housing opportunities in the community for people with disabilities. This includes improving individual assessment tools, designing new rental assistance models, helping congregate models transition to integrated models, and training providers to deliver high quality services.
- CSH will engage with communities and providers to expand supportive housing system capacity (both housing and services) to serve people with disabilities in the community.
- CSH will continue to work with our federal and state partners to support policies and expand resources furthering the goals laid out in the *Olmstead* case.
- CSH will engage state housing finance agencies and public housing authorities to explore and identify opportunities for accessing and securing rental assistance vouchers for people with disabilities, including working with public housing authorities on administrative plans that may prioritize this population.

- CSH will work to ensure that states include homeless populations as part of their Olmstead planning efforts. The *Olmstead* decision recognizes that shelters are also inappropriate settings¹³ since people living in shelters are warehoused in congregate settings, sometimes for long periods. In addition, those who are unsheltered are at risk of cycle through institutionalized settings such as nursing homes, jails or mental health hospitals by virtue of their disability and their homelessness.

¹³ *Olmstead* at 600.