



**Supportive Housing & *Olmstead*:**  
**Creating Opportunities for People with Disabilities**  
*Discussion Paper*  
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## **Introduction**

As states and communities across the country work to meet the mandates of the Supreme Court's *Olmstead v. L.C.* decision, supportive housing will play a major role—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. CSH is firmly committed to the central mandate of *Olmstead*—to provide people with disabilities who have long been inappropriately institutionalized with the housing and support they need to be able to live in the most integrated setting possible in a community of their choice. In this paper, CSH provides an overview of what supportive housing is and outlines three guiding principles for creating supportive housing opportunities for people with disabilities within the context of *Olmstead*.

Our three guiding principles are:

- 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 is a national nonprofit organization that helps communities create permanent housing with services to prevent and end homelessness. CSH is well positioned to play a key role in ensuring that people with disabilities have the opportunity to live and thrive in the community. Supportive housing—housing that is without limits on length of stay, affordable to people with extremely low or no income and offered with voluntary services (discussed below)—is a proven model for people facing severe obstacles to housing stability, including people with disabilities.

CSH believes that state *Olmstead* court settlements and implementation plans must provide a solid and comprehensive plan for financing and delivering the housing and supports people will need to thrive in the community. Without such a plan, states can be left with unreachable goals that undermine actual progress. States and communities must be prepared to address key issues at the outset of implementation, including the speed with which housing options can be provided, cultivation of the necessary partnerships between service and housing providers, and identification of resources to finance housing and services in the community.

Supportive housing serves a wide variety of vulnerable populations, and services are tailored to meet their individual needs. This paper focuses on the principles of supportive housing targeting people with disabilities who have long been institutionalized or are at-risk of institutionalization.<sup>1</sup>

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<sup>1</sup> It should be noted that 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 should take these populations' needs into account also.

## What Is Supportive Housing?

Supportive housing integrates safe, decent, affordable housing with voluntary, client-centered services to help people live and thrive in the community. Unlike residential programs like 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 in an integrated way in the community.

To understand what supportive housing is in the context of *Olmstead*, it is instructive to also understand what supportive housing is not. Supportive housing, regardless of housing approach, starkly differs from group homes or board and care facilities. The following table highlights some of the differences.

Supportive Housing Tenants	Group or Board and Care Residents
<ul style="list-style-type: none"> <li>• Sign a lease (or sublease if master-leased) with landlord, have rights &amp; responsibilities of tenancy under state &amp; local law, are free to come &amp; go or have guests</li> </ul>	<ul style="list-style-type: none"> <li>• Do not have leases, have no rights under landlord-tenant law, have restrictions on coming &amp; going, as well as guests</li> </ul>
<ul style="list-style-type: none"> <li>• Have no restrictions on length of tenancy, can remain in apartment as long as complying with lease terms &amp; desires to remain in apartment</li> </ul>	<ul style="list-style-type: none"> <li>• Do not determine their own length of stay (home decides length of stay)</li> </ul>
<ul style="list-style-type: none"> <li>• May participate in accessible, usually comprehensive, flexible array of services tailored to needs of each tenant, with a case manager on call 24/7</li> </ul>	<ul style="list-style-type: none"> <li>• Service availability varies from home to home, without choice in services</li> </ul>
<ul style="list-style-type: none"> <li>• Are not required to participate in services as a condition of tenancy, of admission into housing, or of receipt of rental subsidies</li> </ul>	<ul style="list-style-type: none"> <li>• Are required to participate in services, or cannot remain in home or access subsidy</li> </ul>
<ul style="list-style-type: none"> <li>• Have rent based on income, in compliance with federal affordability guidelines (30-50% of income).</li> </ul>	<ul style="list-style-type: none"> <li>• Must pay rent based on home's guidelines, not based on federal affordability guidelines</li> </ul>
<ul style="list-style-type: none"> <li>• 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</li> </ul>	<ul style="list-style-type: none"> <li>• Often have no advocate for resolving issues that may lead to eviction, as service providers usually the same as staff running home</li> </ul>
<ul style="list-style-type: none"> <li>• Live in housing that meets federal, state, and local quality standards for safety &amp; security</li> </ul>	<ul style="list-style-type: none"> <li>• May live in substandard conditions</li> </ul>
<ul style="list-style-type: none"> <li>• Usually occupy own bedroom, bathroom, and kitchen &amp;, if sharing common areas, choose own roommates</li> </ul>	<ul style="list-style-type: none"> <li>• Have no choice over housemates, usually share bedroom with at least one (usually multiple) other tenants</li> </ul>
<ul style="list-style-type: none"> <li>• Are protected by Fair Housing law</li> </ul>	<ul style="list-style-type: none"> <li>• Are not necessarily protected by Fair Housing law</li> </ul>

Supportive housing as defined above is a model that complies with Fair Housing law and *Olmstead* principles. That said, CSH recognizes that not all housing currently in operation declaring itself as “supportive housing” meets the criteria outlined above. Therefore, it is important to hold supportive housing providers to a high standard of quality and incorporate these key these principles into supportive housing.

CSH is committed to ensuring that supportive housing is high quality. We have developed a quality assurance program to proactively engage housing and service providers. Our “Seven Dimensions of Quality” initiative provides training, capacity building and expertise in an array of areas including access to housing and services, supportive services design and delivery, and tenant rights, input and leadership, among others. CSH recently received additional funding to refine and expand this initiative, with the aim of developing a “seal of approval” process for qualifying supportive housing as high quality and a checklist that providers and funders alike can reference when assessing the quality of supportive housing they finance or provide services in. We also encourage states and localities to develop quality assurance processes to assess and monitor quality. All of these efforts include furthering access to high quality, *voluntary* services.

### **Approaches to Creating Supportive Housing**

Supportive housing opportunities can be created in a variety of ways to meet the needs and preferences of tenants as well as the community. Broadly speaking, there are three primary approaches to creating supportive housing, each of them with their own benefits and challenges. CSH believes that communities should determine the appropriate balance of these three housing models and ensure people have options as they leave institutions. The three strategies include:

- **Scattered site housing** in which apartments are identified and secured in buildings across a neighborhood or community. Landlords of these buildings lease units directly to tenants and/or master lease units to a supportive housing provider, who then sublets to supportive housing tenants. An array of services is brought into a person’s home, and residents access additional services in the community as requested.
- **Mixed tenancy housing** where supportive housing is interspersed – or a limited number of units are set-aside - within broader affordable housing and/or mixed use and mixed income housing. Some services may be available on-site and residents are connected with other services as requested.
- **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 the community and in proximity and with access to community services and activities.

It should be noted that there are multiple variations on these core strategies, but in each approach supportive housing relies generically on home and community-based services to provide the support that people choose to access. Services are designed to support continued tenancy and improve health and well-being. In some cases tenants access services on site, but to a much greater extent, services are accessed through a wide array of behavioral health and other providers in close proximity in the community.

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 that people have the rights and responsibilities of tenancy, including privacy and the ability to come and go as they please.

CSH believes people should be provided maximum choice in housing options- recognizing that scattered site housing is a priority – but also providing options to live in single site settings. **CSH believes it should be the quality of the tenancy experience that is important, not the configuration or number of units.** Some tenants prefer the benefits of single site supportive housing with site-based services. These benefits include:

- A sense of community and peer support. Some people prefer to live in communities with people who share common experiences.
- Availability of support and services onsite. Some people appreciate having a support system co-located with their residence, providing an ease of access for some populations, particularly in communities where services are otherwise difficult to access due to distance, transportation issues, etc.
- Newly constructed or renovated apartments that are higher quality and more desirable than older houses or apartment buildings.

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

CSH promotes three interrelated principles that should guide efforts to create supportive housing opportunities for people with disabilities within the context of the *Olmstead* decision. Together, these principles provide a framework for creating supportive housing opportunities for all people with disabilities.

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

Any discussion of principles of the Supreme Court’s *Olmstead* case must begin with the obligation of housing providers to promote the right of every person with a disability to live in the most integrated setting appropriate to meet their needs.<sup>2</sup> The Court said that the Americans with Disabilities Act recognized that people with disabilities have historically been excluded from society, and that 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:<sup>3</sup>

Integrated Settings	Restricted Settings
• Located in mainstream society	• Located in congregate setting, occupied primarily by people with disabilities
• Offering community activities of person’s choosing with people of individual’s choosing	• Restricts or provides for daily activities to activities with people with disabilities
• Allows person’s choice in daily activities	• Regimentation in daily activities with little or no autonomy in the individual ability to choose
• Provides people with disabilities opportunities to interact with people without disabilities	• Lacks privacy or autonomy

Supportive housing, in almost every instance, incorporates all of the key elements of “integrated settings” defined by the courts. In fact, Courts have recognized supportive housing as advancing the right of people with disabilities to live independently in integrated settings.<sup>4</sup> Some supportive housing is occupied primarily by people with disabilities; and this supportive housing is also provided in an integrated setting and does not meet the federal definition of “congregate setting.” It meets all central tenets of integrated settings.

<sup>2</sup> *Olmstead v. L.C.*, 527 U.S. 581 (1999) (*Olmstead*).

<sup>3</sup> 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*).

<sup>4</sup> *Disability Advocates, Inc. v. Paterson*, Civil Number 03-CV-3209 (ED NY 2009).

Additionally, HUD regulations state that housing providers should not offer housing that is separate or different solely based on disability, but HUD also acknowledges that housing offered exclusively or primarily to people with disabilities may be necessary to provide people with disabilities equal access to housing available to people without disabilities.<sup>5</sup> Finally, the Dimensions of Quality CSH adheres to are consistent with and re-enforce the key criteria that the Center for Medicare and Medicaid Services (CMS) has proposed for the Home and Community-Based Services waiver that finances services through Medicaid.

## **#2: Expand Access & Diversity of Housing Opportunities**

In addition to addressing the needs of people with disabilities that have been inappropriately institutionalized, the *Olmstead* decision also ruled that unjustified isolation is discrimination based on disability.<sup>6</sup> Homelessness, especially over long periods, is extremely isolating and excludes the people experiencing it from society. These individuals often cycle through institutionalized settings, such as nursing homes, jails or mental health hospitals, by virtue of their disability and their homelessness. As the *Olmstead* decision recognized, shelters are also inappropriate settings,<sup>7</sup> as people living in shelters are warehoused in congregate settings, sometimes for long periods. Supportive housing allows these individuals to live in apartments integrated into the community. Tenants have the opportunity to connect to the community, family members and friends, and the ability to thrive in the community.

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.<sup>8</sup> Additionally, the policies and the programs funded to implement *Olmstead* ought to expand the overall supply of available, accessible housing, as well as expand variety and choice. Many people with significant barriers to housing stability experience difficulties accessing housing and often have few choices of where to live.

Supportive housing, whether single or scattered site, whether mixed income or low-income 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.<sup>9</sup>
- While community-building is an aspect of some supportive housing services, supportive housing is located near community services, transportation and other housing and is not segregated from the larger community.

## **#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 stated

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<sup>6</sup> *Olmstead* at 593.

<sup>7</sup> *Olmstead* at 600.

<sup>8</sup> 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).

<sup>9</sup> 42 USC § 8002 defines “congregate housing” as rental housing connected to a central kitchen that provides meals to residents.

that a person with a disability should not be required to accept an accommodation if the individual chooses not to do so.<sup>10</sup> 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.
- Service providers engage tenants, asking a 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.<sup>11</sup>

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.

## Looking Ahead

Supportive housing—in a variety of settings—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 live independently and thrive in our communities. As *Olmstead* is implemented in states across the country, CSH looks forward to engaging partners to create supportive housing opportunities for all people with disabilities, expanding their options and choices in the community and helping them integrate and thrive in their community.

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<sup>10</sup> *Olmstead* at 599.

<sup>11</sup> *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).