

## Brief

# Supportive Housing and *Olmstead*: State of the Conversation

*February 2024*

This brief provides essential information and describes issues policymakers and advocates must understand to ensure supportive housing meets the legal requirements related to the *Olmstead* decision.

## About CSH

CSH (Corporation for Supportive Housing) advances affordable and accessible housing aligned with services by advocating for effective policies and funding, equitably investing in communities, and strengthening the supportive housing field. Since our founding in 1991, CSH has been the only national nonprofit intermediary focused solely on increasing the availability of supportive housing. As an intermediary, we do not directly develop or operate housing but center our approach on collaboration with a wide range of people, partners, and sectors.

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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 plays a significant role by creating opportunities for people with disabilities to live in their communities of choice. Supportive housing offers accessible, affordable housing along with person-centered, voluntary, quality support services. As Black Indigenous and People of Color (BIPOC) are over-represented in institutional care, it is crucial to ensure compliance with *Olmstead* and promote choice in the living arrangements of individuals with disabilities. Addressing these aspects is vital for fostering equity in our communities.

Supportive housing is an effective housing model designed to assist people impacted by *Olmstead* who either have been institutionalized or are at risk of institutionalization.<sup>1</sup> This type of housing is situated within the community, offering affordable leases tailored to those with extremely low or no incomes. Tenants can maintain their residency as long as they adhere to the lease terms, mirroring the expectations for non-disabled tenants. Supportive housing also includes comprehensive supportive services.

One resident shared their perspective, describing supportive housing as “proactive, if you ask them for the service, they respond. We asked for gardening they brought it. All you have to do is ask—we wanted to start a community newspaper and it happened.” Supportive housing 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.

Notably, more than 20 states are now incorporating Housing Related Services (HRS) into Medicaid coverage.<sup>i</sup> Supportive housing tenants may grapple with behavioral health challenges, complex physical health needs, and limited social support. However, the holistic approach of supportive housing effectively addresses these challenges.

Several state and federal agencies have released guidance for supportive housing’s role in *Olmstead* compliance:

1. U.S. Department of Housing and Urban Development (HUD) offers guidance to HUD-assisted housing providers, including supportive housing providers, on how they can help state and local endeavors meet *Olmstead* obligations.<sup>ii</sup>
2. The Centers for Medicare and Medicaid Services (CMS) Final Settings Rule defined the appropriate setting for delivering Home and Community Based Services (HCBS).<sup>iii</sup> The CMS settings definition closely aligns with the central tenets of high-quality supportive housing. All states were required to have transition plans in place by March 2023 on how they would comply with the settings rule. Each state has a website with these transition plans.

3. More than 20 state Medicaid programs cover or plan to cover Housing Related Services (HRS) via their state Medicaid plans. States differ regarding populations covered, services offered and delivery systems.<sup>iv</sup> Housing Related Services enable populations impacted by *Olmstead* to smoothly transition into or stay within community, ensuring that supportive services accompany individuals not only during the transition but also throughout their life in the community. As defined by state Medicaid programs, persons can access those services as long as the person meets medically necessary criteria.
4. New support for Money Follows the Person (MFP) programs means that 37 states and three territories are using CMS MFP support to downsize institutions, increase access to HCBS, and rebalance Medicaid's historic reliance on institutional care. In the 2017 Report to Congress, CMS noted that the greatest barrier to success of the program was an "insufficient supply of accessible and affordable housing."<sup>v</sup> As a result, some states are creating new supportive housing opportunities to ensure *Olmstead* compliance.

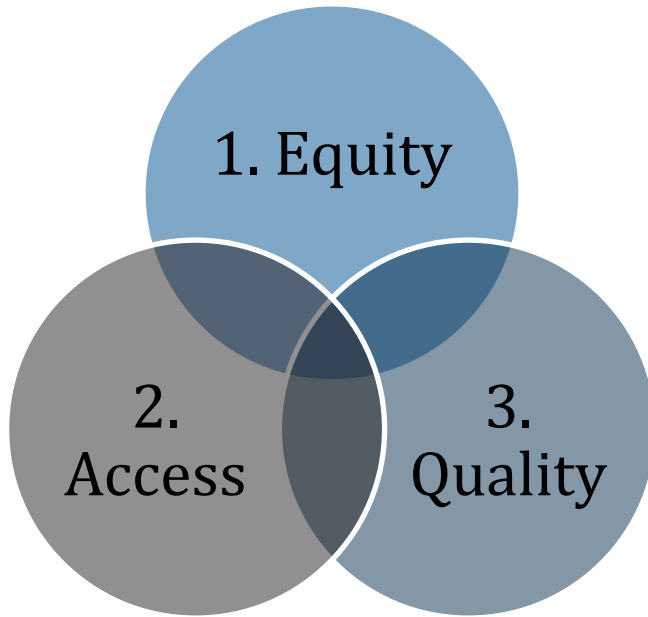
CSH (Corporation for Supportive Housing) is the national leader in the supportive housing sector and is uniquely positioned to assist states, communities, and providers as they explore housing options that ensure people with disabilities can live and thrive in the community. As one supportive housing tenant shared with CSH, "Families are the experts of their families and...then they can reach a level of confidence to exercise their voice with feeling valued, supported and appreciated."

CSH is firmly committed to the central mandate of *Olmstead* — *to provide people with disabilities with the housing and support they need to live in the most integrated setting possible, in their community of choice.*



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## Our Three Guiding Principles



CSH's efforts are shaped by three guiding principles:

1. Building equity in our communities so that all people, particularly those impacted by systemic barriers and regardless of background and disability status, can live independently in the setting of their choice.
2. Expanding access to the range of housing options.
3. Ensuring and promoting high quality supportive services.

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

- **Lack of partnerships between service and housing providers.** Service and housing providers must cultivate partnerships to streamline access to their services. Supportive housing tenants consistently share that community resources are too difficult to access, especially for BIPOC community members.
- **Lack of sufficient funding.** While challenging, there are opportunities for housing and service providers to identify resources to finance housing and services in the community.
- **Long-term planning.** Creation and management of a supportive housing pipeline to grow capacity in communities strategically and over the long term.
- **Uncoordinated systems.** Public sector housing and service systems must integrate to ensure equitable and streamlined access to resources.
- ***Olmstead* compliance reviews.** Compliance reviews include a consideration of community-wide access to affordable and accessible housing. Too many persons with disabilities are not able to access a life in the community, due to the affordable housing crisis and a lack of affordable and accessible community living options.

## Quality Supportive Housing

For more than 30 years, CSH has worked to advance quality supportive housing. Based on expertise and field testing, CSH created a comprehensive set of standards that underline effective and quality supportive housing, known as [Quality Supportive Housing Standards](#).

In addition to publishing these standards, CSH developed the **Supportive Housing Quality Endorsement** program designed as a collaborative process between CSH and housing providers during their pre-development or planning phases. The CSH Supportive Quality Endorsement signifies that the housing development has integrated key elements that will ensure the project achieves tenant and community outcome goals. CSH strongly encourages states and localities to develop quality assurance processes to assess and monitor the quality and outcomes of projects considered supportive housing in their domains.



## Comparing Supportive Housing & Other Options

Unlike residential programs such as group, board or care homes, supportive housing tenants have rights and responsibilities of tenancy, similar to non-disabled community members. The following table highlights some of the differences.

SUPPORTIVE HOUSING TENANTS	GROUP OR BOARD AND CARE RESIDENTS
Sign a lease (or sublease if master-leased) with the landlord; have rights and responsibilities of tenancy under state and local law; are free to come and go, and host guests.	Do not have leases; have no rights under landlord-tenant law; have restrictions on coming and going, and hosting guests.
Have no restrictions on length of tenancy; can remain in apartment if complying with lease terms and desires to remain in apartment; This mirrors the status of those without disabilities.	Do not determine their own length of stay; the home decides the length of stay.
May participate in accessible, usually comprehensive, flexible array of services tailored to the needs of each tenant.	Services availability varies from home to home with a limited choice of services.
Are not required to participate in services as a condition of tenancy, of admission into housing, or of receipt of rental subsidies.	Are required to participate in services or cannot remain in the home or access housing assistance.
Have rent based upon income, in compliance with federal affordability guidelines (30-50% of income).	Must pay rent based upon home's guidelines, not based on federal affordability guidelines.
Resident requests case management services and support from staff and seek health and specialty care services from community providers. Separate property management staff engage residents to resolve issues to prevent eviction.	Residents often lack an advocate for resolving issues that may lead to eviction, as services providers are the same as the staff running the home.
Live in housing that meets federal, state, and local quality standards for safety and security.	May live in substandard conditions.
Usually occupy their own bedroom, bathroom, and kitchen; if sharing common areas, residents choose their roommates.	Have no choice over housemates; shares a bedroom with at least one other (usually multiple) resident.
Protected by Fair Housing Law.	Not necessarily protected by Fair Housing Law.

## Supportive Housing Models

Supportive housing can be structured in a variety of ways to meet the needs and preferences of tenants and the community. Choice is a fundamental value in supportive housing.

Strategies for integrating supportive housing units within a community involve the physical setting and how it is operated. Property owners, managers, and service providers all play key roles in identifying the connections and supports that supportive housing tenants desire to integrate into the community and meet their needs. There are variations on these core supports, but supportive housing generally offers 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.

Supportive housing enables tenants to live interdependently and integrated in the community with the ability to access tailored services on a voluntary basis. Residents can also interact with people of their own choosing. Additionally, each model defined below ensures people have the rights and responsibilities of tenancy, including privacy and the ability to come and go as they please. Other common community integration strategies include universal design and physical accessibility features<sup>vi</sup>, proximity to community resources, involvement in neighborhood initiatives, and use of space in the housing development by local groups or neighborhood events.

The fundamental value in housing access should be choice, with people having the opportunity to choose among multiple housing options. Supportive housing is delivered in a variety of community integrated settings including scattered sites, integrated settings, and single site buildings. Some tenants prefer the flexibility of a scattered site setting, while others may prefer the benefits of a single-site setting, including a sense of community and peer support, availability of services onsite, and newly constructed units.

Many single site supportive housing programs are not disability specific. Instead, residents must meet criteria for low income and a functional need of in-home supportive services to remain living in supportive housing. Supportive housing is a part of a continuum of affordable housing options available in localities and should be considered as one option for addressing the housing needs of people with disabilities. For all persons with disabilities, the primary concern is *the quality of the tenancy experience, 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. People should also have the ability to transition to different models as their needs or preferences change. 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 housing developments all tenants - are people meeting certain criteria, such as functional impairments that require supportive services for community living. CSH believes that these sites are *Olmstead*-compliant, as long as residents choose this housing option and the sites are community integrated. Some, but usually not all, services are provided onsite, and every effort is made to connect to mainstream service systems. Housing is located in the community, providing tenants with access to community services and supports, opportunities to maintain and build relationships with non-disabled individuals and families, and access to employment.

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

To guide state and local efforts to create supportive housing in accordance with the *Olmstead* decision, CSH recommends following a few interrelated principles. 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.<sup>vii</sup> 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:<sup>viii</sup>



## Integrated Settings

- Located in mainstream setting
- Offering community activities of person's choosing with people of individual's choosing
- Allows person's choice in daily activities
- Provides opportunities to interact with people without disabilities

## Restricted Settings

- Located in congregate setting, occupied primarily by people with disabilities
- Restricts or provides for daily activities to activities with people with disabilities
- Regimentation in daily activities with little or no autonomy in the individual ability to choose
- 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.<sup>ix</sup> While some supportive housing buildings are occupied primarily by people with disabilities, these supportive housing providers still meet 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 setting, is not "congregate" housing since tenants have their own apartments with their own bathrooms and kitchens.
- Supportive housing tenants can choose this supportive housing option, as they are required to sign a lease indicating free choice.
- 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 be difficult to understand guidance from federal agencies. For example, HUD regulations explain that housing providers should not offer housing solely based on a specific disability. Yet, HUD acknowledges that housing offered exclusively or primarily to people with disabilities may be necessary to provide equal access to

housing.<sup>1x</sup> HUD must continue working to align federal housing rules with the goals of *Olmstead*. CMS Final Settings Rule establishes 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.

## **#2: Expand Availability and Diversity of Housing Opportunities**

Federal, state, and local policies should advance supportive housing as a means of furthering the right of people with disabilities to live, work and receive services in the greater community, similar to people without disabilities.<sup>xi</sup> The policies and programs funded to implement *Olmstead* should concentrate on expanding the overall supply of affordable housing and the variety and choice of housing options. 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. All of this requires intentional planning and understanding of housing and services needed to scale based on geography and tenant and community choice.

## **#3: Ensure and 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 accommodation if the individual chooses not to do so.

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 their needs, and using motivational interviewing or critical time intervention methods.
- Supportive housing embraces a “Housing First” model in which tenants are not required to meet threshold criteria (i.e., sobriety or a stay in shelter or transitional housing) before being accepted into supportive housing. By embracing “Housing First,” the housing option does not require people who are disabled to overcome more obstacles than people without disabilities to obtain housing.

The key elements of all supportive housing models provide tenants with a choice 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 financing community-based supportive housing opportunities for *Olmstead* populations. This includes both long-term care populations and those experiencing chronic homelessness. States are taking advantage of past or new Money Follows the Person resources and expanding or adapting Medicaid programs to allow housing tenancy supports. Medicaid financing for these services 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 and expand housing capacity.

In addition, partnerships between state Medicaid agencies and housing providers are essential. Medicaid agencies can play a role in supportive housing development, including building design, location, and general operations governing supportive housing. For example, CMS's final settings rule guidance is clear that residents must hold their own lease, have choice of roommates, and have choice of service provider.

If providers wish to use Medicaid services as supportive housing services, these settings will need to be compliant with the Settings Rule. States are currently executing their Transition Plans to ensure compliance with the Settings Rule. To be Settings Rule compliant, housing cannot be dependent upon the service provider or tenants engaging in services. To adhere to CMS guidance, state Medicaid agencies must communicate these requirements to local housing partners so these requirements can be considered when developing projects and budgets. 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. As one tenant stated so clearly, "You are growing. No just stagnating. You have a purpose."

The combination of safe, quality, affordable housing with voluntary supports provides a solid foundation for people to live interdependently and thrive in 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. This also includes supporting states efforts around their Money Follows the Person programs.
- 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.

## References

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- i [Medicaid Waivers Map - CSH](#)
- ii [Providing Integrated, Community-Based Settings for Individuals with Disabilities | HUD.gov / U.S. Department of Housing and Urban Development \(HUD\)](#)
- iii [Home & Community Based Services Final Regulation | Medicaid](#)
- iv <https://www.csh.org/resources/policy-brief-summary-of-state-actions-on-medicaid-housing-services/>
- v [Report to the President and Congress: The Money Follows the Person \(MFP\) Rebalancing Demonstration \(medicaid.gov\)](#)
- vi [Homes for Everyone: Universal Design Principles in Practice, 1996 | HUD USER](#)
- vii [Olmstead v. L. C. :: 527 U.S. 581 \(1999\) :: Justia US Supreme Court Center](#)
- viii [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. | ADA.gov](#)
- ix [Disability Advocates, Inc. v. Paterson, 03-CV-3209 | Casetext Search + Citator](#)
- x [Microsoft Word - HUD Olmstead Guidance 2013 06 04 FINAL](#)
- xi [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. | ADA.gov](#)