Nevada and Olmstead – A Continuous Examination

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Introduction

This report is submitted at the joint request of the Nevada Department of Human Services, Aging and Disability Division and the Olmstead Subcommittee of the Committee on Strategic Planning and Accountability. TRA, Inc. (hereinafter referred to as the Consultant) is the contractor. Tony Records, President of TRA, Inc. performed all of the tasks and activities associated with this report.

On June 22, 1999, the US Supreme Court ruled in the landmark Olmstead v. L.C. decision that unnecessary segregation and institutionalization of people with disabilities is a form of discrimination and prohibited under the Americans with Disabilities Act (ADA). To remedy or avoid such discrimination, states are required to provide integrated community services and supports for people with disabilities who are otherwise entitled to segregated services, when:

1. The state treatment professionals reasonably determine that community placement is appropriate;
2. the person does not oppose such placement; and
3. that placement can be reasonably accommodated, taking into account resources available to the state and the needs of others receiving state disability services. (US Supreme Court (1999) Olmstead v. L.C. (98-536) 527)

This civil rights ruling has resulted in numerous federal initiatives and policy changes nationwide designed to increase services and supports in the community for people with disabilities living in segregated settings, such as institutions and nursing facilities. More recently, there has also been increased

emphasis of ensuring that non-residential supports are also provided in the most integrated setting.

In response to the Olmstead decision, most states, including Nevada, have engaged in developing statewide plans to address the need for community supports for those people with disabilities who are in segregated settings and to prevent future unnecessary segregation. Specifically, Nevada, over a two year period, developed the October 2002 Strategic Plan for People with Disabilities. A broadly representative stakeholder task force of people with disabilities, service providers, advocates, national consultants, state and county officials and state legislators were involved in this planning process. The meeting planners held 45 meetings and training sessions and three public hearings to develop and review the plan. Members and participants initially identified 185 perceived barriers to community services, independence, and inclusion. The Consultant also provided technical assistance and training to the planning group on Olmstead related issues. This plan was approved by the state legislature in 2003. The ten-year timeframe for implementation of this plan expired in 2013.

This report provides a narrow snapshot at how well Nevada's efforts to support people with disabilities in the community over the past nine years comport with the basic principles, as well as the basic requirements of Olmstead and the community integration mandate of the ADA. This report is not to be in anyway considered as legal findings of fact or opinion of law. Rather, it is designed to provide a broad assessment of Nevada's efforts in providing services and supports to people with disabilities in the most integrated setting.
Although a preliminary overview of the findings and recommendations was provided to the Olmstead Subcommittee on April 30, 2015, no prior draft of this report was provided to the Committee or anyone else.

Methodology

In order to obtain information and viewpoints from a variety of sources, the Consultant used several methods toward collecting a broad set of information to formulate the findings and recommendations. These methods included the following:

Stakeholder Interviews. The Consultant made five trips to Nevada (two trips to southern Nevada and three trips to northern Nevada) to facilitate face-to-face interviews with various stakeholders, including people with disabilities, families, advocacy organizations, community service providers, state and county administrators and policy staff, as well as advocacy professionals. These interviews included one-on-one interviews as well as six "town-hall" meeting formats in northern and southern Nevada. There were also observations and interviews with people with disabilities in programs and facilities in southern Nevada.

Document Review. More than 100 various plans, reports and documents were reviewed to obtain a broad analysis of information, to facilitate interview questions and clarify conflicting information.

Internet Research. Extensive internet research from federal agencies, Nevada websites, as well as national and state disability research agencies were conducted to obtain the most up-to-date and accurate information available.

Evaluation Questions. The Consultant approached this review utilizing the following evaluation questions:

1. Is there a statewide effectively working plan to ensure that people with disabilities are being, and will be, served in the most integrated setting?
2. Are policies and procedures in place or being proposed that promote and facilitate services in the most integrated settings?
3. Is Nevada making effective efforts to identify and assess people with

disabilities who may be unnecessarily served in segregated settings?

4. For people who are waiting for community living supports and services, are they receiving these services with reasonable promptness?

5. Are there activities or initiatives occurring to adequately expand community supports and services in order to avert unnecessary segregation?

Acknowledgements

The Consultant experienced full cooperation and support from all individuals and organizations involved in the review. There were also numerous individuals with disabilities, and their families, that took time off of their busy schedules to participate in one-on-one interviews.

There were also numerous advocates and service organizations that participated in this review. In particular, the Consultant would like to thank the following organizations and for their invaluable contributions to this review.

Northern Nevada Independent Living Center

Southern Nevada Independent Living Center

Nevada Partners in Policy Making

Nevada Center for Excellence in Disabilities, UNLV

People First of Nevada (Las Vegas and Reno Chapters)

State of Nevada: Department of Human Services

Aging and Disability Services Division

Mental Health and Developmental Services

Division of Health Care Financing and Policy

Sierra Regional Center

Department of Employment, Training and Rehabilitation

Clark and Washoe County Administration

Governor's Council on Developmental Disabilities

Nevada PEP

Nevada Disability Advocacy and Law Center

Sierra Nevada Quality Care

Southern Nevada Health District

Washoe Legal Services

Life Planning Services of Nevada

Leadership Education Advocacy Designs

Opportunity Village

American Association of Retired Persons, Nevada Chapter

A Nationwide Look at Olmstead

Although the Olmstead decision is nearly 16 years old, the Obama administration has continued to demonstrate heightened attentiveness to monitoring and enforcement of the ADA integration mandate and how well states offer services to people with disabilities. In 2009 the President marked the 10th anniversary of Olmstead by launching "The Year of Community Living," which included several initiatives through many federal agencies and departments over a five year period. These initiatives were designed to enhance interagency coordination and provide structures to better understand the needs of people with disabilities.

In addition, the US Department of Justice (DOJ) has demonstrated a renewed commitment to ADA and Olmstead enforcement. DOJ has intervened on numerous federal cases involving people with disabilities to ensure that Olmstead compliance is given high priority. DOJ has also transformed the manner in which it is enforcing the Civil Rights of Institutionalized Persons Act (CRIPA) by placing high priority on questioning the appropriateness of the presence of people with disabilities in publicly operated institutions. DOJ has also demonstrated that they will seek remedies through CRIPA by making Olmstead claims only, and not being necessarily dependent upon claims about

conditions of the institution. DOJ has taken a much more aggressive attitude in enforcing the ADA and Olmstead decision as a matter of civil rights. In the past two years, for example, DOJ has entered into settlement agreements with Oregon and Rhode Island to ensure that these states are providing work programs and daytime supports in the most integrated settings.

Another example of the new federal attitude and perspective is the recently (2014) promulgated rulemaking by the US Centers for Medicare and Medicaid Services (CMS) regarding its Home and Community-Based Services (HCBS) program. These new rules are designed to ensure that individuals receiving long-term services and supports through home and community-based service (HCBS) programs under the 1915(c), 1915(i) and 1915(k) Medicaid authorities have full access to benefits of community living and the opportunity to receive services in the most integrated setting appropriate. These new requirements also establish an outcome-oriented definition that focuses on the nature and quality of individuals' experiences. The requirements maximize opportunities for individuals to have access to the benefits of community living and the opportunity to receive services in the most integrated setting.

Despite these efforts, however, states across the country have continued to struggle mightily in their attempts to keep up with the rapidly growing need for community integrated supports and services. Collective lists of people nationally waiting for services are measured in the hundreds of thousands. Many states, including Nevada, are facing unprecedented budget problems and deficits at levels never experienced before. Competition for any available funding is fierce. In some states, current services are being reduced. In others, new services are only made available to people who are in a crisis situation. Sadly, some states are now admitting people into institutions that are appropriate for community services because "that's where the money is." There are, however, many

pockets of notable progress across the country.

What does the Olmstead decision mean for states?

Olmstead is often misunderstood by the public to have many different meanings. Some see Olmstead as an entitlement to community services. Others see it as a Medicaid requirement for states to maintain a "continuum" of residential services and supports. In most states, however, the impetus of Olmstead has resulted in: 1) fewer people with disabilities being admitted to public and private institutions. 2) substantial growth in community residential and non-residential services and supports and 3) reductions in the number of people with disabilities in public and private institutions. Many of these changes are the direct result of statewide collaborative planning. In some instances, these changes were the direct result of litigation, or the threat of litigation.

The Olmstead decision made it quite clear that, under Title II of the ADA, states have an affirmative responsibility to operate programs and provide services in a manner that ensures that people with disabilities receive services in the most integrated setting appropriate to their needs. The Olmstead decision established this integration premise as a minimum standard and benchmark for publicly supported programs. The Olmstead decision also established a firmly grounded expectation that states have a clear and unambiguous responsibility to assist people with disabilities in transitioning from segregated settings to community supports.

The Consultant has visited twenty-three states and reviewed their activities pursuant to Olmstead. Although it is clear that much has been accomplished as a result of these activities, it is also clear that no state has completely fulfilled its obligations under Olmstead, to serve people with disabilities in the most integrated setting in accordance with individual need. In many instances, states are working diligently to serve some segments of the disabilities groups while

almost ignoring others. In other states, funding problems and state budget deficits have compelled them to curtail previous planning actions due to lack of resources.

Over the past 15 years, federal agencies have provided states with several new funding mechanisms and tools to assist people with disabilities in the community. In order to utilize these tools, however, the state legislative branch, as well as the executive leadership within the state, must work together to embrace the fundamental principles and commitment to community that Olmstead requires.

Overall Findings

Since the beginning of the development of its Strategic Plan for People with Disabilities fifteen years ago, in 2000, it is the opinion of the Consultant that Nevada has been one of the leading states in the country in its commitment to Olmstead. It is important to note here that the development of this plan is not the primary reason for this opinion. More important, was the continuous diligence of the state to implement the plan and, when necessary and appropriate, to modify the plan to achieve its primary goals and objectives. Throughout the full ten years of plan life, close attention was given to implementation strategies and achievement of its objectives. The Consultant believes that this is exactly what the US Supreme Court intended when they indicated compliance might be demonstrated through the development of a "comprehensively working plan to increase community-based services and reduce institutionalization, and by ensuring that waiting lists for services move at a reasonable pace.2"

Like many states, Nevada found many barriers to implementation of it plans and promoting integration of people with disabilities. Funding constraints and biases, regulatory barriers, local political considerations, and disparities between geographic regions have often interfered with solid plans and intentions. These

barriers notwithstanding, however, Nevada has indeed taken the Olmstead mandate seriously. It is clear that most of the goals and action plans led to the reduction of unnecessary institutionalization and maintaining many people in community settings.

Paradoxically, Nevada historically allocated few new resources for people with disabilities. One positive result of this history is the fact that significant resources were not allocated to statewide institutional care as had been the case in many other states. As a result, Nevada did not need to "undo" a large system of institutional care. On the negative side, this situation also required Nevada to provide new funding and structural resources to support the much-needed growth in community service. The strategy of shifting resources from institution to community, used by many states, was not a viable one for Nevada. Below are more specific findings of strengths and areas of concern as well as corresponding recommendations designed to address the needs to more fully comply with the Olmstead requirements. (2 US Supreme Court (1999) Olmstead v. L.C. (98-536) 527 U.S. 581)

Strengths in Nevada

With an overall population of 2,839.098 people, Nevada is the lowest (50th) of federal per capita spending of any other state at $7,580. Yet, despite this low spending rate, Nevada is among the leaders in the country in minimizing unnecessary segregation.

With regard to people with developmental disabilities for example, Nevada has continued to reduce the number of people in institutional settings. Between 1988 to 2014, Nevada reduced the number of people in facilities larger than 16 people by more than 70%, which is a higher-than-average rate nationwide. Today, Nevada has fewer than 50 people with developmental disabilities remaining in

one remaining state facility. Conversely, the number of people with developmental disabilities living at home, or in small community homes, increased by more than 700% during the same period. Nevada is heading in the direction to be an institution-free state for people with developmental disabilities. There are currently only 13 states, most of which have a smaller population base than Nevada, in that category currently.

For adults with mental illness, Nevada also has among the nation's lowest number of people in public long term psychiatric hospitals and other large institutions. The average length of stay at state hospitals remains among the lowest in the nation. There are also continued efforts to reduce the number of long term hospital beds statewide.

For people in nursing facilities, Nevada has a proactive program to identify people who want to live in the community, as well as a support system to assist them in moving to the community. Through a collaborative effort between the Centers for Independent Living and the FOCIS program, hundreds of people with disabilities statewide have transitioned from nursing facilities to the community over the past ten years. (3. Resident estimated populations as of July 1, 2014, US Census Bureau

4. US Census Bureau, Consolidated Federal Funds Report for Fiscal Year 2014.

5. Lakin, K.C., Larson, S.A., Salmi and Scott, Residential services for persons with developmental disabilities: Status and trends through 2012, University of Minnesota, 2014)

The positive indicators listed above are attributable to several factors. First and foremost has been the planning activities developed over the past 15 years that focused heavily on increasing community capacity and the reduction of the size of institutional settings. This success is not just attributable to the planning documents themselves, but, most importantly, to the commitment of the state to implement the plan and, in many instances revising the plan to address specific needs as they change. The wisdom of the planners to continue with the Strategic Planning Accountability Committee (now the Nevada Commission on

Services for Persons with Disabilities) has made a difference, which is unmatched in most state Olmstead plans and plan implementation.

Areas of Concern

Statewide Understanding of Olmstead.

While some of the stakeholders demonstrated a clear understanding of Olmstead during the review, many did not. Olmstead remains to be one of the most misunderstood US Supreme Court decisions and has often been used to support different social agendas. In interviews with various stakeholders across the state, the understanding of Olmstead and its requirements were varied and inconsistent. It is important for state policy makers, as well as advocacy organizations, to have a clear understanding of Olmstead and the integration mandate.

Also, it is clear that public human services agencies conduct informal self evaluations of Olmstead compliance, but most do not. It is important for the decision makers to be proactive on an ongoing self-assessment to ensure that the ADA integration requirements are being followed, and when they are not, take steps to remediate the situation.

People with Disabilities Living in Institutions in Nevada

As stated earlier, Nevada is among the states with the lowest per capita number of people with disabilities in long-term public institutions. There are still many Nevadans with disabilities, however, who may be unnecessarily in large private institutions. These include private nursing facilities and out-of-state placements.

Primary Barriers to Increasing Community Capacity

The Consultant found the primary barriers to expansion of community capacity for people with disabilities to include deficiencies, or lack of adequate quantity in at least the following areas:

1. Lack of Available and Accessible Transportation - Transportation was, by far, the number one concern expressed by people with disabilities and their families as a barrier to accessing the community. This sentiment was expressed across the state and in urban, suburban, and rural settings. Reported problems included non-accessible vehicles, limited bus routes, Para-transit schedule limitations and overall unreliable bus services.

2. Lack of Affordable and Accessible Housing - A large number of adults with disabilities expressed the need to expand affordable housing opportunities. In some instances, funding for services and supports was available, but the lack of housing resulted in the individual staying in a nursing facility or another in appropriate setting.

3. Inadequate Employment Supports and Opportunities - Among young adults with disabilities, particularly those who recently left the school system, this was a widely reported problem. This includes the need for supported employment funding, as well as job training and job development supports.

4. Lack of Community Behavioral Health/Psychiatric Supports Capacity This problem was reported as particularly acute in rural and frontier regions, but was listed as a concern statewide.

5. Growing Waiting Lists that Move Slowly - Many people reported that funding for community supports was made available, but there was no service provider who was willing to support the individual.

6. Insufficient Person-Centered Planning Supports - There was broad concern that there is a lack of infrastructure and support to implement the person-centered planning that is now required by Federal rules.

7. Shortage of Skilled Staff and Clinicians - Families reported an insufficient supply of Home health aides, personal support professionals, nurses and physical therapists, even when funding for these services is available. Reportedly, this shortage of help is particularly problematic.

8. Lack Community Dental Supports - This problem was reported statewide and focused on the unwillingness of community dentists to accept Medicaid and, in some instances, treat a person with severe disabilities.

9. Shortage Sign Language Interpreters and other Supports for People who are Deaf or Hard of Hearing - Many deaf adults simply cannot access the community and are significantly isolated without the needed communication and other ancillary supports.

10. Lack of Specialized Services to Children and Adults with Autism - Many families of children and adults with Autism expressed frustration with how few specialized services are available for this rapidly growing population.

11. Insufficient Services for People who are Blind or Visually Impaired - These services include orientation and mobility training, assistive technology, transportation, life skills and employment.

12. Proposed possible budget cuts! The Consultant has reviewed several documents describing significant, and, in some instances, devastating budget cuts for the upcoming biennial cycle. While it is impossible to measure the impact of these budget cuts until they are finalized, it is clear that, if enacted, these budget cuts will have a significant negative impact on providing adequate supports for people with disabilities in the community.

Since the specific proposed budget cuts have not yet been finalized it is not possible that any specific analysis can be conducted at this time. The Consultant recommends, therefore, that the Olmstead Subcommittee keep a vigilant watch on the state budget, and its implications, and maintain this review as part of the ongoing planning process. The likelihood of any major positive change in the budget crisis over the next several years is small. It appears that the Committee has already given

the budget cuts a high priority. The Consultant recommends that its impact on compliance with Olmstead and the ADA be considered on an ongoing basis.

Recommendations

As stated earlier, Nevada has maintained a statewide commitment to follow the basic tenants of the ADA and Olmstead decision for the past ten years. As a result, the overall picture of residential supports in the most integrated setting is positive, especially in comparison to the rest of the country. The state of Nevada should be congratulated for its accomplishments in this regard.

That does not mean however, that 100% compliance has been achieved. There is still much to be done. The following recommendations are offered to support continuous improvement in offering services and supports in the most integrated setting consistent with the ADA and Olmstead.

Recommendation #1: Nevada should develop at 10-year community integration plan for Nevadans with disabilities and those with age-related conditions. The plan should include:

- Gubernatorial and Legislative Support
- Statewide Comprehensive Stakeholder Involvement
- Measurable Strategies and Outcomes
- Long-Term Budget Assumptions and Projections

Recommendation #2: Nevada public agencies should establish an internal mechanism to evaluate ongoing compliance with Olmstead and the ADA integration mandate.

Recommendation #3: Nevada should develop policies and oversight mechanisms for waiting lists prioritization and corresponding reasonable pace standards.

Recommendation #4: Nevada should develop mechanisms to directly engage consumers and families in planning and designing supports.

Recommendation #5: Nevada should conduct a specialized needs assessment

in rural and frontier areas in order to identify services gaps in these areas, and develop a plan to address these gaps.