

Chapter 4. Promoting Full Access to Community Life

Swift Implementation of the *Olmstead* Decision

The Supreme Court's landmark decision in *Olmstead v. L.C.*, 527 U.S. 581 (1999), affirmed the right of individuals with disabilities to live in the community rather than in institutions whenever possible. The President recognizes, however, that making the promise of full integration a reality for people with disabilities means not only changing existing practices that favor institutionalization over community-based treatment, but also providing the affordable housing, transportation, and access to state and local government programs and activities that make community life possible.

As part of his promise in the New Freedom Initiative to swiftly implement the *Olmstead* decision, the President issued Executive Order 13217, which requires coordination among numerous Federal agencies that administer programs affecting access to the community for people with disabilities. On March 25, 2002, nine Federal agencies submitted to the President a report entitled *Delivering on the Promise*. The report summarizes agency activities that support *Olmstead's* goal of integration, identifies barriers that exist within programs to full implementation of *Olmstead*, and proposes more than 400 solutions aimed at removing these barriers. Many of the accomplishments that follow are direct consequences of Executive Order 13217 and the recommendations made in *Delivering on the Promise*.

Accomplishments

- In October 2002, Health and Human Services Secretary Tommy Thompson established the Office on Disability to address the coordination of disability policies and programs across HHS agencies. It also oversees the implementation of the New Freedom Initiative within HHS, enhances Federal initiatives among individuals with disabilities, and coordinates interagency and interdepartmental actions.
- The Department of Health and Human Services' Centers for Medicare and Medicaid Services has awarded approximately \$160 million since 2001 to states and other eligible entities under the Real Choice Systems Change Grants for Community Living to enable individuals with disabilities to reside in their homes and participate fully in community life. The President secured an additional \$40 million for this program in FY 2004.
- In FY 2003, the Department of Health and Human Services' Centers for Medicare and Medicaid Services funded a \$6 million demonstration grant to improve the direct service community workforce, which enables state and community-based providers to test new strategies for recruiting, training, and retaining direct service workers. In FY 2004, \$6 million will be provided for this program.
- The Department of Health and Human Services Administration on Aging continues to support family caregivers through the National Family Caregiver Support Project. Established in 2001, this program has provided over \$400 million to states and tribes to develop multi-faceted systems of support to extend the caregiving efforts of families, friends, and neighbors.

- The Departments of Justice and Health and Human Services have entered into an agreement under which HHS refers *Olmstead*-related complaints to DOJ's ADA mediation program. To date, several complaints have been successfully mediated.
- The Department of Justice evaluates residential placements in each new investigation under the Civil Rights of Institutionalized Persons Act (CRIPA) of healthcare facilities in light of the ADA's requirement that services be provided to residents in the most integrated setting appropriate to their needs. The Department has issued letters of findings citing violations of *Olmstead* involving four facilities for persons with developmental disabilities, six nursing homes, and the children's unit of a psychiatric hospital.
- The Department of Justice has worked with officials in several states to help states and other jurisdictions provide community-based services to persons who are currently residing in publicly-operated institutions.
- In September 2003, the Department of Labor's Office of Disability Employment Policy and Center for Faith-Based and Community Initiatives awarded \$500,000 to eight recipients to provide home modifications as a means of expanding the community integration of individuals with disabilities, particularly those seeking employment. The grant addresses a frequently cited barrier to participation in work and community -- the lack of affordable home modifications, such as ramps, widened doorways, lowered countertops, and cabinetry accessible to those who use wheelchairs.

Next Steps

- In the FY 2005 budget, the President has proposed the following to establish demonstration projects aimed at removing barriers to community-based treatment and services for individuals with disabilities
 - \$1.75 billion through FY 2009 for the "Money Follows the Individual Rebalancing Demonstration," with \$350 million targeted for FY 2005. This demonstration would assist states in re-balancing long-term care systems to support cost-effective choices between institutional and community options, including financing Medicaid services for individuals who move from institutions to the community.
 - \$327 million through FY 2009, with \$18 million for FY 2005, to fund three demonstrations that promote home and community-based care alternatives. Two of the demonstrations provide respite care services for caregivers of adults with disabilities or long-term illness and children with substantial disabilities. Another demonstration provides community-based care alternatives for children who are currently residing in psychiatric residential treatment facilities.
 - \$102 million through FY 2009, with \$17 million in FY 2005, to continue Medicaid eligibility for spouses of individuals with disabilities who return to work. Under current law, individuals with disabilities might be discouraged from returning to work because the income they earn could jeopardize their spouse's Medicaid eligibility. This proposal would extend to the spouse the same Medicaid coverage protection now offered to the worker with a disability.
 - \$40 million to continue the Real Systems Change Grants Program administered by the Department of Health and Human Services' Centers for Medicare and Medicaid Services.

- Nearly \$3 million to continue the demonstration program being administered by the Department of Health and Human Services' Centers for Medicare and Medicaid Services to promote the recruiting, training, and retention of direct service workers.

Promoting Homeownership for People with Disabilities

For many, homeownership is an important part of what it means to achieve the “American Dream.” The New Freedom Initiative is committed to making the American Dream of homeownership a reality for more people with disabilities.

Accomplishments

- The Department of Housing and Urban Development is advancing homeownership for persons with disabilities with its voucher homeownership program. Currently, thirty percent of families on the voucher homeownership program include a person with disabilities.
- On November 5, 2003, the Office on Disability within the Department of Health and Human Services co-sponsored with the Department of Housing and Urban Development, Fannie Mae, the Center for Medicare and Medicaid Services, and the National Institutes on Health, the Symposium on Homeownership for Persons with Disabilities. The Symposium provided best practices and lessons learned from states that have effectively provided homeownership to individuals with disabilities. Presented as a live webcast, the symposium can be accessed for one year from the Office on Disability website, www.hhs.gov/od/. The Office on Disability, along with the homeownership co-sponsors, is continuing to provide information forums and “think tank” meetings targeted to national constituent organizations to help increase the availability of affordable housing for individuals with disabilities.

Next Steps

- Building on recent success, the Office on Disability, the Department of Housing and Urban Development, the Centers for Medicare and Medicaid Services, and the National Institutes on Health will sponsor a second webcast on homeownership in June 2004, as part of Homeownership Month.

Expanding Rental Housing Options

Individuals with disabilities seeking access to rental housing face a number of challenges – from physically inaccessible units and common areas to attitudinal barriers. The New Freedom Initiative is committed to removing these barriers, and much has been accomplished through a combination of outreach, technical assistance, and enforcement of the Fair Housing Act.

Accomplishments

- The Department of Housing and Urban Development will complete a study in the fall of 2004, on the nature and extent of discrimination that persons with disabilities face when they seek to rent housing. It will help the Department address such discrimination.
- The Departments of Housing and Urban Development, Health and Human Services, Veterans Affairs, and Labor have sponsored “Policy Academies,” a collaborative initiative that provides assistance to help state and local governments access mainstream supportive services for homeless people. The Policy Academy panels provide broad representation from many organizations, including advocates for persons with disabilities. Five academies have been conducted and two more are planned.
- The Department of Housing and Urban Development’s Fair Housing Accessibility FIRST (FIRST) initiative is a major education and outreach program providing training and technical guidance on a national scale to assist architects and builders design and construct apartments and condominiums with legally required accessibility features. In FY 2003, FIRST trained over 1,500 housing professionals in 26 training events nationwide and responded to over 800 inquiries for technical guidance. In FY 2004, FIRST will continue to provide education and outreach through trainings, the FIRST website (www.fairhousingfirst.org), and a toll free technical guidance number (1-888-341-7781 V/TTY).
- In FY 2003, the Department of Housing and Urban Development provided \$30 million in grants to provide Service Coordinators in Federally supported housing for low income elderly and people with disabilities. Service Coordinators work with residents to locate and access health care, meals, and other critical support services. These grants help residents to obtain supportive services that enable the elderly and people with disabilities to remain in community based housing, rather than be forced to move to nursing homes, segregated housing for persons with disabilities, or institutions.
- In collaboration with the Departments of Health and Human Services and Veterans Affairs, the Department of Housing and Urban Development has developed a \$35 million initiative to jointly fund eleven grants for three years to provide services and permanent housing to people with disabilities who are chronically homeless.
- The Department of Justice and the Department of Housing and Urban Development collaborated to provide training on the accessibility requirements of section 504 of the Rehabilitation Act of 1973 to public housing authorities across the country.
- During the past two years, the Department of Justice filed fifteen lawsuits under the Fair Housing Act against developers, architects, and civil engineers who designed and constructed inaccessible multi-family housing. Also during this time, the Department entered into fifteen consent decrees resolving FHA enforcement actions filed to require recently constructed apartments and condominiums to be made accessible to persons with disabilities.

Access to Transportation

Access to transportation is absolutely critical for achieving full integration of individuals with disabilities into the community. People with disabilities need reliable transportation so that they can get and keep jobs, access medical care, and participate in all of the activities a community has to offer.

President Bush requested \$145 million in new funding for the Department of Transportation in FY 2002 and FY 2003 to promote innovative programs that would remove transportation barriers that individuals with disabilities continue to face. Congress did not appropriate these funds. In May 2003, the Administration proposed a six-year reauthorization of surface transportation programs in the Safe, Accountable, Flexible, and Efficient Transportation Equity Act (SAFETEA), which included \$918 million from FY 2004 through FY 2009 to fund a New Freedom Initiative formula grants program. Under the program, states would allocate their Federal funding competitively to state or local public authorities, non-profits, or private operators of public transportation service to provide new transportation services and transportation alternatives beyond those required by the ADA for individuals with disabilities. Congress did not appropriate the \$145 million requested under SAFETEA for FY 2004.

Even without this requested funding, the Department of Transportation, often with Federal and non-governmental partners, has undertaken a number of activities that support the New Freedom Initiative's goal of providing better transportation options for people with disabilities.

Accomplishments

- The National Highway Traffic Safety Administration (NHTSA) recently issued a Final Rule, effective December 2005, regulating platform lifts and their installation in new motor vehicles. These lifts are designed to carry standing passengers, who may be aided by canes or walkers, as well as persons seated in wheelchairs, scooters, and other mobility aids, into and out of motor vehicles.
- In June 2003, the Department of Transportation's Federal Railroad Administration (FRA) and the Access Board participated in a workshop on research needs related to rail crossings that can pose dangers for individuals with disabilities, particularly those who use mobility devices.
- The Department of Transportation's Bureau of Transportation Statistics has prepared a report, entitled "Freedom to Travel," based on a survey of the views of people with disabilities about transportation. This is the first instance of such a specific national survey. The data compiled in this report will assist communities across the nation in designing paratransit and other services for transportation of people with disabilities and people who are homebound. The report can be viewed at http://www.bts.gov/publications/freedom_to_travel/.
- Since the inception of its Job Access and Reverse Commute Program, the Department of Transportation has funded over 200 state and local grantees in 44 states to provide new employment transportation services for low-income persons, including persons with disabilities. This program funds additional transportation services to jobs and job training sites and addresses unmet transportation needs of persons with disabilities.

- During FY 2003, the Federal Transit Administration's Office of Civil Rights conducted paratransit assessments at seven transit agencies, as well as compliance assessments of 80 key stations and new stations at fourteen rail transit systems nationwide. In addition, FTA conducted four pilot assessments to determine how to best integrate the construction requirements under the ADA Accessibility Guidelines into the Project Management Oversight (PMO) process for major transit investments, to ensure that elements that affect the design and construction of rail transit stations are identified as early in the project development process as possible. These pilot assessments took place in Baltimore, Chicago, Minneapolis, and San Francisco.
- The "United We Ride" program is a five-part initiative to assist states and communities in coordinating human service transportation. The Departments of Transportation, Health and Human Services, Labor, and Education are working together to remove barriers at the Federal level, and to provide assessment tools, technical assistance, peer-to-peer sharing opportunities, and modest grants to help states and communities deliver appropriate and cost-effective transportation services for all human service recipients.
- The Federal Transit Administration, the Center for Independent Living, Inc., the Disability Rights Education and Defense Fund (DREDF), and Easter Seals Project ACTION held a series of six Regional Dialogues on Accessible Transportation throughout 2003. These Regional Dialogues are a follow-up to last year's two highly successful National Dialogues on Accessible Transportation.
- The Community-Based Transportation Planning Grant program, a coordinated effort between the Federal Transit Administration, the Community Transportation Association of America, and Easter Seals Project ACTION, will help selected communities create a partnership of community stakeholders who will develop community-based plans to expand transportation services for persons with disabilities.
- The Federal Aviation Administration will issue to primary airports an ADA self-assessment package, which will provide a checklist and other documentation to allow these entities to assess their compliance with the ADA Accessibility Guidelines.
- In September 2003, the Department of Transportation awarded a two-year contract to the Key Bridge Foundation to support the Department's mission of ensuring nondiscrimination in air transportation. The Key Bridge Foundation will develop materials outlining Federal requirements that prohibit discrimination in air transportation, including an easy-to-understand technical assistance manual and model training program describing the Air Carrier Access Act and related rules.

President's New Freedom Commission on Mental Health

On April 29, 2002, the President issued Executive Order 13263 establishing the New Freedom Commission on Mental Health. Composed of fifteen members representing providers, payers, administrators, and consumers of mental health services, as well as family members of consumers, and seven ex officio members, the Commission was charged with conducting "a comprehensive study of the United States mental health service delivery system, including public and private sector providers," and was directed to advise the President on methods of improving the system. In July 2003, the Commission issued its recommendations in a final report entitled *Achieving the Promise, Transforming Mental Health Care in America*. See <http://www.mentalhealthcommission.gov/reports/reports.htm>.

The report identifies barriers to care within the mental health system and examples of community-based care models that have proven successful in coordinating and providing treatment services.

The Commission concluded that the mental health service delivery system in the United States must be substantively transformed. In the transformed system: 1) Americans understand that mental health is essential to overall health; 2) mental health care is consumer and family-driven; 3) disparities in mental health services are eliminated; 4) early mental health screening, assessment, and referral to services are common practice; 5) excellent mental health services are delivered and research is accelerated; and 6) technology is used to access mental health care and information.

The Commission also concluded that the roles played by states must be central to the transformation process, but states must rely heavily upon the involvement of consumers in research, planning, and evaluation activities. At the same time, the coordinated efforts of more than 25 Federal agencies must undergird and reinforce the states' processes. Every adult with a serious mental illness or child with a serious emotional disturbance must have an individualized plan of care coordinating services among programs and across agencies. Every state must have a comprehensive mental health plan, the ownership of which is shared by all state agencies impacting the care of persons with serious mental illnesses.

Next Steps

- The Substance Abuse and Mental Health Services Administration (SAMHSA), is working with other Federal partners and outside stakeholders to develop a National Action Agenda designed to respond to the recommendations in *Achieving the Promise*. SAMHSA also plans to make technical assistance grants available to states to help them implement recommendations from the Commission.
- The Department of Health and Human Services' Centers for Medicare and Medicaid Services will release a technical assistance guide on six evidence-based practices (family psycho-education, integrated care of co-occurring disorders, personal illness management, supported employment, assertive community treatment, and medication management). The guide will clarify what services are billable under Medicaid.
- The Centers for Medicare and Medicaid Services are working with the Substance Abuse and Mental Health Services Administration and constituent representatives to configure how a consumer self-direction initiative can address persons with mental disorders, as part of a series of planning meetings resulting in action steps.
- In 2004, the Office of the Assistant Secretary for Planning and Evaluation within the Department of Health and Human Services will complete a handbook that describes and clarifies Medicaid rules and regulations governing application of Medicaid options for people with mental illness.

Improving Access

Full access to community life means access to the political process, to civic organizations, to the range of programs and activities offered by state and local governments, and to places of public accommodation. The President fully supports efforts to achieve voluntary compliance with and,

where necessary, to enforce laws such as Titles II and III of the Americans with Disabilities Act. The President also signed the Help America Vote Act (HAVA) into law on October 29, 2002 to improve access to voting process for all Americans, including individuals with disabilities.

Accomplishments

- The Solicitor General intervened in the Supreme Court case of *Tennessee v. Lane*, to defend the constitutionality of Title II of the Americans with Disabilities Act, which prohibits state and local government entities from discriminating against qualified individuals with disabilities. The Solicitor General argued that Congress acted properly when it made states subject to private suits for monetary relief for violations of Title II. A decision in the case is expected in the spring or early summer of 2004.
- The Department of Justice has continued to carry out “Project Civic Access” with great success and is now expanding its efforts. Project Civic Access is a national effort to ensure that towns and cities across America are fully accessible to people with disabilities. So far, the Department of Justice has reached 36 agreements with cities and towns across the country, requiring them to ensure that their public facilities, such as convention halls, arenas, municipal facilities, courthouses, libraries, polling places, and parks, are accessible to people with disabilities.
- In 2003, the Department of Justice achieved favorable action for persons with disabilities in well over 350 cases and matters, through formal settlements, informal resolutions of complaints, successful mediations, consent decrees, and favorable ADA court decisions.
- The Department of Health and Human Services awarded \$13 million under the Help America Vote Act to states to make polling places accessible for individuals with disabilities, to ensure privacy and independence of voting, to train poll workers to meet the needs of individuals with disabilities, and to provide information to individuals with disabilities about their rights of accessibility. The Department also awarded \$2 million to provide advocacy services to individuals with disabilities on issues related to registering to vote, casting a vote, and accessing voting places.

Next Steps

- The Department of Justice will continue to carry out phase two of Project Civic Access, which involves additional communities in all 50 States and focuses on an expanded range of issues, including accessibility of sidewalks, voting technology, disaster response planning, and government websites.
- In addition to the employment priorities identified in Chapter 3, the Department of Justice will focus litigation on matters that are fundamental to people with disabilities, including transportation and travel, consumer access to the free market, polling place access, access to core activities of community living, and *Olmstead* implementation.

This report was produced by the White House Domestic Policy Council.