

To: Department of Community Affairs
From: Georgia Supportive Housing Association (GSHA)
Re: Olmstead Integration Mandate
Date: 8/19/22

Introduction

GSHA is a 501(c)(3) organization dedicated to the creation and preservation of quality supportive housing in Georgia for vulnerable individuals and families.

This memo provides background information on the landmark *Olmstead* decision of the Supreme Court, as well as the agreements and litigation in Georgia that followed *Olmstead*, seeking compliance with its tenets. It clarifies federal and state limitations on density of permanent supportive housing (PSH) units for individuals with disabilities experiencing homelessness and for individuals experiencing homelessness. This memo seeks to identify current challenges in the creation of supportive housing units and provides recommendations to increase the supply of needed PSH units.

History of the Olmstead Integration Mandate

In 1999 the Supreme Court of the United States decided in *Olmstead v. L.C.* that two women confined for psychiatric treatment at Georgia Regional Hospital in Atlanta should receive placement in community care, finding that unjustified segregation of persons with disabilities constitutes discrimination in violation of Title II of the Americans with Disabilities Act.¹

The Court held that public entities must provide community-based services to persons with disabilities when (1) such services are appropriate; (2) the affected persons do not oppose community-based treatment; and (3) community-based services can be reasonably accommodated, taking into account the resources available to the public entity and the needs of others who are receiving disability services from the entity. The decision held that "confinement in an institution severely diminishes the everyday life activities of individuals, including family relations, social contacts, work options, economic independence, educational advancement, and cultural enrichment."

This landmark decision held that certain people with disabilities currently living in "more restrictive settings," such as public institutions and nursing homes, as well as people at risk of living in such settings, should be offered housing and community-based supports that are consistent with the integration mandate of the Americans with Disabilities Act (ADA). The *Olmstead* decision recommended that states develop "comprehensive, effectively working plans" to ensure community integration with the provision of permanent, affordable, accessible, and integrated housing.

¹ *Olmstead v. L.C.* (98-536) 527 U.S. 581 (1999) <https://www.law.cornell.edu/supct/html/98-536.ZS.html>

In 2008, Georgia entered into a Voluntary Compliance Agreement with the US Department of Health and Human Services Office of Civil Rights (HHR OCR) regarding people confined in institutions. This was spurred by a 2001 HHS OCR complaint filed by the Atlanta Legal Aid Society, Georgia Advocacy Office, the Disability Law and Policy Center of Georgia, and Georgia Legal Services Program. The Complaint alleged that Georgia violated the ADA by failing to treat qualified individuals with mental retardation, developmental disabilities, and mental health disabilities in the most integrated setting appropriate to their needs.

In 2009, on the tenth anniversary of the Supreme Court's decision in *Olmstead*, President Obama launched "The Year of Community Living" and directed federal agencies to make enforcement of *Olmstead* a top priority.² A federal court case litigated by the Department of Justice (DOJ) against the State of Georgia ensued. A Settlement Agreement was signed in 2010 to expand community alternatives to institutionalization for individuals with disabilities. In addition to many other requirements, the settlement agreement requires Georgia to have the capacity to provide Supported Housing to any of the approximately 9,000 persons with severe and persistent mental illness (SPMI) in the "Target Population" who need such support.³ The Target Population includes subgroups of people with SPMI, including: (1) those currently being served in the State Hospitals; (2) those who are frequently readmitted to the State Hospitals; (3) those who are frequently seen in Emergency Rooms; (4) those who are chronically homeless; and (5) those who are being released from jails or prisons.⁴

Under the terms of the Settlement Agreement, by June 30, 2015, the State was required to have the capacity to provide Supported Housing to any of the individuals in the Target Population who need such support. In Provision 36, Supported Housing is defined as "assistance, including psychosocial supports, provided to persons with SPMI to assist them in attaining and maintaining safe and affordable housing and support their integration into the community. Supported Housing includes integrated permanent housing with tenancy rights, linked with flexible community-based services that are available to consumers when they need them, but are not mandated as a condition of tenancy. Supported Housing is available to anyone in the Target Population, even if he or she is not receiving services through DBHDD [Georgia Department of Behavioral Health and Developmental Disabilities]."⁵

An Extension Agreement between Georgia and DOJ was signed in 2016 and the case remains open in significant part because of the State's failure to meet the obligations of providing supportive housing to the target population. As of March 2022, the State serves 1,853 recipients of the Georgia Housing Voucher Program.⁶

² 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) https://www.ada.gov/olmstead/q&a_olmstead.htm#_ftnref11

³ United States of America v. State of Georgia, Civil Action No. 1:10-CV-249-CAP
https://drive.google.com/file/d/1ZGqEqxbW_11CjAp5w8bKeHVQBU2dle8e/view?usp=sharing

⁴ Definition of "Target Population" GA DBHDD policy <https://gadbhdd.policystat.com/policy/8675761/latest#autoid-94p33>

⁵ Supplemental Report of the Independent Reviewer, In the Matter of United States v. Georgia, Civil Action No. 1:10-CV-249-CAP
<https://drive.google.com/file/d/0B3BB13fWo7UQZjFEWmd0Mzk3Y2JmM2o2cFQxV3NCQIVyU1lj/view?usp=sharing&resourcekey=0-meXNnWmzhdlToByRCh7XUw>

⁶ March 2022 Office of Supportive Housing Report for SHARE,
https://drive.google.com/file/d/1E_HS8J_A6Kr4oIo3borU1clrS71TUVoh/view

Limitations on Density of PSH Units for Individuals with Disabilities

Federal law, including the ADA, does not limit PSH units in a development or set a maximum percentage of PSH units in order for it to be considered “integrated.” The only federal law enumerating a limit on PSH development is the Frank Melville Supportive Housing Investment Act of 2010, which restricts new Section 811-financed multi-family projects, including condominiums or cooperative housing, to have an occupancy preference of no more than 25% of the units for people with disabilities. There is no “Olmstead” limitation on the development of thoughtfully designed, non-scattered site supportive housing.

The ADA requires state and local governments to “administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.”⁷ It forbids the needless segregation of people with disabilities. The “most integrated setting” is a setting that “enables individuals with disabilities to interact with non-disabled persons to the fullest extent possible.”⁸ The ADA’s integration mandate is implicated where a public entity administers its programs in a manner that results in unjustified segregation of persons with disabilities. More specifically, a public entity may violate the ADA’s integration mandate when it: (1) directly or indirectly operates facilities and or/programs that segregate individuals with disabilities; (2) finances the segregation of individuals with disabilities in private facilities; and/or (3) through its planning, service system design, funding choices, or service implementation practices, promotes or relies upon the segregation of individuals with disabilities in private facilities or programs.⁹

There is a Georgia-specific limitation on the development of supportive housing set forth in the 2010 Settlement Agreement between the State and the DOJ. It provides, in Section III.B.2.c.i.(A), that “[s]upported housing includes scattered-site housing as well as apartments clustered in a single building. By July 1, 2015, 50% of Supported Housing units shall be provided in scattered-site housing, which requires that no more than 20% of the units in one building, or no more than two units in one building (whichever is greater) may be used to provide Supported Housing under this agreement. Personal care homes shall not qualify as scattered-site housing.”¹⁰ The Extension Agreement in 2016 includes this provision in paragraph 37.¹¹

The 2010 Agreement provides that “[t]he Supported Housing required by this provision may be in the form of assistance from the Georgia Department of Community Affairs (DCA), the federal Department of Housing and Urban Development, and from any other governmental or private source.”¹²

⁷ 38 C.F.R. § 35.130(d)

⁸ 28 C.F.R. pt. 35 app. A

⁹ 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) (Q+A #2) https://www.ada.gov/olmstead/g&a_olmstead.htm#_ftnref11

¹⁰ United States of America v. State of Georgia, Civil Action No. 1:10-CV-249-CAP, Section III.B.2.c.i.(A), p.19 of 40 https://drive.google.com/file/d/1ZGqEgxbW_11CjAp5w8bKeHVQBUDle8e/view?usp=sharing

¹¹ Joint Motion to Enter Into Extension of Settlement Agreement, United States of America v. State of Georgia, Civil Action No. 1:10-CV-249-CAP #37, p. 13 <https://drive.google.com/file/d/1SgPKhs8wb6WE5hs73Nn6GCR6u3iXLw3c/view?usp=sharing>

¹² United States of America v. State of Georgia, Civil Action No. 1:10-CV-249-CAP, Section III.B.2.c.i.(A), p.19 of 40 (Of interest for development purposes: the 2010 Agreement provides the parties’ intent that 60% of the scattered site apartments will be two-bedroom units and 40% will be one-bedroom apartments. *Id.* Section III.B.2.c.i.(B), p.19 of 40.

Georgia has no limitation on the development of supportive housing units for individuals and families outside of the Target Population of the Settlement Agreement. There is no limitation on the development of units for special needs categories, such as domestic violence survivors, returning citizens, veterans, individuals with I/DD, individuals with physical disabilities and/or mental disabilities that do not meet Target Population criteria, seniors, young adults, etc.

Georgia Needs to Produce More Dedicated PSH Units to Meet Substantial Unmet Need

While the Settlement Agreement provides 50% of units provided or generated by state funding shall be scattered site and limited to 20% of units in any one building serving the Target Population, the remainder 50% of units in the state's portfolio is not limited and should be used for as many supportive housing units as possible.

While some disability advocates want the development of only scattered site supportive housing, the reality is that Georgia has a shortage of landlords receptive to scattered site vouchers and has developed few dedicated PSH units in recent years. Georgia has a growing need for supportive housing units for varied demographics of special needs populations, and they vie for the limited quantity of existing dedicated PSH units. Research indicates that some of these subpopulations benefit more from single- site versus scattered- site PSH.¹³

Also, Georgia does not yet have adequate Medicaid infrastructure to sustain only scattered-site community-based services. Georgia has a dearth of community-based service providers that can visit households in scattered site locations. This is an impediment to the success of DCA's Permanent Supportive Housing Program and HUD 811 program. And, as Georgia has not fully "expanded" Medicaid, many homeless consumers do not have Medicaid or other insurance, and providers with Medicaid accreditation cannot bill Medicaid for services.

Data indicates that Georgia cannot rely upon only scattered site units to house vulnerable people. The Georgia Housing Voucher Program (GHVP), for example, which relies upon a state appropriation for the vouchers and to fund housing supports for consumers living in the community, has private market challenges. Of 355 new vouchers issued as of March of 2022, 116 achieved housing.¹⁴

It must be recognized that a compromise has been achieved between advocates for the development of only scattered-site supportive housing and those seeking more density to create more units. A compromise was achieved in the Settlement Agreement, and it provides that 50% of units provided or generated by state funding shall be scattered site and limited to 20% of units in any one building serving the Target Population. This allows 50% of the state's supported housing portfolio to be "apartments clustered in one building."

There is a need for the development of more dense supportive housing. It is not problematic if the state does not have data on its portfolio to know when it meets the 50% of the portfolio cut-off for

¹³ "Outcomes in Single-Site and Scattered-Site Permanent Supportive Housing," Homelessness Policy Research Institute (April 1, 2019) <https://socialinnovation.usc.edu/wp-content/uploads/2019/04/Scattered-vs.-Single-Site-PSH-Literature-Review.pdf>

¹⁴ DBHDD Office of Supportive Housing, Supportive Housing Report for SHARE, March 2022 ([link](#))

scattered site or congregate units, because there is not enough housing. If Georgia ever experiences a period of vacancies of supportive housing units, then it becomes relevant.

While very few units of supportive housing have been developed in Georgia in the past years, DBHDD continues to create scattered-site locations with GHVP. In 2017, data from DBHDD indicated that the percentage of scattered sites per Region ranged from 78% in Region 6 to 96% in Region 5.¹⁵ There was no update of data in 2021.¹⁶

DCA should maximize the ability to develop 50% of its portfolio to meet the need, and that means the development of thoughtfully designed projects with greater set aside density.

Supportive Housing in almost every instance, incorporates the Supreme Court’s defined key elements for ‘integrated settings’

In contrast to institutionalized group homes, supportive housing is designed to allow people with disabilities to live in the most integrated setting appropriate to meet their needs.¹⁷ Tenants have their own apartments with their own bathrooms and kitchens. It is located near community services, transportation, employment opportunities and other housing and is not segregated from the larger community. It employs best practice in service paradigms/modalities, promoting choice and voluntary services. Residents living in permanent supportive housing are free to come and go as they choose, and they can move out. They can leave at any time for other housing options of their choice. Not all supportive housing is targeted to people with disabilities. It may target homeless households with children, 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, amongst other demographics.

An example of supportive housing providing integrated living is The Commons at Imperial, a single-site supportive housing development located in downtown Atlanta.¹⁸ Tenants select to live there, sign a lease in their names for private units with a bedroom, bathroom, and kitchen, and enjoy the protections provided by Fair Housing protections. The lease is renewable at both the tenants’ and owners’ option. Tenants have freedoms all multifamily residents enjoy: to control their schedules and activities, make and eat food at any time, have roommates only by their choice, have visitors on their schedule, etc. Critically important, they have a choice in the support services that they receive and using the Housing First approach, the services are voluntary.

The United States Interagency Council on Homelessness (USICH) provides that the shared values and goals of the Olmstead Mandate include “Housing as a foundation for life in the community, not a bed in a hospital, treatment facility, or nursing facility. Housing that is integrated in the community and offers privacy, stability, safety, self-determination, and hope—not a tent, or mat

¹⁵ Report of the Independent Reviewer, In The Matter of United States of America v. The State of Georgia, Civil Action No. 1:10-CV-249-CAP p. 38 of 45.(March 26, 2018)

¹⁶ Review of Supported Housing Obligations, In The Matter of United States of America v. The State of Georgia, Civil Action No. 1:10-CV-249-CAP p.12 of 20.(August 4, 2021)

¹⁷ CSH: Supportive Housing & Olmstead, The Dialogue (March 2016) p. 6 https://drive.google.com/file/d/12DTWLjlosnAB_1wBt88-8nFu6LomQSPi/view?usp=sharing

¹⁸ <https://www.columbiare.com/downtown-atlanta-apartments/commons-at-imperial-hotel/>

on a shelter floor. Opportunities to interact with family members, friends, and social contacts that include neighbors who do not have disabilities, and an end to unnecessary segregation and isolation. Meaningful choices among available housing options and about how and from whom to receive supportive services. Availability of supportive services that are not required as a condition of tenancy that help individuals to maintain housing stability.”¹⁹ Supportive housing meets all of these criteria, even where the density of residents is higher than scattered-site.²⁰

According to national supportive housing leader CSH, “[s]upportive housing, in almost every instance, incorporates the Supreme Court’s 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. It is the case that some supportive housing buildings are occupied primarily by people with disabilities; however, these supportive housing providers still meet all of the central tenets of integrated settings, and do not fall under the federal definition of ‘congregate setting.’”²¹

“Integrated settings are those that provide individuals with disabilities opportunities to live, work, and receive services in the greater community, like individuals without disabilities. Integrated settings are located in mainstream society; offer access to community activities and opportunities at times, frequencies and with persons of an individual’s choosing; afford individuals choice in their daily life activities; and, provide individuals with disabilities the opportunity to interact with non-disabled persons to the fullest extent possible.”²² As per CSH, “it should be the quality of the tenancy experience that is important, not the configuration or number of units.”²³

Largely, concern about projects dense with supportive housing units is from research and litigation focused upon the I/DD community.²⁴ “[S]egregated settings are occupied exclusively or primarily by individuals with disabilities. Segregated settings sometimes have qualities of an institutional nature, including, but not limited to, regimentation in daily activities, lack of privacy or autonomy, policies limiting visitors, limits on individuals’ ability to engage freely in community activities and manage their own activities of daily living, or daytime activities primarily with other individuals with disabilities.”²⁵ An example of a poorly integrated setting is a group home housing people with mental illnesses who do not have contact with people outside of other residents and

¹⁹ United States Interagency Council on Homelessness (USICH): Fulfilling the Dream: Aligning State Efforts to Implement Olmstead and End Chronic Homelessness (February 2016) p. 4
https://www.usich.gov/resources/uploads/asset_library/Olmstead_Brief_02_2016_Final.pdf

²⁰ CSH: Supportive Housing & Olmstead, The Dialogue (March 2016) p. 3-4
https://drive.google.com/file/d/12DTWLjlosnAB_1wBt88-8nFu6LomQSPi/view?usp=sharing

²¹ CSH: Supportive Housing & Olmstead, The Dialogue (March 2016) p. 6 and fn cited there
https://drive.google.com/file/d/12DTWLjlosnAB_1wBt88-8nFu6LomQSPi/view?usp=sharing

²² 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) (Q+A #1) https://www.ada.gov/olmstead/q&a_olmstead.htm#_ftnref11

²³ Id. p. 4 https://drive.google.com/file/d/12DTWLjlosnAB_1wBt88-8nFu6LomQSPi/view?usp=sharing

²⁴ Doe v. Zucker et al, No. 1:2017cv01005 - Document 81 (N.D.N.Y 2019), <https://law.justia.com/cases/federal/district-courts/new-york/nynyndce/1:2017cv01005/111467/81/>; see also Statement of Interest by the United States in Z.S. v. Durham County, 1:21-cv-663 (M.D.NC), (October 25, 2021) <https://www.justice.gov/crt/page/file/1446341/download>

²⁵ Statement of the Department of Housing and Urban Development on the Role of Housing in Accomplishing the Goals of Olmstead (June 4, 2013) Q+A #1, p.6 <https://www.hud.gov/sites/documents/OLMSTEADGUIDNC060413.PDF>

staff of the facility or at segregated day programs, who are required to attend programs or activities, may lack privacy and the ability to manage their activities of daily living.²⁶

Georgians for a Healthy Future is currently working in partnership with the Georgia Council on Developmental Disabilities (GCDD) to assess the barriers to housing that Georgians with developmental disabilities face, and DCA may be able to utilize the findings to identify ideal housing projects for the I/DD population that best meets the goals of the Olmstead Mandate. Simultaneously, I/DD advocates Better Living Together are requesting DCA create supportive housing projects with higher densities of units for individuals with I/DD to improve the cost-effectiveness of service provision when caregivers and services can be shared, and, because individuals with I/DD may want to live in a development with friends with I/DD.

Recommendations

Currently, outside of the LIHTC program, there is only one state program developing *new* units of supportive housing, the HUD Section 811 program. This is a resource for the Target Population of the Settlement Agreement. It is believed there are about 160 households with a disability in the HUD 811 program, though more than 340 units have been developed for PSH set-aside. We recommend DCA expand the set-aside for PSH units in Section HUD 811 to 25%, as each new unit created is critically needed.

In the LIHTC program, we recommend DCA align Project Based Voucher (PBV) RFP rounds with the GA HFA 9% LIHTC round deadline. Aligning these rounds will enable developers/owners coming to the 9% round to receive a commitment for new PBV funding. Further, it is our understanding that a significant tranche of this PBV is targeted to special needs populations, for example Veterans Affairs Supportive Housing (VASH) and GHVP. DCA can partner with these programs for the issuance of subsidy to owners in advance of the 9% round deadline.

Also, we recommend that DCA create a program similar to the Indiana QAP, wherein there is a Community Integration set-aside incentive with a limit on density of supportive housing units for disabled households, and also rounds without these limits.²⁷

DCA is in a position to support the development of projects that will accept tenant-based vouchers. Presently, multi-family housing projects developed using LIHTC are not required to accept vouchers and can turn away voucher holders. At the same time, there are a proliferation of voucher subsidies in the community in need of receptive landlords, such as GHVP, Housing Opportunities for Persons with Aids (HOPWA), VASH, and Mainstream vouchers. Even the the McKinney-Vento Shelter Plus Care (SPC) program, now called GHFA Permanent Supportive Housing Program, is currently a form of rental assistance.

DCA can also encourage developers to utilize project based rental assistance and tenant based rental assistance in LIHTC properties. We recommend that DCA encourage developers to use

²⁶ Statement of Interest by the United States in John Doe v. Howard Zucker, M.D., 1:17-cv-01005 – (N.D.N.Y.), (January 10, 2022) https://www.ada.gov/doe_soi.pdf

²⁷ State of Indiana 2022 Qualified Allocation Plan <https://www.in.gov/ihcda/files/2022-QAP-FINAL-6-28.pdf>

HOME, National Housing Trust Funds, and low income housing tax credits to develop new, dedicated units of supportive housing that are 25% set aside, 30% set aside, or even 100% set aside. DCA is in a position to develop projects with these subsidies included in the underwriting or incentivized to accept TBRA as landlords.

Summation

While we eagerly await the data of Georgia's current inventory of supportive housing and current and future needs for PSH units from the Statewide Housing Needs Assessment contracted to Mullin Lonergan & Associates, we know that supportive housing units are vitally needed.²⁸ This is evidenced in the annual Point In Time Count of sheltered and unsheltered homelessness and the reports of the Independent Reviewer in the state's court case. DCA's core mission includes the creation of safe and affordable housing to meet this need. Changes to DCA policies to allow and actively encourage more dense developments of SH and PSH are allowed under federal and state law and the Settlement Agreement, and will enable housing for more of Georgia's most vulnerable households.

Sincerely,

Marisel Risner Sivley

Marisel Risner Sivley, Esq.
Executive Director, GSHA

Sign on:

²⁸ DCA's Agreement for Statewide Housing Needs Assessment with contractor Mullin Lonergan & Associates includes the deliverable: Assess the population characteristics of those associated with supportive housing needs, including analysis of subpopulation health data, gather information on the current inventory of supportive housing, and estimate the current and future needs for supportive housing units through Monte Carlo simulation or other methodology as deemed appropriate. (D)(4)(e) p. 24 of 27.