

JON L. SASSER, ESQ.
LEGAL SERVICES
STATEWIDE ADVOCACY COORDINATOR

299 So. Arlington Avenue
Reno, Nevada 89501
775-785-5722
jsasser@washoelegalservices.org

Madame Chair and members of the Committee,

For the record my name is Jon Sasser, I am the Legal Services Statewide Advocacy Coordinator. Today, however, I appear as the Legislative Chair of the Commission on Services for People with Disabilities to ask that you support funding to update Nevada's Olmstead plan. Prior to the in-depth testimony of Tony Records I would like to provide a brief background on Olmstead implementation in Nevada. I've been involved since 2000.

Olmstead v. L.C., 527 U.S. 581 (1999), is a US Supreme Court case, (brought by the Atlanta Legal Aid Society) finding that government entities which provide services to persons with disabilities in an institutional setting when a community placement is appropriate are discriminating under the Americans with Disabilities Act (ADA). The holding "reflects two evident judgments": (1) institutional placement of persons who can handle and benefit from community settings perpetuates unwarranted assumptions that persons so isolated are incapable of or unworthy of participating in community life." (2) "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."

The Court further indicated that if a state were sued following its decision that the state would have defense to that suit if it had a plan to move people from institutional care and community settings which was

proceeding at a reasonable pace. As a result many states started developing what came to be called Olmstead plans.

In 2000, I represent represented a coalition called Nevadans for Equal Access. We held a series of meetings with then Department of Human Resources Director Charlotte Crawford to discuss how Nevada planned to implement the decision. Out of those meetings came a proposal to the 2001 Legislature to fund a 10 year strategic plan for people with disabilities. Over the next two years, I participated in the development of that plan. A shift to community-based services was a central part of our 10 year plan. The 2003 Nevada Legislature formally accepted the 10 year Strategic Plan for People with Disabilities as Nevada's Olmstead plan in SCR 10 (2003).

http://www.leg.state.nv.us/Session/72nd2003/bills/SCR/SCR10_EN.html

I then served on the Strategic Plan Accountability Committee (SPAC) which oversaw the implementation of the plan. One important accomplishment was a recognition by the State Department of Administration that providing sufficient slots for Nevada's community-based waivers to allow waiting list no longer than 90 days was a legal mandate under Olmstead. Therefore additional waiver slots were added to the budget without the need to be accepted as an "enhancement".

Following Olmstead the percentage of the Medicaid budget spent on community-based services versus institutionalized care has roughly doubled both nationally and in Nevada. In FFY 2000 (the federal fiscal year following Olmstead), only \$9 billion (18.7%) in Medicaid funding was spent to keep people in the community, while \$49 billion (81.3%) was spent to institutionalize them in nursing homes. By FFY 2012, \$22 billion (38.8%) in Medicaid funding was spent in the community but \$74 billion (61.2%) was spent to keep people in "unnecessary isolation" (up from \$49 billion in FY 2000). In Nevada 17.1% of Medicaid was spent on community care in FY 2000 and 33.5% in FY 2012.

The purpose of today's presentation is to seek support from this Committee to update Nevada's Olmstead plan. As you will hear more detail from Mr. Records, the Commission believes that the time is ripe for several reasons.

- Despite gains community-based services in Nevada still fall far short of the need. For example, applicants are on waiting lists for community-based services far longer than 90 days. In the Home and Community Based Services Waiver for Individuals with Intellectual Disabilities and Related Conditions 1775 individuals were receiving services as of April but 755 were on a waiting list with some waiting while over a year.
- Nevada must, as states must bring their waivers over the next five years into compliance with new federal Medicaid regulations which put far more emphasis on individual freedom and integration into the community.
- Moreover, starting in 2009, the Department of Justice (DOJ) has expanded its Olmstead enforcement beyond an examination of whether a person lives in the community or in an institution. As you will hear from Mr. Records, DOJ recently issued a letter of finding in Rhode Island concluding that people in sheltered workshops and facility-based services were justifiably segregated.

Unless there are questions at this time I would now like to yield to Mr. Records for a more in-depth presentation followed by a brief description of the type of study that Ms. Gerber - Winn and the Division believe would be appropriate.