

An Overview of California's Draft *Olmstead* Plan

Transitioning Persons with Disabilities From Institutions to Community Settings Under U.S. Supreme Court Requirements

October 2003

Executive Summary

Under a landmark 1999 U.S. Supreme Court decision, California is required to accommodate those with physical, mental or developmental disabilities who live in institutions, or are at risk of doing so, in the least restrictive settings possible. What this means is that persons with disabilities must be permitted whenever feasible to live in their own communities rather than institutions. States, in complying with this mandate, face an overhaul of programs, facilities and supporting structures to facilitate community living.

The state's initial draft plan for determining how to serve people with disabilities in compliance with the *Olmstead vs. L.C.* decision was released in June by the California Health and Human Services Agency. It lays out strategies for collecting data, providing comprehensive service coordination, and reviewing community service capacity necessary to implement the Supreme Court's decision. As this analysis is intended to show, the initial plan as proposed may not fully meet the court's guidelines for implementing its landmark 1999 ruling.

In *Olmstead*, the high court ruled that unnecessary segregation and institutionalization of persons with disabilities violates

Contents

- I. Background**
- II. California's Draft *Olmstead* Plan**
- III. Plan's Recommendations for Future Action**
- IV. Analysis of *Olmstead* Draft**
- V. Money Follows the Person: A Promising Practice from Texas**
- VI. Conclusion: Is California Prepared to Meet *Olmstead* Requirements?**

the Americans with Disabilities Act. The court required states to develop working plans for placing individuals with disabilities, including elders, in the most “integrated” -- rather than institutionally segregated -- settings possible. If opportunities for such community placements are limited, states must develop waiting lists that move at a “reasonable pace.” The court stopped short of setting a firm deadline for meeting the requirements of *Olmstead* or specifying the details of implementation. Within general guidelines, states have flexibility in developing their implementation plans, but they must meet the minimum standards set forth in the ruling.

The U.S. Department of Health and Human Services issued guidelines in 2000 to assist states in complying with *Olmstead*. The department strongly recommended that states take steps to obtain consumer input, prevent unjustified institutionalization, ensure appropriate community-based services and provide quality assurances in implementing their working plans.

The Health and Human Services Agency’s draft plan includes several key elements: a statement of core principles to guide the state’s implementation efforts, an overview of current services provided by each state department, recommendations for future action to implement *Olmstead*, and documentation of consumer participation in development of the plan.

While California’s *Olmstead* plan is intended to document compliance with the Supreme Court mandate, as currently conceived it lacks two key elements required for implementation:

- Data on current waiting lists for community facilities, facilities affected, state capacity to provide community services and cost estimates; and
- An adequate timeline for implementation.

In addition, the draft does not propose any commitment of resources to successfully move persons to community settings, nor does it address a current lack of services available to those at risk of institutionalization who are living in communities.

The plan also omits other policy concerns. It does not address homelessness or tackle in depth the state’s dearth of affordable housing -- crucial community issues that could threaten the plan’s success. And while the Department of Veteran’s Affairs ought to be an important partner in the implementation of the plan, given that many veterans with disabilities are institutionalized or face institutionalization, the department made no contribution to its development.

The draft devoted only a single page to an emerging issue. It suggests exploring a funding mechanism, known as “the money follows the individual,” that was developed in Texas to assist persons in moving from nursing facilities to community care services. At its core, the mechanism permits funds allocated for paying for an individual’s care in a nursing home to be used instead for services to keep him or her in the community. This approach, identified as a “promising practice” by the U.S.

Centers for Medicare and Medicaid Services (known as CMS), can be implemented without a federal waiver under state Medicaid authority.

For clarification, we will offer more details here. CMS declares that some states will be in a position to participate right now, while others will require some system redesign to be ready. The Bush Administration has proposed a total of \$1.75 billion over the next five years to implement a funding system based on this method. Federal and state responsibilities under the administration's proposal would be temporarily realigned:

- For twelve months, the federal government would pay 100 percent of the cost of Medicaid-equivalent home and community-based services for eligible persons who move from a Medicaid-certified facility to the community.
- States would be responsible to continue funding beginning in the 13th month.
- States would have to re-invest savings and other resources to rebalance the long-term care system.
- States would have to increase infrastructure for community services.
- States would have to commit to steps that allow funding to follow the individual to the most appropriate setting preferred by that person.

This federal initiative would provide financing to take California in the direction of full implementation of the *Olmstead* decision.

California's draft plan does meet a number of the high court's criteria for implementing the *Olmstead* ruling. However, its lack of data or even a preliminary assessment of resources needed to carry out the plan makes it vulnerable to interpretations that it lacks a policy framework and reasonable, workable timeframe.

This overview looks at the *Olmstead* decision and federal guidelines for implementing it, highlights the California entities that will carry out the transitioning from institutions to community settings, includes the draft plan's recommendations and offers an analysis of its strengths and shortcomings. It concludes by reviewing areas where the draft does and does not meet high court requirements and federal guidelines.

I: Background

The Olmstead Decision

On June 22, 1999, the U.S. Supreme Court ruled in *Olmstead v. L.C.* that unnecessary segregation and institutionalization of persons with disabilities violates the Americans with Disabilities Act (ADA). The Supreme Court ruling stated:

*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.*¹

The ruling requires states to administer programs, activities and services “in the most integrated setting appropriate to the needs”² of persons with disabilities who live in institutions or face that prospect. It sets forth criteria for state compliance:

- A state must develop a working plan for placing qualified individuals with disabilities in less restrictive settings. A qualified individual with a disability, according to the Supreme Court, is:

*...an individual with a disability who, with or without reasonable modifications to rules, policies or practices; the removal of architectural, communication, or transportation barriers; or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.*³

- A state must maintain a waiting list that moves persons to less restrictive settings at a reasonable pace, not controlled by the state’s efforts to keep its institutions fully populated.

Federal Guidelines for Implementing the Olmstead Decision

Guidelines issued by the U.S. Department of Health and Human Services strongly recommend that states take the following steps to implement the *Olmstead* decision:

- Incorporate consumer input in developing and carrying out an implementation plan,
- Take steps to prevent institutionalization of individuals with disabilities in the future,
- Ensure the ongoing availability of services to enable people with disabilities to live independently within their communities,
- Ensure quality, improvement and sound management to support implementation of the plan.⁴

¹ *Olmstead V.L.C.* (98-536) U.S. 581(1999).

² 28 CFR 35.130[d].

³ *Olmstead V.L.C.* [12/31/20].

⁴ Centers for Medicare & Medicaid Services, *Assuring Access to Community Living For the Disabled*, February 1, 2000.

II. California's Draft *Olmstead* Plan

The state Health and Human Services Agency released California's draft *Olmstead* plan on June 12, 2003. Its key components include an overview of current services to persons with disabilities, recommendations for future action, and documentation of the process of including consumer and community input in the plan. It also lists a number of core principles, namely:

- *Self-determination*: Consumers must be able to make decisions about their own lives, including where they will live.
- *Choice*: Consumers must have choices and culturally appropriate information in making their decisions.
- *Community integration*: Persons with disabilities must have opportunities to fully participate in services and activities in their communities.
- *Culturally competency*: Community services must be sensitive to consumers' cultural values and customs and should be fully accessible.
- *Inclusion of Stakeholders*: Ongoing planning for implementing the *Olmstead* decision must involve persons with disabilities and their representatives, family members, providers, vendors and other stakeholders.
- *Integration for Children*: The "most integrated setting" for children with disabilities is in their homes with their families.

The draft describes the public entities that currently serve physically and mentally disabled Californians, based on input from those entities as outlined below. Under the plan, the Long Term Care Council would be the state's lead policy and strategic planning agency for implementing the ruling.

Long-Term Care (LTC) Council

The LTC Council is collaborating in the implementation of Davis administration initiatives to promote caregiver training and more nurses in the work force. It provides coordination among agencies that handle long-term care issues and makes policy recommendations to the Legislature.

Department of Developmental Services

The Department of Developmental Services (DDS) operates under the Lanterman Act, enacted in 1969 to comprehensively address the needs of persons with developmental disabilities in California. DDS reports that it serves 183,000 persons with developmental disabilities in community settings through its network of 21 regional centers. Another 3,600 persons are residents of the state's five developmental centers and two smaller state-operated community facilities.

In 1980-81, the population living in DDS facilities was 8,500; by the end of 2002, it had fallen to 3,600. Although all issues raised in the case are not fully resolved, the United States District Court for the Northern District of California ruled in August 2002 in *Sanchez vs. Johnson* that the department has complied with the Americans with Disabilities Act and the *Olmstead* decision through the use of Community Placement Plans that provide support for individuals to move from Developmental Centers to the Community.

DDS reports that the Agnews Developmental Center, slated for closure in 2005, has the highest per-consumer costs in the state because of a low resident population and its location in the San Francisco Bay Area, a region with a relatively high cost of living. (According to DDS, per-capita costs at Agnews average \$225,643 per year, compared with an average per-capita cost of \$178,497 at the other developmental centers.) Residents of this San Jose facility will be evaluated for the appropriateness of their placement in communities or relocation to other state-operated developmental centers as the closure progresses.

Department of Rehabilitation

The Department of Rehabilitation (DOR) provides employment counseling and services to persons with disabilities through a network of 100 field offices. The DOR serves 20,000 persons with developmental disabilities and administers 29 Independent Living Centers – community-based agencies providing peer counseling, independent living skills and advocacy for persons with disabilities.

The DOR reports that in 2003 it will contract for developing a consumer-based transitional assessment tool to be used by Independent Living Centers in planning for individuals to move from institutional settings into communities. Additionally, it will make \$200,000 available over the next two years to pay one-time costs of individuals' transition from institutions to communities. Finally, the DOR commits to partner with the State Independent Living Council to update a 1995 assessment tool to measure the needs of persons with disabilities who already live in communities.

Department of Mental Health

The Department of Mental Health (DMH) states that the institutionalized population that it serves consists largely of forensic patients in its four state hospitals; those patients would not be impacted by *Olmstead*. Directly eligible for community placements are the 3,500 Californians who reside in facilities that meet the definition of "institutions for mental disease." In addition, *Olmstead* would impact approximately 800 adults and children who have been civilly committed to state hospitals. The draft plan does not mention mental health rehabilitation centers, but approximately 1,400 persons receive treatment in those facilities and would also be impacted by the *Olmstead* decision.

Between 4,000 and 5,000 children receive services in the community through the Children's System of Care, and 4,881 persons are served through the successful AB 2034 Integrated Services to the Homeless program. The department also administers 11 caregiver resource centers, which provide consumer-directed resources, including

respite care, to families who are caring for an adult family member at home. In 2003, DMH plans to award two grants for pilot projects to develop alternatives to the institutions for mental disease. The department will also sponsor statewide *Olmstead* trainings.

Department of Health Services

Working with other state departments, the Department of Health Services (DHS) administers or monitors six waiver programs⁵ that together allow thousands of people to receive services at home or in their communities, rather than in institutional settings. DHS plans to expand these activities in several ways, including evaluating the potential for an assisted living waiver, as authorized in AB 499, Statutes of 2002, and awarding five planning grants to local entities to implement long-term integration projects.

Department of Social Services

The Department of Social Services (DSS) regulates residential care facilities for adults, including the elderly, and children's group homes and foster homes. DSS also has responsibility for the Adult Protective Services program, which investigates and responds to the abuse of elder or dependant adults.

In addition, DSS administers the In-Home Supportive Services program, which provides services to over 280,000 aged, blind and disabled persons in homes and communities. According to DSS, California's system of home care is the largest program of its kind in the country and is an essential component of the state's effort to maintain people in their homes rather than in institutions.

DSS is implementing changes to the IHSS program pursuant to federal "Ticket to Work" legislation that will allow consumers to use attendant services in the workplace. It also is conducting training to Adult Protective Services workers to better protect elders and dependant adults from abuse.

Department of Aging

The California Department of Aging (CDA) administers Older Americans Act programs that include support for frail elderly and functionally impaired adults. CDA also certifies adult day health-care centers. It administers \$500 million in state and federal funds under the Aging with Dignity Initiative, adopted in 2000 to help elderly and disabled adults to live independently in their own homes.

In 2003, CDA plans to implement newly authorized flexibility in the Multipurpose Senior Services Program to allow care managers to work with nursing home residents or transition them into the community while retaining their benefits.

⁵ The developmental disability waiver, multipurpose senior services program waiver, in-home medical care waiver, nursing facility waiver, nursing facility sub-acute waiver and the AIDS waiver.

California Housing Programs

The *Olmstead* plan documents three major housing options for those who are low-income. Some housing is reserved for persons with disabilities, and some is available to all low-income persons.

- The California Housing Finance Agency (Cal HFA) provides homeownership assistance with a down payment or reduced payments.
- Home Choice is a new Cal HFA program that provides mortgage assistance to persons with disabilities who have low to moderate incomes.
- The Department of Housing and Community Development (HCD), along with the Tax Credit Allocation Committee, manage a variety of state rental housing programs, providing capital to developers to build or refurbish housing that will be rented to low-income individuals at reduced rates.

Rental subsidy programs -- such as the United States Housing and Urban Development Section 8 program, the federal McKinney program and the Shelter Plus Care program for the homeless -- are typically administered by local entities, rather than by the state.

Finally, DMH and DDS operate two specialized housing programs. DMH, along with HCD and the Supportive Housing Program Council, administer the Supportive Housing Initiative Act programs that offer on-site services to residents. There are 46 projects, at a cost of \$48.2 million, targeted to persons with serious mental illness, especially those with a co-occurring disorder of substance abuse or who have been homeless. DDS also administers a modest specialized housing project for clients of regional centers to increase affordable housing. In addition, a number of regional centers work with local housing authorities to develop accessible housing options for their consumers.

Transportation Services

The Americans with Disabilities Act requires public bus systems to provide paratransit services, which operate throughout California. In addition, the Older Americans Act funds transportation services for the elderly through Area Agencies on Aging. Regional centers provide transportation vouchers to selected consumers, although they also purchase transportation services directly through contracts with agencies, a less integrated approach.

III. Draft Plan's Recommendations for Future Action

The Health and Human Services Agency, in presenting its recommendations for further action, states that California is committed to full compliance with the *Olmstead* decision. It also states that the *Olmstead* plan is an evolving work in

progress. The agency has formed an *Olmstead* Advisory Group and will update the plan annually.

Other recommendations:

- *Data* -- The draft offers a plan for collecting data in the future to support *Olmstead* activities. By April of 2004, the LTC Council would collect data that is now available and propose a framework for future data collection.
- *Comprehensive Service Coordination* -- The draft recommends preparation of a “conceptual design for a comprehensive assessment and service coordination system” for individuals in, or at risk of being placed in, publicly funded institutions.⁶
- *Assessment* -- The draft recommends that assessment of a person’s placement and community services needs should be client-centered, offer choices and include an appeal procedure if the person does not agree with the findings. Assessment includes needs for housing, residential support, day services, personal care, transportation, medical care and advocacy support.
- *Diversion* -- The draft recommends that state entities seek input into ways to divert persons from institutional placement and report on resources that may be needed for these efforts. DDS would expand a regional resource development approach⁷ to assist individuals whose community home placements are failing, putting them at risk of institutional placement.
- *Transition* -- The draft recommends, in transitioning from institutions to community settings, a focus on discharge planning procedures, service planning and coordination, and expansion of in-home supportive services. Also included in this section are recommendations to expand medical case management, downsize current DDS residential facilities, and take institutionalized residents on field trips to see community services before making choices about them.

The development of community service capacity would require resources that are not currently available. Correspondingly, recommendations relating to this topic are very preliminary and long-term. They include development of strategies for health-care staff recruitment, improved paratransit services, expanded community support services, and improved employment activities through a workforce inclusion initiative. The draft also recommends exploring the feasibility of revising licensing requirements for community facilities to foster rehabilitation, and licensing assisted-living facilities for younger persons with disabilities.

This section also makes recommendations on one of the key factors determining compliance with the *Olmstead* decision – waiting lists. Departments would begin to analyze their current waitlists, status and movement on the lists, and make their reports publicly available.

⁶ California *Olmstead* Plan, p. 41.

⁷ Required in Welfare and Institutions Code 4418.7.

- *Housing* -- Recommendations for providing housing for persons with disabilities take three approaches:
 - ◆ Implementing current programs, such as voter-approved Proposition 46 housing-bond projects;
 - ◆ Encouraging voluntary initiatives, such as improved databases for local public housing and more local enforcement of fair housing laws; and
 - ◆ Requesting the U.S. Department of Housing and Urban Development to commit to more federal rental assistance.

One recommendation in the plan was mandatory: HCD will require that local governments' Consolidated Plans and Housing Elements reflect the goals of the *Olmstead* decision as a condition of certification. However, whether or how to enforce compliance is still under discussion.

- *“Money Follows the Individual” and Other Funding* -- These recommendations propose that California apply for federal funding to support moving more people with disabilities into their communities and explore further federal home and community-based waivers.⁸ The draft also suggests that California explore the “Money Follows the Individual” model developed in Texas and used by a number of states. (For more information on this model, see page 13.)
- *Consumer Information* -- These recommendations acknowledge the role of comprehensive public information to facilitate the best opportunities for consumers to make choices. The draft calls for opening In-Home Supportive Service registry information for all individuals to use, improving the Area Agencies on Aging system for provider information and referrals, educating agencies at all levels about federal waivers, and posting resource information on the Web site of the LTC Council.⁹
- *Community Awareness* -- These recommendations suggest educating community decision-makers to ensure that they are aware of the Americans with Disabilities Act and the *Olmstead* decision when making decisions about public services and resources. The Department of Rehabilitation will take a lead role in informing local entities, including courts, about the law. The Long Term Care Council also may hire a consultant to conduct a wider public awareness campaign on these issues.
- *Quality Assurance* -- The draft plan recommends that quality be assured in community services by adopting outcome-based criteria by which to measure all programs. The criteria, which would be refined after input from consumers and stakeholders, includes program standards, measurable outcomes, data collection, fraud and abuse prevention, a grievance process, education and training, peer support, consumer rights, evidence-based practices, incentives, independence, inclusion of stakeholders in monitoring teams, clear regulatory authority for oversight and sanctions.

⁸ Such as the waiver analysis required by SB 1911 (Ortiz), Chapter 887/Statutes of 2001, and the Independence-Plus waiver.

⁹ www.calcarenet.ca.gov

All departments would review their current criteria to identify areas of incompatibility with the proposed standards.

In addition, various departments would engage in specific activities to improve quality assurance: DSS would provide training and other improvements for the In-Home Supportive Services program and strengthen criminal background checks for those working in community care licensed facilities, DMH would publish mental health performance outcome measures on its Web site as well as continue to audit county mental health services for Medi-Cal compliance, the California Department of Aging would improve Information Assistance services, and DDS would improve its quality assurance systems.

Consumer Input into the Draft Plan

Consumer input in the *Olmstead* planning process was one of the strong recommendations of the U.S. Department of Health Services. The California *Olmstead* Plan documents such input: the plan includes details from 51 local forums held around the state, hundreds of statements from consumers involved in the process, and a summary of stakeholder recommendations.

Advocates and consumers of mental health services were not as actively involved in the plan's development as other disability communities, although the Long-Term Care Council extended deadlines and held special meetings to solicit their participation. The California Association of Social Rehabilitation Agencies, which did participate, has stated that the plan does not adequately address the specific needs of those with psychiatric disabilities.¹⁰

IV. Analysis of the *Olmstead* Draft

An analysis of the draft plan by the Senate Office of Research produced questions about the plan's implementation, funding and several policy concerns.

Implementation

The Supreme Court's ruling made two specific requirements for achieving state compliance with the *Olmstead* decision: states must formulate working plans for placing qualified persons with disabilities in communities and for maintaining a waiting list that moves at a reasonable pace. These requirements seem to call for data, such as the number of persons on waiting lists, the number of facilities affected, the capacity of services in the community, and cost estimates. The *Olmstead* plan does not include this information. Instead, the plan states the intention of the administration to collect data on these issues in the future.

¹⁰ Betty L. Dahlquist, MSW, CPRP, Executive Director, California Association of Social Rehabilitation Agencies, [Comments to California's *Olmstead* Draft Plan](#), 1/28/03.

In contrast, as shown on page 17 by Figure 1, the Texas *Olmstead* plan specifies activities, persons served and the commitment of resources the state is making to each required activity.

California may have difficulties with the Supreme Court's specific requirement to maintain a waiting list that moves at a reasonable pace. Because of past legal action with regard to waiting lists, some types of facilities avoid maintaining a "waiting list" in favor of a less formal inventory of client needs. It will be important for California to develop tools and a method for meeting the Supreme Court requirement for a "waiting list." Future drafts of the plan will need to address this specific issue.

The California draft also lacks a timeline for activities. For example, the report suggests applying for federal waivers, including a SB 1911 home and community-based waiver, as part of the implementation strategy. However, there is no commitment to a timeframe for applying for these waivers. The process would need to begin quickly if *Olmstead* is to be implemented in a timely fashion in California.

Resources

The draft does not recommend a commitment of resources, or even specify what future resources might be required to implement the plan. Likely reflecting the state's serious budget problems, it repeatedly states that even modest recommendations within existing resources may not be implemented due to cost concerns. However, this draft will guide policies and choices for many years beyond the scope of the state's current fiscal crisis. A workable plan could determine what resources would be required to succeed. (Figure 1 offers an example of the Texas commitment of resources to *Olmstead* activities.)

In California, some people with disabilities are living in communities while others with similar diagnoses are living in institutions. A fairly administered *Olmstead* plan must address resources needed by those at risk of institutionalization as well as those transitioning from institutions. Because this draft does not do that, it risks encouraging a two-tiered system of services and funding among people with similar disabilities in the same communities.

Policy Concerns

- Homelessness is not addressed in the report. In response to this concern, a spokesperson for the Health and Human Services Agency stated that the agency did a separate report on homelessness last year.¹¹

However, research indicates that those who are homeless include a high percentage of persons with disabilities. The prevalence of psychiatric and addictive disorders among the homeless has been estimated as high as 90 percent (Bassuk, Rubin and Lauriat, 1984). Another study estimates that as many as 62 percent of homeless men are HIV positive, and 18 percent have active tuberculosis (Torres, et al., 1980). Taken together, these studies indicate that persons who are homeless

¹¹ Agnes Lee, Deputy Director, California Health and Human Services Agency, Legislative Briefing on the Draft Plan, April 2003.

have serious medical infirmities and experience mortality rates twice as great as those of poor, domiciled people with mental illness (Kasprow and Rosenbeck, 1998). The high rate of disability among the homeless population certainly puts them at risk of institutionalization and merits inclusion of these issues in the *Olmstead* Plan.

- The draft recommends expanding Section 8 vouchers for low-income housing. Yet it does not address the dearth of affordable housing in California in more depth. For example, Section 8 vouchers have a 77 percent failure rate in Sacramento County; 77 percent of those who qualify for the vouchers cannot find housing that would accept them and never utilize the benefit. In addition, the Bush Administration is proposing to “block grant” the Section 8 program, which would likely result in decreasing rather than increasing funding for the program. Expanding Section 8 vouchers without realistically addressing the limited stock of affordable housing would do little to change the status quo.
- Despite the fact that the Department of Veteran’s Affairs is a member of the LTC Council, the organizing entity for the *Olmstead* plan, the department did not participate in developing the plan. No explanation has been given for this. A spokesperson for the California Health and Human Services Agency stated that the agency cannot explain why Veteran Affairs did not participate.¹²

V. The Money Follows the Person: A Promising Practice from Texas

“The Money Follows the Person” concept is one of the practices that the draft plan pledges to explore for implementation in California. The concept originated in Texas as a response to the *Olmstead* decision. In 2001, the Texas Legislature passed Rider 37, allowing Medicaid funding to follow an individual who moves from a nursing home into the community. Rider 37 states:

It is the intent of the Legislature that as clients relocate from nursing facilities to community care services, funds will be transferred from nursing facilities to community care services to cover the cost of the shift in services.

The program was implemented without a waiver, under the state’s existing Medicaid authority. When someone chooses to leave a nursing home, the money is transferred from the nursing home budget line item to the community services budget for home and community-based services.

As people leave nursing facilities, they enter a Community Care Program. Funding for this program comes from three sources:

- Medicaid home and community-based waivers.
- Medicaid state plan services.

¹² Agnes Lee, Deputy Director, California Health and Human Services Agency, Legislative Briefing on the Draft *Olmstead* Plan, April 2003.

- State-funded home and community-based services.

To qualify for the program, a nursing facility resident must be receiving Medicaid support and be financially eligible for a Community Care Program if she or he moves to the community. Approximately 62,000 persons resided in nursing homes at the start of the program in September 2001; 950 people have transitioned from nursing homes to the community since then.¹³

According to the Centers for Medicare and Medicaid Services (CMS), implementation of Rider 37 was accomplished in Texas quickly and efficiently for two main reasons: it did not require a major restructuring of the long-term care system, and the program was implemented within existing resources -- no new funds were authorized for the program. Case managers were already in place through the Community Care Program, and training expenses were minimal because no new staff was hired.

Legislative interest in California has been expressed in the Texas “Money Follows the Individual” model. AB 1453 (Parra) would require the California Health and Human Services Agency to submit a report by April 1, 2005,¹⁴ that explores the Texas model and its use in other states. The bill, moving through the Legislature at this writing, also would require:

- A review of federal waivers and of payment options available to residents of skilled nursing facilities;
- An estimate of the number of individuals who may be eligible for the program and the potential savings to the state if the program is implemented, and
- A review of methods for ensuring that individuals who transfer to more independent living environments will receive adequate and quality care.

The Centers for Medicare and Medicaid Services has identified the Texas program as a “promising practice.”¹⁵ President George W. Bush’s fiscal year 2004 budget proposes a “Money Follows the Person” Rebalancing Initiative that includes \$350 million each year for the next five years, for a total of \$1.75 billion. Under this program, federal grant funds would pay the full cost of home and community-based services for the first year after a person transitions from a nursing facility to the community. Start-up costs would be paid by the federal government, but states must have infrastructure in place to support the program. Independent living advocates in New York state estimate that if New York transitioned 1 percent of its nursing home population each year -- 1,300 persons annually -- over the next five years that the program is funded, it would save \$40.6 million each year and \$203 million over the five years.¹⁶

¹³ Centers for Medicare and Medicaid Services, Promising Practices in Home and Community Based Services, Texas – Rider 37: Promoting Independence: “Money Follows the Person.” <<http://www.cms.gov>>.

¹⁴ This also is the due date of the next *Olmstead* Plan draft.

¹⁵ Centers for Medicare and Medicaid Services, Promising Practices in Home and Community Based Services, Texas – Rider 37: Promoting Independence: “Money Follows the Person.” <<http://www.cms.gov>>.

¹⁶ Independent Living USA, Federal Budget “Money Follows the Individual,” <www.ilusa.com/news>.

The president's proposal has several key requirements:

- The state must agree to continue funding for each individual beginning in the 13th month after the person has transitioned to the community.
- The state must reinvest savings or other resources to rebalance the long-term care system from an institutional bias to providing services in the community.
- The state must increase the infrastructure for community services and improve the ability of individuals to live and participate in their communities.
- The state must make a commitment to take steps to enable money to follow the person to the most appropriate setting preferred by the individual.

VI. Conclusion: Is California Prepared to Meet the Requirements of *Olmstead*?

This conclusion summarizes the findings of this paper in six key areas where the state faces high court requirements and federal guidelines:

Supreme Court Requirements:

- A state must formulate a working plan for placing qualified individuals with disabilities in less restrictive settings. *The state's Olmstead Plan is an effort to meet these criteria.*
- A state must maintain a waiting list that moves persons to less restrictive settings at a reasonable pace, not controlled by the state's efforts to keep its institutions fully populated. *The current version of the Olmstead plan does not address this issue, although departments will include a review of waiting lists in a future draft of the plan.*

U.S. Department of Health and Human Services Guidelines:

- ◆ Consumer input must be included in developing and implementing a plan. *The Olmstead plan documents extensive efforts to include consumers in the planning process.*
- ◆ The state must take steps to prevent the future unjustified institutionalization of individuals with disabilities. *The Olmstead plan does not propose such steps. It addresses this concern as a recommendation for future action.*
- ◆ The state must ensure the ongoing availability of services that enable people to live independently within their communities. *The draft's overview of current services attempts to address this issue, although it does not address issues affecting persons with disabilities already living in the community.*

- ◆ The state must provide quality assurance, quality improvement and sound management to support implementation of the plan. *The Olmstead Plan's recommendations for future action include efforts to provide comprehensive service coordination, address community service capacity and provide for quality assurance. However, the plan makes no cost estimates and offers no funding strategies to implement these measures.*

Although the plan articulates many concerns of consumers and a long-term vision for reform, a lack of data or even a preliminary assessment of necessary resources makes the plan vulnerable to the interpretation that these goals lack a policy infrastructure and may not be workable within a reasonable timeframe.

Prepared by Laurel Mildred

Figure 1
Excerpt from the Texas Health and Human Services Commission's
Revised "Promoting Independence Plan"

Exceptional Item	2004-05 Biennial Totals		Exceptional Item Description
	General Revenue	All Funds	
Waiting List Reduction and Avoidance			
Reduce Long-Term Care Interest Lists	\$89,717,763	\$199,398,601	Over 60,000 people are currently on interest lists. Limited funding and increasing needs continue to add to the length of interest lists and to the time people must wait to receive services.
Waiting List Reduction - Waiver programs	28,788,282	71,310,514	This item would provide waiver services to 1,200 persons who are now waiting for services. A phase-in of the new placements at a rate of 50 per month is assumed.
Equity Funding	32,745,565	80,370,461	This request distributes resources to the local authorities who are below the mean in per-capita funding by adding 1,344 waiver slots for individuals on the waiting list.
Community Mental Health Children's Services – Therapeutic Foster Care for High Need Children/Families	8,685,071	9,117,285	Therapeutic foster care and intensive treatment/support for 112 families in 2004 and 196 families in 2005. These services would help prevent parental relinquishment of children and placement in conservatorship in order to receive mental health services.
Tuberculosis Medications	1,300,000	1,300,000	Requested funding is for the purchase of TB medications and testing supplies. The increased at-risk population has necessitated an increase in medications, diagnostic tests, medical evaluations, and laboratory tests. In addition, the cost of more advanced medications continues to increase.
HIV Medications	6,782,478	6,782,478	Requested funding is for an increase in new clients needing HIV medications. 1,275 new clients would be treated with HIV medications.
Children with Special Health Care Needs	56,081,690	56,081,690	Requested funding would meet the growing demand for services and eliminate the waiting list for the program. An additional 1,787 clients would receive medical services in 2004 and 2,305 in 2005. An additional, 840 clients would receive family support services in 2004 and 1,080 in 2005.
Maintain Kidney Health Care	10,073,672	10,073,672	Requested funding would maintain the current level of services for Kidney Health Care clients and for a caseload increase of 7-10 percent during 2004-05. Funding would serve an additional 2,299 clients in 2004 and 4,816 in 2005. Without additional funding, services to eligible clients will have to be reduced.

Restore CPS Purchased Services	2,347,528	2,347,528	Projected-earned federal funds for 2004-05 are expected to be less than appropriated in the current biennium. Funding for this item will avoid any reduction in the level of services provided to clients receiving Family-Based Safety Services, designed to prevent the removal of children from their own homes. Without this funding, there is a possibility that more children will be removed from their homes and placed into foster care.
Maintain Contracts for Adoption Placement	1,000,000	1,000,000	Additional funding is requested to ensure that contracted agencies continue to recruit and place children in need of adoptive homes. Federal funding (Adoption Incentive Grant Award) for this service has steadily decreased for Texas and will not be available for 2004-05.
Funding for Foster Care Day Care	1,622,907	1,622,907	This initiative would fund the increased need for foster parent day care services for eligible children. This additional funding would serve approximately 160 children in 2004 and 208 children in 2005.
Facility Based Youth Enrichment	929,724	929,724	This funding will replace Title XX, which was not appropriated in 2002-03. Contingent funding sources for this program did not materialize in the 2002-03 biennium. Keeping existing levels of services is critical for the agency to maintain a continuum of services designed to protect children, strengthen families, and support partnerships with local communities.
Federally Qualified Health Centers	10,000,000	10,000,000	In order to address the shortage of health care services in many parts of the state, this item would assist local communities in establishing or expanding Federally Qualified Health Centers. These centers provide basic health care in medically under-served areas.
Rehabilitate People with Disabilities	5,888,587	26,897,026	This item funds a state match for projected 3 percent annual growth in a federal grant. This is the primary service delivery system in a continuum of services leading to employment. Without the exceptional request, an estimated 28,583 Texans with disabilities would not be served the first year of the biennium.
Waiting List Reduction and Avoidance	\$ 255,963,267	\$ 477,231,886	

Source: The Revised Texas Promoting Independence Plan. In response to SB 367, Executive order RP-13, and the *Olmstead vs. L.C.* Decision, Dec. 2, 2002. <www.hhsc.state.tx.us/pubs/tpipo2/02_12TPIPprev.pdf>