



COMMONWEALTH of VIRGINIA
Department for the Aging

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AAA TUESDAY E-MAILING
August 2, 2011

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Note: The web addresses (links) in this document may change over time. The Department for the Aging does not attempt to refresh the links once the week has passed. However, this document is maintained on the web for a period of time as a reference. Some links may require registration.



COMMONWEALTH of VIRGINIA
Department for the Aging

MEMORANDUM

TO: Executive Directors
Area Agencies on Aging

FROM: Patricia Cummins

DATE: August 2, 2011

SUBJECT: VAIRS Suicide Intervention Webinar Announcement

Date: August 18, 2011 **Time:** 2:00 pm – 3:30 pm

Cost: \$25 – go to www.VAIRS.org to register & pay by August 12

Webinar Overview

It is estimated that 5% of the population (over 15.5 million in the US) experiences thoughts of suicide at any given time. This statistic indicates that, as I&R providers, it is quite likely we may encounter an individual considering suicide as the solution to a life problem. The objective of this workshop is to help the I&R professional identify the person at risk of suicide, connect with them, and provide appropriate assistance. This webinar will provide the participants with an understanding of their roles and tasks in working with the person at risk with the goal of reducing the stress encountered when working with persons at risk.

Trainer Info:

John Plonski has over 26 years experience in the fields of Crisis/Suicide Intervention and Information and Referral on local, state, and national levels using a person-centered approach to assist those in crisis. His 20 years of employment at Covenant House Nineline, and prior experience as a volunteer at a local crisis intervention hotline gives him an insight into the unique training needs of both professional and volunteer staff.



COMMONWEALTH of VIRGINIA
Department for the Aging

MEMORANDUM

TO: Executive Directors, Information & Referral Specialists, Case Managers
Area Agencies on Aging

FROM: Patricia Cummins

DATE: August 2, 2011

SUBJECT: November 15th VAIRS Conference in Richmond

Please save the date for the Fall Virginia Alliance of Information and Referral Systems (VAIRS) Conference.

The VAIRS conference is scheduled for Tuesday, November 15th at The Place at Innsbrook, 4036-C Cox Road, Glen Allen, VA 23060.

Details will follow.

COMMONWEALTH of VIRGINIA
Department for the Aging

MEMORANDUM

TO: Executive Directors
Area Agencies on Aging

FROM: Tim Catherman, Director of Administrative Services

DATE: August 1, 2011

SUBJECT: Veterans Transportation and Community Living grants

The Department of Transportation has joined with the Departments of Veterans Affairs, Labor, Defense, and Health and Human Services to establish an initiative that will improve transportation options and mobility for America's veterans, service members, and their families. The Veterans Transportation and Community Living Initiative (VTCLI) announced Notice of Funding Availability.

Here is the link to the initiative website: <http://www.fta.dot.gov/veterans>.

This grant opportunity will be funded using \$30 million in unallocated Discretionary Bus and Bus Facilities Program funds, authorized by 49 U.S.C. 5309(b) of the Safe, Accountable, Flexible, Efficient, Transportation Equity Act: A Legacy For Users (SAFETEA-LU), Public Law 109-59, August 10, 2005. VTCLI will provide up to \$3 million for the VA health care network to coordinate veterans' transportation needs with community transportation systems. The Department of Labor's Office of Disability Employment Policy will provide up to \$250,000 for social media tools and training to include veterans and military in community transportation decision-making. The VTCLI grant program requires a 20% local match.

A Veterans Transportation and Community Living Initiative webinar will be held on August 4th from 12:30 to 2:00 pm. To register for the webinar:
https://www.nhi.fhwa.dot.gov/resources/webconference/web_conf_learner_reg.aspx?webconfid=23323

Participant dial-in number: (866) 254-5935
Participant access code: 212187

Complete proposals for the discretionary Veterans Transportation and Community Living grants must be submitted by September 16, 2011.



COMMONWEALTH of VIRGINIA
Department for the Aging

MEMORANDUM

TO: Executive Directors
Area Agencies on Aging

FROM: Kathy Miller, Director of Programs

DATE: August 2, 2011

SUBJECT: Public Hearings on Transitioning Individuals from Training Centers to Community-Based Settings

Section § 37.2-319 of the Code of Virginia requires the Governor to direct the Secretary of Health and Human Resources to develop a plan to transition individuals with intellectual disabilities from state training centers to community-based settings. The plan shall include provisions to reduce the number of individuals who are currently residing in state training centers and include provisions to:

- (i) offer a broad array of community-based services including but not limited to Intellectual Disability Home and Community Based Waivers, and
- (ii) address the availability of appropriate community housing.

The plan shall also include:

- (i) facility specific objectives,
- (ii) timeframes to implement changes, and
- (iii) shall be developed with input from:
 - a. individuals receiving training center services and their families,
 - b. community services boards,
 - c. private providers, and
 - d. the Department of Medical Assistance Services.

The Department of Behavioral Health and Developmental Services (DBHDS) has scheduled regional public hearings to receive citizen input on what should be included in the plan. Individuals wishing to speak must register at the hearing site no earlier than one hour prior to the start of the hearing and should limit their comments to 3 minutes or less. Groups and organizations are asked to consolidate comments to reduce duplication.

SUBJECT: Public Hearings on Transitioning Individuals from Training Centers
to Community-Based Settings

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Questions should be directed to: Heidi Dix, DBHDS Assistant Commissioner, for
Developmental Services at (804) 371-0064.

Written comments should be emailed to heidi.dix@dbhds.virginia.gov or mailed to: Heidi
Dix, Virginia Department of Behavioral Health and Developmental Services, 1220 Bank
Street, Richmond, VA 23218-1727

Monday, August 1

10:00 a.m.

Hampton Public Library, Room A (capacity = 80)

4207 Victoria Blvd.

Hampton, VA 23669

Tuesday, August 2

9:00–11:00 a.m.

Petersburg Public Library, Meeting Room (capacity = 50)

137 South Sycamore Street

Petersburg, VA 23803

Tuesday, August 2

2:00 p.m.

George Mason Regional Library, Meeting Room (capacity = 75)

7001 Little River Turnpike

Annandale, VA 22003-5975

Wednesday, August 3

2:00 p.m.

Smyth-Bland Regional Library, Copenhaver Room (capacity = 75)

118 S Sheffey Street

Marion, VA, 24354

Thursday, August 4

10:00 a.m.

Lynchburg Public Library, Meeting Room (capacity = 110)

2315 Memorial Avenue

Lynchburg, VA 24501

Accommodations for individuals with hearing impairment may be made by calling (804)
371-0064. All requests for individuals with hearing impairment must be received by 5:00
p.m., Monday, July 25.



COMMONWEALTH of VIRGINIA
Department for the Aging

MEMORANDUM

TO: Executive Directors
Area Agencies on Aging

FROM: Ellen Nau, Program Coordinator

DATE: August 2, 2011

SUBJECT: Information for the Aging Network

Working Caregivers

A Gallup Healthways Well-Being Index survey has produced three articles about working caregivers in the United States. More than one in six working Americans is a caregiver. The first article discusses what it means to be a working caregiver, the second article presents information on the impact of caregiving on the work place, and the third and final article reviews who working caregivers are caring for, and how these caregivers spend their time. To access these informative articles, go to:

<http://www.gallup.com/poll/148640/One-Six-American-Workers-Act-Caregivers.aspx>

Money Magazine

A July 29, 2011 article in money magazine cites the material from the above mentioned three articles and offers caregivers three tips for caring for an elderly relative. The article that can be located at: http://blogs.smartmoney.com/encore/2011/07/29/3-tips-for-caring-for-a-relative/?mod=rss_&link=SM_home_blogsum. Money Magazine asks that their readers send in their tips for caring for an elderly relative.

Rosalynn Carter Institute Summit and Training Institute

The 2011 Rosalynn Carter Institute National Summit and Training Institute will be held October 5-7, 2011. This year's Summit is entitled *Using What Works: Bringing Effective Caregiver Programs to Your Community*. Details and online registration available at: www.2011RCISummit.org

2011 National Lifespan Respite Conference

The "Many Faces of Respite Conference," 2011 National Respite Conference will be held in Glendale, AZ, November 1-4, 2011. For more information, access the ARCH National Lifespan Respite website at: <http://www.arch.memberlodge.org/Events>

SUBJECT:Information for the Aging Network

Working Caregivers

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NASUAD Notes OIG Findings on Medicaid Adult Day Health Services

A recent report of the U.S. Department of Health and Human Services Office of the Inspector General entitled "*Medicaid Services Provided in Adult Day Health Setting*": (OEI-09-07-00500) has resulted in OIG recommendations to the Centers for Medicare and Medicaid Services concerning Medicaid funded adult day health services. CMS, according to the OIG report, should:

- specify what adult day health services are require for Medicaid reimbursement
- direct states to enforce supervision requirements for staff who provide therapy services in Medicaid adult day health programs
- address the issue of adult day health centers not responding to the OIG survey.

The OIG report is available at <http://oig.hhs.gov/oei/reports/oei-09-07-00500.pdf>

NASUAD will be issuing an issue brief on this topic in the near future. Mike Cheek at NASUAD is dealing with this topic and can be reached at mcheek@nasuad.org



COMMONWEALTH of VIRGINIA
Department for the Aging

MEMORANDUM

TO: Executive Directors
Area Agencies on Aging

FROM: Patricia Cummins

DATE: August 2, 2011

SUBJECT: Free Training: Information & Referral/Assistance (I&R/A) Intensive Training at National Home and Community Based Services Conference in Washington, DC on Sept. 12

The National Association of States United for Aging and Disabilities' (NASUAD) National Aging I&R Support Center is offering a free I&R/A intensive training session at this year's National Home and Community Based Services Conference in Washington, DC. The training will be held on Monday, September 12th, from 8:30 a.m. to 5:00 p.m. New and experienced I&R/A professionals are encouraged to join this training session as staff from the Support Center review the core competencies of aging I&R/A. The training session will also provide participants with an overview of the CIRS-A exam, including the skills, knowledge and experience needed to successfully pass the exam. To register for the I&R/A intensive training contact Kimberly Fletcher at (202) 898-2578 or send her an e-mail at lfinnan@nasuad.org. You do not have to register for or attend the HCBS Conference to participate in the I&R/A training session.

A proctored AIRS Certification Testing will also be available on Tuesday, September 13th, from 9:30 a.m. to 11:30 a.m. Applicable fees and registration are required for AIRS testing. For more information on AIRS Certification testing, contact the Certification Manager at AIRS, 11240 Waples Mill Road, Suite 200, Fairfax, VA 22030; 703-218-AIRS ext. 201 or certification@airs.org.

You may find details about the intensive training as well as instructions for AIRS certification testing registration in the attached flyer or on NASUAD's website at <http://nasuad.org/documentation/hcbs2011/AIRS%20Flyer.pdf>.

HCBS conference details may be viewed at http://www.nasuad.org/events/national_hcbs_conference.html



I&R/A Training and AIRS Certification

DON'T MISS THIS OPPORTUNITY FOR TRAINING AND CREDENTIALING!

The National Association of States United for Aging and Disabilities (NASUAD) is pleased to provide an opportunity for Information and Referral/Assistance (I&R/A) training and certification testing at the National Home and Community Based Services Conference.

This year's conference will include a one day intensive session and an opportunity for individuals seeking credentials to be tested for AIRS certification. The I&R/A intensive training session is designed to provide a concentrated review of the key competencies needed for certification as an aging I&R/A specialist (CIRS-A). **This one day intensive session is offered without charge, however, pre-registration is required. Applicable fees and registration are required for AIRS testing.**

I&R/A Intensive Training

Monday, September 12

8:30 am – 5:00 pm

Hyatt Regency Washington on Capitol Hill

This session will examine both:

- (1) The essential knowledge, skills, attitudes and work-related behaviors a professional must demonstrate to effectively perform as an I&R/A specialist in accordance with the AIRS performance based competencies, with a particular focus on competencies for working with older persons and caregivers; and
- (2) The infrastructures, programs, services, benefits, and the related federal legislation associated with older Americans, as well as key national resources for optimizing service delivery by aging I&R/As.

No charge for this intensive training, but registration is required.

Registration? Contact Kimberly Fletcher at (202) 898-2578 or send an e-mail to kfletcher@nasuad.org.

Questions? For more information on the I&R/A intensive training session, contact Rex O'Rourke at 202-898-2578, or rorourke@nasuad.org.

Continues.



AIRS Certification Testing

Tuesday, September 13

9:30 am – 11:30 am

Hyatt Regency Washington on Capitol Hill

Candidates for AIRS Certification testing will find information about the CIRS, CIRS-A and CRS examinations, application forms and fees, study materials and competencies for I&R/A specialists on the AIRS website: www.airs.org.

The following steps will assist you with the application and study processes:

1. **Review** the AIRS Certification testing information provided on the [AIRS website](http://www.airs.org).
2. **Complete** the [AIRS Certification Application Form](#).
3. **Submit** the Certification Application Form along with supporting documentation and payment to AIRS. Application and payment must be received by AIRS at least 30 days prior to the test date.
4. **Study** Recommended Certification Resource Materials prior to testing. Study materials may be found on the [AIRS website](#). The study guide for developing aging competencies can also be reached directly through the [I&R Support Center's website](#).
5. **Attend** the National Aging I&R Support Center's one day intensive training session on Monday, September 12.

Questions? For more information on AIRS Certification testing, contact the Certification Manager at AIRS, 11240 Waples Mill Road, Suite 200, Fairfax, VA 22030; 703-218-AIRS ext. 201 or certification@airs.org.

The intensive training session is sponsored by the National Aging I&R/A Support Center, NASUAD, funded by the U.S. Administration on Aging



COMMONWEALTH of VIRGINIA
Department for the Aging

MEMORANDUM

TO: Executive Directors
Area Agencies on Aging

FROM: Kathy Miller, Director of Programs

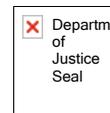
DATE: August 2, 2011

SUBJECT: DOJ and Enforcement of Integration Mandate in ADA/Olmstead

In recognition of the 12th anniversary of the Supreme Court's Olmstead decision, the United States Department of Justice (DOJ) has issued a comprehensive "Statement on Enforcement of the Integration Mandate" of the ADA and Olmstead. This is DOJ's "technical assistance guide." Advocates can use it in their advocacy efforts. The document represents the official position of the highest law enforcement agency in the country.

The document is included in the Tuesday Mailing but is available for downloading at:
http://www.ada.gov/olmstead/q&a_olmstead.htm

U.S. Department of Justice
Civil Rights Division



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.*

In the years since the Supreme Court's decision in *Olmstead v. L.C.*, 527 U.S. 581 (1999), the goal of the integration mandate in title II of the Americans with Disabilities Act – to provide individuals with disabilities opportunities to live their lives like individuals without disabilities – has yet to be fully realized. Some state and local governments have begun providing more integrated community alternatives to individuals in or at risk of segregation in institutions or other segregated settings. Yet many people who could and want to live, work, and receive services in integrated settings are still waiting for the promise of *Olmstead* to be fulfilled.

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 vigorously enforce the civil rights of Americans with disabilities. Since then, the Department of Justice has made enforcement of *Olmstead* a top priority. As we commemorate the 12th anniversary of the *Olmstead* decision, the Department of Justice reaffirms its commitment to vindicate the right of individuals with disabilities to live integrated lives under the ADA and *Olmstead*. To assist individuals in understanding their rights under title II of the ADA and its integration mandate, and to assist state and local governments in complying with the ADA, the Department of Justice has created this technical assistance guide.

The ADA and Its Integration Mandate

In 1990, Congress enacted the landmark Americans with Disabilities Act "to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities."¹ In passing this groundbreaking law, Congress recognized that "historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem."² For those reasons, Congress prohibited discrimination against individuals with disabilities by public entities:

[N]o qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.³

As directed by Congress, the Attorney General issued regulations implementing title II, which are based on regulations issued under section 504 of the Rehabilitation Act.⁴ The title II regulations require public entities to "administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities."⁵ The preamble discussion of the "integration regulation" explains that "the most integrated setting" is one that "enables individuals with disabilities to interact with nondisabled persons to the fullest extent possible . . ."⁶

In *Olmstead v. L.C.*, 527 U.S. 581 (1999), the Supreme Court held that title II prohibits the unjustified segregation of individuals with disabilities. The Supreme Court held that public entities are required to provide community-based services to persons with disabilities when (a) such services are appropriate; (b) the affected persons do not oppose community-based treatment; and (c) community-based services can be reasonably accommodated, taking into account the resources available to the entity and the needs of others who are receiving disability services from the entity.⁷ The Supreme Court explained that this holding "reflects two evident judgments." First, "institutional placement of persons who can handle and benefit from community settings perpetuates unwarranted assumptions that persons so isolated are incapable or unworthy of participating in community life." Second, "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."⁸

To comply with the ADA's integration mandate, public entities must reasonably modify their policies, procedures or practices when necessary to avoid discrimination.⁹ The obligation to make reasonable modifications may be excused only where the public entity demonstrates that the requested modifications would "fundamentally alter" its service system.¹⁰

In the years since the passage of the ADA and the Supreme Court's decision in *Olmstead*, the ADA's integration mandate has been applied in a wide

variety of contexts and has been the subject of substantial litigation. The Department of Justice has created this technical assistance guide to assist individuals in understanding their rights and public entities in understanding their obligations under the ADA and *Olmstead*. This guide catalogs and explains the positions the Department of Justice has taken in its *Olmstead* enforcement. It reflects the views of the Department of Justice only. For questions about this guide, you may contact our ADA Information Line, 800-514-0301 (voice), 800-514-0383 (TTY).

Date: June 22, 2011

Questions and Answers on the ADA's Integration Mandate and *Olmstead* Enforcement

1. What is the most integrated setting under the ADA and *Olmstead*?

A: The "most integrated setting" is defined as "a setting that enables individuals with disabilities to interact with non-disabled persons to the fullest extent possible."¹¹ 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. Evidence-based practices that provide scattered-site housing with supportive services are examples of integrated settings. By contrast, segregated settings often have qualities of an institutional nature. Segregated settings include, but are not limited to: (1) congregate settings populated exclusively or primarily with individuals with disabilities; (2) congregate settings characterized by regimentation in daily activities, lack of privacy or autonomy, policies limiting visitors, or limits on individuals' ability to engage freely in community activities and to manage their own activities of daily living; or (3) settings that provide for daytime activities primarily with other individuals with disabilities.

2. When is the ADA's integration mandate implicated?

A: 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.¹²

3. Does a violation of the ADA's integration mandate require a showing of facial discrimination?

A: No, in the *Olmstead* context, an individual is not required to prove facial discrimination. In *Olmstead*, the court held that the plaintiffs could make out a case under the integration mandate even if they could not prove "but for" their disability, they would have received the community-based services they sought. It was enough that the state currently provided them services in an institutional setting that was not the most integrated setting appropriate.¹³ Additionally, an *Olmstead* claim is distinct from a claim of disparate treatment or disparate impact and accordingly does not require proof of those forms of discrimination.

4. What evidence may an individual rely on to establish that an integrated setting is appropriate?

A: An individual may rely on a variety of forms of evidence to establish that an integrated setting is appropriate. A reasonable, objective assessment by a public entity's treating professional is one, but only one, such avenue. Such assessments must identify individuals' needs and the services and supports necessary for them to succeed in an integrated setting. Professionals involved in the assessments must be knowledgeable about the range of supports and services available in the community. However, the ADA and its regulations do not require an individual to have had a state treating professional make such a determination. People with disabilities can also present their own independent evidence of the appropriateness of an integrated setting, including, for example, that individuals with similar needs are living, working and receiving services in integrated settings with appropriate supports. This evidence may come from their own treatment providers, from community-based organizations that provide services to people with disabilities outside of institutional settings, or from any other relevant source. Limiting the evidence on which *Olmstead* plaintiffs may rely would enable public entities to circumvent their *Olmstead* requirements by failing to require professionals to make recommendations regarding the ability of individuals to be served in more integrated settings.

5. What factors are relevant in determining whether an individual does not oppose an integrated setting?

A: Individuals must be provided the opportunity to make an informed decision. Individuals who have been institutionalized and segregated have often been repeatedly told that they are not capable of successful community living and have been given very little information, if any, about how they could successfully live in integrated settings. As a result, individuals' and their families' initial response when offered integrated options may be reluctance or hesitancy. Public entities must take affirmative steps to remedy this history of segregation and prejudice in order to ensure that individuals have an opportunity to make an informed choice. Such steps include providing information about the benefits of integrated settings;

facilitating visits or other experiences in such settings; and offering opportunities to meet with other individuals with disabilities who are living, working and receiving services in integrated settings, with their families, and with community providers. Public entities also must make reasonable efforts to identify and addresses any concerns or objections raised by the individual or another relevant decision-maker.

6. Do the ADA and *Olmstead* apply to persons at serious risk of institutionalization or segregation?

A: Yes, the ADA and the *Olmstead* decision extend to persons at serious risk of institutionalization or segregation and are not limited to individuals currently in institutional or other segregated settings. Individuals need not wait until the harm of institutionalization or segregation occurs or is imminent. For example, a plaintiff could show sufficient risk of institutionalization to make out an *Olmstead* violation if a public entity's failure to provide community services or its cut to such services will likely cause a decline in health, safety, or welfare that would lead to the individual's eventual placement in an institution.

7. May the ADA and *Olmstead* require states to provide additional services, or services to additional individuals, than are provided for in their Medicaid programs?

A: A state's obligations under the ADA are independent from the requirements of the Medicaid program.¹⁴ Providing services beyond what a state currently provides under Medicaid may not cause a fundamental alteration, and the ADA may require states to provide those services, under certain circumstances. For example, the fact that a state is permitted to "cap" the number of individuals it serves in a particular waiver program under the Medicaid Act does not exempt the state from serving additional people in the community to comply with the ADA or other laws.¹⁵

8. Do the ADA and *Olmstead* require a public entity to provide services in the community to persons with disabilities when it would otherwise provide such services in institutions?

A: Yes. Public entities cannot avoid their obligations under the ADA and *Olmstead* by characterizing as a "new service" services that they currently offer only in institutional settings. The ADA regulations make clear that where a public entity operates a program or provides a service, it cannot discriminate against individuals with disabilities in the provision of those services.¹⁶ Once public entities choose to provide certain services, they must do so in a nondiscriminatory fashion.¹⁷

9. Can budget cuts violate the ADA and *Olmstead*?

A: Yes, budget cuts can violate the ADA and *Olmstead* when significant funding cuts to community services create a risk of institutionalization or segregation. The most obvious example of such a risk is where budget cuts require the elimination or reduction of community services specifically designed for individuals who would be institutionalized without such services. In making such budget cuts, public entities have a duty to take all reasonable steps to avoid placing individuals at risk of institutionalization. For example, public entities may be required to make exceptions to the service reductions or to provide alternative services to individuals who would be forced into institutions as a result of the cuts. If providing alternative services, public entities must ensure that those services are actually available and that individuals can actually secure them to avoid institutionalization.

10. What is the fundamental alteration defense?

A: A public entity's obligation under *Olmstead* to provide services in the most integrated setting is not unlimited. A public entity may be excused in instances where it can prove that the requested modification would result in a "fundamental alteration" of the public entity's service system. A fundamental alteration requires the public entity to prove "that, in the allocation of available resources, immediate relief for plaintiffs would be inequitable, given the responsibility the State [or local government] has taken for the care and treatment of a large and diverse population of persons with [] disabilities."¹⁸ It is the public entity's burden to establish that the requested modification would fundamentally alter its service system.

11. What budgetary resources and costs are relevant to determine if the relief sought would constitute a fundamental alteration?

A: The relevant resources for purposes of evaluating a fundamental alteration defense consist of all money the public entity allots, spends, receives, or could receive if it applied for available federal funding to provide services to persons with disabilities. Similarly, all relevant costs, not simply those funded by the single agency that operates or funds the segregated or integrated setting, must be considered in a fundamental alteration analysis. Moreover, cost comparisons need not be static or fixed. If the cost of the segregated setting will likely increase, for instance due to maintenance, capital expenses, environmental modifications, addressing substandard care, or providing required services that have been denied, these incremental costs should be incorporated into the calculation. Similarly, if the cost of providing integrated services is likely to decrease over time, for instance due to enhanced independence or decreased support needs, this reduction should be incorporated as well. In determining whether a service would be so expensive as to constitute a fundamental alteration, the fact that there may be transitional costs of converting from segregated to integrated settings can be considered, but it is not determinative. However, if a public entity decides to serve new individuals in segregated settings ("backfilling"), rather than to close or downsize the segregated settings as individuals in the plaintiff class move to integrated settings, the costs associated with that decision should not be included in the fundamental alteration analysis.

12. What is an *Olmstead* Plan?

A: An *Olmstead* plan is a public entity's plan for implementing its obligation to provide individuals with disabilities opportunities to live, work, and be served in integrated settings. A comprehensive, effectively working plan must do more than provide vague assurances of future integrated options or describe the entity's general history of increased funding for community services and decreased institutional populations. Instead, it must reflect an analysis of the extent to which the public entity is providing services in the most integrated setting and must contain concrete and reliable commitments to expand integrated opportunities. The plan must have specific and reasonable timeframes and measurable goals for which the public entity may be held accountable, and there must be funding to support the plan, which may come from reallocating existing service dollars. The plan should include commitments for each group of persons who are unnecessarily segregated, such as individuals residing in facilities for individuals with developmental disabilities, psychiatric hospitals, nursing homes and board and care homes, or individuals spending their days in sheltered workshops or segregated day programs. To be effective, the plan must have demonstrated success in actually moving individuals to integrated settings in accordance with the plan. A public entity cannot rely on its *Olmstead* plan as part of its defense unless it can prove that its plan comprehensively and effectively addresses the needless segregation of the group at issue in the case. Any plan should be evaluated in light of the length of time that has passed since the Supreme Court's decision in *Olmstead*, including a fact-specific inquiry into what the public entity could have accomplished in the past and what it could accomplish in the future.

13. Can a public entity raise a viable fundamental alteration defense without having implemented an *Olmstead* plan?

A: The Department of Justice has interpreted the ADA and its implementing regulations to generally require an *Olmstead* plan as a prerequisite to raising a fundamental alteration defense, particularly in cases involving individuals currently in institutions or on waitlists for services in the community. In order to raise a fundamental alteration defense, a public entity must first show that it has developed a comprehensive, effectively working *Olmstead* plan that meets the standards described above. The public entity must also prove that it is implementing the plan in order to avail itself of the fundamental alteration defense. A public entity that cannot show it has and is implementing a working plan will not be able to prove that it is already making sufficient progress in complying with the integration mandate and that the requested relief would so disrupt the implementation of the plan as to cause a fundamental alteration.

14. What is the relevance of budgetary shortages to a fundamental alteration defense?

A: Public entities have the burden to show that immediate relief to the plaintiffs would effect a fundamental alteration of their program. Budgetary shortages are not, in and of themselves, evidence that such relief would constitute a fundamental alteration. Even in times of budgetary constraints, public entities can often reasonably modify their programs by re-allocating funding from expensive segregated settings to cost-effective integrated settings. Whether the public entity has sought additional federal resources available to support the provision of services in integrated settings for the particular group or individual requesting the modification – such as Medicaid, Money Follows the Person grants, and federal housing vouchers – is also relevant to a budgetary defense.

15. What types of remedies address violations of the ADA's integration mandate?

A: A wide range of remedies may be appropriate to address violations of the ADA and *Olmstead*, depending on the nature of the violations. Remedies typically require the public entity to expand the capacity of community-based alternatives by a specific amount, over a set period of time. Remedies should focus on expanding the most integrated alternatives. For example, in cases involving residential segregation in institutions or large congregate facilities, remedies should provide individuals opportunities to live in their own apartments or family homes, with necessary supports. Remedies should also focus on expanding the services and supports necessary for individuals' successful community tenure. *Olmstead* remedies should include, depending on the population at issue: supported housing, Home and Community Based Services ("HCBS") waivers,¹⁹ crisis services, Assertive Community Treatment ("ACT") teams, case management, respite, personal care services, peer support services, and supported employment. In addition, court orders and settlement agreements have typically required public entities to implement a process to ensure that currently segregated individuals are provided information about the alternatives to which they are entitled under the agreement, given opportunities that will allow them to make informed decisions about their options (such as visiting community placements or programs, speaking with community providers, and meeting with peers and other families), and that transition plans are developed and implemented when individuals choose more integrated settings.

16. Can the ADA's integration mandate be enforced through a private right of action?

A: Yes, private individuals may file a lawsuit for violation of the ADA's integration mandate. A private right of action lies to enforce a regulation that authoritatively construes a statute. The Supreme Court in *Olmstead* clarified that unnecessary institutionalization constitutes "discrimination" under the ADA, consistent with the Department of Justice integration regulation.

17. What is the role of protection and advocacy organizations in enforcing *Olmstead*?

A: By statute, Congress has created an independent protection and advocacy system (P&As) to protect the rights of and advocate for individuals with disabilities.²⁰ Congress gave P&As certain powers, including the authority to investigate incidents of abuse, neglect and other rights violations; access to individuals, records, and facilities; and the authority to pursue legal, administrative or other remedies on behalf of individuals

with disabilities.²¹ P&As have played a central role in ensuring that the rights of individuals with disabilities are protected, including individuals' rights under title II's integration mandate. The Department of Justice has supported the standing of P&As to litigate *Olmstead* cases.

18. Can someone file a complaint with the Department of Justice regarding a violation of the ADA and *Olmstead*?

A: Yes, individuals can file complaints about violations of title II and *Olmstead* with the Department of Justice. A title II complaint form is available on-line at <http://www.ada.gov/> and can be sent to:

U.S. Department of Justice
Civil Rights Division
950 Pennsylvania Avenue, NW
Disability Rights Section - NYAV
Washington, DC 20530

Individuals may also call the Department's toll-free ADA Information Line for information about filing a complaint and to order forms and other materials that can assist you in providing information about the violation. The number for the ADA Information Line is (800) 514-0301 (voice) or (800) 514-0383(TTY).

In addition, individuals may file a complaint about violations of *Olmstead* with the Office for Civil Rights at the U.S. Department of Health and Human Services. Instructions on filing a complaint with OCR are available at <http://www.hhs.gov/ocr/civilrights/complaints/index.html>.

¹ 42 U.S.C. § 12101(b)(1).

² 42 U.S.C. § 12101(a)(2).

³ 42 U.S.C. § 12132.

⁴ See 42 U.S.C. § 12134(a); 28 C.F.R. § 35.190(a); Executive Order 12250, 45 Fed. Reg. 72995 (1980), *reprinted in* 42 U.S.C. § 2000d-1. Section 504 of the Rehabilitation Act of 1973 similarly prohibits disability-based discrimination. 29 U.S.C § 794(a) (“No otherwise qualified individual with a disability . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance . . .”). Claims under the ADA and the Rehabilitation Act are generally treated identically.

⁵ 28 C.F.R. § 35.130(d) (the “integration mandate”).

⁶ 28 C.F.R. Pt. 35, App. A (2010) (addressing § 35.130).

⁷ *Olmstead v. L.C.*, 527 U.S.at 607.

⁸ *Id.* at 600-01.

⁹ 28 C.F.R. § 35.130(b)(7).

¹⁰ *Id.*; see also *Olmstead*, 527 U.S. at 604-07.

¹¹ 28 C.F.R. pt. 35 app. A (2010).

¹² See 28 C.F.R. § 35.130(b)(1) (prohibiting a public entity from discriminating “directly or through contractual, licensing or other arrangements, on the basis of disability”); § 35.130(b)(2) (prohibiting a public entity from “directly, or through contractual or other arrangements, utilizing criteria or methods of administration” that have the effect of discriminating on the basis of disability”).

¹³ *Olmstead*, 527 U.S. at 598; 28 C.F.R. 35.130(d).

¹⁴ See CMS, *Olmstead Update No. 4*, at 4 (Jan. 10, 2001), available at <https://www.cms.gov/smdl/downloads/smd011001a.pdf>

¹⁵ *Id.*

¹⁶ 28 C.F.R. § 35.130.

¹⁷ See U.S. Dept. of Justice, *ADA Title II Technical Assistance Manual* § II-3.6200.

¹⁸ *Olmstead*, 527 U.S. at 604.

¹⁹ HCBS waivers may cover a range of services, including residential supports, supported employment, respite, personal care, skilled nursing, crisis services, assistive technology, supplies and equipment, and environmental modifications.

²⁰ 42 U.S.C. §§ 15001 *et seq.* (Developmental Disabilities Assistance and Bill of Rights Act, requiring the establishment of the P&A system to protect and advocate for individuals with developmental disabilities); 42 U.S.C. § 10801 *et seq.* (The Protection and Advocacy for Individuals with Mental Illness Act, expanding the mission of the P&A to include protecting and advocating for individuals with mental illness)

²¹ 42 U.S.C. §§ 10805, 15043.

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