

DOES THE LAW REQUIRE COMMUNITY BASED SERVICES FOR EVERYONE?

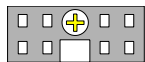


NO. However, The Americans with Disabilities Act (ADA) has made community based services a priority.

The Americans with Disabilities Act (ADA) was enacted in 1990. It established legal standards to provide people with disabilities an equal opportunity to participate in society. The law includes a mandate that government services be provided in the most integrated setting appropriate. This means services must be provided in a setting that maximizes opportunities for persons with disabilities to interact with persons who do not have disabilities. This became known as the "community integration mandate."

The ADA regulations also provide that state and local governments have a responsibility to make "reasonable modifications" to avoid discrimination on the basis of disability. This means that they are expected to take special steps to help persons with disabilities become integrated. However, they are not required to make fundamental alterations in programs and services.

HOW DOES THE COMMUNITY INTEGRATION MANDATE AFFECT PEOPLE IN PSYCHIATRIC HOSPITALS?



According to a 1999 U.S. Supreme Court decision (*L.C. v. Olmstead*), it is discrimination in violation of the ADA to require a person to be segregated or institutionalized to receive services when they could be receiving services in a less restrictive setting. In its decision, the Court emphasized the intent of Congress that the ADA be used to secure community living opportunities for persons with

disabilities. The Court also noted that institutional services must continue to be available for those persons who require that level of care.

DOES THIS MEAN THE STATE MUST PROVIDE COMMUNITY SERVICES FOR EVERYONE WHO CAN LIVE IN THE COMMUNITY?

Technically, the answer is that they should, but they don't have to do it all at once. The Court recognized that it would take both time and money for states to comply with the community integration mandate. Therefore, the Court ruled that states could consider the availability of resources, as well as the diverse needs of persons with disabilities, in meeting this requirement.



The Court made it clear that this decision did not mandate hospital closures or immediate deinstitutionalization. Instead, it requires that states must consider the needs of all persons with disabilities. States were expected to discharge people from institutional settings at a reasonable pace; states could not attribute their failure to do so solely due to a lack of resources.

The decision suggested that states could show they were trying to meet the requirement if they demonstrated that they have a "comprehensive, effectively working plan for placing qualified persons with mental disabilities in less restrictive settings, and a waiting list that moves at a reasonable pace not controlled by the state's endeavors to keep its institutions fully populated."

WHO DECIDES WHETHER A PERSON CAN LIVE IN THE COMMUNITY?

The state is allowed to rely on the reasonable assessment of its professionals. However, the reasonableness of such determinations can be

challenged. Decisions must be based on the individual's status, not the availability of community services.

DOES CONNECTICUT HAVE A PLAN TO INTEGRATE PERSONS INTO THE COMMUNITY?

Connecticut does not yet have a community integration plan. A multi-year investigation by the U.S. Department of Justice (DOJ) documented the state's failure to discharge individuals from Connecticut Valley Hospital (CVH, the state's remaining large inpatient psychiatric facility) in a timely manner. As a result, the DMHAS Commissioner and CVH instituted policies that require discharge within 120 days of declaration of readiness for discharge.

Despite the existence of these policies, discharge is still often delayed due to the lack of housing alternatives. The failure to conduct timely assessments and perform discharge planning can contribute to unnecessary delays. There are ongoing conversations about how Medicaid funds might be used under a waiver plan to cover optional services that support housing and to facilitate supportive services for persons with mental health conditions.

ARE THERE MANY PEOPLE IN CONNECTICUT WHO ARE UNNECESSARILY INSTITUTIONALIZED OR RESTRICTED?

YES, ALTHOUGH IT IS DIFFICULT TO DETERMINE EXACTLY HOW MANY.

DMHAS has documented gridlock in the state's mental health system, which can result in many clients receiving services in the wrong setting. Many are in hospitals only because there are not enough community placements, and others are stuck in transitional living arrangements, because more independent housing is not

available. People with mental health conditions continue to remain in nursing homes, although it is not known precisely how many of these individuals can live in the community.

The lack of an effective community integration plan means that people who do not require hospital care are unnecessarily confined and prevented from rebuilding their lives in the community. At the same time, people who may need those beds are denied access to them.

WHAT ABOUT THE PEOPLE IN SHELTERS AND JAILS?



The law is not as explicit about the rights of people already "in the community" however; it is



possible that people who are at risk of unnecessary institutionalization could be covered by the ADA. In addition, if the state runs programs, such as alternatives to incarceration, in a way that discriminates against persons with psychiatric disabilities, and makes it more likely that they will go to jail, that might violate the ADA. This means that the State may need to make reasonable modifications in its programs to provide necessary services to these individuals to promote community integration.

INDIVIDUALS HAVE THE RIGHT TO ADVOCACY SERVICES

Persons protected by the Bill of Rights have the right to advocacy to assist them in enforcing their rights. These advocates must be allowed to participate in treatment team meetings as well as other meetings and proceedings to enforce the Patients' Bill of Rights.



PROTECT YOUR RIGHTS

Among the legal rights protected under the Americans with Disabilities Act is the right to be integrated into the community, and to receive services in the least restrictive environment possible. This means an environment which maximizes an individual's opportunity to interact with non-disabled persons.

The purpose of this flyer is to provide an overview of the ADA provisions which establish an individual's right to community based, rather than institutional, services. It is not intended to explain all of the details related to this law or to provide legal advice. If you have questions about community integration, please call the Connecticut Legal Rights Project.



CONNECTICUT
LEGAL
RIGHTS
PROJECT, INC.

THE COMMUNITY INTEGRATION MANDATE OF THE AMERICANS WITH DISABILITIES ACT



RIGHTS TO COMMUNITY BASED TREATMENT

**For more assistance contact
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*The information in this flyer is effective as of
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**LEGAL REPRESENTATION FOR PEOPLE
WITH MENTAL HEALTH CONDITIONS**