



Olmstead Decision and Brain Injury

NASHIA Celebrates the 20th Anniversary of the Olmstead Decision

Tomorrow, June 22, marks the the 20th anniversary of the Olmstead Decision of the U.S. Supreme Court. This landmark decision, *Olmstead v. L.C.*, has increased community options, participation and independence of people with disabilities, including individuals with brain injury, and older Americans who are moving out of nursing homes and other institutions and back into the community. As the result of this decision, both federal and State government have pursued initiatives to increase community options for long-term services and supports (LTSS). As a major financier of LTSS, most of these initiatives have pertained to Medicaid, such as the Money Follows the Person (MFP) Demonstration Grant program, which provided enhanced federal funding for Medicaid services for beneficiaries who transition from institutions to the community.

The U.S. House of Representatives passed legislation extending funding for the Money Follows the Person (MFP) program this week and the legislation has been sent to the Senate. H.R. 3223, the Empowering Beneficiaries, Ensuring Access, and Strengthening Accountability Act, includes an extension of MFP through FY 2024, and the Spousal Impoverishment Protections to preserve asset protections for the spouses of Medicaid beneficiaries who receive long term care benefits through March 31, 2024.

About half of the States administer brain injury home and community-based services (HCBS) waiver programs. About the same number administer programs that are funded through State general revenue and/or trust fund programs. Some States use multiple funding streams to provide services, supports and resources to help people to reintegrate into family and community living after a brain injury. Click [here](#) to learn more information about these resources, scroll to Reports/Fact Sheets to access the fact sheets.



How has Olmstead Impacted Brain Injury Services?



What is the Olmstead Decision?

The United States Supreme Court held in *Olmstead v. L.C.* that persons with disabilities have a right to have opportunities to live, work, and receive services in the greater community, like individuals without disabilities. Specifically,

Massachusetts TBI/ABI Waiver Programs

After two class action lawsuits were settled in favor of plaintiffs with a traumatic brain injury (TBI) seeking community living in lieu of institutional services, a landmark settlement was reached in the Commonwealth of Massachusetts on June 2, 2008, that enables individuals with TBI to move out of nursing facilities and into the community.

The Hutchinson v. Patrick settlement and a similar lawsuit, Rolland V. Patrick, settled in 2013, resulted in the Massachusetts Rehabilitation Commission (MRC) implementing a TBI Medicaid Home and Community-based (HCBS) Waiver program followed by the Money Follows the Person Demonstration project, and an ABI HCBS waiver. MRC also administers the Statewide Head Injury Program (SHIP).

Click [here](#) to learn more about these initiatives from a webinar presented by Sandy Biber, Director, Community Based Service, Massachusetts Rehabilitation Commission.

the Court ruled *that unjustified segregation of persons with disabilities constitutes discrimination in violation of Title II of the Americans with Disabilities Act (ADA)*, which prohibits public entities, including State and local governments, from discriminating against "qualified individuals with disabilities" by excluding them from services and activities due to their disability.

Does the Olmstead Decision Impact Individuals with Brain Injury?

Yes. Under the ADA, a person with a disability is defined as a person who has a physical or mental impairment that substantially limits one or more major life activities; a person who has a history or record of such an impairment; or a person who is perceived by others as having such an impairment.

Is Olmstead Limited to Institutional Facilities?

No. Cases have been filed with regard to individuals with disabilities in sheltered workshop settings, facility-based day programs, and segregated educational program for students with behavior-related disabilities. Settlement agreements have been made by DOJ and pertinent States with directives to provide community alternatives, such as supported employment services in lieu of sheltered employment.



NASHIA Partners with the NCAPPS Project on Person-Centered Thinking and Planning

What is Person-Centered Thinking and Planning?

Person-Centered Thinking and Planning is an ongoing problem-solving process that empowers individuals with brain injury to plan for their future and get the services and resources needed. In person centered planning, groups of people selected by the individual with brain injury support the individual and that person's vision of what they would like to do in the future.

Who Created the Person-Centered Planning Approach?

Person Centered Planning was first developed in the 1980's by a small number of people including John O'Brien, Connie Lyle O'Brien, Beth Mount, Jack Pearpoint, Marsha Forest and Michael Smull. Their belief is that people with disabilities are people "first". As such, they developed approaches to ensure that the person is at the center of planning and empowered to pursue their dreams and goals.

Why is Medicaid Involved?

The [2014 Settings Rule](#) required that Medicaid Home and Community-Based Services (HCBS) be provided in accordance with person centered planning. "Medicaid will not cover home and community-based services (HCBS) without a person-centered service plan (service plan) that addresses the beneficiary's long-term care needs as an alternative to institutionalization." This applies to HCBS waiver programs and State Plan services under the 1915(c), 1915(i) and 1915(k).

What is NCAPPS?

The National Center on Advancing Person-Centered Practices and Systems (NCAPPS) is a new initiative from the Administration for Community Living (ACL) and the Centers for Medicare & Medicaid Services (CMS) to help States, Tribes, and Territories to implement person-centered practices and systems change to make person-centered principles a reality in the lives of people who require services and supports across the lifespan. NCAPPS will provide technical assistance, webinars and other learning opportunities to assist States in transforming their systems. NASHIA is partnering and collaborating with the project with regard to State programs offering HCBS services to individuals with brain injury.

Do You Have Resources and Expertise to Share?

As a partner to the NCAPPS project, NASHIA welcomes information from your State with regard to implementing person-centered thinking and practice. Has your State embarked on training, developed a training curriculum and policies, and other expertise that we may share? Whether these policies and practices have been implemented with regard to Medicaid funded services or State general revenue/trust funds, we would love to hear from you. You may send or contact Rebecca Wolfkiel, Executive Director, at execdirector@nashia.org.



Person-Centered Planning Resources

- "An Introduction to Person-Centered Thinking: Making a Difference Now!" A [PPT](#) by Anne Roehl, Institute on Community Integration, University of Minnesota
- NASHIA 3-Part Webinar Series on Person-Centered Planning: "From Dreams to Reality" (2018). Click [here](#) and scroll through archived webinars.



Brain Injury Services and Resources

- U.S. Administration for Community Living (ACL) [TBI State Partnership Grant Program](#)
- [CHARTING the LifeCourse™](#), UM-KC Institute for Human Development, UCEDD
- [Medicaid and Long-Term Services and Supports: A Primer](#), Kaiser Family Foundation

- [NCAPPS](#) resources and materials.
 - [Steps to Creating a Statewide Person-Centered Service Planning System](#), Centers for Medicare and Medicaid Services (CMS).
 - [MRC Community Based Services \(MA\)](#)
 - [State Programs and Services for Individuals with TBI and Their Families](#), NASHIA, 2018
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