

Michigan OLMSTEAD Housing Plan- 2014

In June 2013, HUD issued “Statement of the Department of Housing and Urban Development on the Role of Housing in Accomplishing the Goals of Olmstead”. *Listed here at the beginning are important excerpts:*

Individuals with disabilities have historically faced discrimination that limited their opportunity to live independently in the community and required them to live in institutions and other segregated settings.² In 1999, the United States Supreme Court issued the landmark decision in *Olmstead v. L.C.*, 527 U.S. 581 (1999), affirming that the unjustified segregation of individuals with disabilities is a form of discrimination prohibited by Title II of the Americans with Disabilities Act (ADA). (page 1)

The Supreme Court ruled that the ADA prohibits the unjustified segregation of individuals with disabilities, which means that states and localities cannot require that individuals with disabilities reside in nursing homes, state psychiatric hospitals, or other institutional settings in order to receive necessary services if those services could reasonably be provided in integrated, community-based settings. **Specifically, the Court held that public entities must provide services to individuals with disabilities in community settings rather than institutions** when: 1) such services are appropriate to the needs of the individual; 2) the affected persons do not oppose community-based treatment; and 3) community-based services can be reasonably accommodated, taking into account the resources available to the public entity and the needs of others who are receiving disability-related services from the entity.⁹

In reaching this conclusion, the Court relied on Congress’ findings in enacting the ADA 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.”¹⁰

The *Olmstead* decision—and subsequent voluntary *Olmstead* planning and implementation, litigation by groups representing individuals with disabilities, and Department of Health and Human Services and Department of Justice enforcement efforts—are creating a dramatic shift in the way services are delivered to individuals with disabilities. While, historically, state health and long-term care systems have been heavily weighted toward using institutions, hospitals, nursing homes, adult care facilities, and other restrictive, segregated settings to provide long term services and supports for individuals with disabilities, **states have been rebalancing their systems away from institutions and steadily increasing the array of services that can be provided with Medicaid funding in home- and community-based settings.**

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The integration mandate of the ADA and *Olmstead* compels states to offer community-based health care services and long-term services and supports for individuals with disabilities who can live successfully in housing with access to those services and supports. **In practical terms, this means that states must find housing that enables them to assist individuals with disabilities to transition out of institutions and other segregated settings and into the most integrated setting appropriate to the needs of each individual with a disability.** A critical consideration in each state is the range of housing options available in the community for individuals with disabilities and whether those options are largely limited to living with other individuals with disabilities, or whether those options include substantial opportunities for individuals with disabilities to live and interact with individuals without disabilities. (page 4)

The Centers for Medicare & Medicaid Services (CMS) have supported efforts by states to rebalance their health care systems from institutional to community-based care. For example, the Money Follows the Person (MFP) program, authorized by Congress in 2005 and extended in 2010 under the Patient Protection and Affordable Care Act (ACA), authorizes CMS to offer incentives to states to assist them in rebalancing their long-term care system to a more home- and community-based orientation by, among other things, providing an enhanced federal match on services and supports for individuals who transition to community-based settings from institutional care. **Individuals with disabilities have encountered a consistent barrier to using state MFP programs to transition out of institutions: a lack of accessible, affordable housing, and in particular, a lack of integrated housing options scattered throughout the community where individuals with disabilities can receive the support services they need from a service provider of their choosing.** (page 5)

VOLUNTARY Michigan Olmstead planning and implementation

(Foundational recommendations)

STEP 1- 2013/ 2014 HUD 811 Supportive Housing for People with Disabilities –NOFA / Spring 2014.

In 2012 MSHDA/ MDCH teamed up to apply for the first round of the revamped HUD 811 PRA (Project Based Rental Assistance). Only 13 of 41 State applicants received awards; Michigan did not get an award.

MSHDA applies for and manages the housing assistance and MDCH- Home and Community Based Services was lead agency for referral and services utilizing Michigan's MI-Choice Medicaid Waiver program.

MSHDA after receiving a HUD 811 PRA award would issue rental assistance for non- elderly people with disabilities, through qualified project developers receiving integrated assistance on

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10-25% of their total project units. These tenants would pay 30% of their income towards rent. HUD subsidizes the rest.

In the 2012 application MSHDA applied for 200 vouchers, and was going to match 50%, totaling 300 vouchers. NOTE: The successful recipients asked for less vouchers. It might make sense for example to ask for 100-150 with a 50% match, totaling 150-225 in this year's application.

STEP 2- MICHIGAN Tenant Based Vouchers.

Prior to the HUD HEARTH Act, Michigan residents in nursing homes who did not have housing to come back to in the community qualified for MSHDA's HARP (Homeless) vouchers.

The HEARTH language was designed by HUD to govern McKinney-Vento funding, Leasing Assistance Programs and Emergency Solutions Grant funding largely on the County Continuum of Care level.

In 2012 MSHDA chose to adopt this same language to also govern the voucher program. No longer did people without housing exiting the nursing home qualify (except for short-term stays).

People with disabilities being left out of this vital integrated subsidized housing program, violates the heart of the 1999 "OLMSTEAD" Supreme Court decision.

HUD clearly has emphasized both before and after the HEARTH Act, that preferences are necessary for both residents in institutions and "at risk" in order to have the community based options to receive services that they deserve. This is NOT viewed as a social welfare issue; rather it is a civil rights issue.

HUD encourages public housing agencies and other HUD-assisted housing providers to work with state and local governments to provide integrated, affordable and accessible housing options for individuals with disabilities who are transitioning from, or at serious risk of entering, institutions or other segregated settings. For example, public housing agencies, pursuant to PIH Notice 2012-31, and other recipients of HUD assistance may offer certain preferences that will enable individuals with disabilities to transition from institutions more quickly or enable an individual at serious risk of institutionalization to remain in integrated, affordable housing in the community. HUD encourages implementing appropriate preferences that support *Olmstead* efforts. ("Statement of the Department of Housing and Urban Development on the Role of Housing in Accomplishing the Goals of Olmstead" page 7, June 2013)

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Step 3- Bridge Funding.

On January 24, 2014 during the webinar “The Intersection of Housing Policy and Health- Olmstead is the Mandate, ACA the Opportunity”, both Alison Barkoff, Special Counsel for Olmstead Enforcement in the Civil Rights Division of the Department of Justice, and Kevin Martone, Executive Director, Technical Assistance Collaborative presented Bridge Funding as a necessary part of a successful Olmstead plan. Voucher programs cycle between being open and closed and without a Bridge program integrating residents back into the community on an ongoing basis, we would be continuously stopping the momentum of this successful integration.

Tenant Based Rental Assistance (TBRA) using HOME dollars allocated from HUD to MSHDA can accomplish this. We can no longer simply say those funds are allocated elsewhere without asking if we properly carved out an appropriate piece for those with disabilities as the law requires.

TBRA are usually a two year temporary voucher, extendable if needed. Having these would allow us to help someone in an institution, or at serious risk, to receive services in the community with help of the temporary housing voucher, and then roll it over to the mainstream tenant voucher when the program is open. Then the open TBRA are used again when the mainstream voucher program closes. This creates an ongoing ability to help those in institutions or at serious risk to receive services in the community and live integrated with those who do not have a disability.

Step 4 Affordable Assisted Living (AAL) pilot.

MSHDA & MDCH have successfully developed pilots in Grand Rapids, Oakland & Macomb Counties and Detroit. Several hundred units of senior housing with both enhanced services and restricted or subsidized rents have benefitted many of our seniors in these areas. However long wait lists become a reality at these developments. With the inevitable doubling of our elderly populations it is vital we focus on the pluses & minuses of these pilot programs and brace for the significantly increased needs the baby boomers will create.

Combine this with the forthcoming changes to HUD’s 202 (supportive housing for the elderly program) and we will need to facilitate further successful senior living options. The old HUD 202 produced many of the current subsidized senior housing units. Developers could obtain both capital and operating subsidies from HUD to make these developments affordable (30% of tenants income towards rent, balance subsidized by HUD). In the future only the rental subsidies will be through HUD, requiring developers to finance these through other vehicles such as the Tax Credit program.

The 2012 Michigan Office of Services to the Aging- “Needs Analysis” reported 45% of Michigan’s elderly have disabilities too, nearly 1 out of every 2.

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Step 5 MI-Choice Voucher (Oakland & Macomb pilot)

This pilot tenant based voucher has benefitted many elderly & disabled Michigan residents requiring enhanced services with affordable housing in Assisted Living settings.

However the last time our MSHDA tenant based vouchers opened, the homeless were once again given preference over those in institutions (or at risk) being integrated into the community. Additionally only about half of the 125 vouchers are in use.

Conclusion

As more states and local jurisdictions assist in transitioning individuals from institutions and other segregated settings into their communities because of *Olmstead* implementation and enforcement, the need for new, integrated affordable housing will become more acute. "Statement of the Department of Housing and Urban Development on the Role of Housing in Accomplishing the Goals of Olmstead". June 2013 page 8

While MSHDA has truly been a partner to Michigan's MFP Nursing Facility Transition program, we are now very clear more must be planned and implemented.

To their credit, MSHDA has implemented both the AAL program and MI-Choice vouchers. The use of both must be expanded however. MSHDA did apply for both the Non-elderly tenant based vouchers (NED II) and 2012 HUD 811 PRA. We must apply again as these become available from HUD.

HOWEVER ALL state administrators, PHA's, social service agencies and advocates must STOP talking about the steps to integrate each and every individual currently in (or at risk of) an institution that seeks and is capable of living in a more integrated setting, as something we would like to do. We must accept these individuals' civil rights to integration, and plan and create NOW their community alternatives as our Supreme Court tells us we are mandated to do.

We are proud the State of Michigan and its Community Mental Health (CMH) system through this same mandate integrated those previously in Mental Hospitals back into the community before any other large state in America; now it is time for those with disabilities (including the elderly) falling outside of the CMH system to have their civil rights honored as well. Our research during the 2012 HUD 811 application taught us hundreds are in institutions awaiting affordable housing options as well as hundreds more on waiting lists for in home services that are "at risk".

We lost the 10% integrated set aside MSHDA previously mandated towards permanent supportive housing (PSH) as part of Michigan's Tax Credit program. We lost the tenant based MSHDA vouchers for our residents in or at risk of being in nursing homes. We are underutilizing and NOT prioritizing the MI-Choice vouchers. And we MUST create appropriate

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bridge financing to keep these integration efforts moving successful ongoing, vs. hit or miss as voucher programs open and close, as the national experts recommend.

We acknowledge other important statewide efforts that are consistent with the goals stated here including:

- Homeless efforts including our veterans
- CMH efforts including more integrated housing options for those able & desiring
- OHIO has used HOME funds for temporary ramps, distributed through their Centers for Independent Living, helping the disabled to remain in their own homes
- New alternatives to HUD 202 (supportive housing for the elderly) capital financing
- Hiring the Technical Assistance Collaborative (TAC) as an OLMSTEAD implementation consultant
- Planning alternatives to the Tax Credit program which is under scrutiny in congress for capital financing for future developments
- Continued ongoing support for Leasing Assistance Programs (McKinney Vento) that have helped hundreds of Michigan's residents achieve successful affordable and supportive housing.
- Encourage local PHA's to honor & meet their Supreme Court OLMSTEAD obligations as well.
- Ongoing statewide (PSH) efforts
- Ongoing statewide "no-wait" for the elderly & disabled to receive Mi-Choice and other Home & Community Based Services (NOTE: Michigan is the 4th worst state in the nation at spending its long term care Medicaid dollars on Home & Community support services vs. institutions. This is NOT ONLY an embarrassment to us all, but clearly a violation to the heart of OLMSTEAD.) "Long-Term Care Services in the United States: 2013 Overview" *National Center for Health Statistics*

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Prior to writing this proposed "Voluntary" Michigan OLMSTEAD Housing Plan, David discussed NFT barriers with the 20 NFT Housing Specialists and Debra Hendren, Community Housing Network, Housing Resource Manager. I also met with representatives of Michigan's Developmental Disability Council, Michigan's Office of Services to the Aging, Michigan Disability Rights Coalition, Michigan Eldercare Attorneys and this Michigan Disability Housing Workgroup.

ALL comments, feedback and of course "letters of support" are welcome; please forward to our workgroup. www.mdhwg.org david.layne@morcinc.org ecklundp@dnswm.org