

Opening Doors

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Best Practice Principles for Achieving Civil Rights in Permanent Supportive Housing

By Henry Korman

Introduction

The January 2003 issue of *Opening Doors*, “Permanent Supportive Housing: A Proven Solution to Homelessness” introduced the idea of permanent supportive housing as a solution to homelessness. There is no single definition of “supportive housing.” Many housing providers think of it as nothing more than a model for combining supportive services and affordable housing for people with special needs, especially people with significant disabilities, in community-based settings.

Approaches that combine housing and community-based services are also used by state agencies working to implement the directive of the Supreme Court in *Olmstead v. L.C.* Described in detail in the December 2000 issue of *Opening Doors*, the *Olmstead* decision says that unjustified isolation and segregation of people with disabilities is discrimination and violates the Americans with Disabilities Act (ADA). *Olmstead* requires states to develop comprehensive plans to assure that people with disabilities in institutions and at risk of institutionalization receive supportive services in the most integrated setting appropriate to their individual needs. States responding to the *Olmstead* decision are seeking strategies to combine affordable housing and supportive services through models that promote true community integration.

Olmstead makes it clear that there is an important civil rights dimension to the link between community-based supportive services and affordable housing for people with disabilities. The responsibility to provide services in the most integrated setting extends to community-based services. However, the simple combination of housing and services in community-based settings does not necessarily result in “integration.” A true definition of supportive housing must therefore articulate a vision for delivering needed supports and permanent housing in a manner that responds to the integration imperatives of the ADA and other civil rights laws protecting people with disabilities.

Nowhere is this challenge more evident than when it is necessary to combine service funding with mainstream affordable housing resources to create supportive housing. Rules governing supportive services funding usually target services at people with a specific type of disability. Conversely, civil rights requirements in mainstream housing programs often forbid tenant selection based on category of disability. This conflict between the categorical approach to funding community-based services and the non-categorical requirements of housing programs sometimes proves to be a barrier to the development of permanent supportive housing for people with disabilities.

Of course, not all people with disabilities need or desire permanent housing linked to services. This issue of *Opening Doors* discusses why permanent supportive housing is an important option for some people with disabili-

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The Consortium for Citizens with Disabilities

(CCD) is a national coalition of consumer, advocacy, provider, and professional organizations who advocate on behalf of people of all ages with disabilities in their families. CCD has created the CCD Housing Task Force to focus specifically on housing issues that affect people with disabilities.



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ties, and explores the difficulties in coordinating the categorical approach to providing services with the housing system's general prohibition on category-specific tenant selection practices. This issue includes a discussion of best practice principles that can be used to achieve a vision of supportive housing that comes closer to an ideal: **permanent affordable, integrated, community-based housing where the right to occupy the housing unit is based on standard landlord-tenant laws, and in which flexible, on-demand supportive services are available and controlled by the tenant.**

Who Needs Supportive Housing and Why?

Many people with disabilities do not need supportive housing. Nevertheless, a large number of people with disabilities are people with long-term conditions that affect their activities of daily living. People with significant physical disabilities may require the removal of architectural barriers, and may need assistive technology and adaptive equipment. Many people need personal care assistance with activities such as eating, getting in and out of bed or a chair, bathing, dressing, etc. Some people with serious mental illnesses need periodic assistance with money management, medication management, vocational support, skills training, socialization, housing search, and crisis support, especially to prevent re-hospitalization. Some people with developmental disabilities may require similar services, and may also benefit from case management, adaptive skills training, and habilitation services that assist with socialization.

As a group, people with disabilities are disproportionately poor compared to their counterparts without disabilities. According to the 2000 U.S. Census, the poverty rate for people with disabilities is two-thirds higher than the poverty rate for people without disabilities. Sixty-one percent of families with a household member with disabilities receive Social Security benefits, needs-based Supplemental Security Income (SSI), or public assistance, compared to 17.8 percent of families where there is no person with a disability.

Housing resources that serve all low-income people are scarce, and that scarcity is particularly burdensome for people with disabilities. Reports by the U.S. Department of Housing and Urban Development (HUD) document that very low-income people with disabilities have the highest rate of worst case housing needs, compared to very low-income elders and families with children. The October 2005 edition of *Opening Doors*, entitled "Priced Out in 2004," details the particularly harsh affordability conditions for

people receiving SSI. In 20 states, the Fair Market Rent standard used by HUD for a modest one-bedroom apartment exceeds the entire amount of an individual monthly SSI payment. There is no state in the nation where the Fair Market Rent is less than 71 percent of monthly SSI benefits. The federal standard for housing affordability suggest that people with SSI level income should pay no more than 30 percent of monthly income for housing costs.

The combination of the need for supportive services and for accessible and affordable housing means that independent living is accomplished by many people with disabilities only when subsidized housing and supportive services are both available. Supportive housing is a key strategy to meeting that need.

Civil Rights, Institutions, and the Emergence of Group Residential Facilities

Historically, models for delivering supportive services have isolated people with disabilities in institutions, including state psychiatric hospitals, nursing homes, state schools, and intermediate care facilities for the mentally retarded. These places are usually operated by agencies identified by category of disability, such as State Departments of Mental Health or Mental Retardation. As late as the 1970s, people confined to institutions were forced to live in inhumane conditions where physical, emotional, and sexual abuse, and physical and medical neglect were the common experiences. Civil rights lawsuits have improved living conditions, and in some cases succeeded in closing the worst of these places, although both institutions and the reports of poor living conditions persist.

The civil rights lawsuits also resulted in the creation of smaller group residential facilities like community residences and group homes intended to house people formerly confined to institutions. These facilities are usually operated by providers under contract to state human service agencies.

For that reason, they generally serve people with a single type of disability. In the group residential model, housing and services are “bundled” and delivered in a range of settings from most restrictive to least restrictive based on the extent and nature of an individual’s disability. Often, to move from a more restrictive setting to a less restrictive setting an individual must establish that he or she has developed independent living skills and must show a reduced need for services. These facilities are also the model for housing other groups receiving community-based services. For example, individuals with substance abuse problems often are served in settings like halfway houses and group residences.

Disability Rights

The early lawsuits challenging institutional conditions preceded the enactment of the ADA and *Olmstead*. They were based on civil rights safeguards protecting people with disabilities under the U.S. Constitution and Section 504 of the 1973 Rehabilitation Act. The ADA expanded the settings where civil rights protections applied to human services programs funded by state and local government, and places of public accommodations, such as transitional housing, shelters, and housing linked to supportive services. The protections available under these laws are summarized in the box on [page 4](#).

Community-Based Services Funding Streams

The Supreme Court *Olmstead* decision drew on the ADA protections (listed on [page 4](#)) when it ruled that people with disabilities were entitled to receive supportive services in the most integrated setting appropriate to their needs. One of the most important outcomes of *Olmstead* was the directive issued by the federal Centers for Medicare and Medicaid Services (CMS) in January 2000 instructing State Medical Assistance agencies to use Medicaid funds as a primary source for the implementation of *Olmstead* plans.

Protections available under the Americans with Disabilities Act (ADA)

• **Non-Discrimination**

Discrimination is prohibited. “Discrimination” is any delay, denial, exclusion or limitation of opportunity, and any different or unequal treatment, based on disability.

• **Integration**

Programs must be administered in the most integrated setting appropriate to the needs of the individual. Different or separate benefits to people with disabilities or to any class of people with disabilities are prohibited, except when necessary to provide services that are as effective as those provided to others. People with disabilities may not be denied the opportunity to participate in programs that are available to the general public despite the existence of separate or different programs or activities that may be targeted solely to people with disabilities.

• **Equal Opportunity and Choice**

Housing and services must afford people with disabilities an equal opportunity to obtain the same result, or gain the same benefit as that provided to people without disabilities. In addition, the overall design of housing programs and services must assure that individuals with disabilities have a similar and complete range of housing choices available to them regardless of disability.

• **Privacy, Liberty, and Property**

Concepts of privacy, liberty, and property capture a number of important rights. Privacy and liberty mean that the person controls their own behavior largely free of constraint. People cannot be deprived of liberty, either committed to an institution or limited in their activities, without good reason, and without sufficient legal process. Rights of privacy and liberty also protect the physical person against intrusion, meaning, among other things, that an individual cannot be forced to receive medical or therapeutic treatment without their consent. These same principles recognize that an individual holds a property interest in his/her home. That interest cannot be diminished or terminated without appropriate legal process.

• **The Individual, Not the Group**

A fundamental purpose of disability discrimination law is the reversal of limitations and unequal treatment based on stereotypical assumptions. Achieving this purpose means that services should be provided based upon the needs of the individual, and not because of membership in a category of people with disabilities.

Most Medicaid funded community-based services are offered as an option of participating states. One mechanism available to states is the Medicaid Home and Community-Based Care Services (HCBS) waiver program. States with approved HCBS waiver programs are permitted to waive the “comparability” rule, which requires states to provide an equal level of services to all qualified participants, without regard to diagnosis. The program allows states to offer a variety of community-based services, including adult day care and health services, habilitation services, assistive technology and adaptive equipment, case management, personal care attendants, respite care, and vocational services. States participating in the program are allowed to target waiver services to categories of people with disabilities, such as frail elders, people with physical disabilities, people with developmental disabilities, individuals with traumatic brain injury, and people who have AIDS. States may also vary the types of benefits they offer by category of disability.

States may choose to make supportive services available to people with mental illnesses using another feature of the Medicaid program for provision of community-based services, the state option program. Under Medicaid option programs, states provide services like personal care assistance, targeted case management, clinic services, and psychiatric rehabilitation services. Like HCBS waivers, Medicaid options are exempt from the Medicaid comparability requirement, and many states elect to target optional services based on category of disability, including mental illness.

The approach that targets supportive services by category of disability is not limited to Medicaid. The systems that provide mental health and substance abuse services are also characterized by a history that begins with institutional forms of treatment and a shift to community-based options. Like other forms of supportive services, treatment for mental health or substance abuse are also made available through funding streams such as the federal Substance Abuse Treatment Block Grant and the Mental Health Block Grant, which are restricted to those people with diagnoses.

All of these approaches target community-based services based on the category of disability. There are practical reasons for this result. Supportive service expenditures exert tremendous fiscal pressures on state and federal budgets. In an environment of limited financial resources, virtually all states focus available supportive services on those individuals who are still living in institutions, or who are most at risk of being institutionalized. Because people with disabilities are confined to institutions based on diagnosis and served by community agencies, which receive these categorical funds, virtually all community-based services remain targeted to people based on category of disability.

Linking Supportive Services to Housing Programs

Medicaid and other supportive service funding pay for the service component of supportive housing. To create supportive housing opportunities, it is essential to find ways to assure that people with disabilities can access mainstream affordable housing programs. Civil rights-related rules associated with affordable housing programs often conflict with the rules of supportive services programs. While federal housing programs permit admissions and selection preferences under an all-inclusive definition of disability, they tend to prohibit restrictions that limit eligibility or preferences to categories of people with disabilities (for example, only people with mental illness, or only people with mental retardation/developmental disabilities). For example, the federal public housing, tenant-based Section 8 Housing Choice Voucher, and multi-family subsidized housing programs administered by HUD permit selection preferences favoring all people with disabilities in general, but forbid preferences that are targeted to people with a specific category of disability.

Other HUD programs are more flexible, particularly when supportive services are part of the program design. However, there is no consistent policy across programs, and sometimes policy within a single program is inconsistent. The

April 2006 edition of *Opening Doors* discussed in detail the ways in which HUD's new Section 8 Project-Based Voucher (PBV) Program can create new supportive housing opportunities for people with disabilities. An owner may advertise a PBV unit as offering services for a particular type of disability. However, the housing must be open to all otherwise eligible persons with disabilities who may benefit from services provided in the housing. Preferences that base admission on establishing need for services are only permitted in order to serve individuals: 1) with disabilities that significantly interfere with their ability to obtain and maintain themselves in housing; 2) who, without supportive services, will not be able to obtain or maintain themselves in housing; and 3) for whom services cannot be provided in an integrated setting.

There is precedent for this service-related tenant selection process. The federal Section 811 Supportive Housing for Persons with Disabilities program (Section 811) creates housing linked with supportive services for people with physical, mental, or emotional impairments, and individuals with developmental disabilities. Section 811 providers may, with the approval of HUD, limit occupancy to people with disabilities who have similar disabilities. However, the owner must permit occupancy by any qualified person with a disability who could benefit from the housing and services, without regard to the person's disability.

Supportive housing is often funded by programs administered through HUD's Office of Community Planning and Development (CPD). CPD programs include the McKinney-Vento homeless programs, HOPWA, and the HOME program. It is within these programs that HUD policies display the greatest inconsistency. The statute governing the Housing Opportunities for Persons with AIDS (HOPWA) program requires that the program serve only people with AIDS and related disorders. Similar statutory provisions apply in the McKinney-Vento Shelter Plus Care program. HUD rules interpret the Shelter Plus Care statute to say that providers may establish a preference

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for groups such as people with serious mental illnesses, chronic substance abuse, or AIDS. However, a provider is permitted to exclude other homeless people with disabilities only when there is sufficient demand for the housing within the target population, and the other homeless people cannot benefit from the services offered by the provider. Current rules in the Supportive Housing Program (SHP) also allow targeting of units to designated populations of people with disabilities.

Rules in the HOME program display the most inconsistencies. HOME funds used for tenant-based rental assistance may use selection preferences for a specific category of individuals with disabilities when the participating jurisdiction's HUD-mandated Consolidated Plan says that the preference is needed to narrow a gap in benefits and services to that group of people. There are no comparable standards for capital use of HOME funds. Early guidance from 1997 indicates that while HOME program *selection preferences* may be offered to a category of people with disabilities, *eligibility* cannot be limited to a category of people with disabilities, and a project may not be filled exclusively through referrals from a single social service agency. In 2005, HUD issued HOME program fair housing guidelines saying that in special needs housing for people with disabilities, the housing must be marketed to all individuals with disabilities and cannot be restricted to persons with specific types of diagnoses or subclasses of persons with disabilities.

The Low Income Housing Tax Credit (LIHTC) program, described in the April 2005 issue of *Opening Doors*, is another mainstream housing program that is available to create housing opportunities for people with disabilities. Supportive housing is a permissible use of tax credits. Civil rights requirements in the LIHTC program are embodied in a rule under which dwelling units qualify for credits only if they are "available for use by the general public." To meet this standard, the unit must be rented in a manner consistent with HUD non-discrimination rules. In the supportive housing context, IRS interpretive rulings say that low rent units qualify for tax credits where, for example, they are part of

a project for homeless individuals with a selection preference for people with alcohol and chemical dependencies. Such selection preferences are permitted only when units are also available to all homeless applicants, without regard to disability.

Disability Rights in Housing Linked to Services

Section 504 and the ADA permit programs serving categories of people with disabilities when needed to achieve equal opportunity. These laws are the civil rights basis for the kind of categorical targeting that takes place in service programs. Ironically, HUD and LIHTC rules that forbid or limit housing options based on category of disability are also "civil rights-related program requirements." They reflect the view that categorical housing programs limit equal opportunity and lead to segregation.

When both housing and services are dedicated to particular categories of people with disabilities served by particular agencies in the community, decisions about choice of housing and control over supportive services may not be based on the needs or desires of the individual, but instead may be based on group characteristics. Categorical housing programs often require people with disabilities to live in places segregated by disability, in locations they might not choose, outside of the communities with which they identify, and, in group home or congregate settings, with people they do not select as roommates.

Rights of equal treatment, privacy, autonomy, and liberty can be undermined when housing is contingent on acquiescence to a treatment plan, or when the ability to retain possession of the housing is not protected by standard landlord-tenant laws. Some federal programs allow providers to enter into license agreements with occupants, instead of leases or rental agreements. License agreements can be terminated with very little advance notice and without the opportunity for judicial oversight that is characteristic of standard rental housing. Still other programs condition occupancy on participation in a service plan approved and overseen by the service provider.

The Low Income Housing Tax Credit (LIHTC) program is another mainstream housing program that is available to create housing opportunities for people with disabilities.

Focus on the Person and the Place

Individuals with disabilities seeking affordable housing and community-based supports face a practical dilemma: supportive services programs – including Medicaid – are in the process of casting off old, discriminatory practices that isolate people with disabilities in segregated, institutional settings by category of disability. However high levels of poverty combined with the absence of affordable housing, have forced supportive service providers to continue to command housing and service resources following the old institutional patterns – by category of disability. The basic understanding of disability rights that emerges from the civil rights laws suggests an answer to this dilemma. A system of housing and supportive services must first proceed with respect for the desires and needs of the individual person, not the imperatives of the service provider, nor the category of disability served by the provider. The design of the supportive housing must preserve and enhance human relationships, and nurture full and integrated participation in family relations, social contacts, work options, economic independence, educational advancement, and cultural enrichment.

A supportive housing system that reflects these values would be based on the following principles:

Supportive Housing Within a Larger Framework of Meaningful Choice

People with disabilities generally want the same kinds of housing that other citizens want: independent, affordable apartments or houses, with voluntary access to support.

One measure of progress towards integration is the achievement of conditions where individuals of similar incomes have a like range of housing choices available to them regardless of their race, color, religion, sex, handicap, familial status or national origin. This understanding of integration derives from the obligation to affirmatively further fair housing under the Fair Housing Act. The responsibility to further fair housing is one

that is also imposed through program statutes and agency regulations on virtually every recipient of federal housing funds, including recipients of HUD housing subsidies and capital advances, HOME funds, and LIHTC.

At the state and local level in particular, the obligation to further fair housing and assure equal choice is one part planning and one part action. *Olmstead* planning groups are one venue to carry out these activities. State housing finance agencies also have the obligation to further fair housing. They can do so through the Qualified Allocation Plans that federal law requires for the distribution of LIHTC. Public Housing Agencies (PHA) must develop PHA Plans for the use of federal public housing subsidies and Section 8 Housing Choice Voucher funds. State and local recipients of HOME funds, Community Development Block Grants, and some homeless funding operate under similar responsibilities to develop five-year Consolidated Plans. Both PHAs and state and local jurisdictions must complete an Analysis of Impediments to Fair Housing Choice within these planning processes, under which they identify barriers to equal opportunity and take action to remove those barriers.

So far, few state *Olmstead* planning groups include representatives of housing agencies. However, all of these planning mechanisms require public participation. It is imperative that people with disabilities and advocates use these tools to promote not just supportive housing opportunities for people with disabilities, but also full access to a wide range of affordable housing opportunities not linked directly to supportive services.

Necessity and Efficacy in the Link Between Housing and Supportive Services

Segregated housing for people with disabilities, including housing identified by category of disability, is permissible under the ADA and Section 504 only when necessary to provide individuals

The design of the supportive housing must preserve and enhance human relationships, and nurture full and integrated participation in family relations, social contacts, work options, economic independence, educational advancement, and cultural enrichment.

with disabilities benefits or services that are as effective as those provided to people who are not people with disabilities. Research indicates that the effectiveness of institutions and congregate-type facilities in reducing re-institutionalization, improving economic self-sufficiency, and improving adjustment to community living is highly suspect. The relative lack of efficacy in bundled housing for people with disabilities is most evident in studies that compare HUD's Continuum of Care approach to providing services to homeless people with an alternative approach known as Housing First. The Continuum of Care consists of a number of residential settings, including shelters, safe havens, transitional housing, and permanent supportive housing.

The first priority of Housing First is to stabilize people in the short-term through the immediate provision of housing. The model provides a subsidized apartment without any prerequisites for treatment or sobriety. Participants are offered treatment by the program's support service staff, often utilizing a team-approach such as an Assertive Community Treatment (ACT) team. Comparing outcomes for participants in Continuum of Care programs with those of participants with mental illnesses in a Housing First program, one study found that Housing First participants experienced a greater decrease in psychiatric symptoms and smaller proportions of time homeless even though the participants also reported lower utilization of supportive services.

While some Housing First programs serve all homeless people as the target population, others are aimed exclusively at people with mental health and substance abuse issues. Nevertheless, Housing First qualifies as a supportive housing program that is consistent with civil rights principles for at least three reasons: 1) the characteristics of the housing are the same as the sort of housing available to the general public; 2) supportive services are voluntary; and 3) when participation is limited to people within a category of disability, that limitation is effective in reduc-

ing barriers to stable housing for people whose disabilities might otherwise be a barrier to equal access.

Matching People to Services, Not Disabilities to Units

Disability discrimination laws require that decisions about the distribution of housing and services must be based on facts applicable to individuals and not on presumptions as to what a class of individuals with disabilities can or cannot do. In practical terms, this principle means that applicants for supportive housing should qualify for admission not because of their relationship to a diagnosis-identified service provider, but instead because they can benefit from the services offered in connection with the housing. They should not be refused admission because they are not clients of the service agency at the time of application and selection. A related concept is that people with multiple disabilities must not be excluded because they have some other disability in combination with the disability for which the services are primarily designed.

Services are Voluntary and Separate from Housing

The Housing First model, which services are voluntary and follow the person to their home, is also responsive to the ideas of privacy and autonomy. It is based on research findings that a lack of personal control and choice is associated with the experience of psychiatric symptoms. Models that make housing contingent on giving up control of decisions about daily living, treatment, and services have been shown to have the effect of eroding coping tools. Programs that are designed to preserve choice and personal control are more successful in the reduction of psychiatric symptoms.

The Housing First approach understands that housing needs are separate from needs for treatment. It aims for an individualized set of service relationships with individual consumers living in various housing situations. It means that services are voluntary, and that they are flexible, portable, and available on demand.

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North Carolina: An Innovative Supportive Housing Model

Since 2002, the North Carolina Housing Finance Agency has partnered with the North Carolina Department of Health and Human Services to facilitate the inclusion of people with disabilities within properties funded by the federal Low Income Housing Tax Credits (LIHTC) program. All tax credit properties must develop a Targeting Plan that makes 10 percent of the units available to extremely low-income people with disabilities, including those people who are homeless. Since 2002, an estimated 900 units of high quality affordable rental housing linked with voluntary services and supports for people with disabilities have been funded – and an additional 200+ new units are added each year.

Tenants for the targeted units are selected on the basis of income and disability, but not because they have a specific type of disability. Tenants sign leases and are treated like any other resident. The Key Program, a state funded demonstration rental assistance program, is available to ensure that the targeted units are affordable to people receiving SSI payments. In addition to the 10 percent set-aside, other units in the tax credit property may also be rented to people with disabilities who can afford to pay the tax credit rent or who may have a Section 8 voucher.

The Department of Health and Human Services facilitates a partnership between the property owner/manager and a local lead agency that represents the local human service system – acting as provider, coordinator, and/or referral agent for the range of community services available to people with disabilities in their community.

North Carolina's approach is an exemplary cross-disability model of linking affordable housing with community based services for people with disabilities – and one that other states could easily adopt. In fact, the Louisiana Housing Finance Agency recently created a similar program that will provide as many as 3,000 units of permanent supportive housing. Targeting units for people with disabilities within Low Income Housing Tax Credit financed properties is an ideal strategy to promote housing affordability, integration, as well as separation of housing from services, and ensures that the services provided are based on the needs and choices of tenants living in their own homes.

Rights of Occupancy are Not Diminished

Closely associated with the concept that services should be voluntary is the idea that people with disabilities should not be subjected to different terms and conditions and lesser privileges of occupancy simply because their housing is also a place where they might receive services. Housing linked to services often violates this principle by diminishing the rights of program participants to possess the units they occupy through the use of agreements that allow for termination of tenancy with little or no procedural protections. Using mainstream housing resources in supportive housing can protect these rights simply because rules in the HOME, Project-Based Voucher, LIHTC, and similar programs require the use of leases, guard against eviction except for good cause, and forbid summary eviction, including summary eviction without process for failure to comply with program requirements. A principle of supportive housing is that the hous-

ing is permanent, and continued occupancy is based on standard landlord-tenant law, instead of an individual's qualifications as a participant in a program of supportive services.

Site Selection, Concentration, and Design

Recent studies of homeless programs concluded that the environment in which supportive housing is located, including such factors as crime and drug activity in the building and at the neighborhood level influence the decisions of homeless people with disabilities to stay in or leave supportive housing because of the effect such conditions have on sobriety, and the capacity for managing stress.

In the context of race discrimination, it is recognized that design, choice of location, and the density and configuration of housing result in significant fair housing consequences. HUD civil rights-related program requirements generally forbid site selection in areas with high concentrations of poverty and racial segregation, and

require PHAs to adopt admissions practices that serve to deconcentrate poverty. Assisted housing must also promote greater choice of housing opportunities, and be accessible to amenities like schools, retail facilities, health centers, public transportation, and employment.

Supportive housing can benefit from lessons learned in the race context with more robust standards aimed at reducing isolation, preventing segregation, and avoiding differential treatment. Units scattered within a larger housing development, integrated by income, and occupied by people with and without disabilities are preferred over facilities serving only people with disabilities. Housing should be built on sites that are part of vibrant communities, located near educational, commercial, and health facilities, public transportation and employment opportunities, and away from crime, poverty, drugs, and racial segregation. Units should be designed as apartments and homes, not as beds in a congregate facility. The housing also must be sited, designed, and constructed in a manner

consistent with uniform architectural standards that make them usable and accessible to people with mobility and sensory impairments. The best integrative model for supportive housing is the one that people without disabilities expect will apply to their own life situations: scattered-site housing models with supports that may or may not be provided in the person's home.

Race and Ethnicity

Discrimination and segregation based on race and ethnicity have long plagued public and assisted housing programs, some of it caused by histories of deliberate segregation and deprivation of housing opportunity for people of color, and some of it the result of benign but persistent neglect of racial considerations. There is growing evidence that race, ethnic background, and culture all play a role in preventing people of color and people whose first language is not

English from gaining access to health care and supportive services. There is a higher prevalence of poverty and disability among households of color than among white households. There is also a substantially higher rate of poverty among disabled families of color compared to white disabled households. Government studies document the existence of "striking" disparities for minorities in access to mental health services, and the quality of care. At least one study observed that the race or ethnicity of the individuals with disabilities needing long-term supports may influence the decisions of states to use Medicaid HCBS waivers. As a result, some states serving high numbers of people of color with disabilities elect against community-based services and instead continue to limit choice to institutional forms of long-term care.

Olmstead's conclusion that institutional isolation is a form of disability discrimination is directly connected to an earlier history of civil rights cases focused on race in which it was understood that discrimination and segregation cause long-lasting, stigmatizing injury. The obligations to further fair housing, to affirmatively market to racial and ethnic minorities, and to refrain from racial discrimination embedded in the Fair Housing Act and related laws apply with full force to supportive housing. It is incumbent on supportive housing providers to attend to these issues.

New Tools and Better Approaches

The issues of scarcity, poverty, and discrimination that make it necessary for people with disabilities to seek government funded housing and service resources are not about to vanish, and will require setting aside housing resources specifically for people with disabilities for the foreseeable future. Those issues and the imperatives of *Olmstead* are also likely to force the continued practice of dedicating resources to people with specific disabilities. If supportive housing is located within a larger fabric of opportunity for people with disabilities in the same housing that is available to the general public; if the features

The best integrative model for supportive housing is the one that people without disabilities expect will apply to their own life situations: scattered-site housing models with supports that may or may not be provided in the person's home.

of supportive housing resemble the apartments, homes, and rights of tenancy also available to the general public; and if access to and utilization of services is a function of individual needs, desires, and choice, then it should not matter whether eligibility for housing is identified by category of disability.

Systems of supportive services are in fact moving towards models that do not restrict eligibility based on category of disability, connection to institutions, or control of services by providers. Recent amendments to the Medicaid statute create opportunities not yet realized to deliver services based on individual need, and not on category of disability. The changes may allow states to provide home and community-based services to elders and people with disabilities without need for a federal waiver, and without the necessity of proving that the provision of HCBS would be less costly than institutional care. Under the new law, people with disabilities would qualify for services based on an individualized assessment of need, services would be based on an individualized care plan, and states would have the option to provide self-directed services under the direction and control of the participant. Other amendments codify as a pilot program the idea that in funding supportive services “the money follows the person.”

Affordable housing programs are also moving towards more flexible standards that permit different models of supportive housing. The recent amendments to HUD’s PBV regulations reflect this trend. Services may be provided at the site of the housing, or off-site, independent of the dwelling units. The new rules match people to services based on individual need by permitting supportive housing providers to offer selection preferences to people with disabilities who need services offered at a particular project. The rules work to preserve autonomy by mandating that residents shall not be required to accept the supportive services offered at the project. They honor the concept of separate housing only when needed to achieve civil rights goals by limiting segregated settings only to those circumstances where there is no other means to meet the housing needs of people with significant disabilities.

Perhaps the most important feature of the PBV program from a civil rights standpoint is the central role of individual choice and housing opportunity embedded in the program. After one year of occupancy in a project-based development, participants can request and receive a portable, tenant-based voucher in exchange for the project-based assistance. Once issued, the tenant-based voucher enables a participant to leave the supportive housing environment and rent a unit of their choosing in the private market.

Even with these new standards of flexibility, the gap between housing programs and service programs is not yet completely closed. The PBV rule retains the prohibition on selection preferences for people with a category of disability. The recent changes to the Medicaid statute still permit supportive service providers to limit access to community-based services to target populations based on type of disability. There is concern among some advocates that the flexibility afforded under the new law will lead to more rather than less fragmentation in services. Under these circumstances, housing opportunities for people with disabilities, especially the people with significant disabilities that stand to benefit from *Olmstead*, will depend on the ability of people with disabilities to state their demands, and the concomitant ability of service and housing providers to respond by developing supportive housing with operational hallmarks that further civil rights in order to achieve true integration.

This issue of *Opening Doors* is adapted from a longer article entitled, “Clash of the Integrationists: The Mismatch of Civil Rights Imperatives in Supportive Housing for People with Disabilities,” to be published in a winter symposium edition of the *St. Louis University Public Law Review* commemorating the February 2006 Conference on Homelessness co-sponsored by the St. Louis University School of Law and the Affordable Housing Forum of the American Bar Association. The cooperation of the editors of the *Public Law Review* is gratefully acknowledged.

Attention *Opening Doors* Subscribers!

Starting in the Spring of 2007, *Opening Doors* will **no longer be published in print format**. We will continue to produce electronic issues of the newsletter, which will be available to download from our website at www.tacinc.org. We will also continue to send announcements to our email list when each new issue is published. To sign up for the email list, please visit www.tacinc.org/Forms/emaillist.htm. We will publish one more printed issue (available in early 2007), after which we will switch to the electronic-only format. Be sure to sign up for the email list!

As always, the Technical Assistance Collaborative will strive to continue providing important information on affordable housing issues to people with disabilities, their families, advocates, and service providers across the United States.

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