



HOUSE BILL 25-1017

OLMSTEAD PROTECTIONS

SPONSORS: REP. CLIFFORD, REP. FROELICH, SEN. MICHAELSON JENET



BACKGROUND

The Supreme Court *Olmstead* decision enshrined in law the duty upon the state to actively work towards transitioning individuals with disabilities out of institutions and into the community and to have community-based services to decrease the risk of institutionalization.

It placed on states the obligation to administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities. Segregation of individuals with disabilities in institutions denies them freedom in decision making, keeps them from family and friends, and denies them the opportunities that exist in community. It also denies communities the contributions of those individuals.

Community based services are cheaper in the long run than institutionalized services. Many disability lawyers believe that *Olmstead* is at risk due to the Supreme Court opinion in *Loper Bright* saying that courts cannot rely on the interpretation of administrative agencies unless the power to interpret is specifically designated to the administrative agencies.

WHAT THE BILL DOES

HB25-1017 requires the following:

- The bill establishes that public and governmental entities shall administer services, programs, and activities in the most integrated setting that is appropriate to the needs of individuals with disabilities. The bill also establishes when entities are required to provide home- and community-based services to individuals with disabilities. If an entity cuts services, the entity shall assess whether the service cut increases the risk of institutionalization for individuals receiving services. If so, the entity must develop a plan to reduce that risk.
- The bill directs the department of health care policy and financing to develop a comprehensive community integration plan for implementing its obligation to provide individuals with disabilities with opportunities to live, work, and be served in integrated settings. The plan must be reviewed and updated every 3 years.
- The bill codifies existing caselaw around the defenses to *Olmstead* including the fact that if the government can establish that doing so would require a fundamental alteration of its program, services, or activities then it is a defense to a claim.

SUPPORT COMMUNITY LIVING



FREQUENTLY ASKED QUESTIONS

What is *Olmstead*?

Olmstead v. L.C. was a landmark 1999 Supreme Court case that ruled that institutionalizing people with disabilities without a valid reason is discrimination. It is one of, if not the most, important Supreme Court decision that has shaped policy around the rights of people with disabilities and the services they receive. It has laid the groundwork for the system of care we have today which keeps people in their homes and in their communities.

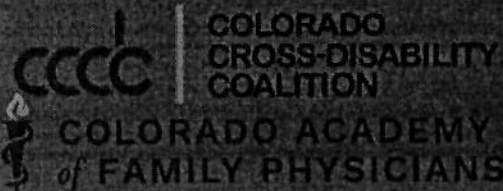
Why do we need state protections?

Recent decisions in the federal judiciary have shifted public policy away from a federalized system and back to a more state-centered approach. There may be a time in the near future where rights like the *Olmstead* right are returned back to the states to determine the best approach. If that happens, this state law will be crucial to ensuring that the state provides community based services to people with disabilities and does not institutionalize people.

Will this increase state liability?

No! Right now, the bill does not have a private right of action or an attorney general enforcement mechanism. The bill is a dormant protection meant to safeguard against a policy changes at the federal level which may remove these protections. Under that circumstances, this state right would be a backup to ensure the continued delivery of home and community based services.

Groups who Support HB25-1017



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