

Disability Rights and Civil Rights in Georgia



A Report of the
Georgia Advisory Committee to the
U.S. Commission on Civil Rights

June 2019

Advisory Committees to the U.S. Commission on Civil Rights

By law, the U.S. Commission on Civil Rights has established an advisory committee in each of the 50 states and the District of Columbia. The committees are composed of state citizens who serve without compensation. The committees advise the Commission of civil rights issues in their states that are within the Commission's jurisdiction. More specifically, they are authorized to advise the Commission in writing of any knowledge or information they have of any alleged deprivation of voting rights and alleged discrimination based on race, color, religion, sex, age, disability, national origin, or in the administration of justice; advise the Commission on matters of their state's concern in the preparation of Commission reports to the President and the Congress; receive reports, suggestions, and recommendations from individuals, public officials, and representatives of public and private organizations to committee inquiries; forward advice and recommendations to the Commission, as requested; and observe any open hearing or conference conducted by the Commission in their states.

This report is the work of the Georgia Advisory Committee to the U.S. Commission on Civil Rights. The report may rely on testimony, studies, and data generated from third parties. State Advisory Committee reports to the Commission are wholly independent and are not subject to Commission approval. Advisory reports are reviewed by Commission staff only for legal sufficiency and procedural compliance with Commission policies. The views, findings, and recommendations expressed in this report are those of a majority of the Georgia Advisory Committee, and do not necessarily represent the views of the Commission, nor do they represent the policies of the U.S. Government.

Acknowledgments

The Georgia Advisory Committee (Committee) thanks each of the panelists who presented to the Committee during their February 27, 2018, and July 17, 2018 meetings. The Committee is also grateful to members of the public who spoke during the selected periods of public comment.

The Committee would also like to recognize and acknowledge former Committee member Justin Pressley, who was a strong advocate of the disability community in Georgia and nationwide. Through his dedication, persistence and encouragement, the Committee unanimously approved his initiative for this report and hearing. Unfortunately, during the time of the preparation for the hearing conducted for this report, Mr. Pressley fell ill and passed away. The Committee members submit this report in his memory and as a lasting legacy of his passion for the disability community.

**Georgia Advisory Committee to the
U.S. Commission on Civil Rights**

The Georgia Advisory Committee to the U.S. Commission on Civil Rights submits this report regarding the civil rights impact of disability rights in Georgia as part of its responsibility to study and report on civil rights issues in the state of Georgia. The contents of this report are primarily based on testimony the Committee heard during public meetings on February 27 and July 17, 2018, as well as related testimony submitted to the Committee during the relevant period of public comment.

This report begins with a brief background of the issue to be considered by the Committee. It then presents an overview of the testimony received. Finally, it identifies primary findings as they emerged from this testimony, as well as recommendations for addressing related civil rights concerns. This report is intended to focus specifically on civil rights concerns regarding disability rights in Georgia. While other important topics may have surfaced throughout the Committee's inquiry, those matters that are outside the scope of this specific civil rights mandate are left for another discussion.

**Georgia Advisory Committee to the
U.S. Commission on Civil Rights**

JERRY GONZALEZ, *Chair, Georgia Advisory Committee*, Atlanta

Khafre Abif, Augusta

Julius Dudley, Atlanta

Chanel Haley, Atlanta

Jeremy Kidd, Macon

Joseph Knippenberg, Atlanta

Laverne Lewis Gaskins, Augusta

John Mayes, Rome

J.D. McCrary, Atlanta

Jamala McFadden, Atlanta

Jack Park, Zebulon

Stephanie Woods Miller, Macon

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I. EXECUTIVE SUMMARY

The Georgia Advisory Committee (Committee) to the U.S. Commission on Civil Rights met in Atlanta, Georgia on February 27, 2018, to receive testimony on disability rights about the *Olmstead v. L.C.* United States Supreme Court decision and subsequent settlement agreements. In *Olmstead v. L.C.*, two women sued the Commissioner of Georgia's Department of Human Services under Title II of the Americans with Disabilities Act (ADA). They argued that, by being kept in an institution after being cleared for community-based programs, they were not receiving services in the "most integrated setting" and that this segregation constituted discrimination under Title II. In a 6-3 decision, the U.S. Supreme Court agreed with the women, stating that the unjustified segregation they were facing did constitute discrimination and that people with disabilities had the right to receive services in the community.

During this meeting, panelists highlighted three programs that play a critical role in fulfilling the requirements set by *Olmstead* and the following Settlement Agreements: The Aging and Disabilities Resource Connection (ADRC), Money Follows the Person (MFP), and Medicaid. While the programs listed above are designed to increase access to home- and community-based services for people with disabilities, testimony indicated that in some areas, the implementation of these programs might not be congruent with their mission.

Panelists also raised concern regarding individuals facing some special circumstances, such as those already living in nursing homes, those requiring access to behavioral health services, and those in need of supported and affordable housing. Panelists expressed the importance of transitioning people with disabilities from nursing homes into the community, a need for more early intervention programs that reduced the number of people who require mental health crisis intervention services, and that in order to successfully afford people the opportunity to transition out of institutions and into community and home-based settings, supported and affordable housing options must be expanded. Panelists also discussed issues of employment, language barriers, education, and incarceration.

The Committee offers a series of recommendations to the U.S. Commission on Civil Rights regarding this topic of disability rights, including further study on this issue.

II. INTRODUCTION

The U.S. Commission on Civil Rights (Commission) is an independent, bipartisan agency established by Congress and directed to study and collect information relating to discrimination or a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, age, disability, national origin, or in the administration of justice. The Commission has established advisory committees in each of the 50 states and the District of Columbia. These Advisory Committees advise the Commission on civil rights issues in their states that are within the Commission's jurisdiction.

The Georgia Advisory Committee (Committee) to the U.S. Commission on Civil Rights voted unanimously to take up a proposal to examine the civil rights implications of the state of Georgia's full implementation of the Supreme Court's decision *Olmstead v. L.C.*, which upholds the right of people with disabilities to receive services in their community.¹

On February 27, 2018, the Committee convened a public meeting in Atlanta, Georgia to hear testimony regarding the civil rights implications of the implementation of the Supreme Court decision *Olmstead v. L.C.*² The Committee heard from state and local service providers, legal experts, members of national and state disability organizations, academics, and disability rights advocates.³ Following these panelists, the Committee heard from community members during a public comment period.⁴

On July 17, 2018, the Committee held a web briefing where they received additional testimony about the legal basis and implications of *Olmstead v. L.C.*, as well as an explanation of the 2010 and 2016 *U.S. v. Georgia Settlement Agreements*.⁵

The following report results from the testimony provided during this meeting, as well as testimony submitted to the Committee in writing during the related period of public comment. It begins with a brief background of the issue to be considered by the Committee. It then presents an overview of the testimony received. Finally, it identifies primary findings as they emerged from this testimony, as well as recommendations for addressing related civil rights concerns. The purposes of this report are: (i) to relay the civil rights concerns brought forth by the panels relating to the implementation of *Olmstead v. L.C.*, and the *U.S. v. Georgia Settlement Agreements* in Georgia; and (ii) to lay out specific recommendations to the Commission regarding actions that can be taken to understand and address these issues moving forward.

¹ *Olmstead v. L.C.*, 527 U.S. 581 (1999).

² *Briefing Before the Georgia State Advisory Committee to the U.S. Commission on Civil Rights*, Atlanta, GA, Feb. 27, 2018 (hereafter cited as *Atlanta Briefing*).

³ *Ibid.*

⁴ *Ibid.*

⁵ *Briefing Before the Georgia State Advisory Committee to the U.S. Commission on Civil Rights*, Conference Call, July 17, 2018 (hereafter cited as *Web Briefing*).

III. BACKGROUND

A. Americans with Disabilities Act

The Americans with Disabilities Act (ADA), signed into law in 1990, focuses on the civil rights of people with disabilities.⁶ Specifically, the ADA prohibits discrimination against individuals with disabilities in the public sphere.⁷ There are five sections in the ADA, with each section targeting a different aspect of the public sphere – employment, state and local government, public accommodations operated by private entities, telecommunications, and miscellaneous provisions.⁸

The legal basis for *Olmstead v. L.C.* falls under Title II of the ADA.⁹ Title II focuses on the role of public services, state, and local government.¹⁰ This section states that “no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.”¹¹ A qualified individual with a disability is defined as “an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.”¹²

Services, programs, and activities are expected to be administered to persons with disabilities in the “most integrated setting appropriate to the needs of qualified persons with disabilities,”¹³ with the most integrated setting being one that “enables individuals with disabilities to interact with nondisabled persons to the fullest extent possible, and that persons with disabilities must be provided the option of declining to accept a particular accommodation.”¹⁴

⁶ Americans with Disabilities Act, 42 U.S.C. § 12101.

⁷ 42 U.S.C. § 12132.

⁸ Mid-Atlantic ADA Center, “An Overview of the Americans with Disabilities Act,” *ADA National Network*, <https://adata.org/factsheet/ADA-overview> (last accessed July 2, 2019).

⁹ *Olmstead*, 527 U.S. at 587; 42 U.S.C. § 12312.

¹⁰ 42 U.S.C. § 12312.

¹¹ *Id.*; Susan Walker Goico, Director, Disability Integration Project at Atlanta Legal Aid Society, *Web Briefing*, p. 3, lines 1-8.

¹² 28 C.F.R. § 35.104; Goico Testimony, *Web Briefing*, p. 3.

¹³ 28 C.F.R. § 35.130(d).

¹⁴ Nondiscrimination on the Basis of Disability in State and Local Government Service, 56 Fed. Reg. 35694-01, 35705 (July 26, 1991); Goico Testimony, *Web Briefing*, p. 3.

Public entities, under the ADA, are required to make modifications to programs or practices to prevent discrimination. However, such entities do not have to make modifications if the modifications would "fundamentally alter the nature of the service, program, or activity."¹⁵

B. *Olmstead v. L.C.*

Olmstead v. L.C. (Olmstead) centered around two women, Lois Curtis and Elaine Wilson, with mental illnesses and developmental disabilities who were admitted to Georgia Regional Hospital's psychiatric unit.¹⁶ After receiving treatment, the women received notice from mental health professionals that they were ready to transition into a community-based program; however, Georgia Regional Hospital did not release them, leaving them in the psychiatric unit for several years.¹⁷

Curtis and Wilson sued the Commissioner of Georgia's Department of Human Services under Title II of the ADA, arguing that, by being kept in an institution after being cleared for community-based programs, they were not receiving services in the "most integrated setting" and that this segregation constituted discrimination under Title II.¹⁸ In a 6-3 decision, the Supreme Court agreed with Curtis and Wilson, stating that the unjustified segregation they were facing did constitute as discrimination and that people with disabilities had the right to receive services in the community, within the following criteria:¹⁹

- Community-based services are appropriate,
- The affected person does not object to receiving community-based services, and
- The services can be reasonably accommodated when looking at the available resources and the needs of others.²⁰

Within the majority opinion, the Supreme Court stated that placement of people eligible for community-based services within institutions upholds the assumption that people with disabilities are "incapable of or unworthy of participating in community life," and that placement in an institution limits the ability of people with disabilities to engage in central facets of life, including family relations, work opportunities, and education.²¹

¹⁵ 28 C.F.R § 35.130(b)(7)(i); Goico Testimony, *Web Briefing*, p. 3.

¹⁶ *Olmstead*, 527 U.S. at 593.

¹⁷ *Id.*

¹⁸ *Id.* at 593-94; Goico Testimony, *Web Briefing*, p. 4.

¹⁹ *Olmstead*, 527 U.S. at 602-03; Goico Testimony, *Atlanta Briefing*, p. 66; Talley Wells Testimony, *Atlanta Briefing*, p. 76.

²⁰ *Olmstead*, 527 U.S. at 602-03.

²¹ *Id.* at 583; Goico Testimony, *Web Briefing*, p. 4.

The Supreme Court ruling applies to all people with disabilities, including, but not limited to, mental health disabilities, intellectual and developmental disabilities, physical disabilities, and brain injuries.²² It also applies to people in institutions, such as state psychiatric hospitals, nursing homes, and segregated schools, as well as people who are at risk of entering into an institution.²³

C. Georgia Settlement Agreements

1. 2009 Civil Rights for Institutionalized Persons Act Settlement Agreement

The Civil Rights for Institutionalized Persons Act is a 1980 law designed to protect the civil rights of people in institutions by granting the Department of Justice (DOJ) the ability to investigate claims of abuse or neglect in five public institutions²⁴:

- Jails and prisons
- Juvenile correctional facilities
- State or locally-run mental health facilities
- State or locally-run intellectual and developmental disability facilities
- State or locally-run nursing homes.²⁵

If civil rights violations are found, the DOJ will work with the offending institution to correct these violations.²⁶ If efforts to correct violations fail, the DOJ will then bring a federal lawsuit to the institution.²⁷

In 2007, the state of Georgia was notified by the DOJ that they had received reports of civil rights violations within their state psychiatric hospitals.²⁸ Following an investigation into the hospitals, in 2009, Georgia's Department of Behavioral Health & Developmental Disabilities and the DOJ entered into an agreement that settled a federal lawsuit under Civil Rights for Institutionalized Persons Act.²⁹ Under this agreement, the State was required to adjust staffing, training, policies, procedures, and physical structures to achieve compliance in the following areas:

²² 42 U.S.C. § 12102(2).

²³ *Fisher v. Okla. Health Care Auth.*, 335 F.3d 1175, 1181-1182 (10th Cir. 2003).

²⁴ 42 U.S.C. § 1997 *et. seq.*

²⁵ *Id.*

²⁶ 42 U.S.C. § 1997b.

²⁷ 42 U.S.C. § 1997a.

²⁸ State of Georgia, Department of Behavioral Health & Developmental Disabilities, *CRIPA Overview*, 2013, https://dbhdd.georgia.gov/sites/dbhdd.georgia.gov/files/related_files/site_page/DOJ%20CRIPA%20Overview.pdf (hereafter cited as *CRIPA Overview*).

²⁹ *Ibid.*

- Protection from harm
- Mental health care
- Seclusion or restraint
- Medical and nursing care
- Services to populations with specialized needs
- Discharge planning.³⁰

This agreement was scheduled to end in 2014 as long as the State was in sustained compliance in all areas.³¹

2. 2010 ADA Settlement Agreement

In 2010, the DOJ filed a lawsuit with the state of Georgia, Georgia's Department of Behavioral Health & Developmental Disabilities, and Georgia's Department of Community Health on the grounds that the state was continuing to violate Title II of the ADA – Georgia was failing to administer services to people with disabilities in the most integrated settings possible.³² The Department of Behavioral Health and Developmental Disabilities entered into an agreement with the DOJ in October 2010, which outlined the expansion of community services for two populations, (1) people with serious and persistent mental illness, and (2) people with

³⁰ Ibid.; Goico Testimony, *Web Briefing*, p. 7; Settlement Agreement, *United States v. Georgia*, Jan. 18, 2009,

³¹ *CRIPA Overview*.

³² State of Georgia, Department of Behavioral Health and Developmental Disabilities, *ADA Overview*, 2013, https://dbhdd.georgia.gov/sites/dbhdd.georgia.gov/files/related_files/site_page/DOJ%20ADA%20Overview.pdf (hereafter cited as *ADA Overview*)

developmental disabilities.³³ In addition, this agreement created a Quality Management Program for Department of Behavioral Health and Developmental Disabilities.³⁴

Nine thousand people with severe and persistent mental illness were targeted through this agreement, with a focus on people who were currently in state hospitals, frequently admitted to state hospitals, frequently present in emergency rooms, chronically homeless, and/or being released after incarceration.³⁵ Services covered by the agreement for this population included the following:

- Assertive Community Treatment teams
- Intensive Case Management teams
- Supported Housing vouchers
- Bridge Funding
- Supported Employment
- Community Support Teams
- Case Management services
- Crisis Stabilization Units
- Peer Support Services
- Crisis Service Centers
- Mobile Crisis Services
- Crisis Apartments.³⁶

For people with developmental disabilities, the state was required to transfer all people living in state hospitals to integrated community settings, with the goal being to transfer 150 people each year, for a total of 750 people.³⁷ The state was also charged with creating additional community resources, including

- Family Supports resources
- Community Waivers
- Mobile Crisis Teams
- Crisis Respite Homes
- Education programs for judges and lawyers.³⁸

³³ Ibid; Goico Testimony, *Web Briefing*, p. 8.

³⁴ *ADA Overview*.

³⁵ Ibid.

³⁶ Ibid; Goico Testimony, *Web Briefing*, p. 8.

³⁷ *ADA Overview*.

³⁸ *ADA Overview*; Goico Testimony, *Web Briefing*, p. 8.

Finally, the state was required to conduct quality management audits of waiver services.³⁹ This agreement was scheduled to end in 2015.⁴⁰

The Olmstead Planning Committee, established in 2001, finalized nine strategic goals in 2010 to assist with compliance.⁴¹ These goals were Olmstead compliance, transition, diversion, system capacity, resources, evaluation, sustainability, policy, and data.⁴²

3. 2016 Extension Agreement

In May 2016, the state of Georgia and the DOJ entered into an extension of the 2010 ADA Settlement.⁴³ While the state was in compliance with a majority of the provisions specified in the 2010 settlement, this extension provided an avenue to ensure compliance with all specified provisions.⁴⁴ In terms of general provisions, the state agreed to continue having an independent reviewer issue compliance reports on a regular basis. When targeting the population of people with serious and persistent mental illness, the state was charged with improving the bridge funding and the Georgia Housing Voucher Program, as well as improving efforts surrounding supported housing.⁴⁵ Continued work to be done for people with developmental disabilities include the following:

- Continuing transitions from state hospitals to the community
- Maintaining a “high-risk surveillance list”
- Implementing statewide clinical oversight
- Implementing statewide support coordination and ensuring a caseload cap for coordinators
- Tracking crisis respite homes
- Developing and implementing a strategic plan for provider recruitment
- Funding additional home and community-based services waivers
- Continuing investigations, mortality reviews, risk management, and quality reviews.⁴⁶

³⁹ ADA Overview.

⁴⁰ Ibid.

⁴¹ Olmstead Planning Committee, “Center for Leadership in Disability,” <https://disability.publichealth.gsu.edu/initiatives/olmstead-planning-committee/> (last accessed July 3, 2019).

⁴² Ibid; Stacy Ramirez Testimony, Former Committee Member, Georgia Olmstead Planning Committee *Atlanta Briefing*, p. 98.

⁴³ Extension of Settlement Agreement, *United States v. Georgia*, Civil Action No. 1:10-cv-00249-CAP (N.D. Ga May 18, 2018), https://dbhdd.georgia.gov/sites/dbhdd.georgia.gov/files/related_files/site_page/Dkt.%20258%20Joint%20Motion%20to%20Enter%20Extension%20of%20Settlement%20Agreement%205.18.20....pdf

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*; Goico Testimony, *Web Briefing*, p. 9.

This extension was scheduled to end in June 2018; however, the parties in question were given until the end of 2018 to show compliance with the extension.⁴⁷ In September 2018 an independent reviewer's report was released, stating that while progress had been made in achieving compliance, the progress was not uniform in all areas.⁴⁸ As of March 2019, no updates have been made regarding the settlement's status on the DBHDD's website.

IV. SUMMARY OF PANEL TESTIMONY

The panel discussion on February 27, 2018, at the Shepherd Center in Atlanta, Georgia included testimony from state and local service providers, legal and legislative organizations, national and state organizations, practitioners and academics, and advocacy organizations.⁴⁹ Panelists were selected to provide a diverse and balanced overview of concerns on the implementation of *Olmstead* in Georgia; people with disabilities and family members of people with disabilities were represented on panels. Panelists discussed the role of government services, programs, and activities and challenges with these government programs. They also identified specific areas in need of improvement, including nursing homes, behavioral health, and supported housing.

A. Overview of Government Services, Programs, and Activities

Panelists highlighted three programs that play a critical role in fulfilling the requirements set by *Olmstead* and the following Settlement Agreements: The Aging and Disabilities Resource Connection, Money Follows the Person, and Medicaid.

1. *Aging and Disabilities Resource Connection*

The Aging and Disabilities Resource Connection is a coordinating set of partner organizations that provides information and referrals to clients, who either call or communicate online about services they need.⁵⁰ Employees provide this information from a statewide database holding over 25,000

⁴⁷ Joint Status Report, *United States v. Georgia*, Civil Action No. 1:10-cv-00249-CAP (N.D. Ga. June 29, 2018), <https://dbhdd.georgia.gov/sites/dbhdd.georgia.gov/files/imported/DBHDD/Files/joint.status.6.29.18.pdf>.

⁴⁸ Elizabeth Jones, Report of the Independent Reviewer, *United States v. Georgia*, Civil Action No. 1:10-CV-249-CAP (N.D. Ga. Sept. 19, 2018), <https://dbhdd.georgia.gov/sites/dbhdd.georgia.gov/files/imported/DBHDD/Files/Dkt.%20305%20Joint%20Notice%20of%20Filing%20Report%20of%20Independent%20Reviewer.PDF>.

⁴⁹ The Committee also invited the participation of the State of Georgia Attorney General's office to comment on the State's compliance with the 2010 ADA Settlement Agreement and its 2016 extension, and whether or not the State should accordingly be released from judicial supervision under the agreement. The Office did not respond to the Committee's request for comment. See Appendix I for related Committee outreach letter.

⁵⁰ Administration for Community Living, "Aging and Disability Resource Centers," Dec. 13, 2017, <https://acl.gov/programs/aging-and-disability-networks/aging-and-disability-resource-centers>.

services and supports to around 90,000 clients each year.⁵¹ The Aging and Disabilities Resource Connection serves all 159 counties across Georgia and serves explicitly individuals with disabilities, older individuals, and their families, caregivers, and other professionals.⁵²

2. *Money Follows the Person*

Money Follows the Person provides transitions and options counseling to help clients move from nursing homes to home and community-based settings, specifically focusing on older adults, individuals with physical disabilities and/or traumatic brain injury, and youth with mental illness.⁵³ This program began in 2008 due to a grant from the Centers for Medicare and Medicaid Services and is planned to extend until 2020.⁵⁴ In 2018, Money Follows the Person's name changed to "Medicaid Waiver Transition Services," but the intended goals remained the same as before.⁵⁵

Money Follows the Person works to (1) increase the use of home and community-based services, (2) eliminate barriers in state law and programming that restrict the use of Medicaid funds to enable people to receive long-term services in the setting of their choice, and (3) increase the ability of the state to provide home and community-based services for those who choose that setting.⁵⁶ Program services include housing assistance, medical services, peer support, and various environmental modifications.⁵⁷

To qualify, individuals must meet the following criteria:⁵⁸

- Live in a long-term, inpatient care facility for at least 90 consecutive days
- Receive Medicaid coverage for the care before transitioning to the community
- Meet an institutional level of care before and after transitioning to the community

⁵¹ Julia Fisher-Strauss Testimony, Assistant General Counsel, Georgia Department of Human Services Office of General Counsel, Division of Aging Services, *Atlanta Briefing*, p. 29; Becky Kurtz Testimony, Director, Agency on Aging Atlanta, *Atlanta Briefing*, pp. 141-142.

⁵² Georgia's Aging and Disability Resource Connection, "Welcome to Georgia's Aging and Disability Resource Connection," <https://www.georgiaadrc.com/site/1/home.aspx> (last accessed July 3, 2019).

⁵³ State of Georgia, Department of Community Health, "Money Follows the Person Fact Sheet," Atlanta, GA, 2017; "Georgia Money Follows The Person," <https://medicaid.georgia.gov/georgia-money-follows-person-ga-mfp> (last accessed Mar. 15, 2019) (hereafter cited as GA Money Follows the Person); Fisher-Strauss testimony, *Atlanta Briefing*, p. 31.

⁵⁴ State of Georgia, Department of Home and Community Based Services, "Money Follows the Person," <https://dch.georgia.gov/hcbs/money-follows-person> (last accessed July 3, 2019).

⁵⁵ *GA Money Follows the Person*.

⁵⁶ State of Georgia, Department of Community Health, "Money Follows the Person," 2012, https://medicaid.georgia.gov/sites/medicaid.georgia.gov/files/related_files/document/MFPBrochure_July2012_FIN_AL.pdf (hereafter cited as 2012 Money Follows the Person).

⁵⁷ *2012 Money Follows the Person*.

⁵⁸ State of Georgia, Department of Community Health. *Money Follows the Person Fact Sheet*, 2017, https://medicaid.georgia.gov/sites/medicaid.georgia.gov/files/related_files/document/17MFP.pdf (hereafter cited as 2017 Money Follows the Person); *GA Money Follows the Person*.

- Move into a qualified home, apartment, or group setting.

To receive services, individuals must contact the state Money Follows the Person office and undergo an eligibility and needs screening.⁵⁹ If a participant is eligible, they will work with field personnel to create a transition plan, arrange for discharge, and hold monthly meetings post-discharge.⁶⁰

3. *Medicaid*

Four Medicaid Waiver programs discussed by panelists were the Community Care Services Program, Independent Care Waiver Program, New Options Waiver Program, and Comprehensive Supports Waiver Program.

A person qualifies for Community Care Services Program if they have a physical disability, hold approval for an intermediate level of care certification for nursing home placement, and choose to use community-based services instead of institutional services.⁶¹ With this Waiver, a person can receive services in the home as well as at a day program. Services include meals, personal support services, and respite care for the primary caregiver.⁶²

The Independent Care Waiver Program is for people ages 21-64 years with physical disabilities and/or traumatic brain injuries who are medically stable but are at risk of being placed in an institution if community-based services aren't available.⁶³ Home-care services are provided with the Waiver, including case management, medical equipment, and home modification.⁶⁴

Individuals with an intellectual disability, developmental disability, or a closely related condition are possibly eligible for the New Options Waiver Program or Comprehensive Supports Waiver Program waivers, granted that home and community-based services would be an appropriate alternative treatment compared to institutional care.⁶⁵ The New Options Waiver Program Waiver is designed for individuals who require services but currently live in the community in a residential

⁵⁹ 2012 *Money Follows the Person*.

⁶⁰ 2017 *Money Follows the Person*; *GA Money Follows the Person*.

⁶¹ State of Georgia, Department of Community Health, *Community Care Services Program Fact Sheet*, 2015, https://medicaid.georgia.gov/sites/medicaid.georgia.gov/files/related_files/document/17CCSP.pdf.

⁶² *Ibid.*

⁶³ State of Georgia, Department of Community Health, *Independent Care Waiver Program Fact Sheet*, 2015, https://dch.georgia.gov/sites/dch.georgia.gov/files/IndependentCareWaiverProgram_FY14_Final_0.pdf.

⁶⁴ *Ibid.*

⁶⁵ State of Georgia, Department of Community Health, *New Options Waiver Program (NOW) and Comprehensive Supports Waiver Program (COMP) Fact Sheet*, https://dch.georgia.gov/sites/dch.georgia.gov/files/NOW_COMP_FY14_Final_1.pdf (hereafter cited as New Options Waiver Program and Comprehensive Supports Waiver Program Fact Sheet); Goico Testimony, *Web Briefing*, pp. 8-11.

setting.⁶⁶ The Comprehensive Supports Waiver Program Waiver is for individuals who are transitioning from an institutional setting to a community setting.⁶⁷

B. Challenges with Government Services, Programs, and Activities

While the programs listed above are designed to increase access to home- and community-based services for people with disabilities, testimony indicated that in some areas, the implementation of these programs might not be congruent with their mission. Several specific challenges which may impede the effectiveness of these programs are described below.

1. Lack of information and/or inaccurate information

Panelists shared stories of people in institutions who did not want to remain in those institutions but did not know about the services available in a community setting, or did not know where to go to access them.⁶⁸ For example, Cheri Mitchell, an advocate from People First of Georgia, described working with one client as follows:

...[i] asked him, I said do you want to be in a nursing facility. He said no, I don't want to be in a nursing facility. I said well, how long have you been in that nursing facility, seven years he had been in that nursing facility and I said, can I have somebody come and talk to you from Money Follows the Person? He said sure, I would love that...four months later, that man was out. Seven wasted years, he could have been home with his wife and his children, and he instead was locked away in a nursing facility.⁶⁹

2. Restrictive eligibility requirements

For a person to qualify for services through the Money Follows the Person program, he or she must live in an institution for three months.⁷⁰ Talley Wells of Georgia Appleseed raised concern that this excludes people who are already living in the community but require home- or community-based services to prevent institutionalization.⁷¹ If a person would like to receive Money Follows the Person funding and lives in the community, they must first enter an institution, which limits the ability of a person to receive services in the most integrated setting.⁷²

⁶⁶ Ibid.

⁶⁷ *New Options Waiver Program and Comprehensive Supports Waiver Program Fact Sheet*; Judy Fitzgerald Testimony, Commissioner, Georgia Department of Behavioral Health and Developmental Disabilities, *Atlanta Briefing*, pp. 20-21

⁶⁸ Fisher-Strauss Testimony, *Atlanta Briefing*, p. 49; Eric Jacobs Testimony, Executive Director, Georgia Council on Developmental Disabilities, *Atlanta Briefing*, p. 36.

⁶⁹ Cheri Mitchell, People First of Georgia, *Atlanta Briefing*, pp. 169-170.

⁷⁰ *2017 Money Follows the Person*.

⁷¹ Wells Testimony, *Atlanta Briefing*, pp. 89-90.

⁷² Kathy Floyd Testimony, Executive Director, Georgia Council on Aging, *Atlanta Briefing*, p. 89.

3. *Waitlists*

Lengthy waitlists can effectively prohibit people from accessing receiving these programs and services. Panelist Eric Jacobson, of the Georgia Council on Developmental Disabilities, noted that approximately 9,000 people are waiting for access to the New Options Waiver Program and Comprehensive Supports Waiver Program waivers to receive developmental disability home- and community-based services.⁷³ The number of people on the waitlist has reportedly been steadily increasing, starting at approximately 6,300 in October of 2009.⁷⁴

4. *Funding*

Funding for supportive, community-based programs, especially for the Aging and Disabilities Resource Connection, is limited. From FY16 to FY17, the Aging and Disabilities Resource Connection lost \$800,000 in federal funding.⁷⁵ In the Metro-Atlanta area, specifically, the Aging and Disabilities Resource Connection received \$37,000 in funding for FY18.⁷⁶ Advocates testified that an additional \$4 million for FY19 would be necessary in order to support this program across the state fully.⁷⁷

5. *Staffing*

Once in the community, panelists raised concern that people with disabilities who are participating in these government programs have limited access to providers, due to inadequate reimbursements for providers, and consequentially low levels of provider participation.⁷⁸

The Federal Mental Health Parity and Addiction Equity Act of 2008,⁷⁹ while designed to provide equal insurance benefits for mental health conditions as for physical health conditions, reportedly lacks an enforcement mechanism in Georgia.⁸⁰ Kim Jones of the National Alliance on Mental Illness Georgia testified that if insurance does not provide equal benefits for behavioral health care

⁷³ Jacobs Testimony, *Atlanta Briefing*, pp. 36-37; Wells Testimony, *Atlanta Briefing*, p. 77.

⁷⁴ Ramirez Testimony, *Atlanta Briefing*, p. 98.

⁷⁵ Floyd Testimony, *Atlanta Briefing*, p. 85 lns 24-25 (Staff are in the process of contacting panelists for clarification).

⁷⁶ Atlanta Regional Commission, "Funding Shortfall Threatens Program Connecting Thousands of Older Metro Atlantans," Feb. 19 2018, <https://atlantaregional.org/news/aging-health/funding-shortfall-threatens-program-helping-thousands-older-metro-atlantans/>; Kurtz Testimony, *Atlanta Briefing*, p. 141.

⁷⁷ Georgia Council on Aging, "Funding for Aging and Disability Resource Centers," <https://static1.squarespace.com/static/545924e4e4b0e891e46ae716/t/59f34788109526b62a6a41e2/1509115784784/ADRC+final.pdf>; Floyd Testimony, *Atlanta Briefing*, p. 86.

⁷⁸ Fitzgerald Testimony, *Atlanta Briefing*, p. 15, 13-14, p.14-19; Eric Jacobson Testimony, *Atlanta Briefing*, p. 38, 15-16; Goico Testimony, *Web Briefing*, p. 9.

⁷⁹ Final Rules Under the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008, 78 Fed. Reg. 68,240 (Nov. 13, 2013).

⁸⁰ Id.; Kim Jones, *Atlanta Testimony*, p. 180 lines 14-19.

as it does for physical health care, providers might be less inclined to participate in these government programs.⁸¹ As a result of low staffing in the community, many individuals eligible for community services may remain in or enter into institutions because there is no alternative available.⁸²

Ken Thomas, a caregiver of a family member with autism, who spoke about his family's move from Pennsylvania to Georgia, noted the difficulty he faces in getting services for his nephew:

When he first [came] to stay with me and my family in 2006, he was on several medications then...In Pennsylvania, we were fortunate because he was able to get waiver funding with the state there. We were able to get funding for respite services for him, or a day program that he went to three days a week. He also had a Hab Aide that came up and took him in the community...Under that situation, he was in a much, much better condition than he has been since we moved to Georgia five years ago.

Since we moved here, he hasn't been able to get anything. I mean zero. We've been on the waiting lists since we moved here in 2014 and I started off in Region 3. He's had several assessments there; I'm still waiting. We moved down to McDonough, Georgia, three years ago. I think that's Region 6...Of course, the information between those two regions hasn't been transferred or communicated properly, and so we're still waiting, and it's been rough on our family...He had several assessments. We keep getting moved...we're never really getting anything done. These are families that are being affected. It really seems like a person needs to [be] put in a crisis situation, where the crisis situation is the only thing that people will listen to before they can get help...⁸³

C. Specific Populations

In addition to these general challenges facing program participants as a whole, panelists also raised concern regarding individuals facing some special circumstances, such as those already living in nursing homes, those requiring access to behavioral health services, and those in need of supported and affordable housing.

1. Nursing Homes

Susan Jamieson, formerly of Atlanta Legal Aid, stated she believed nursing homes were the “most flagrant Olmstead unresolved example of disability segregation in the state.”⁸⁴ She described her experience visiting nursing homes:

When I think back to pre-Olmstead days in the 1980s and the 1990s, I remember walking through dayrooms, caged yards tacked on the back of buildings. The shock of seeing poorly dressed patients, overwhelming

⁸¹ Kim Jones, Executive Director, National Alliance on Mental Illness Georgia, *Web Briefing*, pp. 179-80.

⁸² Jacobson Testimony, *Atlanta Briefing*, p. 38; Goico Testimony, *Atlanta Briefing*, p. 69.

⁸³ Ken Thomas Testimony, *Atlanta Briefing*, pp. 206-208.

⁸⁴ Susan Jamieson Testimony, *Atlanta Briefing*, p. 56.

smell of urine and sweat, a complete lack of privacy, crowded bedrooms, palpable fear, helplessness and intense boredom that I observed in those individuals who I met over many years.

I was shocked in those years that those places could even exist in our society and not only that, we'd become accustomed to them, and we allowed so many lives to languish in those conditions.

So what I want to say to you today is that I honestly see those exact same conditions in most of the nursing homes I visit and I have visited many in my years as former Director of the Disability and Duration Program at Legal Aid.⁸⁵

In one key legal case, *Fisher v. Oklahoma*,⁸⁶ plaintiffs sued the Oklahoma Health Care Authority on the basis of *Olmstead v. L.C.*, because waiver recipients in the community were given a cap on the number of prescription medications that would be covered, while those living in institutions such as nursing homes had no such cap.⁸⁷ While the case was ultimately settled, the Court did find that “nothing in the text of the [Americans with Disabilities Act] or the *Olmstead* decision would suggest that institutionalization is a prerequisite” to bringing a claim under the Americans with Disabilities Act’s integration mandate.⁸⁸

In the spirit of providing services in the most integrated, least restrictive environment possible, as required by the Americans with Disabilities Act, panelists emphasized the importance of transitioning people with disabilities from nursing homes into the community where possible.⁸⁹ Yet, Ms. Jamieson testified that, in 2012, over one-quarter of nursing homes in Georgia did not refer any resident for information about home and community alternatives.⁹⁰ She also noted that Georgia has 364 nursing homes, according to yearly reports by the Division of Aging Services, yet an average of just seven referrals are made per year, per nursing home, to receive more information about alternative treatments.⁹¹ Without proper referral services, clients may remain in unnecessarily restrictive environments. Susan Walker Goico of Atlanta Legal Aid spoke about a client who did not have information about community services: “My very first client...was a 30-year-old woman who was living in a nursing home. She had no idea that there were community services available to her until we told her about them and helped her apply.”⁹²

To address this lack of information, the State began issuing a federally mandated nursing home survey, known as the Minimum Data Set or MDS.⁹³ Ms. Jamieson noted that when completing

⁸⁵ *Ibid.*, 56-57.

⁸⁶ *Fisher v. Okla. Health Care Auth.*, 335 F.3d at 1175

⁸⁷ *Id.*

⁸⁸ *Id.* at 1181; see also Talley Wells Testimony, *Atlanta Briefing*, pp. 78 - 79.

⁸⁹ Kurtz Testimony, *Atlanta Briefing*, p. 140.

⁹⁰ Jamieson Testimony, *Atlanta Briefing*, p. 60.

⁹¹ *Ibid.*

⁹² Goico Testimony, *Web Briefing*, p. 11.

⁹³ Centers for Medicare and Medicaid Services, “MDS 3.0 for Nursing Homes and Swing Bed Providers,” <https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment->

this survey, nursing home clinicians are obligated to ask each patient, “would you like to hear more about alternatives in the community?”⁹⁴ If the patient declines, the clinician then asks the patient if they’d like to be asked that question in the future.⁹⁵ If the patient states that they would not like to be asked again, then the clinician has the right to skip that question about community alternatives in the future.⁹⁶ Ms. Jamieson identified this detail as impacting the ability for people with disabilities to receive access to home and community-based services.⁹⁷

Even when a resident of a nursing home does request information about community alternatives, Ms. Jamieson testified that they often are not referred to the Aging and Disability Resource Center, which is designated as the central point of contact for receiving information on services.⁹⁸ When patients do receive information on home and community-based services, these services are reportedly frequently not accessible or not as accessible as the services within nursing homes due to long waitlists.⁹⁹

2. Behavioral Health

According to Judy Fitzgerald of the Georgia Department of Behavioral Health and Developmental Disabilities, Georgia’s Division of Behavioral Health is focused on “recovery-oriented, community-based care.”¹⁰⁰ Ms. Fitzgerald described a series of Crisis Stabilization Units and Behavioral Health Crisis Centers available across the state.¹⁰¹ In Crisis Stabilization Units, a person experiencing a psychiatric crisis can be stabilized for some time instead of going to a psychiatric hospital.¹⁰² Behavioral Health Crisis Centers have Crisis Stabilization Units within them, as well as temporary observation beds and the ability to take walk-ins.¹⁰³ Currently, there are 22 Crisis Stabilization Units in the state, with 11 of the units being within a Behavioral Health Crisis Center.¹⁰⁴ Ms. Fitzgerald stated that these crisis centers are evidence-based, and designed around research Georgia conducted with other states to avoid hospitalization.¹⁰⁵

[Instruments/NursingHomeQualityInits/NHQIMDS30.html](#) (last accessed July 9, 2019); Jamieson Testimony, *Atlanta Briefing*, p. 59.

⁹⁴ Jamieson Testimony, *Atlanta Briefing*, p. 59.

⁹⁵ *Ibid.*, 60.

⁹⁶ *Ibid.*, 59-60.

⁹⁷ *Ibid.*, 59-62.

⁹⁸ *Ibid.*, 61.

⁹⁹ *Ibid.*, 61-62.

¹⁰⁰ Fitzgerald Testimony, *Atlanta Briefing*, p. 19.

¹⁰¹ *Ibid.*, 17.

¹⁰² *Ibid.*, 18-19, 42.

¹⁰³ *Ibid.*, 17, 42.

¹⁰⁴ *Ibid.*, 42.

¹⁰⁵ *Ibid.*, 18.

Zolinda Stoneman of the University of Georgia, however, cautioned that focusing too much money into crisis centers could detract from resources available for regular primary care services, and increase the number of people experiencing a psychiatric crisis.¹⁰⁶ Ms. Stoneman described the following:

[o]nce people go into Crisis Centers, they turn into long term placement because we're not actively involving the service providers in whatever is going on in terms of the crisis, in the crisis home. So that then the person frequently doesn't have a provider anymore, and there's a need to come up with a new provider and the providers don't have support, so they may not want to take on that person. So the person languishes in that home.¹⁰⁷

To improve responses to people experiencing a crisis, Ms. Stoneman recommended that instead of having the person in crisis travel to a center, a behavior support worker should travel to the person's place of residence and remain with the person until the crisis is resolved.¹⁰⁸ In this way, the person experiencing a crisis does not face the risk of long term institutional placement unless long term placement is absolutely necessary.¹⁰⁹

Panelists across sectors stated that there was a need for more early intervention programs that reduced the number of people who require crisis intervention services.¹¹⁰ Ms. Stoneman's research out of the University of Georgia suggested that 80 percent of the money available for behavioral healthcare should be used in prevention, with the remaining 20 percent used for crisis services.¹¹¹ This same study also suggests some best practices for early behavioral health interventions. The research found that if behavioral support workers connect with individuals who are at risk of psychiatric distress or crisis and build a relationship with them before a crisis occurs, they can reduce the risk that an individual will face a behavioral or mental health crisis in the first place.¹¹² Such preventative services should include a focus on providing clients with technical assistance and models of what to do when facing a mental health crisis.¹¹³

3. *Supported and Affordable Housing*

The U.S. Department of Housing and Urban Development defines a supported housing program as a "program designed to promote the development of supportive housing and supportive services, including innovative approaches to assist homeless persons in the transition from homelessness,

¹⁰⁶ Zolinda Stoneman Testimony, Institute on Human Development and Disability, University of Georgia, *Atlanta Briefing*, p. 132.

¹⁰⁷ *Ibid.*, 133.

¹⁰⁸ *Ibid.*

¹⁰⁹ *Ibid.*, 13.

¹¹⁰ Fitzgerald Testimony, *Atlanta Briefing*, p. 23; Kim Jones Testimony, Executive Director, NAMI Georgia, *Atlanta Briefing*, p. 175; Stoneman Testimony, *Atlanta Briefing*, p. 131.

¹¹¹ Stoneman Testimony, *Atlanta Briefing*, p. 131.

¹¹² *Ibid.*, 132.

¹¹³ *Ibid.*, 132.

and to promote the provision of supportive housing to homeless persons to enable them to live as independently as possible.”¹¹⁴ Affordable housing, defined by Department of Housing and Urban Development, is “housing for which the occupant(s) is/are paying no more than 30 percent of his or her income for gross housing costs, including utilities.”¹¹⁵

Panelists noted that in order to successfully afford people the opportunity to transition out of institutions and into community and home-based settings, supported and affordable housing options must be expanded.¹¹⁶ Danny Housley of Georgia ADAPT, the National Federation of the Blind of Georgia, and the Center for Independent Living testified that people need to have “affordable, accessible and integrated housing in the community they choose” upon leaving an institution.¹¹⁷ However, these services are not sufficiently available in Georgia. Susan Walker Goico of Atlanta Legal Aid cited an independent reviewer report which found that supported housing is not available systematically, especially for people leaving state hospitals, people with mental illness who are released from jails and prisons, and people who frequent emergency rooms.¹¹⁸

Where supported and affordable housing options are available, Cheri Mitchell of People First of Georgia testified that challenges arose.¹¹⁹ She noted that often time supported housing is clustered in segregated areas. She also raised concern that supported housing communities often require participation in specific services, which may unintentionally impede residents from developing further independence.¹²⁰ For example, “...I’m hearing stories about how they’re making the housing contingent on the services. So you get a person who wants to work, but they can’t go to work because if they don’t attend that support group, they lose their housing.”¹²¹

Other panelists also raised concerns about affordable housing options. Kim Jones of National Alliance on Mental Illness Georgia shared a story of a client she previously worked with who was placed in affordable housing that presented serious health and safety concerns.¹²²

¹¹⁴ U.S. Department of Housing and Urban Development, “Glossary of HUD Terms.” https://www.huduser.gov/portal/glossary/glossary_s.html (last accessed July 11, 2019).

¹¹⁵ Ibid.

¹¹⁶ Danny Housley Testimony, *Atlanta Briefing*, pp. 192-193.

¹¹⁷ Ibid.

¹¹⁸ Elizabeth Jones, Independent Reviewer's Report, Year Six, *United States v. Georgia*, Civil Action No. 1:10-CV-249-CAP, (N.D. Ga Sept. 19, 2016); *see also* NAMI Georgia, “Civil Rights for persons with disabilities in Georgia and implications of the law or its operation,” Written Statement on Feedback on Olmstead Interest by Georgia Advisory Committee to the U.S. Commission on Civil Rights, at 2 (hereinafter NAMI Georgia Written Testimony); Goico Testimony, *Web Briefing*, pp. 9 ln 37 – 10 ln 2.

¹¹⁹ Cheri Mitchell Testimony, *Atlanta Briefing*, p. 191.

¹²⁰ Ibid.

¹²¹ Mitchell Testimony, *Atlanta Briefing*, p. 191.

¹²² Jones Testimony, *Atlanta Briefing*, p. 178.

We have one member whose daughter was sexually abused at her apartment...she was sexually assaulted and drugged and robbed. The conditions were deplorable, no air-conditioning all summer and this is here in Atlanta. They refused to fix broken appliances or anything else. Her dishwasher was filled with black liquid. I couldn't go in there because the smell was so bad. I paid to do a search of the kind of people in the complex. There are registered sex offenders all around her. She was threatened at gunpoint in her parking lot; threatened on a voice message that if she told anyone about the attempted rape, that he would kill her. Two buildings in her complex have burned in this past year. She is a single woman on a mental illness voucher, it is criminal.¹²³

Danny Housley of Georgia ADAPT also shared a story about a client's housing situation, where the client was able to successfully transition out of an institution but received inadequate care in the community.¹²⁴

Additionally, people enrolled in Money Follows the Person are restricted to community-based supported homes that have four beds or less.¹²⁵ Kathy Floyd of the Georgia Council on Aging shared that she believed the restriction should be changed so that people can use Money Follows the Person and live in homes with six beds or less.¹²⁶ Ms. Floyd stated that changing this restriction would allow for more people to move out of institutions and into the community because Georgia has several six-bed personal care homes.¹²⁷ Ms. Mitchell of People's First of Georgia pointed out, however, that the six-bed personal care homes constituted a violation of *Olmstead* because the setting did not meet criteria of being the most integrated setting possible.¹²⁸

One program in place to address a lack of supported and affordable housing is Georgia's Housing Choice Voucher Program. This program is a "tenant-based rental assistance program that assists extremely low-income individuals and families to rent safe, decent, and affordable dwelling units in the private rental market."¹²⁹ Purported goals for this program include the following:¹³⁰

- Provide improved living conditions for extremely low and low-income individuals and families while maintaining their rent payments at an affordable level;
- Affirmatively further fair housing for individuals and families;

¹²³ Ibid., 178 - 179.

¹²⁴ Danny Housley Testimony, *Atlanta Briefing*, pp. 171-172.

¹²⁵ The Kaiser Commission on Medicaid and the Uninsured, "Georgia's Money Follows the Person Program: Helping People Move Back Home," 2011, http://www.tilrc.org/assests/news/publications/kff_mfp_study_2011_ga_profiles.pdf; The Kaiser Commission on Medicaid and the Uninsured, "Money Follows the Person: An Early Implementation Snapshot," June 2009, <https://www.kff.org/wp-content/uploads/2013/01/7928.pdf>.

¹²⁶ Floyd Testimony, *Atlanta Briefing*, pp. 86-87.

¹²⁷ Ibid.

¹²⁸ Mitchell Testimony, *Atlanta Briefing*, pp. 167-168.

¹²⁹ State of Georgia, Department of Community Affairs, *Rental Assistance (Housing Choice Voucher)* <https://www.dca.ga.gov/safe-affordable-housing/rental-housing-assistance/rental-assistance-housing-choice-voucher> (last accessed July 11, 2019).

¹³⁰ Ibid.

- Promote freedom of housing choice and integrate lower income and minority persons into mainstream society;
- Provide decent, safe, and affordable housing for eligible participants; and
- Provide an incentive to private property owners to rent to lower-income persons by offering timely subsidy payments.

Both Ms. Fitzgerald and Ms. Walker Goico described the Housing Choice Voucher Program as a success and significant accomplishment in work done around supported housing.¹³¹ Ms. Fitzgerald stated that thousands of individuals had received housing through this program, and Ms. Walker Goico shared that the program was particularly beneficial when an individual had an intensive case management team.¹³²

Other panelists cautioned that private housing vouchers also create challenges, however. Ms. Mitchell shared that she's seen a shortage of housing choices due to limited funding.¹³³ Additionally, National Alliance on Mental Illness Georgia submitted written testimony stating that vouchers were as low as \$600 per month, limiting recipients' options while looking in the private housing market.¹³⁴ National Alliance on Mental Illness Georgia stated that because the voucher's worth was so low, individuals were limited to securing housing in high crime areas, possibly leading to an inability to provide for themselves.¹³⁵

D. Other Panel Testimony

1. Employment for People with Disabilities

Panelist Gina Kline of Brown, Goldstein, & Levy provided testimony on the importance of employment services for people with disabilities. She stated that *Olmstead* extends to employment services and that services or supports attached to employment services should be provided in the most integrated setting as is appropriate.¹³⁶ Ms. Kline discussed *U.S. v. Rhode Island and City of Providence*, a 2013 case where the U.S. Department of Justice found that the defendants had unnecessarily segregated people with intellectual and developmental disabilities into sheltered

¹³¹ Fitzgerald Testimony, *Atlanta Briefing*, p. 23; Goico Testimony, *Web Briefing*, p. 9.

¹³² Ibid.

¹³³ Mitchell Testimony, *Atlanta Briefing*, p. 190.

¹³⁴ NAMI Georgia Written Testimony, at 1.

¹³⁵ Ibid.

¹³⁶ Gina Kline Testimony, *Atlanta Briefing*, p. 106.

workshops and were placing 85 students at risk of entering a sheltered workshop instead of seeking integrated employment.¹³⁷ However, she did not share examples of this occurring in Georgia.

2. *Language Barriers*

Talley Wells of Georgia Appleseed and Pierluigi Mancini, a mental health and addiction consultant, testified that, according to the U.S. Census Bureau, Georgia has over one million foreign-born residents, with around half of this population reporting that they speak English "less than very well."¹³⁸ Talley Wells stated that there is limited support in place to help people with disabilities who are seeking services and are not fluent in English.¹³⁹ Mr. Mancini said that often, people who are learning English might not have the full vocabulary to express themselves in a clinical or a crisis setting, which can hurt their ability to receive proper services.¹⁴⁰ Zan Thornton of Georgia ADAPT emphasized the need for Certified Deaf Interpreters in her testimony, stating that people who are deaf or hard of hearing are supposed to have an interpreter available to facilitate communication.¹⁴¹ She provided an example of a client she worked with who needed a Certified Deaf Interpreter, stating "when they did this intake, they didn't get an interpreter, they never --- they consulted him at all. They just said oh, we'll get somebody else to write for you and so he has an attendant every day and they don't sign and he doesn't write English and so there's a lot of struggles within the deaf community, hard of hearing and deaf, blind."¹⁴²

3. *Education*

Susan Walker Goico of Atlanta Legal Aid briefly mentioned the existence of Georgia Network for Educational and Therapeutic Support schools, which are public schools throughout Georgia where schools send students with behavioral health conditions.¹⁴³ She saw these schools as a violation of *Olmstead*, as the students received education in a segregated facility¹⁴⁴ Devon Orland of the Georgia Advocacy Office further testified about Georgia Network for Educational and Therapeutic Support schools.¹⁴⁵ Ms. Orland noted that these schools, while designed to provide education for students with autism or behavioral disorders, do not provide adequate educational or therapeutic services.¹⁴⁶ While no examples of mistreatment or a lack of services were provided by panelists at

¹³⁷ Interim Settlement Agreement, *United States v. Rhode Island and City of Providence*, No. 1:13-cv-00442 (D.R.I. June 13, 2013); see also Gina Kline Testimony, *Atlanta Briefing*, p. 107, pp. 108-109.

¹³⁸ Pierluigi Mancini Testimony, *Atlanta Briefing*, pp. 201-202; Wells Testimony, *Atlanta Briefing*, p. 80; U.S. Census Bureau, "QuickFacts – Georgia," <https://www.census.gov/quickfacts/fact/table/ga/POP645217#POP645217>.

¹³⁹ Wells Testimony, *Atlanta Briefing*, p. 80.

¹⁴⁰ Mancini Testimony, *Atlanta Briefing*, p. 202.

¹⁴¹ Zan Thornton, *Atlanta Briefing*, p. 161.

¹⁴² *Ibid.*, 160-161.

¹⁴³ Goico Testimony, *Atlanta Web Briefing*, p 6.

¹⁴⁴ *Ibid.*, 72.

¹⁴⁵ Devon Orland Testimony, *Atlanta Briefing*, pp. 185-186.

¹⁴⁶ *Ibid.*

the Committee hearing, several parents and students have spoken on cases of physical and verbal abuse and neglect to journalists.¹⁴⁷

4. *Incarceration*

Ms. Walker Goico shared that there is a subset of people with severe mental illness who routinely cycle in and out of the criminal justice system because they do not receive the proper mental health services to live in the community.¹⁴⁸ Likewise, Elaine Magruder, a public defender from the Metro-Atlanta area, stated that people with mental health conditions who are charged with misdemeanors often spend weeks in jail waiting for a bed to open up at Georgia Regional Hospital.¹⁴⁹ She commented that the law “...gives the judge discretion to let people get that competency evaluation and treatment in the community, but [they have] got to have housing.”¹⁵⁰ Ms. Magruder stated that a lack of housing, both at Georgia Regional Hospital, and in the community, limits options for people to receive treatment, and that ultimately “...a person should not have to be arrested to get treatment at the jail as the last resort, because the jails end up being the housing and treatment...”¹⁵¹

V. FINDINGS AND RECOMMENDATIONS

Among their duties, advisory committees of the U.S. Commission on Civil Rights are authorized to advise the Commission (1) concerning matters related to discrimination or a denial of equal protection of the laws under the Constitution and the effect of the laws and policies of the Federal Government with respect to equal protection of the laws and (2) upon matters of mutual concern in the preparation of reports of the Commission to the President and the Congress.¹⁵² The Georgia Advisory Committee heard testimony that the State’s adherence to the ruling of *Olmstead* and the following settlement agreements had not reached a point where all persons with disabilities were receiving services in the most integrated setting appropriate.

Below, the Committee offers the Commission a summary of concerns identified throughout the Committee’s inquiry. Following these findings, the Committee proposes for the Commission’s consideration several recommendations that apply both to the State of Georgia and the nation as a whole.

¹⁴⁷ Rachel Aviv, “Georgia’s Separate and Unequal Special-Education System,” *New Yorker*, Sept. 24, 2018, <https://www.newyorker.com/magazine/2018/10/01/georgias-separate-and-unequal-special-education-system>; Timothy Pratt, “The Separate, Unequal Education of Students with Special Needs,” *The Atlantic*, Mar. 21, 2017, <https://www.theatlantic.com/education/archive/2017/03/the-separate-unequal-education-of-students-with-special-needs/520140/>.

¹⁴⁸ Goico Testimony, *Atlanta Briefing*, p. 67.

¹⁴⁹ Elaine Magruder Testimony, *Atlanta Briefing*, pp. 209-210.

¹⁵⁰ Ga. Code Ann. § 17-7-130; Elaine Magruder Testimony, *Atlanta Briefing*, pp. 209-210.

¹⁵¹ Magruder Testimony, *Atlanta Briefing*, p. 210.

¹⁵² 45 C.F.R. § 703.2.

A. Findings

- 1) Government services, programs, and activities are in place to help fulfill the requirements mentioned in *Olmstead v. L.C.*, the 2009 Civil Rights for Institutionalized Persons Act Settlement Agreement, the 2010 ADA Settlement Agreement, and the 2016 Extension. These programs include the Aging and Disability Resource Connection, Money Follows the Person and Medicaid.
- 2) People with disabilities face challenges in participating in these government programs.
 - a) Many people in institutions are not aware of home- and community-based services or how and where to access these services.
 - b) Money Follows the Person has a restrictive eligibility policy, where people must live in an institution for three months before qualifying for the program.
 - c) Around 9,000 people with an intellectual disability, developmental disability, or a closely related condition are currently on a waitlist to receive Medicaid waivers for home- and community-based services in Georgia.
 - d) Funding for the Aging and Disability Resource Connection is limited.
 - e) Inadequate reimbursements for providers have led to a shortage of providers for home- and community-based services.
- 3) Special population considerations
 - a) Nursing homes often do not provide referrals to information about home- and community-based services to residents. Georgia has 364 nursing homes, and an average of seven referrals are made per year, per nursing home, to receive more information about services. In 2012, over one-quarter of these nursing homes did not refer any resident for community-based services. Additionally, even when a patient requests a referral, they are often not directed to the appropriate service.
 - b) Georgia provides access to behavioral health services through Crisis Centers and Crisis Stabilization Units, which are spread throughout the state. However, panelists testified that crisis services should not be the only service invested in by the State. They argued that funds for Crisis Centers might detract from funding available for primary care and outpatient services, and a person entering a Crisis Center faces the risk of entering into long-term inpatient treatment.
 - c) Supported and affordable housing is a critical area to address. In order for people with disabilities to transition into the community, supported and affordable housing must be available and accessible.

- i) While Georgia's Housing Choice Voucher Program serves to help people with disabilities have a stable living situation, these living situations can hold health and safety risks, with voucher rates being below market value.
 - ii) For individuals in the Money Follows the Person program, housing choices are limited to personal care homes with four beds or less, making it difficult to find an available housing situation. However, were that personal care home bed limit to increase, people run the risk of continuing to live in an institution.
 - iii) Some housing programs are contingent on receiving services, like participating in support groups or attending classes. While offering additional support, such requirements may limit a person's ability to integrate into society.
- 4) Other panel testimony looked at language barriers to receiving services, access to integrated education for children, and the intersection of the criminal justice system with access to home- and community-based services.
- a) Over one million people residing in Georgia were born outside the United States, and around half of this population report being able to speak English in a limited fashion. Georgia provides limited access to translators in their home- and community-based services, which can increase the likelihood of a person who does not speak English well either not receiving services altogether or receiving services that are not appropriate. People who are deaf or hard of hearing are also entitled to a Certified Deaf Interpreter; however, such interpreters are not always provided.
 - b) The Georgia Network for Educational and Therapeutic Support schools are public schools which enroll only children with behavioral disorders, including autism and mental health conditions. Panelists raised concern that students at these schools do not receive appropriate educational and therapeutic services. Additionally, incidents of physical and verbal abuse and neglect have been reported in the media.
 - c) A subset of people with mental illness cycle in and out of jails due to a lack of services in the community. People with mental illness who are charged with crimes must wait for weeks in jail until a bed opens up at a psychiatric hospital for treatment. While these people are eligible to receive treatment in the community, this treatment is contingent upon having a place to live, and often, the person lacks a stable living situation.

B. Recommendations

- 1) The U.S. Commission on Civil Rights should conduct a national study on disability rights in the United States. Such a study should include:

- a) An analysis of changes in state disability laws and related changes in disability rights following the 1999 U.S. Supreme Court *Olmstead v. L.C.* decision;
 - b) An analysis of current home- and community-based services offered to people with disabilities; the effectiveness of these services to ensure people with disabilities can receive services in the least restrictive, most integrated setting appropriate; and the accessibility of these services;
 - c) An analysis of current violations under the ADA and *Olmstead*.
- 2) The U.S. Commission on Civil Rights should issue the following formal recommendations to the U.S. Department of Health and Human Services, Centers for Medicare & Medicaid Services:
- a) The Centers for Medicare & Medicaid Services should establish a working group that looks at the marketing and advertising of home- and community-based services, specifically examining and analyzing the layout and format of the Minimum Data Set and its role in providing information on home- and community-based services; and
 - b) According to the analysis, the Center should alter the Minimum Data Set so that it allows for more opportunities for the distribution of information on home- and community-based services.
- 3) The U.S. Commission on Civil Rights should issue the following formal recommendations to the U.S. Department of Justice, Civil Rights Division, Disability Rights Section:
- a) The Civil Rights Division should establish a working committee to study the role of housing in ensuring compliance with *Olmstead* including a review of barriers to housing faced by people with disabilities and by people with mental illness involved in the criminal justice system;
 - b) According to the results of this study, the Division should develop a series of recommendations for states on ensuring that housing programs for people with disabilities meet the criteria established in *Olmstead* and the ADA; and
 - c) The working committee should conduct a state-by-state analysis of the feasibility of transitioning to a housing program that is supported, affordable, and without undue and unnecessary administrative complications.
- 4) The U.S. Commission on Civil Rights should issue a letter to the Georgia Governor and the Georgia Legislature urging them to:
- a) Review the findings and recommendations contained within this report;

- b) Further investigate identified areas of concern within their jurisdiction and take appropriate action to address them; and
- c) Specifically examine regulatory efforts on nursing homes and the potential for misaligned incentives.

VI. APPENDIX

- I. Briefing Agenda, February 2018
- II. Letter to Attorney General Carr
- III. NAMI Georgia Written Testimony

U.S. COMMISSION ON CIVIL RIGHTS



Olmstead (Disability) Decision

Hosted By:

The Georgia Advisory Committee to the U.S. Commission on Civil Rights

Date:

Tuesday, February 27, 2018

Time:

9:30am—5:00 pm

Location:

Shepherd Center
2020 Peachtree Road, NW
Atlanta, GA 30309

U.S. COMMISSION ON CIVIL RIGHTS

Southern Regional office
61 Forsyth St., SW-Suite 1840T
Atlanta, GA 30303

Phone: 404-562-7000
Fax: 404-562-7005
Online: www.usccr.gov
Twitter: @USCCRGov

The Georgia Advisory Committee to the United States Commission on Civil Rights is hosting a public meeting to hear testimony regarding civil rights concerns related to Olmstead (Disability) Decision in the State. This meeting is free and open to the public.

- Opening Remarks and Introductions (9:30am-9:45am)
 - Panel 1: State and Local Service Providers (9:45am-10:55am)
 - Panel 2: Legal and Legislative (11:00am-12:05pm)
 - Panel 3: National/State Organizations (12:10pm-1:15pm)
- Break (1:15pm-2:00pm)
 - Panel 4: Practitioners and Academics (2:00pm-3:30pm)
 - Panel 5: Advocacy Organizations (3:35pm-4:30pm)
 - Open Forum (4:35-4:55pm)
- ADJOURNMENT

The Committee will hear public testimony during the open forum session, as time allows. Please arrive early if you wish to speak. The record is also open for written testimony and will remain so for thirty days following the hearing. For more information please contact the Southern Regional Office of the U.S. Commission on Civil Rights.

State Advisory Committees to the U.S. Commission on Civil Rights are composed of state citizens who serve without compensation. The Committees advise the Commission of civil rights issues in their states, providing recommendations and advice regarding such matters to the Commission.

Agenda

9:30am INTRODUCTIONS

9:45am - 10:55am PANEL 1 State and Local Service Providers

Judy Fitzgerald, Commissioner, Georgia Department of Behavioral Health & Developmental Disability

Amy Howell, Assistant Commissioner, Georgia Department of Behavioral Health & Developmental Disability

Robyn A. Crittenden, Commissioner, Georgia Department of Human Services

Eric Jacobson, Executive Director, Georgia Council on Developmental Disabilities

11:00am - 12:05pm PANEL 2 Legal and Legislative

Susan Jamieson, Olmstead Attorney, Atlanta Legal Aid

Talley Wells, Executive Director, Georgia Appleseed

Kathy Floyd, Executive Director, Georgia Council on Aging

12:10pm – 1:15pm PANEL 3 National/State Organizations

Stacey Ramirez, State Director, The ARC Georgia

Shelly Simmons, Executive Director, Statewide Independent Living Council

Regina Kline, Attorney, Brown Goldstein & Levy

1:15pm - 2:00pm LUNCH BREAK

2:00pm - 3:30pm PANEL 4 Practitioners and Academics

Zoe Stoneman, Director University Professor, Institute on Human Development & Disability, University of Georgia

Becky A. Kurtz, Director, Area Agency on Aging, Atlanta Regional Commission

Chase Jones, Chairman, Georgia Brain & Spinal Injury Trust Fund Commission

Brenda Liz Muñoz, Bilingual Program Associate for School and Community Supports, Senior Diversity Fellow for Latino Community of Practice; Center for Leadership in Disability, School of Public Health; Georgia State University

3:35pm - 4:30pm PANEL 5 Advocacy Organizations

Ruby Moore, Executive Director, Georgia Advocacy Office

Cheri Mitchell, People First of Georgia

Kim Jones, Executive Director, NAMI.Org

4:35pm – 4:55pm PUBLIC COMMENT AND COMMUNITY TESTIMONIALS

4:55pm ADJOURN



U.S. Commission on Civil Rights Regional Programs Unit

John C. Kluczynski Federal Building
230 South Dearborn Street
Suite 2120
Chicago, IL 60604

Attorney General Chris Carr
Georgia Department of Law
40 Capitol Square SW
Atlanta, GA 30334

Attorney General Carr,

I am contacting you today on behalf of the Georgia State Advisory Committee (SAC) to the U.S. Commission on Civil Rights. The Committee is currently conducting a study of civil rights concerns related to the Olmstead Act and the following ADA Settlement Agreement. The Committee has previously invited the Attorney General's office to provide testimony on this topic at a hearing in February 2018 and again in February 2019.

As the Committee reviews the testimony it has gathered and prepares to issue its report, the Committee would like to extend an invitation to yourself or a representative to comment on (1) whether the state should be released from judicial supervision regarding the 2010 ADA Settlement Agreement and 2016 extension, and (2) whether the state is in compliance with the Settlement Agreement requirements.

If the Attorney General or other representative would like to comment on these issues, testimony may be submitted either via a web conference meeting with the Committee, or in writing. If a web conference is desired, the Committee would be happy to work with you to identify a mutually agreeable date and time to schedule. If you would prefer to submit written testimony, please do so via email at mwrointern3@usccr.gov, no later than Friday, March 29, 2019.

Sincerely,

A handwritten signature in black ink, appearing to read "David Mussatt", is written over a light blue rectangular background.

DAVID MUSSATT
Supervisory Chief, Regional Programs Unit

Jerry Gonzalez, Chair, Georgia SAC
Khafre Abif, Georgia SAC
Julius Dudley, Georgia SAC
Chanel Haley, Georgia SAC
Jeremy Kidd, Georgia SAC
Joseph Knippenberg, Georgia SAC

Laverne Lewis-Gaskins, Georgia SAC
John Mayes, Georgia SAC
James McCrary, Georgia SAC
Jamala McFadden, Georgia SAC
Jack Park, Georgia SAC
Stephanie Woods Miller, Georgia SAC



To: The Georgia Advisory Committee to the U.S. Commission on Civil Rights.

Re: **Feedback on Olmstead interest by Georgia Advisory Committee to the U.S. Commission on Civil Rights (Civil Rights for persons with disabilities in Georgia and implications of the law or its operation)**

Thank you for reaching out to the Georgia Chapter of the National Alliance on Mental Illness for further information on housing issues in Georgia following the hearing held by the U.S. Commission on Civil Rights in Atlanta on February 27, 2018. This complex issue requires innovative solutions. **We support the concept of Housing First because safe and affordable housing provides both initial stability and a pathway to a client's ability to achieve and maintain recovery.**

As mentioned in our testimony, NAMI Georgia and many of our fellow partners have long advocated for the expansion of Georgia's supportive housing capacity. **We have found that having affordable housing is still a serious problem in our state that affects all Georgians—especially those living with mental health problems.** We also note that different areas of the state will have different solutions. For example, the housing and transportation issues of Atlanta will be very different from more rural areas of the state. Nonetheless, there are pervasive needs affecting the entire state which include:

- 1. A lack of affordable housing;**
 - a. A method of addressing gentrification and a lack of infrastructure in communities;
 - b. Assistance around Regulatory Fees (Permit fees average around \$25,000 and do not include the cost of time, taxes or professional services);
- 2. A need for additional quality providers to serve individuals moving from inpatient to the community who utilize best practices;**
 - a. Provider recruitment and development;
 - b. Funding for home and community-based services;
 - c. Wrap-around services for those coming out of crisis;
- 3. Adequate funding;**
 - a. With vouchers that can be as low as \$600 a month, the only housing available is frequently found in areas with high crime and unsafe conditions. This amount is too low to be competitive in a safe housing market. This can inevitably lead to these individuals not being able to maintain their medication schedules, being unable to care for themselves and possibly ending up involved in criminal activities that lead to unnecessary incarceration;
 - b. A continued and enhanced need for a federal program where the financial assistance follows the individual;
 - c. Transportation funds;
- 4. Address stigma that impacts housing;**
 - a. The need for Mental Health Parity and Addiction equity upheld by the state Insurance Department.

- b. With the stigma around and misunderstandings surrounding mental health, disabled people find that they are unable to secure housing because they have a criminal background or because of misconceptions regarding mental illness.
- 5. A need for an aging population of caregivers of adult children who are searching for assisted living for themselves to ensure that their adult children have safe housing.**

Along with our partners at the Georgia Supportive Housing Association, we have crafted the following recommendations to bolster supportive housing and serve consumers in need:

Regulatory-

- Protect the State Low Income Housing Tax Credit as a significant and continuing source of funding for new affordable multi-family housing statewide.
- Ensure recipients of tax credits are housing referred to consumers (behavioral health, disabled tenants).
- Enable local communities to use zoning, tax, and financial incentives to support the preservation and development of housing that meets the needs of families across the economic spectrum.
- Support restriction of criminal records legislation for purposes of housing in Permanent Supportive Housing programs.

Funding-

- Continue support and increase the amount of funding for the Georgia Housing Voucher from \$600 to an amount that is competitive in a safe and low crime housing market and to make it more of a long term solution.
- “Approve NOW” and COMP Medicaid waivers should be included in Community Service Boards’ state contracts like developmental disabilities are currently included.
- Allocate funds from the state Department of Community Affairs (DCA) to set aside for Permanent Supportive Housing projects. For example, HOME funds previously included a set-aside for Permanent Supportive Housing projects.
- Increase resources to the Housing Trust Fund for the Homeless to establish added permanent housing options.
- Increase federal/state funds for case management. Administrative allowances in grants are currently unduly low for the need.
- Increase funding for services to PSH consumers to draw more providers into the State.
- Fund transportation as a healthcare expense or other reimbursable (ie, Medicaid).
- Either eliminate or increase the limit on the number of Mental Health occupants that are allowed to live together.

Logistics-

- Provide outreach 24/7 at jails and emergency rooms that see the highest levels of “super-utilizers” and people with dual diagnoses. Promote coordination between state agencies and the regional Continuums of Care to provide outreach and services.
- Develop and support relationships with home building and apartment associations who accept permanent supportive housing programs in their units.

**Georgia Advisory Committee to the
United States Commission on Civil Rights**



U. S. Commission on Civil Rights

Contact: Regional Programs Coordination Unit

 U.S. Commission on Civil Rights

 230 S. Dearborn, Suite 2120

 Chicago IL, 60604

 (312) 353-8311

This report is the work of the Georgia Advisory Committee to the U.S. Commission on Civil Rights. The report, which may rely on studies and data generated by third parties, is not subject to an independent review by Commission staff. State Advisory Committee reports to the Commission are wholly independent and reviewed by Commission staff only for legal and procedural compliance with Commission policies and procedures. State Advisory Committee reports are not subject to Commission approval, fact-checking, or policy changes. The views expressed in this report and the findings and recommendations contained herein are those of a majority of the State Advisory Committee members and do not necessarily represent the views of the Commission or its individual members, nor do they represent the policies of the U.S. Government. For more information, please contact the Regional Programs Coordination Unit.