

Delivering on the Promise:

U.S. Department of Justice

**Self-Evaluation
to Promote
Community Living for People
with Disabilities**

**Report to the President
On Executive Order 13217**

DEPARTMENT OF JUSTICE

Executive Summary

As an enforcement agency, the focus of the Department of Justice ('the Department' or 'DOJ') in the review mandated by Executive Order No. 13217, is on how most effectively and meaningfully to fulfill the President's mandate of swift implementation of the United States Supreme Court's decision in *Olmstead v. L.C.*, 527 U.S. 581 (1999). The Department's work in this area is largely centralized within the Civil Rights Division, which is responsible for the laws relevant to promoting the rights of individuals with disabilities. These laws include the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. " 12101 *et seq.*, the law interpreted by the United States Supreme Court in *Olmstead*, which is enforced in part by the Division's Disability Rights Section; the Civil Rights of Institutionalized Persons Act (CRIPA), 42 U.S.C. ' 1997, which is enforced by the Department's Special Litigation Section; and the Fair Housing Act (FHA), 42 U.S.C. " 3601 *et seq.*, which is enforced by the Division's Housing and Civil Enforcement Section. Other Department components may facilitate the smooth transition of individuals with disabilities moving from institutions to community settings. The Office of Community Oriented Policing Services (COPS) and the Community Relations Service (CRS) will work to find ways to reduce the extent to which individuals with mental illness become involved with the criminal justice system as they move from institutional to community settings. The Department's goal is to continue vigorous enforcement within the Civil Rights Division in cooperation with and with the support of other components of the Department.

Americans with Disabilities Act

The Department played an important role in developing the position adopted by the United States Supreme Court in *Olmstead*, where the Court interpreted the ADA's requirement to provide State and local government services in the most integrated setting appropriate to the needs of the individual with a disability, and to require that States place individuals with disabilities in community settings, rather than institutions, whenever appropriate. The Department has advanced and will continue to further the ADA's integration requirement in the aftermath of the *Olmstead* decision.

Additionally, the Department's work in enforcing titles II and III of the ADA broadly protects the rights of people with disabilities to live and work as fully integrated members of society, by ensuring the accessibility of government services, housing and social services, transportation, health care, child care, insurance, employment by public entities, and a host of consumer goods and services provided by private businesses. The Department's technical assistance programs, which educate the public about the requirements of the ADA and the rights of individuals with disabilities, and its

commitment to alternative dispute resolution through a substantial mediation program, further enhance the Department's enforcement efforts.

Despite over a decade of strong ADA enforcement, technical assistance, and significant advancement of the rights of individuals with disabilities, barriers remain. Barriers include unnecessary institutionalization, such as that at issue in *Olmstead*; impediments involving laws and enforcement; and a lack of accessible housing (discussed in conjunction with the Fair Housing Act, below), transportation, and health care services.

To overcome these barriers, the Department plans to take the following concrete steps:

1. Develop and issue 3 technical assistance documents: a "Know Your Rights" piece for people currently living in institutions to address widespread lack of understanding of the ADA and the rights protected in the *Olmstead* decision; a similar document targeted for people who are on the verge of being institutionalized; and a document designed to assist States in implementing their responsibilities under *Olmstead*.
2. Ensure comprehensive enforcement of the ADA with respect to public programs and public and private institutions by increasing coordination activities between the DOJ and the Department of Health and Human Services (HHS).
3. Ensure the accessibility of inner city buses and paratransit services in conjunction with the Department of Transportation (DOT) with whom DOJ shares ADA enforcement responsibility, as well as through increased DOJ involvement in private suits as *amicus curiae*. Working collaboratively with DOT, DOJ will develop a list of criteria to guide DOT to refer appropriate paratransit complaints to DOJ for enforcement purposes.
4. Work to ensure the accessibility of mental health services within communities for people who are deaf, are hard-of-hearing, or have speech impairments by investigating ways to expand the Department's nationwide campaign to improve communications access by targeting, in particular, mental health services.
5. Target enforcement efforts to end discrimination in the provision of dental services to people with cognitive and developmental disabilities, in order to overcome a barrier identified by many of the public commenters.
6. Expand the Department's mediation program for *Olmstead*-related claims, including training additional mediators, investigating ways to train lay advocates to assist individuals with certain kinds of disabilities that may affect the equality of bargaining power, and investigating and working toward the possibility of implementing a formal arrangement under which HHS could refer unresolved individual *Olmstead*

complaints to this program.

7. Hold a meeting between disability rights advocates and the Assistant Attorney General for the Civil Rights Division to open lines of communication regarding *Olmstead*-related issues.
8. Engage in additional outreach and research to determine how the Department should address the need to provide community services for children with significant disabilities so that such children may remain with their families and within the community.

Civil Rights of Institutionalized Persons Act

The Civil Rights of Institutionalized Persons Act, 42 U.S.C. ' 1997 (CRIPA), addresses the rights of individuals who reside in institutions run by or on behalf of a government. Under CRIPA, the Department may initiate a civil action where there is reasonable cause to believe that a State or political subdivision of a State is engaged in a pattern or practice of subjecting institutionalized individuals to conditions that deprive them of the rights secured by the United States Constitution or Federal laws. The Civil Rights Division's Special Litigation Section enforces CRIPA and handles the majority of the Department's work under *Olmstead*. See Appendix A for a list of Special Litigation's *Olmstead*-related efforts. In its investigations of health care institutions, the Department collects evidence to determine whether there are violations of Federal statutes and regulations, including the ADA, Section 504 of the Rehabilitation Act, title XIX of the Social Security Act, and various Medicaid programs.

Over the years, the Department has investigated ADA integration regulation violations at 27 institutions for people with developmental disabilities, 6 psychiatric hospitals, 5 nursing homes, and 1 residential school for students with visual disabilities. The Department continues to pursue and has completed cases and investigations in 17 States, the District of Columbia, and the Commonwealth of Puerto Rico. The Department has also filed briefs as *amicus curiae* addressing the meaning of the ADA's integration regulation in 4 cases involving the unnecessary segregation of people in institutions.

Despite these efforts, some barriers remain. To overcome these barriers, the Department plans to carry on its strong enforcement of CRIPA as well as its ongoing technical assistance efforts. Additionally, the Department plans to take the following specific steps to enhance its ability to enforce CRIPA and help move people from institutions to community settings when appropriate:

1. Consider mechanisms that would give the Department greater investigative abilities under CRIPA, address issues arising from community placements, and address allegations of discrimination in purely private institutions.

2. Increase the Department's staff training and information gathering efforts to specifically address the *Olmstead* initiative.
3. Increase the Department's outreach and education, especially directed to parents and other family members of people currently residing in institutions, those on the verge of institutionalization, and treating professionals. Such education will assist family members in understanding the benefits of community placement. It will also address some treating professionals' unfamiliarity with community placement alternatives, reducing the likelihood that persons with disabilities who can be placed in community settings will be unnecessarily institutionalized.
4. Explore ways to address the shortage of community services and supports, including increasing the availability of direct care staff to work in community settings and the number of mental health courts across the country.
5. Increase coordination with other Federal agencies, such as the Department of Housing and Urban Development (HUD) and CMS to address available housing in the community and other key issues.
6. Increase coordination between the Civil Rights Division's Special Litigation Section and other Department components that investigate Medicaid/Medicare Fraud statutes to address the fraud committed by an institution that accepts Federal money to care for an individual who is unnecessarily institutionalized.

The Fair Housing Act

Without the availability of accessible, affordable housing, many persons with disabilities have no choice but to live in institutions, e.g., nursing homes or hospitals, rather than community settings. Thus, ensuring an adequate supply of both public and private housing that is accessible and affordable is a vital step toward meeting the goals of President Bush's Executive Order. Enforcement of the Fair Housing Act's (FHA) prohibitions against discrimination on the basis of disability in all types of housing transactions is a key component of ensuring that persons with disabilities are able to live in communities of their choice across the country. The Department of Justice shares authority for enforcing the FHA with HUD.

Since October 1, 1996, the Civil Rights Division has brought 38 lawsuits against developers, builders, owners, architects, and/or site engineers to enforce the FHA's design and construction requirements for new multi-family housing and an additional 25 cases to enforce the FHA's requirements against disability-based discrimination and for reasonable accommodations. During this time, the Civil Rights Division has brought an additional 10 cases to ensure that zoning and other regulations concerning land use are not employed to hinder the residential choices of individuals with disabilities by

unnecessarily restricting communal or congregate-residential arrangements, such as group homes.

There has been a significant amount of litigation concerning the ability of local governmental units to exercise control over group living arrangements, particularly for persons with disabilities. To provide guidance on these issues, DOJ and HUD have issued a Joint Statement on Group Homes, Local Land Use, and the FHA. This joint statement is available at http://www.usdoj.gov/crt/housing/housing_special.htm.

Additionally, DOJ, HUD, and the Department of the Treasury have entered into a Memorandum of Understanding (MOU) in a cooperative effort to promote enhanced compliance with the FHA, including the prohibition of discrimination on the basis of disability, for all properties that receive relief from Federal income tax in the form of low income housing tax credits. The DOJ/HUD/IRS Memorandum of Understanding is available on our web site at <http://www.usdoj.gov/crt/housing/mou.htm>.

Despite the progress that has been made in recent years, there remains a huge unmet need for affordable housing that is accessible to persons with disabilities. To continue to break down barriers that prevent persons with disabilities from living in communities of their choice across the country, the Department is committed to continuing and enhancing its fair housing program. Specifically, DOJ will take the following steps:

1. Continue to devote substantial resources to investigations and enforcement actions against developers, builders, architects, and site engineers who design and/or construct multi-family housing that does not comply with the requirements of the FHA and rental offices and other places of public accommodation within housing complexes that do not comply with the ADA.
2. Conduct investigations, initiate enforcement actions, and participate as *amicus curiae* in private lawsuits under the FHA with respect to discriminatory land use and zoning decisions that prevent group homes from being operated in community settings.
3. Investigate and take enforcement action to eliminate discriminatory housing practices that deny reasonable structural modifications to housing units, disqualify persons with disabilities from living in certain types of housing, impose discriminatory conditions of residence/use on persons with disabilities, or deny reasonable accommodations that may be necessary for persons with disabilities to have an equal opportunity to enjoy and use housing.
4. Encourage advocacy groups and private counsel representing persons with disabilities to alert the Department to private lawsuits where *amicus* participation by the Department would assist the court in interpreting and applying the provisions of the FHA and Section 504 of the Rehabilitation Act.

5. Use the Department's Fair Housing Testing program to identify patterns or practices of discrimination against persons with disabilities by individuals and entities engaged in the sale or rental of housing.
6. Continue to work with HUD to increase the accessibility of public housing by improving enforcement of the nondiscrimination requirements (including accessibility and reasonable accommodation requirements) of Section 504 of the Rehabilitation Act and the FHA against public housing authorities and other recipients of Federal funds.
7. Develop guidelines to assist HUD in identifying Section 504 accessibility cases that should be referred to the Department for enforcement action. The Department will meet with HUD on a quarterly basis to discuss Section 504 accessibility cases that meet the guidelines for referral to the Department for enforcement action.
8. Continue working with HUD and the Internal Revenue Service (IRS) to implement the provisions of the Memorandum of Understanding among the agencies so that housing providers that discriminate against persons with disabilities do not benefit from low income housing tax credits.
9. Continue to work with HUD to provide training and technical assistance on compliance with the accessibility requirements of the FHA and Section 504 of the Rehabilitation Act, as applicable, to increase knowledge of, and compliance with, these requirements among architects, developers, site engineers, and public housing officials.
10. Encourage universities offering courses of study in architecture and engineering to provide courses in accessible design.
11. Work with private entities, such as the National Association of Home Builders, the American Institute of Architects, and other groups representing design professionals and builders, to increase their members' knowledge and understanding of the accessibility requirements of the FHA and Section 504 of the Rehabilitation Act.
12. Increase efforts to work with other government agencies to improve compliance with the nondiscrimination provisions of the FHA and Section 504 of the Rehabilitation Act as it relates to housing. For example, the Department will continue to work with HUD on technical assistance to improve housing providers' understanding of the FHA and Section 504 of the Rehabilitation Act, as well as to improve enforcement of both Acts.
13. Provide training on FHA and Section 504 of the Rehabilitation Act accessibility requirements to officials who enforce State and local building codes and encourage State and local governments to make accessibility requirements for multi-family

housing equivalent to, or greater than, the accessibility requirements of the FHA.

14. Encourage State and local officials to review plans for multi-family housing and public housing for compliance with Federal accessibility requirements or, alternatively, to provide developers, builders, architects, engineers, and others involved in the design and construction of housing with literature outlining Federal accessibility requirements and notice that plans have not been reviewed for compliance with these requirements.
15. Continue to underscore the legal obligations of all agencies that provide or administer Federal financial assistance for housing programs to require compliance with the FHA and Section 504 of the Rehabilitation Act as a condition of the receipt and retention of funding and to refer noncompliant programs to the Department for enforcement action.

FINAL REPORT OF THE ATTORNEY GENERAL

Pursuant to Executive Order No. 13217, Community-Based Alternatives for Individuals with Disabilities, the Department of Justice (the Department or DOJ) has engaged in an ongoing review of its practices, policies, and procedures to determine whether any should be modified to improve the availability of community-based services for individuals with disabilities. To ensure the effective implementation of this Executive Order, the Attorney General has designated the Associate Attorney General to represent him on the Inter-Agency Coordination Council, which is chaired by the Deputy Secretary of the Department of Health and Human Services (HHS) and to direct the Department's compliance efforts. This Final Report contains the findings of the Department's review to date.

As an enforcement agency, the Department's focus is on how most effectively and meaningfully to fulfill the President's mandate of swift implementation of the United States Supreme Court decision in *Olmstead v. L.C.*, 527 U.S. 581 (1999), where the Court construed title II of the Americans with Disabilities Act (ADA) to require States to place individuals with disabilities in community settings, rather than institutions, whenever appropriate. The Department is committed to the community placement of individuals with disabilities. In *Helen L. v. Didario*, 46 F.3d 325 (3rd Cir.), *cert. denied*, 516 U.S. 813 (1995), the Department successfully argued as *amicus curiae* that the Pennsylvania Department of Public Welfare's refusal to provide attendant care in the home for an individual with a mobility impairment who was qualified for attendant care, and who needed services to live with her children in her home, violated the requirement of the ADA that services be provided in the most integrated setting appropriate to the needs of people with disabilities. The Department of Public Welfare had required the woman to enter a nursing home to obtain the assistance she needed. The Department subsequently made similar arguments regarding the integration requirement of title II in *Williams v. Wasserman*, 937 F. Supp. 524 (D. Md. 1996).¹ Additionally, the Department of Justice worked closely with HHS in developing the government's position in *Olmstead*, where again, as *amicus curiae*, the Department asked the Supreme Court to rule that unnecessary institutionalization may be a violation of title II. The Court agreed and ruled that a community placement is required where the State's treatment professionals have determined that it is appropriate, the individual does not object to it, and where it can be reasonably accommodated considering the resources available to the State and the needs of other persons with disabilities served by the program at issue.

¹ These arguments were ultimately rejected after a long bench trial. On September 27, 2001, the court in *Williams v. Wasserman*, 2001 WL 11481175 (D. Md.), found that the State's progress with community placement of the plaintiffs and other similarly situated individuals was acceptable when considering the need to balance funding between institutional and community treatment. The Court also found that an immediate shift of resources to community care constituted a fundamental alteration of the State's resources under *Olmstead*.

The ADA, 42 U.S.C. " 12101 *et seq.*, broadly protects the rights of individuals with disabilities. The Civil Rights Division's Disability Rights Section is responsible for implementation of regulations and enforcement of titles II and III of the ADA and for litigation of employment claims under title I involving State governments. Title II applies to State and local government entities, and, in subtitle A, protects qualified individuals with disabilities from discrimination on the basis of disability in services, programs, and activities. Title III covers, among others, private businesses known as places of public accommodation, including, among others, the offices of health care providers, child care centers, and a variety of community-based service providers. The Disability Rights Section is also responsible for coordination of Federal agencies' implementation of Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. ' 794 (Section 504 of Rehabilitation Act of 1973), which prohibits discrimination on the basis of disability in federally funded and federally conducted programs.

The Civil Rights of Institutionalized Persons Act, 42 U.S.C. ' 1997 (CRIPA), concerns the rights of individuals who reside in institutions operated by or on behalf of a government. Under CRIPA, the Department may initiate a civil action where there is reasonable cause to believe that a State or political subdivision of a State is engaged in a pattern or practice of subjecting institutionalized individuals to conditions that deprive them of the rights secured by the United States Constitution or Federal laws. The Civil Rights Division's Special Litigation Section enforces CRIPA and handles the majority of the Department's work under *Olmstead*. See Appendix A for a list of Special Litigation's *Olmstead*-related efforts. In its investigations of health care institutions, the Department collects evidence to determine whether there are violations of Federal statutes and regulations, including the ADA, Section 504 of the Rehabilitation Act, title XIX of the Social Security Act, and various Medicaid programs.

The Fair Housing Act, 42 U.S.C. " 3601 *et seq.* (FHA), prohibits discrimination on the basis of disability in all types of housing transactions. The Civil Rights Division's Housing and Civil Enforcement Section shares responsibility for enforcing the FHA with the Department of Housing and Urban Development. Under the FHA's accessibility requirements, newly constructed, multi-family housing must be accessible to and adaptable for use by individuals with disabilities. The FHA's accessibility requirements are more modest than those of the ADA, most notably with respect to spaces inside individual units where the FHA typically requires only that a space can be made usable by individuals with disabilities, including persons who use wheelchairs. The Department also works to ensure that zoning and other regulations concerning land-use are not employed to hinder the residential choices of individuals with disabilities; such hindrances include unnecessarily restricting communal or congregate-residential arrangements, such as group homes. These sorts of residential arrangements are frequently used for community placement of individuals with disabilities.

The breadth of the Department's enforcement authority regarding the rights of individuals with disabilities, therefore, reaches both institutional settings and a great variety of the government services and private businesses that are necessary to

implement and sustain effective community-based care. In addition to enforcement of these statutes within the Civil Rights Division, the Department has, in undertaking the review required by the Executive Order, identified other components, such as the Office of Community Oriented Policing Services (COPS) and the Community Relations Service (CRS) that may help facilitate the goals of the Executive Order. The Civil Rights Division is leading the Department-wide review and has formed an *Olmstead* committee comprised of members of the Disability Rights Section, the Housing and Civil Enforcement Section, and the Special Litigation Section. The Department's goal is to continue vigorous enforcement within the Civil Rights Division in cooperation and with the support of other components of the Department.

This Final Report provides a list of the Department's accomplishments to date that is relevant to the community placement of individuals with disabilities, a discussion of recognized barriers, and a blueprint for solutions and the future implementation of the *Olmstead* decision.

I. The Americans with Disabilities Act of 1990 (ADA)

A. ADA Accomplishments to Date.

The Department has broad authority under the ADA to ensure that individuals with disabilities have access to community life. For individuals with disabilities to live freely within community settings, a great variety of community-based facilities and services must be made accessible. People with disabilities must have access to grocery stores and other retail establishments that provide consumer goods. Individuals who use wheelchairs need curb ramps on sidewalks to be able to move freely through the community. Individuals moving from institutions into community settings must have access to basic transportation services. Employment and vocational services are also important to a self-sufficient and sustained life in the community. Access to affordable, accessible housing and to health care services, including basic psychiatric care and counseling, must be readily available to such individuals. In nearly a decade of ADA enforcement, the Department has made great strides in ensuring accessibility to these sorts of services and establishments in communities nationwide.

The Department enforces the ADA in a variety of contexts, including public employment, State and local government services, private businesses known as public accommodations and commercial facilities, and licensing and testing entities. The Department implements the ADA by developing regulations, providing technical assistance to enable the public to understand the regulations, and, when necessary, conducting investigations and pursuing litigation to enforce the ADA. The kinds of discrimination the Department seeks to resolve vary from policies prohibiting individuals with certain disabilities from receiving services, to architectural barriers to access for individuals who use wheelchairs, to communication barriers that prevent

individuals with hearing or speech disabilities from effectively communicating in the receipt of services, among others B all of which aim to fulfill the ADA's mandate of integrating individuals with disabilities into the mainstream of American life.

1. The Department has played a leading role in the movement toward community living.

The Department of Justice has played an important role in enforcing the integration requirement of the title II regulation, which requires that government services be provided to individuals with disabilities in the most integrated setting appropriate to the needs of the individual. It is this requirement that the United States Supreme Court interpreted in the *Olmstead* decision. Most of the Department's work in this area is discussed with respect to the Civil Rights of Institutionalized Persons Act (CRIPA), below.

When I was young, I was placed in an institution because my mother was unable to look after me. I have Cerebral Palsy. . . . They told me what to do and what not to do. And for me, that wasn't living a good lifestyle. Now I live in the community. I'm learning to be independent and live my own life. B Testimony at Sept. 5, 2001, National Listening Session.

The Department of Justice successfully argued to the Supreme Court in *Olmstead*, and to lower courts in previous cases, that unnecessary institutionalization of individuals with disabilities is a form of disability-based discrimination prohibited by title II. See *Helen L. v. Didario*, 46 F.3d 325 (3rd Cir.), *cert. denied*, 516 U.S. 813 (1995); *Williams v. Wasserman*, 937 F. Supp. 524 (D. Md. 1996).

The Department has continued to further the ADA's goal of integration in the aftermath of the *Olmstead* decision. The Department filed an *amicus curiae* brief in *Newberry v. Menke* (M.D. Tenn.), arguing that individuals who reside in the community, but who are at risk of institutionalization, have standing to challenge aspects of a Tennessee Medicaid program that allegedly create incentives for institutionalization in violation of title II's integration requirement.

2. Housing and social services are more accessible due to the Department's efforts.

Access to housing is critical to furthering the goals of *Olmstead*. Most of the Department's enforcement regarding accessible housing falls under the Fair Housing Act, discussed below. Some housing-related issues are also covered by the ADA. The Department has enforced titles II and III of the ADA with respect to discriminatory

zoning, leasing, and permitting practices that affect facilities serving or housing individuals with disabilities.

The Department successfully argued that zoning is covered by title II of the ADA. In *Innovative Health Systems, Inc. (IHS) v. City of White Plains*, 117 F.3d 37 (2nd Cir. 1997), for example, the Department filed an *amicus curiae* brief supporting the plaintiffs' efforts to stop the City of White Plains, New York, from preventing them from operating an alcohol and drug dependency treatment program in the downtown area. The United States Court of Appeals for the Second Circuit ruled that the ADA covers all of the activities of State and local government, including zoning practices.

In other cases in which municipalities have attempted, through zoning or permitting practices, to prevent services or accessibility renovations by entities, the Department has supported challenges to the discriminatory practices. In *Kennedy v. Fitzgerald* (N.D.N.Y. 2000), for example, the Department filed an *amicus curiae* brief alleging that the city was violating title II by maintaining and implementing a policy of refusing to permit businesses to encroach on city sidewalks for the purpose of installing wheelchair ramps. In another matter, the Department successfully argued that an organization intending to operate a rehabilitation center for people with mental disabilities in the downtown area could challenge the town's opposition to its plans under the ADA. Pathways Psychological Support Center had been refused permission by the town to purchase a building and was later denied an occupancy permit by the town. See *Pathways Psychological Support Center v. Town of Leonardtown*, 1999 WL 1068488 (D. Md. 1999), 15 NDLR P 221 (1999).

One of the greatest barriers to community treatment is the "not in my back yard" NIMBY syndrome. B E-mail testimony of Aug. 23, 2001.

The Department has also worked to prevent discriminatory leasing practices in circumstances affecting disability service providers. Under an agreement with the Department, a commercial real estate corporation that refused to lease office space in Northern Virginia to a nonprofit organization that serves persons with disabilities will no longer discriminate against people with disabilities and will take corrective action to ensure that it does not happen in the future. The leasing corporation owns, manages, and develops retail and office properties throughout the United States.

3. The Department enforces the ADA with respect to a wide variety of public and private transportation service providers.

People with disabilities often must rely on public transportation systems to move about in the community. The ADA requires basic transportation services such as public transit services (including paratransit services), over-the-road buses, demand-response

systems, rental cars, and taxi cabs to be accessible. The Department shares the enforcement responsibilities for public transportation with the Department of Transportation, which is responsible for investigating complaints and, where deemed necessary, referring unresolved complaints to the Department for litigation.

The Department has brought enforcement actions dealing with public transit services. In *Richardson v. City of Steamboat Springs* (D. Colo. 2000), the Department intervened and alleged that the City violated the ADA by purchasing inaccessible used buses without first making the required good faith effort to purchase accessible buses, by neglecting to repair inoperable wheelchair lifts and to provide alternative transportation when wheelchair lifts were inoperable, and by not adequately training bus drivers in the operation of wheelchair lifts. The Department resolved the case by consent decree. In another case, *James v. Peter Pan Transit Management, Inc.*, 14 NDLR P 254 (E.D.N.C.1999), the Department filed an *amicus curiae* brief to challenge the inaccessibility of the Raleigh, North Carolina bus system to people who use wheelchairs. The Department successfully argued that the public transit authority may be held liable under title II for discrimination by a private company that provides bus service to the public under a contract with the transit authority. The Department has been involved in similar actions in Chicago and Philadelphia.

Some individuals who are moving from institutions to community settings may also use taxi services. The Department has resolved a number of complaints regarding taxi drivers who were unwilling to serve individuals who use wheelchairs, as well as individuals who use service animals. In addition, some individuals with disabilities will also experience difficulty traveling in private cars when they are unable to refuel because many gas stations are inaccessible. To address this problem, the Department has issued technical assistance documents that make it clear that the ADA requires gas stations to ensure equal access to their customers with disabilities by providing refueling assistance to individuals with disabilities, on request, without any charge beyond the self-service price.

4. Health care and related social services remain a special focus of the Department's enforcement efforts.

Having full access to all necessary health care and social support services is essential for individuals moving from institutions into communities. The Department has worked vigorously to ensure the accessibility of a variety of health care services to individuals with disabilities. Some of the public input solicited in execution of the Executive Order indicated that some individuals with disabilities, especially those with mental retardation and mental illness, may have difficulty obtaining dental services. The Department has prevailed in a number of cases dealing with dentistry and discriminatory policies that prevented treatment of individuals with certain types of disabilities, most notably individuals with HIV and AIDS. In another Supreme Court case, *Bragdon v. Abbott*, 524 U.S. 624 (1998), the United States prevailed as *amicus curiae* in ensuring that dental services are accessible to individuals with HIV and AIDS.

The Department has taken this position in a variety of lawsuits, as well as having negotiated consent decrees with dental providers. *See also United States v. Morvant*, 898 F. Supp. 1163 (E.D. La. 1995); *United States v. Castle Dental*, Civ. No. H-93-3140 (S.D. Tex. 1993).

The Department has embarked upon an ambitious, nationwide campaign to improve communications access in our nation's hospitals for people who are deaf, are hard of hearing, or have speech disabilities. This initiative started with the Department's intervention in *Connecticut Association of the Deaf v. Middlesex Memorial Hospital*, a lawsuit brought by the Office of Protection and Advocacy in Connecticut against 10 acute-care hospitals for failing to provide sign language and oral interpreters for persons who are deaf or hard of hearing. In a consent decree joined by all acute-care hospitals in the State of Connecticut, the hospitals agreed to set up a State-wide, on-call system to provide interpreters 24 hours a day, seven days a week, for persons who are deaf or hard of hearing. The Department has used this model for enforcement in other States and communities across the nation. *See, e.g.*, DOJ's April 2001 settlement agreement with Advocate Ravenswood Hospital Medical Center in Illinois (to be posted soon at www.usdoj.gov/crt/ada/adahom1.htm).

The Department has also been involved in ensuring accessibility of counseling services for individuals with disabilities, perhaps the single most critical component of the health care services for the population of individuals implicated by *Olmstead*. In one example, again involving communications barriers, the Department resolved a complaint with a private social services agency when the agency agreed to adopt written policies and procedures ensuring that consumers who are deaf will receive sign language interpreters without cost when participating in the agency's counseling programs. This agreement originated from a complaint in which the provider had required an individual who is deaf to pay the costs of sign language interpreter services at court-ordered counseling sessions.

5. The Department has made serious efforts to combat discrimination in child care.

Many children with disabilities may be at risk of being placed in segregated settings while parents are at work, if adequate and affordable mainstream child care is not available. Children may be institutionalized because of a lack of access to child care services. The right of individuals with disabilities to be provided care in the most appropriate setting for their needs was raised in *Orr v. KinderCare* (N.D. Calif.), a lawsuit challenging the exclusion of a nine-year-old boy because of his developmental disabilities, low vision, and mild seizure disorder, from its after-school program. After six months of serving Jeremy Orr in its two-year-old room, KinderCare argued that it could not meet his individualized needs in "a group care setting" largely because he would not initiate his own activities. The Department participated in the suit as *amicus curiae*. Under a consent decree resolving the lawsuit, KinderCare agreed to retain Jeremy Orr in its after-school program and allow him to be accompanied by an aide

funded by the State. KinderCare also agreed to allow Jeremy Orr to attend the program in an age-appropriate classroom when the aide was present, and in the two-year-old room when the aide was not present.

The Department has been involved in other child care cases involving discrimination against children on the basis of disability. For example, the Department has vigorously enforced title III with respect to child care providers who exclude children based on their HIV-positive status. In one such case, the Department entered into a consent decree resolving a lawsuit filed against ABC Nursery, Inc. in Beloit, Wisconsin, for allegedly refusing to admit a three-year-old boy because he had tested positive for HIV.

In some situations, the problem of discrimination in child care settings results from the refusal of providers to assist in basic services or with medical needs that arise because of the child's disability. The Department reached an agreement resolving a complaint filed by the mother of a child with cerebral palsy against a child care center that had refused to put on and remove leg braces that the child needed to walk. In addition, the center attempted to keep the child with a younger age group because, due to her disability, she required diaper changing at a later age than other children at the center. In another example, the United States District Court for the Northern District of California in *Alvarez v. Fountainhead, Inc.*, 55 F. Supp.2d 1048 (N.D. Cal. 1999), ordered a California child care center to modify its "no medications" policy and enroll a child who has asthma and uses an inhaler. Fountainhead Child Care Center prohibited teachers from assisting in the administration of any medication to children enrolled in its program. The Department argued as *amicus curiae* that the minimal monitoring and supervision required when Jeremy Alvarez used the inhaler would be reasonable and not fundamentally different from the responsibilities that all child-care operators have for the safety and well-being of their students. The Department has also addressed child care setting medication issues for children with diabetes and children with severe allergies.

6. The Department has strived to address discriminatory insurance practices.

The ADA's requirements regarding insurance are limited. Nevertheless, the Department has made strides in protecting individuals with disabilities from discriminatory insurance practices that often implicate the very population of individuals who will be moving into community settings as a result of the *Olmstead* initiative.

The Department has conducted a vigorous enforcement campaign to ensure that insurance policies themselves, and not just the physical office of insurance providers, are covered by title III of the ADA. Adopting the position articulated by the Department in an *amicus curiae* brief, the court in *Wai v. Allstate Insurance*, 75 F. Supp.2d 1 (D.D.C. 1999), held that title III prohibits discrimination in the terms and conditions of insurance policies and not just physical access to facilities. The Department's brief in

Wai supported the position of a landlord who wanted to rent a single family house to an organization that would operate it as a group home for persons with mental retardation, but who was refused standard landlord property and casualty insurance. The landlord was told by the insurance companies that she must obtain more expensive commercial insurance for the house. While other courts similarly have held that ADA coverage reaches beyond physical offices spaces, see *Carparts Distribution Center, Inc., v. Automotive Wholesaler's Association of New England, Inc.*, 37 F.3d 12 (1st Cir. 1994), some jurisdictions have not adopted the Department's position. See, e.g., *Ford v. Schering-Plough Corp.*, 145 F.3d 601 (3rd Cir. 1998); *Parker v. Metropolitan Life Ins. Co.*, 121 F.3d 1006 (6th Cir.1997).

In another case involving insurance for nursing home services, the Department resolved through settlement a complaint by an individual who is deaf who alleged that she was denied nursing home insurance solely because of her disability. The company agreed to reconsider her application for insurance and to develop a company policy for its employees and agents to ensure effective communication with customers who are deaf or hard of hearing. Finally, the Department intervened in a lawsuit alleging that an insurance company had terminated the auto insurance coverage of an individual because of his mild mental retardation. Under the consent decree resolving the suit, the insurance company agreed to pay substantial damages and civil penalties and to revise its policies so that it no longer considered the mental disability of an insured or applicant for insurance in deciding to grant or continue insurance coverage if a doctor has reported that the individual is able to drive safely.

7. Employment and professional opportunities are increased as a result of the Department's efforts.

Employment and access to training and vocational services is another important area affecting the *Olmstead* population. The Department has enforced the ADA against State and local government employers who have discriminated on the basis of disability. The Department's enforcement actions have involved laborers, clerks, nurses, police officers, fire fighters, dispatchers, and other public servants. Enforcement actions against private entities are handled by the Equal Employment Opportunity Commission, with no involvement by the Department.

Perhaps most critical to the population of individuals moving from institutions into the community was the United States Supreme Court's unanimous holding in *Cleveland v. Policy Management Systems Corp.*, 526 U.S. 795 (1999), that courts should not give any special weight to the fact that an individual has applied for Social Security disability benefits in determining whether a plaintiff is a qualified individual with a disability in a title I employment suit. Applications for Social Security disability benefits generally require the individual to be unable to work. The Court agreed with the Department that because the qualification standards for Social Security and those under the ADA are different, application for or receipt of Social Security benefits is not by itself inconsistent with being a qualified individual with a disability.

8. The Department has undertaken specific initiatives to increase access to government programs by people with disabilities.

Access to civic life is a fundamental part of American society. The Department's "Project Civic Access" is a wide-ranging effort to ensure that States, cities, towns, and villages comply with the ADA. As part of this ongoing initiative, the Department has reached comprehensive settlement agreements with 40 cities, towns, and counties.

Issues typically addressed in these settlement agreements include physical modifications of facilities to improve accessibility in government facilities such as city and town halls, police and fire stations, court houses, centers for health care delivery, child care centers, centers for teen and senior activities, libraries, and recreational centers. The agreements also address the effective communication of government services, reasonable policy modifications, and other key elements of title II.

Another of the Department's major initiatives in the area of government services was a nationwide effort to ensure that critical 9-1-1 services were accessible to individuals who are deaf or hard of hearing or who have speech disabilities. The Department undertook to ensure that 9-1-1 emergency services provide direct, equally effective access to TTY, or text telephone, users. Compliance reviews and investigations that are not triggered by specific allegations of discrimination were conducted in over 500 locations in all 50 States by United States Attorneys' Offices in consultation with the Civil Rights Division. Where problems were found, the United States Attorneys offered technical assistance and negotiated agreements to bring those 9-1-1 systems into compliance. The Department has published "Americans with Disabilities Act Access for 9-1-1 and Telephone Emergency Services," outlining ADA requirements for providing direct access to emergency services for persons using TTYs.

9. The Department continues to ensure the accessibility of public accommodations and commercial entities' facilities.

Access to the facilities of merchants and a host of other private businesses is another important part of effective community placement of individuals with disabilities. Title III requires public accommodations to remove barriers to access for people with disabilities in existing facilities when doing so is readily achievable. The Department has vigorously enforced this provision with respect to a host of categories of businesses that must be accessible to people with disabilities if they are to integrate successfully into mainstream society. Resolutions have been reached with health care facilities, grocery stores, restaurants, senior centers, and others. For example, Safeway Stores, Inc. entered an agreement with the Department to modify security bollards or cart corrals used at the entrances to many of its stores nationwide so that customers who use wheelchairs can have greater access.

Making buildings correct from the start is much more cost efficient than is retrofitting existing facilities. To ensure that the future-built environment is accessible to people with disabilities, the ADA requires all new construction and alterations to meet specific architectural design standards. The Department has enforced these provisions with respect to all types of new construction and alterations through the investigation of individual complaints and through compliance reviews that enable the Department to review architectural plans to determine if new construction projects will comply with the ADA's standards.

10. The Department has established a highly successful ADA mediation program.

Mediation is an informal process in which a neutral third party assists opposing parties to reach a voluntary, negotiated resolution of a dispute and, in this context, a charge of discrimination. Mediation gives the parties the opportunity to discuss the issues raised in a dispute, to clear up misunderstandings, to determine the underlying interests or concerns, to find areas of agreement, and, ultimately, to incorporate those areas of agreements into resolutions. The Department's ADA mediation program, which operates under a contract with the Key Bridge Foundation, receives title II and III complaints for mediation. Successful instances of mediation have resolved complaints that dentists and other health care providers failed to provide effective communication to patients who were deaf or hard of hearing; that town halls, grocery stores, pharmacies, and health care facilities were inaccessible to people who use wheelchairs; that places of public accommodation, such as retail stores, prohibited people from entering with their service animals; that child care centers excluded children with autism; and complaints alleging a wide variety of other issues and circumstances.

The mediation program currently receives referrals of complaints under titles II and III for mediation by professional mediators who have been trained in the legal requirements of the ADA. An increasing number of people with disabilities and disability rights organizations are specifically requesting the Department to refer their complaints to mediation. More than 450 professional mediators are available nationwide to mediate ADA cases. Over 80 percent of the cases in which mediation has been completed have been successfully resolved.

11. The Department develops and distributes a wide range of ADA technical assistance in many different ways.

The Department also has a variety of ongoing technical assistance endeavors to explain the requirements of the ADA to the general population and to specific, targeted populations.

Chief among the ongoing ADA efforts is the toll-free ADA Information Line, which provides information to the public about the requirements of the ADA and distributes

technical assistance publications. Automated service is available 24 hours a day, seven days a week. During regularly scheduled hours, disability rights specialists respond to questions and concerns from people with disabilities, State and local government officials, and the business and nonprofit communities. During the past year, the ADA Information Line responded to 110,000 callers. The Department also operates an ADA Information Line Fax Delivery Service that allows the public to select from among 32 different ADA technical assistance publications and receive the information directly on their fax machines or computer fax/modems. The Department's ADA Home Page provides information about ADA activities, and is now a nationally recognized source of information on the ADA. In the past year, the ADA Home Page (<http://www.usdoj.gov/crt/ada/adahom1.htm>) has received over 11 million visits B making it one of the top web sites at the Department.

The second key component of the technical assistance effort is the extensive written and video materials that the Department has developed to explain rights and responsibilities under the ADA, including "Technical Assistance Manuals" for titles II and III, a series of "Question and Answer" booklets, and numerous other publications. All of the publications are available free of charge. The Department provides millions of pieces of information and publications annually to people with disabilities and covered entities.

In addition to these general pieces, the Department has developed technical assistance pieces that have specific relevance to access to community life. For example, the Department developed a variety of brochures, training guides, and roll-call videotapes to educate police and courts about how to ensure equitable treatment to people with a variety of disabilities. Through the ADA Technical Assistance Grant Program, the Department has worked with trade associations and others to develop ADA materials tailored to meet the needs of specific audiences, including hotels and motels, restaurants, grocery stores, small businesses, builders, mayors and town officials, law enforcement, people with disabilities, and others. The Department has also worked with State-based organizations to help State and local government officials and local business owners become aware of the ADA and the resources that are available to assist them in complying.

B. Barriers to the Full Implementation of Olmstead.

Despite nearly a decade of ADA enforcement, technical assistance, and considerable progress in advancing the rights of individuals with disabilities, barriers remain in many sectors of American society. The Department has identified a number of barriers to the community placement of individuals who are currently residing in institutions. These barriers are discussed below.

- 1. Many reasons, including a lack of awareness of the ADA's requirements, contribute to the problem of unnecessary institutionalization.**

Many people are unnecessarily institutionalized because of a general lack of awareness and understanding of the requirements of *Olmstead* and the ADA. Individuals who reside in institutions are often unaware of their rights or how to pursue them. Under *Olmstead*, individuals with disabilities have the right to be given a choice as to whether they wish to be placed in community settings when such a placement is deemed appropriate by their treating professionals. In some cases, especially in nursing homes, the problem of individuals with disabilities not knowing their rights results from a failure to reach and educate the affected population. In other cases, educational materials or efforts that currently exist may be inadequate for individuals with certain kinds of disabilities, such as cognitive, learning, or developmental disabilities.

This lack of awareness also reaches professionals and others who work with individuals with disabilities. The *Olmstead* decision places a great deal of responsibility on treating professionals. Professionals working with the institutions may be unaware of the availability of viable alternatives within the community. Individuals with certain kinds of disabilities often have legal guardians who make decisions about their care. Guardians, in addition to the individuals with disabilities, need educational outreach regarding both the ADA and the availability of viable services within local communities. An intensive educational effort, including technical guidance to individuals, professionals, and the States, is necessary to ameliorate these problems.

The lack of accessible services or facilities is also responsible for the placement of qualified individuals with disabilities in institutional settings that are inappropriate for their needs. For example, a person who is deaf may have to find a nursing home far away from his family and friends because none of the nursing homes in his State provide qualified sign language interpreters or other appropriate auxiliary aids or services that are necessary for him to communicate effectively. As part of the public input required by the Executive Order, commenters speaking on behalf of an advocacy organization noted that there are still large numbers of persons who are deaf in institutions across the country, many of whom were misdiagnosed as having mental illness or mental retardation because of their inability to communicate effectively. See, e.g., teleconference testimony.² They testified that such individuals have languished in institutions because of communication barriers that affect diagnosis, consent for

² One person testified as follows during the Aug. 15, 2001 teleconference:

. . . There are very large numbers of deaf people in institutions around the country, many of whom were misdiagnosed as mentally retarded or mentally ill, because they could not communicate. Some have been languishing in institutions for decades, some without any adequate communication and some with no meaningful consent for treatment.

These people have to be identified and it is urgent that communications services, including interpreters, be made available to them in the community, so that they can be placed into the community and receive meaningful education and other services.

treatment, and treatment, itself. Effective communication services must be provided within communities - especially in health care services - if individuals who are deaf are to receive meaningful access to community life.

. . . [Our State] institutionalizes many individuals simply because they face multiple disabilities or disabilities for which there are no community-based State programs. Our agency filed a Federal lawsuit nearly two years ago on behalf of a woman who is deaf and mentally ill. Her doctors felt she could live in the community, but the State delayed her discharge repeatedly because it had not arranged to accommodate her deafness. After two years of litigation, we expect that the [psychiatric facility] will discharge her in September and she will finally begin treatment, with accommodations, in an appropriate community-based program. B E-mail testimony of Aug. 27, 2001.

Children with disabilities may be improperly placed in institutions, rather than in foster care or remaining with their families, because of the lack of accessibility within the community. Some children may be placed in inappropriate institutions because of the lack of access to appropriate and accessible child care facilities. Such facilities may have architectural barriers to access by children who use wheelchairs. More often, the problem resides in discriminatory policies and practices of such facilities. One example from the Department's enforcement efforts, detailed above, is the case of a child with mental retardation whose child care center refused to keep him enrolled simply because he was unable to initiate his own activities. The child's presence in no way altered the basic services provided by the child care center; he was simply different and fell victim to discriminatory policies that resulted from ignorance or fear.

2. Some barriers to community placement result from Federal laws and the fragmentation of Federal agency enforcement practices.

One of the requirements of the Executive Order is that Federal agencies come together to assess their policies and practices as well as the laws each agency enforces. In the public input solicited in execution of the Executive Order, the Department received general comments expressing the concern of fragmentation of Federal programs and Federal enforcement efforts. See, e.g., testimony given during the Aug. 15, 2001, teleconference.³

³ One commenter testified as follows during the August 15, 2001, teleconference:

. . . I've been a quadriplegic for 45 years, the result of a spinal cord injury incurred in service. . . . After leaving the private sector and coming into the advocacy arena, one of the greatest things that I see is the fragmentation of Federal programs. Obviously you're not the creators of that, but the recipients of that nightmare. And what I see is a lack of systemic solutions. We have all of these fragmented programs. We have waiting lists

The Department has reviewed its internal practices to ascertain any limitations in the laws it enforces and the Department's means of enforcement. This review identified a potential gap in the Department's enforcement efforts. The issue arises when States contract with private institutions to perform services. Placing people in private facilities does not alter the State's obligation under the *Olmstead* decision. The placement may, however, affect the remedies available to an institutionalized person because the Civil Rights of Institutionalized Persons Act (CRIPA) does not reach these institutions. Much of the Department's litigation concerning institutions has relied upon CRIPA coverage and the section within the Civil Rights Division that enforces it. (*See discussion of CRIPA, below*).

To address these limitations, the Department needs to work closely with HHS, which receives all ADA-related health care complaints under title II and investigates such complaints to determine whether to refer them for litigation by the Department. HHS receives a significant number of complaints from individuals within institutions. Although HHS has worked successfully with States to resolve such cases and establish comprehensive plans for community placement, there may be individuals who remain unassisted. The Department and HHS should work together to devise a strategy within the dictates of each agency's jurisdiction.

3. Other barriers result from circumstances within society.

As noted above, the barriers that keep individuals in institutional settings often reside in the community. The lack of accessible housing, accessible transportation,

for affordable, accessible housing. You have problems with transportation. You have problems with obtaining healthcare services if you go into employment. Obviously Senate Bill 1298, just recently introduced will go somewhere to providing the community supports and services that are needed; however, it's still a poverty-by-eligibility program.

The solutions must eliminate the paternalistic view and medical model and look at what economic impact the programs will provide. My experience as a service-connected disabled veteran, the VA B the government has two programs, one of which doesn't work and one of which does. The one that does is the VA program, which offers healthcare services and provides financial support.

The result of that was that I was able to go into the private sector to buy my own housing, to go into the private sector to provide my own transportation and the personal attendant services which eliminates some of the under-the-table payments that are currently made and trying to obtain that, because simply the individual is not able to afford that.

As a result, I was able to create my own employment, plus the employment of others in a company that I owned, 165 employees. So there is a need to coordinate all of this and get a systemic solution, so that an individual doesn't have to go to so many different agencies to provide the benefits that are needed to get into an employable situation. . . .

and access to health care services, especially psychiatric care, remain formidable problems.

The chief barrier identified in our solicitation of public input is the lack of physically accessible housing in communities; this includes both private and public, multi-family housing as well as accessible group homes or similar communal-living arrangements. Although the ADA covers zoning and permitting, processes that may impede housing opportunities for individuals with disabilities, the barrier of affordable, accessible housing is most appropriately addressed by the Department's enforcement of the Fair Housing Act. (*See discussion under Fair Housing Act, below*).

The most commonly used mode of transportation by individuals moving from institutions into the community is likely to be public transportation. Public transportation includes paratransit services and inner city buses, both of which may remain inaccessible in some communities. Public transportation may be inaccessible for a number of reasons, including the lack of accessibility of some public buses to individuals who use wheelchairs. Public transportation may also present problems to individuals who are blind, because routine "stops" may not be indicated audibly. The Department shares responsibility for enforcing the ADA with the Department of Transportation, which is chiefly responsible for investigation of public transportation barriers. Taxi services may also be used by the population of individuals moving from institutions into the community. As discussed above, the Department of Justice has worked to make taxi services accessible and, specifically, to prohibit discriminatory policies and practices that result when taxi drivers refuse to serve people who use wheelchairs or who have service animals. Despite these efforts, taxi services in some communities may remain inaccessible to individuals with disabilities. Other factors within a community B such as a lack of curb cuts B may present barriers to the free movement of individuals with disabilities, even if basic transportation services are accessible.

I am totally blind and my biggest problem in functioning in society is transportation. I have adequate financial resources in my life right now but I still don't have my medical needs met because I can't get transportation to medical services. Even if education is available, how do I get there? I have intelligence and the ability to work; but, again how do I get there? B E-mail testimony of Aug. 27, 2001.

The third essential part of the successful implementation of *Olmstead*, and a primary barrier in many communities, is access to appropriate health care services. Health care services may include general medical care, or more specialized treatment of physical health problems. Most critical in meeting the needs of this population is access to psychiatric and psychological care and counseling, and other similar treatment options that serve individuals who have resided in institutions.

Communication barriers, mentioned above, are one way in which such services are inaccessible to individuals with disabilities. Other barriers, both architectural and policy or practice-based, remain. One area of public comment addressed the need within the population of individuals implicated by *Olmstead* for access to dental services. See, e.g., e-mail testimony of Aug. 14, 2001.⁴ In some comments, the accessibility problem had less to do with architectural barriers, and more to do with a refusal by dentists to treat individuals with developmental or mental illnesses. Discriminatory practices and policies that arise from fear are an important barrier in health care services.

If an individual is to successfully adapt to community placement, a host of other entities and services that are covered by the ADA must be available, such as grocery stores and clothing stores.

Employment is another barrier that must be addressed. A lack of accessibility in educational or training and vocational services was a common subject of public comment. Full participation of individuals with disabilities in education programs is often a prerequisite for meaningful competitive employment. There is often a lack of employment opportunity for people moving from institutions to community settings, especially for individuals with little or no work history. Many people with disabilities are underemployed, earning comparatively lower salaries than their nondisabled counterparts.

Other services within the community may impose barriers to successful community placement and retention of people with disabilities. Police officers may react inappropriately when observing people with disabilities. Sometimes the responses of such officers exacerbate a delicate situation. Police may also treat deviant but non-threatening behaviors as criminal.

In short, a variety of barriers to the community placement of individuals with disabilities remain. Many such barriers are covered by the ADA and other Federal laws. After almost ten years of ADA enforcement, pockets of the economic sector are accessible; other pockets remain inaccessible. Time and coordinated education and enforcement should assist in addressing these barriers. The Department's specific ideas for how to begin to address the barriers identified by this review and to implement *Olmstead* are provided below.

⁴ One person testified by e-mail as follows on Aug. 14, 2001:

I am the mother of [a] long time resident of [a training center]. [My son] has profound mental retardation. . . .

There are a great many people with mental retardation who require and choose high quality community-based supports. Barriers to high quality community care include [a lack] of access to health care (including dental, medical and therapies) and other services . . .

C. Blueprint for Future Action.

To address the barriers identified in this report, the Department recommends the following specific and narrowly-tailored approaches to meet the essential needs of individuals who are moving from institutions into the community.

1. The Department will develop specific technical assistance documents to assist with *Olmstead* implementation.

Executive Order 13217 specifically requires the provision of technical guidance by Federal agencies. To address the lack of awareness regarding the requirements of the ADA and, specifically, of the *Olmstead* decision, the Department will develop and issue 3 technical assistance pieces. The first piece will be designed to reach individuals with disabilities who are currently living within institutions and will inform such individuals of their rights under the ADA and *Olmstead*. The second document will be designed for people who are on the verge of institutionalization, such as the elderly. The third piece will assist States in their responsibilities for the implementation of *Olmstead*, building upon the work HHS and other agencies have done with the States in developing comprehensive plans for the community placement of individuals with disabilities. For example, the Department of Education (ED) is also working with HHS and the Department of Labor (DOL) to train a core group of cross-disability leaders to work with States to develop their five-year plans. These disability advocates are helping States to plan, implement, and evaluate their community-based services for persons with disabilities. Therefore, the Department will work cooperatively with HHS, ED, and DOL in developing a technical guidance piece for the States. The technical assistance piece for the States may be issued either by the Department, or by HHS, ED, DOL, and the Department, jointly. This intensive educational effort should assist in improving the understanding of all parties necessary to the community-placement initiative.

2. The Department will ensure comprehensive enforcement of the ADA with respect to public programs and public and private institutions by increasing coordination activities between the Department, HHS, and ED.

As required by the Executive Order, the Department will continue to work closely with the HHS Office for Civil Rights to ensure a coordinated *Olmstead*-enforcement approach. To address the problem of States contracting with private institutions, the Department will work with HHS to ensure that private institutions that are acting on behalf of the States are providing services in a manner consistent with States' obligations under *Olmstead*. Additionally, the Department will work to ensure that private institutions do not themselves discriminate on the basis of disability by, for instance, ensuring that such institutions provide effective communication to people with communication-related disabilities and make reasonable modifications to policies, practices, and procedures when needed to fully integrate people with disabilities into

their programs. The Department will also confer with ED staff to identify ways to reduce barriers in educational opportunities for individuals with disabilities to improve access to meaningful competitive employment. The Department will collaborate with ED to realize this important objective.

The Department will also intensify efforts to implement *Olmstead* in court B as a plaintiff, intervenor, or *amicus curiae* B in situations where entities refuse to comply voluntarily with the *Olmstead* decision. In addition to vigorous enforcement of the ADA to promote greater overall accessibility within communities nationwide, the Department will investigate ways to ensure that essential services covered by the ADA, such as transportation and health care services, are made accessible to individuals with disabilities who are moving from institutions into communities.

3. To ensure the accessibility of inner-city buses and paratransit services, DOJ will work with the Department of Transportation and will increase DOJ's *amicus curiae* involvement in private suits.

The Department will work with the Department of Transportation toward ensuring the accessibility of inner-city buses and paratransit services. Working collaboratively with DOT, the Department will develop a list of criteria to guide DOT to refer appropriate paratransit complaints to the Department for enforcement purposes. The Department will look for opportunities to participate in private lawsuits as *amicus curiae* on issues involving paratransit services and accessible public transportation and will continue its efforts to expand the available modes of accessible transportation nationwide. In conjunction with the DOT, the Department will also reach out to public transit organizations to encourage voluntary compliance with the ADA.

4. The Department will work to ensure the accessibility of mental health services for people with communication-related disabilities.

In response to the public input the Department received regarding communication barriers, the Department will investigate ways of expanding its nationwide campaign to improve communications access for people who are deaf or hard of hearing, or who have speech disabilities, by targeting, in particular, mental health services within the community.

5. The Department will target discrimination in the provision of dental services to people with cognitive and developmental disabilities.

The Department also will look for ways to address the problem of dental services being inaccessible to individuals moving from institutions into community settings. The Department will work to combat discriminatory policies and practices in which dental services are not provided to individuals with certain types of disabilities, such as developmental disabilities and mental illnesses.

6. The Department will tailor its existing mediation program to address *Olmstead*-related claims and will work toward the possibility of implementing a formal referral arrangement with HHS.

In furtherance of the goals of Executive Order 13217, the Department will also work with HHS in determining whether it would be possible to refer unresolved individual complaints dealing with *Olmstead* from HHS to the Department's ADA Mediation Program. HHS currently has over 200 open *Olmstead*-related complaints. Such an initiative will require the two agencies to develop a process through which HHS may refer complaints to the Department's mediation program. One way to formalize such an initiative would be for HHS and the Department to commit to a Memorandum of Understanding regarding the mediation of *Olmstead*-related complaints.

Pursuant to the *Olmstead* initiative, the Department will offer training with regard to the *Olmstead* decision and related issues to the mediators. In addition, the Department will also identify advocacy groups who can train lay advocates to assist individuals in the mediation process who, because of disabilities ranging from mental retardation to cognitive and learning disabilities, might desire or require additional assistance and advocacy on their behalf.

7. The Department will engage in targeted outreach to identify affected populations and improve the flow of information.

The public input the Department received concerning the execution of Executive Order 13217 has been helpful to the Department in determining how best to implement *Olmstead*. The National Listening Session and other efforts undertaken by HHS identified barriers to community placement generally within the Federal system. The Department would like to solicit input regarding the issues affecting the Department's enforcement and technical assistance responsibilities. To that end, the Department will initiate a more targeted, and smaller-scale meeting with leaders and advocacy groups that deal with Department-specific issues. The Assistant Attorney General for the Civil Rights Division will chair this meeting with advocacy groups. This meeting will review issues pertaining not only to the ADA, but also to enforcement of the Fair Housing Act, and the Civil Rights of Institutionalized Persons Act, both of which are discussed below.

In addition, the Department will consider outreach targeted at determining what specific barriers keep children in institutions, and away from family settings. The Department is especially interested in keeping children with families and families together within communities and sees *Olmstead* implementation as a first step in that process. Specifically, the Department would like to meet with advocacy groups to assess whether the problem of children residing within institutions lies chiefly in a lack of accessibility in child care settings or other similar barriers that are covered by the ADA. The Department also will work with child care organizations and educators to promote the delivery of services to people with disabilities. The Department also will

collaborate with the Department of Education (ED) in undertaking this effort since ED is responsible for administering the statutes applicable to educational services for children with disabilities.

The Department will use the considerable network of advocacy groups and organizations representing States that it has developed pursuant to its ADA and other enforcement activity to distribute its *Olmstead* technical assistance pieces, and the Department will coordinate with HHS and its component, CMS, to reach individuals in nursing homes and other institutions. The Department will continue its ongoing outreach efforts and send Department members to upcoming conventions and other speaking opportunities dealing with *Olmstead* and the community placement of individuals with disabilities.

II. The Civil Rights of Institutionalized Persons Act (CRIPA)

The Civil Rights of Institutionalized Persons Act, 42 U.S.C. ' 1997 (CRIPA), protects the rights of institutionalized people. Under CRIPA, the Department may initiate a civil action where there is reasonable cause to believe that a State or political subdivision of a State is engaged in a pattern or practice of subjecting institutionalized individuals to conditions that deprive them of the rights secured by the United States Constitution or Federal laws. One of the rights secured by Federal law and enforced under CRIPA is the right that is directly addressed in *Olmstead*.

The right at issue in *Olmstead* is the right for an institutionalized person to be served in the most integrated setting appropriate to the individual's needs. This right is found in the regulations issued by the Attorney General to comply with Congress's mandate in title II of the ADA that no individual with a disability should be subjected to discrimination by any State or governmental agency. 42 U.S.C. ' 12134. Following Congress's explicit directions, the title II provision relevant here, known as the "integration regulation," requires States to "administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities." 28 C.F.R. ' 35.130(d) (ADA title II integration provision).

As part of its CRIPA enforcement efforts, the Department conducts investigations of conditions of confinement in nursing homes, psychiatric hospitals, facilities for persons with developmental disabilities, and other health care facilities and, pursuant to the ADA, reviews the appropriateness of placement of individuals in these institutions. The Department also reviews discharging procedures by professionals at facilities and ensures that the care and treatment of individuals discharged to the community is safe and appropriate to meet the individuals' needs. As part of its CRIPA investigations of health care institutions, the Department collects evidence to determine whether there are violations of title II of the ADA, particularly the ADA integration regulation. The Department also enforces other Federal statutes and

regulations, such as Section 504 of the Rehabilitation Act, title XIX of the Social Security Act, and various Medicaid programs.

Under CRIPA, the Department may initiate a civil action where there is reasonable cause to believe that a State or political subdivision of a State is engaged in a pattern or practice of subjecting institutionalized individuals to conditions that deprive them of the rights secured by the United States Constitution or Federal laws.

A. CRIPA Accomplishments to Date.

Over the years, the Department has investigated ADA integration regulation violations at 31 institutions for people with developmental disabilities, 11 psychiatric hospitals, 6 nursing homes, and 1 residential school for students with visual disabilities. The Department continues to pursue and has completed cases and investigations in 17 States, the District of Columbia, and the Commonwealth of Puerto Rico. The Department has also filed briefs as *amicus curiae* in 4 cases addressing the meaning of the ADA's integration regulation in cases involving the unnecessary segregation of people in institutions. See Appendix A for a list of *Olmstead* work under CRIPA.

1. Hundreds of people have been moved from institutions to community settings as a result of the Department's efforts.

Hundreds of individuals who were being unnecessarily institutionalized are now living safely in the community with adequate supports and services, as a result of the Department's enforcement of CRIPA and the ADA's integration regulation. For example, in *United States v. Tennessee*, CA 00-6120, 00-6265, 00-6476 (W.D. Tenn. 1992), the United States alleged that Tennessee maintained unconstitutional conditions of confinement at Arlington Developmental Center (ADC). Following a lengthy trial, the district court ordered the State to develop a comprehensive plan for placing ADC residents into appropriate, quality community placements. Since the time a plan was developed and approved, 63 ADC residents have been placed in the community. Based upon the Department's ongoing monitoring efforts in this case, the majority of the remaining ADC residents will be discharged into the community in the next two years. In another case, two Louisiana facilities for persons with developmental disabilities housed over 1,700 people when the Department began its investigation. The Department worked with the State to transition inappropriately confined people into the community. Today, more than 700 formerly institutionalized persons now live in the community. In Wisconsin, since the Department began its investigation of two facilities for persons with developmental disabilities, more than 650 persons have moved into the community. Similar cases in other States have resulted in the community placement of countless individuals.

The Department has also successfully argued as *amicus curiae* that *Olmstead* and the ADA integration regulation require jurisdictions to serve unnecessarily institutionalized people in the community and that jurisdictions may be required to

expand, modify, and revise existing services to do so. See, e.g., *Davis v. California Health and Human Services* (N.D. Cal. 2000) (residents of a large nursing home must be served in the community where appropriate).

2. The Department has ensured the appropriateness of placement in health care settings.

The Department conducts regular investigations of health care facilities and reviews the appropriateness of placement of individuals in institutions. It has worked successfully with a number of institutions to identify individuals who would be more appropriately served in the community. The Department then works with jurisdictions to identify required residences, day programs, vocational opportunities, specialized services, medical care, and related services and other supports needed to serve individuals in the community. For example, in *United States v. Puerto Rico*, Civ. No. 99-1435 (D.P.R.), in late September 2001, the Department will submit a plan to the Federal district court, seeking approval for a person-centered community services plan that creates from scratch a comprehensive community services system for persons with developmental disabilities who currently live in segregated institutions. The Commonwealth has committed to provide individualized assessments for all of the over 200 institutionalized persons and place in the community those who are determined to require placement in a more integrated setting. The plan will provide for assessments, appropriate transition planning and implementation, and creation of the infrastructure of supports and services for that community system that will include housing, transportation, supported employment and/or integrated training opportunities, recreation, case management services, and respite care funds and supports for families who choose to care for such persons at home. As in Puerto Rico, the Department has worked with institutions all over the country to help those facilities identify persons who should be moved to homes in the community.

3. The Department has ensured adequate institutional discharge planning and transition.

The Department regularly evaluates the discharge-planning processes and policies of the institutions it investigates and ensures that the process of transition from an institution to the community is safe and adequate. In many cases, the Department has found that inadequate discharge planning and transitional services have resulted in placements in inappropriate settings and high rates of readmission to institutions, in violation of *Olmstead*. For instance, in a case involving a psychiatric hospital in Virginia, the Department ensured that discharge planning began when a person was admitted to the hospital. The hospital strengthened its treatment services to ensure integration of discharge planning into the patient's care plan. Representatives of local community providers participated in patients' treatment in the hospital to ensure smooth transition to a community setting upon discharge. As a result of the Department's work, the facility improved coordination between the hospital and community providers and decreased patient placements to homeless shelters. In a case involving a nursing

home in Philadelphia, as a result of the Department's work, the facility now prepares discharge plans upon admission to the nursing home. The plans specify the individualized needs of the residents and how those needs will be met in the community setting. Where appropriate, residents are now transferred to much less restrictive settings such as independent apartments, the homes of family or friends, or other community-based homes. In a case involving D.C. Village, a nursing home in the District of Columbia, when the District of Columbia decided to close the nursing home following litigation with the Department, the Department secured court orders to ensure that transitions to the community would occur safely for residents. Similar cases in many States have resulted in the improvement in the discharge-planning processes in scores of nursing homes, psychiatric hospitals, and facilities for persons with developmental disabilities.

4. The Department has ensured that people discharged into the community are afforded safe treatment.

The Department also tours the homes of people who are moved from institutions into the community to ensure that placements are safe and appropriate to meet individual needs. For instance, in *United States v. Williams*, Civ. No. 76-293 (D.D.C.), the Department visits the homes of former residents of Forest Haven, the District of Columbia's now-closed institution for persons with developmental disabilities, to ensure the adequacy of the services being provided. The Department has directed its energies to ensuring that individuals receive adequate protections, services, and supports in the community. Earlier this year, the Department negotiated and filed an extensive and comprehensive remedial plan to help redress deficient conditions and practices within the District's community-based system. An independent court monitor oversees the defendants' compliance. Moreover, the District of Columbia created an independent, nonprofit organization to provide independent monitoring, lay advocacy, and legal representation to all persons with developmental disabilities served in the District's system. The District of Columbia is funding this independent organization with over \$31 million over the course of the next 11 years. In similar cases throughout the country, the Department ensures that people moved from institutions to community settings as a result of *Olmstead* are safe and provided with adequate, appropriate services.

5. The Department has participated as *amicus curiae* in ADA integration regulation cases involving unnecessary segregation in institutions.

The Department has also participated as *amicus curiae* in several cases involving the unnecessary segregation of people in institutions and the meaning of the ADA integration regulation, as described above.

B. Barriers to the Full Implementation of Olmstead.

Through the Department's CRIPA work, hundreds of individuals who were unnecessarily institutionalized are now living safely in the community with adequate supports and services. The Department's work under CRIPA, however, can be hampered in several important respects.

1. The Department's authority under CRIPA is limited.

First, CRIPA only authorizes investigation of institutions where there are patterns or practices of violations of rights. Thus, the Department has no jurisdiction to investigate individual *Olmstead* complaints under CRIPA.

Second, the Department's ability to conduct CRIPA investigations is dependent on the cooperation of the jurisdiction being investigated. In the 20-year experience of enforcing CRIPA, the Department has successfully settled the vast majority of cases in which the jurisdiction has given it access to documents and the institution. In cases where access is denied, the Department may have no alternative but to initiate costly and time-consuming litigation.

Third, CRIPA authorizes the Department to investigate institutions that are operated by, or on behalf of, a governmental authority. Thus, the Department has no CRIPA jurisdiction to investigate purely privately-run facilities.

Fourth, some States and other political subdivisions of States have resisted the Department's efforts to investigate the services provided to individuals who are moved from an institution into the community. The public entities argue that the Department's ability to enforce CRIPA ends at the brick walls of the institution. Some States and political subdivisions of States in an effort to swiftly implement *Olmstead* or because of lack of adequate oversight, have placed individuals in the community without adequate supports. These individuals have been subjected to unnecessarily difficult conditions. In some cases, individuals are quickly re-institutionalized or incarcerated because the services appropriate to their needs have not been provided in the community. The Department must have the ability to ensure that the individuals who are moved from the institutions to the community as a result of its law enforcement efforts are safe and getting services appropriate to their needs.

2. Oversight of community support services is not always adequate.

Some parents and other family members resist the Department's efforts to enforce the integration regulation. They are afraid for the safety of their loved ones if their relatives are moved to the community. These fears are not unfounded, given that some States have not lived up to their responsibilities to inspect conditions of care in the community and the adequacy of services provided to individuals moved from institutions to the community.

For the Home and Community-Based Program, the largest and most popular program providing [community] services, we must devise reasonable services to ensure that the States fulfill their oversight responsibilities. . . . Otherwise, we risk the possibility of serious health and safety problems in community-based programs. B Testimony given during the Sept. 5, 2001, National Listening Session.

Also, laws requiring quality of care oversight are geared towards institutions, not community-based settings. Although current statutes and regulations do require states to assure CMS that safeguards are in place to protect the health and welfare of home and community-based waiver enrollees, expectations about specific state responsibilities are unclear. For this reason, DOJ strongly endorses HHS= commitment to develop a multi-pronged strategy to address quality of care issues in home and community-based services. See Preliminary Report of Federal Agencies' Actions to Eliminate Barriers and Promote Community Integration.

3. Current federal laws and regulations impose barriers to community living.

As HHS recognizes in its Report, there are institutional biases in the Medicaid statute itself. For a discussion on this point, see Report of the Department of Health and Human Services on Community-Based Alternatives for Individuals with Disabilities. For example, the Medicaid statute does not provide for reimbursement of family members for in-home care of relatives with disabilities. Families without adequate resources to pay for supports may be faced with institutionalizing individuals who could otherwise be cared for in family homes. DOJ strongly endorses HHS= commitment to establish a Medicaid Community Services Reform Task Force to advise HHS on this and other issues.

I am a young mother to a child with a disability. . . . I have been fighting almost non stop with social services in my area to get in home help with my daughter for going on seven months now. Samantha's seizures are sometimes so severe that she quits breathing. She requires about one-sixth the amount of sleep that a typical healthy child does at this age. I spend most of my days and nights so sleep deprived I'm not sure if I'm coming or going. There were two occasions that I passed out from exhaustion and awoke several hours later to a crying baby. That is when I started asking for help. I have yet to receive it. I am not asking for social services to supply someone, I am asking for the funds so I can hire someone who already knows my child's needs and quirks. B

E-mail testimony of Aug. 27, 2001.

Another barrier to community integration is the shortage of direct care workers to provide services to individuals moved from institutions into the community. These shortages result from a host of complex social and economic factors, including the characteristics of the local job market, local wage rates, differing job requirements and working conditions in community versus institutional settings. Another factor, however, is that there are disparities in compensation between direct care workers in institutional settings versus those in community settings. DOJ strongly endorses HHS= commitment to undertake a national demonstration designed to address shortages of community service direct care workers. See Preliminary Report of Federal Agencies' Actions to Eliminate Barriers and Promote Community Integration.

This morning, like every other morning, there were thousands of people with disabilities who woke up and wanted to get out of bed but couldn't because there was no one there to help them. . . . While many factors contribute to this, the main one is simple economics. Because, regardless of the State or region, most community-based service workers are expected to do their jobs at poverty level wages often without health coverage or other employee benefits or with little or no opportunity for career advancement. Not surprisingly, there's an ever increasing shortage of these workers. . . . This results in turn over rates of 100% among many provider agencies, increased incidences of abuse and neglect and countless instances when people are left, often in their own waste, because their attendants showed up late that day or not at all. The future of community-based services and the very lives of millions of people with significant disabilities, therefore, hinges on our ability to begin to remedy this national crisis immediately. . . . If we truly value people with disabilities being in the American community, we must value and compensate those who make it possible. Testimony given at the Sept. 5, 2001, National Listening Session.

4. Some treating professionals are unfamiliar with community-placement alternatives.

Olmstead places a lot of responsibility on treating professionals in institutions to assess whether an individual would be more appropriately served in the community. Oftentimes, professionals in institutions are not aware of alternatives available in the community and make recommendations accordingly. This presents a significant barrier for an individual who would like to move from the institution into the community.

5. States are unwilling to risk closure of institutions and loss of jobs.

A final barrier to fulfilling the goals of the President's Executive Order is that sometimes States or other jurisdictions are reluctant to discharge individuals who qualify for community placement under *Olmstead* into the community because, eventually, institutional populations will diminish and may result in the closure of the facility. In that case, staff at institutions lose their jobs.

C. Blueprint for Future Action

To continue to break down the barriers to persons with disabilities living in institutions to move into the community, the Department is committed to enhancing its enforcement of CRIPA. The Department will continue to devote resources to investigations and litigation, where appropriate, with respect to institutions where individuals are unnecessarily institutionalized. The Department will continue to provide substantial technical assistance to jurisdictions about how to comply with *Olmstead*. The Department will also continue to participate as *amicus curiae* in impact institutional litigation where the ADA integration regulation is at issue. Additionally, the Department will take the following specific steps to enhance its ability to enforce *Olmstead* and help move people from institutions to community settings when appropriate.

1. The Department may recommend expansion of its authority.

The Department may consider additional mechanisms that would give it greater investigative abilities to address issues arising from community placements and to address allegations of discrimination in purely private institutions.

2. The Department will increase staff training and information gathering efforts.

The Department will train its staff on the benefits of community placement over institutionalization.

Department staff will attend national conferences on topics relevant to serving people with disabilities in the most integrated settings appropriate to their needs and collect information on the speakers and attendees to solicit information on leaders in the field. In addition, staff will solicit input from advocacy groups in the field to gather suggested consultants' and experts' names and to alert the Department to private lawsuits where *amicus curiae* participation by the Department would assist the court in interpreting and applying the ADA integration regulation.

3. The Department will increase its outreach and education.

To overcome the resistance of some parents and other relatives to the community placements of their institutionalized loved ones, Department staff will increase its efforts to educate parents and other family members concerning the benefits of community placement over institutionalization in large, congregate settings. The Department also will increase efforts to educate individuals at risk of institutionalization on alternatives to placement in facilities. Field trips to successful community placements may help aid the educational process.

The Department will explore ways to increase training for treating professionals in institutions so that they understand the possibilities of treatment in the community and the alternatives available.

4. The Department will explore ways to address the shortage of community services and supports.

To address the shortage of direct-care staff available to work in community settings and States' resistance to shrinkage of institutions and the resulting loss of staff positions, the Department will explore ways to transition competent former institutional staff to work in community-placement settings.

To address the increasing numbers of persons with mental disabilities in the nation's jails and prisons, the Department will explore ways to increase the number of mental health courts across the country. Mental health courts would increase the diversion of persons with mental disabilities from correctional settings to appropriate treatment settings in the community.

Five times as many people [with mental illness] are incarcerated than are in State mental health treatment facilities. B Testimony given at the Sept. 5, 2001 National Listening Session.

5. The Department will coordinate its efforts with other Federal agencies.

The Department of Justice is committed to working with HHS and HUD on the following issues:

- Aiding HHS in developing its multi-pronged strategy to address quality of care issues in home and community-based services. This strategy includes establishing defined expectations for home and community-based services; assisting states in using the results of CMS quality reviews of community placements; providing technical assistance to states and HHS regional staff in effective systems design or quality improvement strategies; and implementing new quality assurance and improvement systems uniquely suited for services in one's own home.

- Coordinating with CMS and HUD to take advantage of Federal money available for the costs of housing in the community. The Department will work with HUD to explore ways in which HUD representatives could be included in institutional meetings at which the transition of an individual from an institution to a community is discussed, so that HUD representatives can counsel individuals regarding housing options and assist with obtaining vouchers.
- Through the Interagency Council on Community Living and the Medicaid Community Services Reform Task Force, working with HHS to reduce barriers to community living and reduce institutional biases in the Medicaid program.
- Through the Interagency Council on Community Living and the Medicaid Community Services Reform Task Force, exploring the issue of providing support for family care givers.
- To identify those institutions where the greatest number of qualified individuals are unnecessarily institutionalized, exploring a DOJ database that analyzes the utilization reviews from institutions and ranks those with the highest percentage of reviews that show that individuals do not need the level of care the institution provides.

6. The Department will increase coordination among various enforcement components.

The Department will explore increasing enforcement coordination among its various components. For instance, Department components can undertake joint investigations that focus on the fraud committed by an institution that accepts Federal money to care for an individual who is unnecessarily institutionalized. The Department's Civil Rights Division and two United States Attorneys Offices have successfully conducted two such joint investigations under CRIPA and Medicaid/Medicare Fraud statutes.

The Department will also explore enforcement coordination to ensure that States that provide services through contracts with private institutions continue to meet their obligations under *Olmstead*. At this time, CRIPA only gives the Department jurisdiction to enforce title II of the ADA, which covers institutions run by State and other governmental agencies. The Civil Rights Division will also ensure private institutions meet their obligations under title III of the ADA.

III. The Fair Housing Act (FHA)

A. FHA Accomplishments to Date.

Enforcement of the Fair Housing Act's prohibitions against discrimination on the basis of disability in all types of housing transactions is a key component of ensuring that persons with disabilities are able to live in communities of their choice across the country. The Department shares authority for enforcing the FHA with the Department of Housing and Urban Development (HUD). HUD investigates, conciliates, and adjudicates administrative complaints alleging violations of the FHA. DOJ investigates and litigates claims involving a pattern or practice of discrimination in violation of the FHA in addition to filing enforcement actions arising from individual administrative complaints where HUD has found reasonable cause to believe the FHA has been violated and the complainant or respondent elects to have the matter resolved in Federal court. DOJ's enforcement of the FHA's protections for persons with disabilities has concentrated on two major areas. The first is ensuring that newly constructed multi-family housing is built in accordance with the FHA's accessibility and adaptability requirements so that it is accessible to or adaptable for use by persons with disabilities. The second is ensuring that zoning and other regulations concerning land-use are not employed to hinder the residential choices of individuals with disabilities by unnecessarily restricting communal or congregate-residential arrangements, such as group homes.

The Olmstead case is not about plans, but about real choice, getting and staying out of nursing homes and other institutions. Focus on addressing the shortage of accessible, affordable integrative housing for folks coming out of nursing homes and other institutions and those at imminent risk of going in. B Testimony given at the Sept. 5, 2001, National Listening Session.

1. The Department has worked diligently to improve the availability of accessible housing.

The Fair Housing Act defines discrimination in housing against persons with disabilities to include, among other things, a failure "to design and construct" certain new multi-family dwellings so they are accessible to or adaptable for use by persons with disabilities, and particularly individuals who use wheelchairs. The FHA's design and construction requirements apply to multi-family dwellings of four or more units built for first occupancy after March 13, 1991. All ground floor units in buildings without elevators and all units in elevator buildings must have the following features: an accessible entrance on an accessible route; accessible common and public use areas; doors sufficiently wide to accommodate wheelchairs; accessible routes into and

through each dwelling; light switches, electrical outlets, and thermostats in accessible locations; reinforcements in bathroom walls to accommodate the installation of grab bars; and usable kitchens and bathrooms configured so that a person using a wheelchair can enter the space and access the appliances and fixtures within.

In addition, Section 504 of the Rehabilitation Act of 1973 requires, among other things, that recipients of Federal funds, e.g., public housing authorities, make at least 5% of their newly constructed or substantially rehabilitated housing accessible to persons with mobility disabilities, including persons who use wheelchairs, and at least 2% accessible to persons with hearing or vision disabilities.⁵

Without the availability of accessible, affordable housing, many persons with disabilities have no choice but to live in institutions, such as nursing homes or hospitals, rather than living in community settings. Thus, ensuring an adequate supply of both public and private housing that is accessible and affordable is a vital step toward meeting the goals of President Bush's Executive Order.

Since October 1, 1996, the Civil Rights Division has brought 38 lawsuits against developers, builders, owners, architects, and/or site engineers to enforce the FHA's design and construction requirements for new, multi-family housing. Most of the cases have been resolved by consent decrees providing a variety of types of relief, including: retrofitting to bring inaccessible features into compliance where feasible and, where it is not, alternatives that will provide for making other housing units accessible; training on accessibility requirements for those involved in the design and construction process; a mandate that all new housing projects comply with the accessibility requirements; monetary relief for those injured by the violations; and civil penalties to deter future violations of the FHA.

In a recent case, the United States sued a developer and an architect who failed to design and construct a large apartment complex in Greenville, North Carolina, in compliance with the accessible and adaptable-design requirements of the FHA. The violations included steps leading into the individual units, an insufficient number of curb cuts, doors too narrow to allow passage by persons using wheelchairs, bathroom walls without reinforcements to permit the installation of grab bars, and an inaccessible rental office. The lawsuit was resolved through a consent decree, which required the builder and developer to: (1) retrofit the common-use areas of the apartment complex; (2) ensure that at least one fully retrofitted one-bedroom unit and two-bedroom unit remain vacant and available at all times for viewing and rental by a prospective tenant who requests such a unit; (3) give notice to every prospective tenant of the availability of the fully accessible units; (4) pay aggrieved persons up to \$5,000 each for any out-of-pocket costs incurred because of the accessibility violations; and (5) include enhanced accessibility features in a portion of the units in the next two multi-family

⁵ For multi-family dwellings built by recipients of Federal funds, FHA and Section 504 requirements may both apply.

projects that they construct. The architectural firm that designed the complex was required to: (1) pay a \$5,000 civil penalty; (2) donate 100 hours of technical assistance to non-profit organizations that serve the housing needs of persons with disabilities in the Greenville community; and (3) contribute to any amount paid by the other defendants to compensate aggrieved persons.

In another recent case, the United States sued a developer and builder for failing to design and construct five condominium developments located in Las Vegas and Mesquite, Nevada to be accessible to persons with disabilities. Design and construction violations in the common areas of the condominium developments included steps in the pathways and leading into the individual units, pathways that were too steep for individuals using wheelchairs to negotiate, inadequate curb cuts, and inadequate accessible parking spaces. Design and construction violations in individual condominium units included doors that were too narrow to accommodate wheelchairs, bathrooms that were too small to be used by individuals who use wheelchairs, and thermostats and electrical outlets in inaccessible locations. Under the terms of the consent decree that resolved the case, the defendants will spend over \$1 million to make interior and exterior modifications to bring the properties into compliance with FHA requirements and establish a fund that will be used to retrofit the units of those owners who have not yet come forward to request them and pay compensatory damages to those persons who were victims of the defendants' discriminatory actions. Under the consent decree, defendants must also certify to the Department that any future construction complies with the FHA.

The Department has also actively enforced the FHA's other nondiscrimination requirements relating to persons with disabilities, including requirements for reasonable accommodation to housing providers' rules, policies, practices, and services and reasonable physical modifications to housing. Since October 1, 1996, the Civil Rights Division has brought 25 cases to enforce the FHA's prohibitions against disability-based discrimination and its reasonable accommodation requirements. In a recent case, the United States filed a lawsuit alleging that a condominium development in New York discriminated against an owner and resident of a condominium in the complex who has multiple sclerosis and uses a wheelchair. The development required the resident to park her specially-equipped van several spaces away from her unit and directly next to a garbage dumpster, even though the parking spaces for the development were generally unassigned. As part of the consent decree resolving the litigation, the condominium development agreed to establish and clearly designate for the complainant's sole use a permanent parking space immediately adjacent to the walkway leading to her unit.

2. Combating discrimination against persons with disabilities living in group homes is another priority for the Department.

Congregate living arrangements or "group homes" are often the primary alternative to institutionalization for many individuals with disabilities. As part of our

effort to reduce the barriers to persons with disabilities living in communities, the Department has had a long-standing commitment to vigorous enforcement of the FHA's prohibition against municipalities' and other local government entities' use of zoning or land-use decisions or policies to exclude or otherwise discriminate against persons with disabilities by denying permits or zoning approval to group homes for persons with disabilities.

The FHA makes it unlawful to (1) utilize land-use policies or actions that treat groups of persons with disabilities less favorably than groups of persons without disabilities, e.g., enacting an ordinance prohibiting housing for persons with disabilities generally or housing for persons with specific types of disabilities, such as group homes for persons with psychiatric disabilities, from locating in a particular area, while allowing other groups of unrelated individuals to live together in that area; (2) take action against or deny a permit for a home because of the disability of individuals who live or would live there, e.g., denying a building permit for a home because it was intended to provide housing for persons with mental retardation; or (3) refuse to make reasonable accommodations in land-use and zoning policies and procedures where such accommodations may be necessary to afford persons or groups of persons with disabilities an equal opportunity to use and enjoy housing, e.g., making an exception to an occupancy standard that allows only five unrelated persons to live in a home by allowing a group home for persons with disabilities to have eight unrelated persons living in a home.

As a social service agency that provides residential programs, supportive housing and supportive services to single women who are homeless and formerly homeless, [we are] encouraged by the President's concern and commitment for people with disabilities. In FY=01, 84% of the women that [we] serve[] had a mental, physical or multiple disabilities. In its 15-year history, [we have] engaged in seven battles to site our residential programs and supportive housing developments in communities that presented resistance to the presence of women who are homeless and disabled. What [we] faced were the misperceptions that the women we serve are violent and would negatively impact those communities. B E-mail testimony of Aug. 24, 2001.

Since October 1, 1996, the Civil Rights Division has brought 10 cases to enforce the non-discrimination provisions regarding group homes for persons with disabilities. In a recent case, the United States brought suit against the City of Toledo, Ohio, alleging that the City discriminated against persons with disabilities in violation of the FHA by enacting an ordinance which sought to limit the number of group homes that could be located within a specified distance of each other. Under the settlement agreement that resolved the litigation, the City agreed to repeal the challenged

ordinance and to revise its zoning regulations. In addition, the City agreed to pay \$95,500 in damages and attorneys' fees to the private plaintiffs in companion lawsuits.

There has been a significant amount of litigation concerning the ability of local governmental units to exercise control over group living arrangements, particularly for persons with disabilities. To provide guidance on these issues, the Department and HUD have issued a Joint Statement on Group Homes, Local Land-use and the FHA. This statement is available at http://www.usdoj.gov/crt/housing/housing_special.htm.

3. DOJ has entered into a Memorandum of Understanding with the Department of Treasury and the Department of Housing and Urban Development regarding low income housing tax credits.

Ensuring that affordable housing developments are accessible to persons with disabilities is an important goal of the Department's fair housing enforcement program. To that end, DOJ, HUD, and the Department of the Treasury have entered into a Memorandum of Understanding (MOU) in a cooperative effort to improve compliance with the FHA, including the prohibition against discrimination on the basis of disability, for all properties that receive relief from Federal income tax in the form of low income housing tax credits. See <http://www.usdoj.gov/crt/housing/mou.htm>.

As part of this MOU, HUD and DOJ have agreed to identify low-income housing tax credit properties for which there is: (1) a charge by the Secretary of HUD for a violation of the FHA; (2) a probable cause finding under a substantially equivalent fair housing State law or local ordinance by a substantially equivalent State or local agency; (3) a lawsuit under the FHA filed by DOJ; or (4) a settlement agreement or consent order entered into between HUD or DOJ and the owner of a low-income housing tax credit property. Under the procedures outlined in the MOU, once these properties are identified, the Internal Revenue Service (IRS) sends a notice to the property owners advising them that a finding of discrimination, including an adverse final decision by the Secretary of HUD, an adverse final decision by a substantially equivalent State or local fair housing agency, or an adverse judgment by a Federal court could result in the loss of low-income housing tax credits. For matters resolved through settlement agreements or consent decrees, the IRS similarly sends notice to property owners that a judgment enforcing the terms of a settlement agreement or consent decree could result in the loss of tax credits.

Under the MOU, HUD and DOJ also provide FHA training upon request to designated IRS personnel and participants in the low income housing tax credit program. The IRS, in turn, provides technical assistance and training upon request to HUD and DOJ personnel on general tax administration issues under the low-income housing tax credit program. HUD and DOJ are also making training available upon request to State housing finance agencies and other entities, e.g., developers, property management companies, and syndicators, on the accessibility requirements of the FHA and Section 504 of the Rehabilitation Act.

B. Barriers to the Full Implementation of Olmstead.

Housing opportunities for persons with disabilities were enhanced in 1988 when the FHA was amended to prohibit discrimination on the basis of disability in the sale and rental of housing and to require the design and construction of certain new multi-family housing to be accessible to or adaptable for use by persons with disabilities. However, despite the progress that has been made in recent years, there remains a huge unmet need for affordable housing that is accessible to persons with disabilities in communities across the country.

1. New construction requirements for multi-family housing are widely ignored.

The reasons for the lack of affordable, accessible housing are varied. First, there is widespread non-compliance with the FHA's new construction requirements for multi-family housing by both private and public providers. Much of this noncompliance may result from the lack of knowledge about the requirements on the part of builders, architects, and engineers. Because the design curricula at universities and technical schools do not usually include courses on accessible design, many professionals who design multi-family and public housing are often unfamiliar with the accessibility requirements of the FHA and Section 504 of the Rehabilitation Act. Moreover, State and local building codes typically do not incorporate Federal accessibility requirements relating to housing; therefore, State and local officials who review architectural plans and completed facilities for compliance with local building, fire, and life-safety codes typically do not review such plans or facilities for compliance with Federal accessibility requirements.

2. Modifications or retrofits to existing housing are expensive and related legal obligations are misunderstood.

The systematic failure to build new housing in compliance with Federal accessibility requirements means that much of the work of ensuring access to housing for persons with disabilities is done in the context of modifications or retrofits to existing housing. While the incorporation of accessible or adaptable features in housing involves little, if any, cost at the design or the construction stage, retrofitting to bring non-compliant, multi-family housing and public housing into compliance with the FHA and Section 504 can be expensive and difficult. Also, many housing providers do not understand the FHA's prohibitions against discrimination on the basis of disability. These prohibitions include the obligation to provide reasonable accommodations for persons with disabilities or to allow such persons to make reasonable structural modifications to dwellings to improve accessibility. Thus, despite Federal mandates, units often remain inaccessible to persons with disabilities.

3. The FHA's accessibility provisions are limited.

Even newly constructed, multi-family housing that complies with FHA requirements is often not fully accessible to all persons with mobility disabilities because the FHA requires only a modest level of accessibility or adaptability for persons who use wheelchairs. Also, the FHA only requires accessibility features in newly constructed, multi-family housing with four or more units; therefore, most single-family housing developments built today do not provide any options for accessible single-family homes.

4. Many public housing authorities routinely violate the law, resulting in a wide spread lack of accessible public housing.

The concern about the lack of accessible housing is not limited to the private housing market. Many public housing authorities are not in compliance with the nondiscrimination requirements of the FHA and Section 504 of the Rehabilitation Act regarding access to public and/or Section 8 housing for persons with disabilities. Thus, many low-income persons with disabilities are denied an equal opportunity to live in public and/or Section 8 housing across the country.

5. Some housing providers maintain discriminatory policies.

In communities where accessible housing does exist, some housing providers still have policies that exclude or place discriminatory conditions of residence on persons with disabilities, such as assisted-living facilities with policies barring residents from using scooters or electric wheelchairs or retirement communities that deny residence to persons with certain types of visible disabilities, e.g., persons who are blind, persons who are deaf, or persons who use wheelchairs.

6. Community opposition to group homes continues.

Another barrier to fulfilling the goals of the President's Executive Order is that, in many communities across the country, there continues to be strong opposition by citizens and their elected officials to the location of group homes, assisted-living centers, and other facilities for persons with disabilities in residential settings. This community opposition often means that group homes are not built, thereby severely curtailing housing opportunities for persons with disabilities. Alternatively, such facilities are built in less desirable settings to avoid community opposition.

Despite the implementation of the Americans with Disabilities Act (ADA) and the Fair Housing Act of 1988, persons with psychiatric disabilities are discriminated against with regards to housing. Landlords are unwilling to rent to persons with psychiatric disabilities and communities still openly oppose housing for persons with psychiatric disabilities. B E-mail testimony of Aug. 27, 2001.

C. Blueprint for Future Action.

To continue to break down barriers against persons with disabilities living in communities of their choice across the country, the Department is committed to continuing and enhancing its fair housing program in this area.

1. The Department will continue its strong tradition of vigorous enforcement of the FHA.

The Department will continue to devote substantial resources to investigations and enforcement actions against developers, builders, architects, and site engineers who design and/or construct multi-family housing that does not comply with the requirements of the FHA and rental offices and other places of public accommodation within housing complexes that do not comply with the ADA. Also, the Department will conduct investigations, initiate enforcement actions, and participate as *amicus curiae* in private lawsuits under the FHA with respect to discriminatory land-use and zoning decisions that prevent group homes from being operated in community settings. The Department will also investigate and take enforcement action to eliminate discriminatory housing practices that deny reasonable structural modifications to housing, disqualify persons with disabilities from living in certain types of housing, impose discriminatory conditions of residence/use on persons with disabilities, or deny reasonable accommodations that may be necessary for persons with disabilities to have an equal opportunity to enjoy and use housing.

2. The Department will employ all available avenues to identify opportunities to enforce the FHA.

To assist in our enforcement efforts, we will encourage advocacy groups and private counsel representing persons with disabilities to alert the Department to private lawsuits where *amicus curiae* participation by the Department would assist the court in interpreting and applying the provisions of the FHA and Section 504 of the Rehabilitation Act. We will also use the Department's Fair Housing Testing program to identify patterns or practices of discrimination against persons with disabilities by persons and entities engaged in the sale or rental of housing.

3. The Department will work with other agencies to improve the accessibility of public housing and to ensure that tax incentives do not go to those who discriminate on the basis of disability in housing.

In an effort to increase the amount and availability of affordable and low-income housing for persons with disabilities, the Department will continue to work with HUD to increase the accessibility of public housing by improving enforcement of the

nondiscrimination requirements (including accessibility and reasonable accommodation requirements) of Section 504 of the Rehabilitation Act and the FHA against public housing authorities and other recipients of Federal funds. The Department also plans to continue working with HUD and the IRS to implement the provisions of the Memorandum of Understanding among the agencies so that housing providers that discriminate against persons with disabilities do not benefit from low income housing tax credits.

4. The Department will work to increase nationwide understanding of the FHA and Section 504 of the Rehabilitation Act.

As a complement to the Department's enforcement program, the Department will continue to work with HUD to provide training and technical assistance on compliance with the accessibility requirements of the FHA and Section 504 of the Rehabilitation Act, as applicable, to increase architects', developers', site engineers', and public housing officials' knowledge of, and compliance with, these requirements. The Department will encourage universities offering courses of study in architecture and engineering to provide courses in accessible design. The Department will also work with private entities, such as the National Association of Home Builders, the American Institute of Architects, and other groups representing design professionals and builders to increase their members' knowledge and understanding of the accessibility requirements of the FHA and Section 504 of the Rehabilitation Act.

5. The Department will increase its coordination efforts with HUD and other agencies.

The Department will also increase its efforts to work with other government agencies to improve compliance with the nondiscrimination provisions of the FHA and Section 504 of the Rehabilitation Act as it relates to housing. For example, the Department will continue to work with HUD on technical assistance to improve housing providers' understanding of the FHA and Section 504, as well as improve enforcement of both Acts. The Department will develop guidelines to assist HUD in identifying Section 504 accessibility cases that should be referred to the Department for enforcement action. The Department will meet with HUD on a quarterly basis to discuss Section 504 accessibility cases that meet the guidelines for referral to the Department for enforcement action. The Department will also provide training on FHA and Section 504 accessibility requirements to officials who enforce State and local building codes and will encourage State and local governments to make accessibility requirements for multi-family housing equivalent to, or greater than, the accessibility requirements of the FHA. We will also encourage State and local officials to review plans for multi-family housing and public housing for compliance with Federal accessibility requirements or, alternatively, to provide developers, builders, architects, engineers, and others involved in the design and construction of housing with literature outlining Federal accessibility requirements and notice that plans have not been reviewed for compliance with these requirements. Finally, the Department will

encourage all agencies that provide or administer Federal financial assistance for housing programs to require compliance with the FHA and Section 504 as a condition of the receipt and retention of funding and to refer noncompliant programs to the Department for enforcement action.

IV. Other DOJ Programs

Most of the Department's activities involve the enforcement of Federal laws or the support of State and local law enforcement efforts. As more people with disabilities move from institutions to community settings, there is a real need to find ways to reduce the extent to which they B especially those with mental illness B are likely to become involved with the criminal justice system as inmates, victims, or witnesses.⁶ Some of the Department's activities B such as those of the Office of Justice Programs and the Office of Community Oriented Policing Services B may be strengthened or modified to assist with this effort.

Additionally, another DOJ component B the Community Relations Service B has developed strong networks within traditionally underserved communities. This network can be used to disseminate critical *Olmstead*-related information to the broadest possible audience.

The Office of Justice Programs (OJP)

Since 1984, the Department's Office of Justice Programs (OJP) has provided Federal leadership in developing the nation's capacity to prevent and control crime, improve the criminal and juvenile justice systems, increase knowledge about crime and related issues, and assist crime victims. OJP's senior management team - comprised of the Assistant Attorney General (AAG), the Deputy Assistant Attorney General (DAAG), and the five bureau heads - works together with dedicated managers and line staff to carry out this mission.

Through the programs developed and funded by its bureaus and offices, OJP works to form partnerships among Federal, State, and local government officials to control drug abuse and trafficking; reduce and prevent crime; rehabilitate

⁶ Many inmates of correctional institutions have disabilities such as mental illness, hearing or vision problems, learning or speech disabilities, or mobility impairments, including 31% of State inmates and 23% of Federal inmates. Laura M. Maruschak and Allen J. Beck, Medical Problems of Inmates, 1997, DOJ's Bureau of Justice Statistics Special Report, NCJ 181644 (January 2001) (<http://www.ojp.usdoj.gov/bjs/abstract/mpi97.htm>). A relatively high number of inmates report having a mental condition or having stayed overnight in a mental hospital, including 16% of State prison inmates, 7% of Federal prison inmates, and 16% of those in local jail. Paula M. Ditton, Mental Health and Treatment of Inmates and Probationers, DOJ's Bureau of Justice Statistics Special Report, NCJ 174463 (July 1999) (<http://www.ojp.usdoj.gov/bjs/abstract/mhtip.htm>).

neighborhoods; improve the administration of justice in America; meet the needs of crime victims; and address problems such as gang violence, prison crowding, juvenile crime, and white-collar crime. The functions of each bureau or program office are interrelated. For example, the statistics generated by the Bureau of Justice Statistics may drive the research that is conducted through the National Institute of Justice and the Office of Juvenile Justice and Delinquency Prevention. Research results, in turn, generate new programs that receive support from the Bureau of Justice Assistance and the Office of Juvenile Justice and Delinquency Prevention. Although some research and technical assistance is provided directly by OJP's bureaus and offices, most of the work is accomplished through Federal financial assistance to scholars, practitioners, experts, and State and local governments.

Many of DOJ's program bureaus and offices award formula grants to State agencies, which, in turn, subgrant funds to units of State and local government. Formula grant programs in such areas as drug control and system improvement, juvenile justice, victims compensation, and victims assistance, are administered by State agencies designated by each State's governor.

The Office of Community Oriented Policing Services (COPS)

The Office of Community Oriented Policing Services (COPS) is the Federal office responsible for advancing community policing, including the addition of 100,000 community policing officers. COPS promotes community policing through a variety of initiatives, including hiring grants, grants to promote innovative approaches to solving crime, training and technical assistance, compliance and monitoring, and program assessments and policy support.

The Community Relations Service

The Community Relations Service (CRS) mediates community conflicts and tensions. Created by the Civil Rights Act of 1964, CRS is dedicated to assisting State and local units of government and community groups. CRS has extensive ties to groups and persons of diverse racial and cultural backgrounds within local communities.

A. Accomplishments to Date.

- 1. The Department works to improve access to, delivery of, and quality of mental health and other youth services to help prevent future criminal conduct.**

OJP's Bureau of Justice Assistance issued a \$226,000 grant to Nova Southeastern University in Fort Lauderdale, Florida in FY 1999 to establish the South Florida Medical Corrections Options Program. This program will enhance and expand

the effort to divert mentally ill, female, misdemeanor offenders from the justice system in Broward County. In addition to providing for the screening and evaluation of offenders for the Broward County Mental Health Court, this grant provided for the creation and operation of a forensic treatment center with the capacity to offer various treatment and assistance services to complement the mental health court's diversion efforts.

OJP's Office of Juvenile Justice and Delinquency Prevention (OJJDP) awarded grants totaling \$4,235,000 between FY 1995 and FY 2000 to the City of Boston to fund their Boston SafeFutures Initiative. The goals of this program are to strengthen and institutionalize collaboration and participation among youth service agencies, parents, youth, and elected and appointed officials in and outside the target area; integrate youth into realistic opportunities to engage in the decision-making planning systems of their community; decrease serious crime and violent juvenile crime; increase job readiness, career, higher education, and job opportunities for target-area residents; and educate families on the benefits of mental health services.

OJJDP issued a grant of close to \$200,000 in FY 1999 to the Public Health Foundation Enterprises, Inc. in the City of Industry, California. This entity is a nonprofit community-based after-school organization committed to improving the quality of life of families through mental health services and community education.

2. The Department supports mental health counseling to parolees or those on probation.

OJP's Crime Act Corrections Program Office issued a grant of over \$100,000 to the Northern Mariana Islands Criminal Justice Planning Agency in FY 1996 to develop and implement residential substance abuse treatment programs consistent with the Northern Mariana Islands Treatment Alternative to Street Crime Program (TASC). TASC provides drug testing to monitor all probationers, parolees, and Division of Corrections inmates. In addition to drug testing, TASC provides drug treatment for drug-using offenders at the Division of Corrections. The treatment program, with a capacity for six (6) offenders, will include components of the therapeutic community model, which emphasizes accountability and responsibility. Following release from incarceration, the participants will receive outpatient drug treatment at the Division of Mental Health and Social Services.

3. The Department provides and makes accessible more mental health and drug/alcohol prevention programs.

OJP's Executive Office of Weed and Seed (EOWS) awarded a grant for \$175,000 in FY 1999 to the City of Mobile, Alabama to coordinate the delivery of criminal justice and social services in targeted neighborhoods to eliminate violent crime, drug-trafficking, and drug-related crime and to provide a safe environment for law-abiding citizens to live, work, and raise families. The Mobile, Alabama program,

and others like it around the country, works to “weed” from distressed neighborhoods criminal offenders engaged in drug crime and other violent offenses, stabilize the neighborhoods through community-oriented policing, and “seed” these neighborhoods with housing, employment, and social-sustaining programs. There are approximately 270 Weed and Seed neighborhood sites across the country which provide a variety of services. Many of the sites have “Safe Havens” for young people, where a variety of services, including mental health and other medical services, can be obtained. Some Safe Havens also provide medical screening and mental health services for families.

In the last several years, EOWS has funded various similar programs, including: (1) the Northeast Educational Service Cooperative in Hayti, South Dakota (\$250,000 in FY 1999); (2) Selma, Alabama (\$125,000 in FY 1999); (3) Tupelo, Mississippi (\$125,000 in FY 1999); (4) the Northeast Council of Governments in Aberdeen, South Dakota (\$250,000 in FY 1999); (5) the Pee Dee Community Action Agency in Florence, South Carolina (\$175,000 in FY 2000); (6) Madison County (Huntsville), Alabama (\$175,000 in FY 2000); and (7) the Jefferson Parish President’s Office in Jefferson, Louisiana (\$125,000 in FY 2000) (with a focus on providing services and programs to elderly persons, persons with disabilities, economically disadvantaged persons, and young people).

4. The Department’s programs rehabilitate homes of residents with disabilities, among others, as part of the "Neighborhood Restoration" component of Weed & Seed.

The Department provides technical assistance and some training regarding rehabilitation of homes, including homes of residents with disabilities, as part of the “Neighborhood Restoration” component of Weed & Seed.

5. The Department supports the development of a mental health screening protocol to be used in correctional facilities for clinical, research, and/or program development and evaluation.

OJP’s National Institute of Justice awarded grants totaling over \$300,000 to the California Youth Authority between FY 1998 and FY 1999 to establish an assessment package designed to obtain direct information about the mental health status of juveniles entering State-level institutions, as a reliable and valuable classification tool for use with youthful-offender populations.

The University of Connecticut Health Center received a grant of \$750,000 in FY 2000 from the National Institute of Justice to develop, implement, validate, and disseminate an efficient three-stage, mental health screening protocol that will be accessible nationally by correctional facilities for clinical, research, and program development and evaluation purposes. The study’s goal is to develop and validate a mental health screening protocol to enhance the timely and accurate identification of psychiatric disorders within adult correctional systems.

OJJPD issued a grant of \$80,000 to the Policy Research Associates in Delmar, New York to update and expand the monograph, "Responding to the Mental Health Needs of Youth in the Juvenile Justice System," to incorporate new research, initiatives, and policy changes that have occurred since 1992. The revised version will include new topics such as identifying and meeting the needs of youth with co-occurring substance abuse and mental health disorders, as well as a description of innovative, collaborative approaches developed at Federal, State, and local levels to respond to the mental health needs of youth in the juvenile justice system.

6. The Department helps train prosecutors on mental health issues.

OJJPD has issued grants totaling \$1,200,000 to the American Prosecutors Research Institute in Alexandria, Virginia to increase and improve prosecutor involvement in juvenile justice. As part of this program, training of prosecutors will address certain "evolving juvenile justice areas," such as community prosecution, community justice, community-assessment centers, and mental health concerns, among others.

7. The Department develops disability-related educational and resource materials for law enforcement officials and victim advocates.

OJP's Office of Victims of Crime (OVC) issued a grant of \$51,000 in FY 1999 to the National Sheriff's Association (NSA) in Alexandria, Virginia to initiate a program to bring leaders from the disability advocacy field together with the NSA to develop a pocket guide for law enforcement that will provide brief, instructional tips on the best ways to respond legally, professionally, and compassionately to crime victims who have Alzheimer's Disease, mental illness, mental retardation, or who are deaf or hard of hearing. The guidebook will have a brief introductory section, five individual sections on each special population of victims, and a section that explains the responsibilities of law enforcement under the ADA. The guide will include a directory of national resources that officers can contact for further assistance. The OVC Resource Center will disseminate the handbook to law enforcement agencies across the nation.

OVC issued a \$160,000 grant over two years to Video Action, Inc., in Washington, D.C. to bring together leaders from the disability and victim advocacy communities to design and develop a video-based awareness and resource package to encourage and support the efforts of advocates in both the criminal justice system and the private sector to partner with practitioners in the disability communities to reach and serve crime victims with a wide range of physical and cognitive disabilities.

Over a period of three years, OVC provided \$300,000 in funding to the Abused Deaf Women's Service (ADWAS) of Seattle to replicate its culturally appropriate, linguistically accessible program of services for victims of sexual assault and domestic violence who are deaf or deaf-blind. To date, ADWAS has trained and provided

ongoing technical assistance to over 75 leaders in the deaf community from 15 cities across the nation, enabling them to return to their community and develop similar programs for victims who are deaf or deaf-blind.

8. The Department supports programs to address the mental health, behavioral, and substance abuse needs of Native American youth and their families.

COPS provided funding in FY 2000 and FY 2001 under the Mental Health and Community Safety Initiative for American Indian/Alaska Native (AI/AN) Children, Youth, and Families. Grants were awarded for salaries and benefits for new police officers, and for law enforcement training and equipment, including technology and vehicles, for new and existing police officers. Resources funded under this program (officer positions, equipment, and/or training) must be used to address the mental health, behavioral, and substance abuse needs of Native American youth and their families and provide a range of youth support services and programs both in the community and in the school arena. This grant is part of a collaborative initiative between the Department of Education, the Department of Health and Human Services, and the Department of Justice, Office of Juvenile Justice and Delinquency Prevention. It is the intention of this initiative to provide a comprehensive approach to address the mental health and substance abuse issues of AI/AN children, youth, and families.

9. The Department continues to support the facilitation of more effective collaboration between local law enforcement and community mental health professionals in responding to individuals with significant mental illness.

Through its Collaborative Leadership Project, COPS has funded a partnership among the National Sheriffs' Association, the Treatment Advocacy Center, and the Seminole County, Florida Sheriffs Office to facilitate more effective collaboration between local law enforcement and community mental health professionals in responding to individuals with severe mental illness. The partnership will identify the most promising programs and practices that have been developed to distinguish appropriate and inappropriate law enforcement actions, to help officers respond more effectively to mental illness crises, to divert individuals to mental health treatment when appropriate, and to access community mental health services.

B. Barriers to the Full Implementation of Olmstead.

1. Many victim assistance programs and shelters are inaccessible to people with disabilities.

Domestic violence shelters, rape crisis shelters, and other facilities and programs for victims of crimes are often physically inaccessible to many people with

disabilities and some maintain eligibility criteria that discriminate against people with disabilities. Shelter operators are commonly unaware of legal obligations under the ADA. As a result, some people with disabilities have been institutionalized simply because the most integrated setting appropriate to their needs (a domestic violence shelter, for instance), is not available to them. In the mainstream institutional setting, those individuals do not generally get the assistance they may need to deal appropriately with the underlying criminal issues. Additionally, victim advocates are often unaware of the huge number of people with disabilities who are crime victims and so do not target their efforts at identifying and serving this population.

However, accessibility is not just an issue of physical resources. In January, 1998, OVC funded a landmark forum that brought together experts from the victim assistance, disability advocacy, and research fields to address the victimization of people with disabilities. Forum findings and recommendations were captured in an OVC Bulletin entitled “Working with Victims of Crime with Disabilities” (<http://www.ojp.usdoj.gov/ovc/publications/factsheets/disable.htm>). While physical barriers are a deterrent to providing services, participants identified other critical issues, with many from the disability communities stating that “attitudes toward the person with a disability is as important or more so than physical accessibility.” Participants went on to discuss the pervasive problem of under reporting of crimes committed against individuals with disabilities, and that concerted efforts must be directed toward educating a broad array of practitioners in the disability advocacy, healthcare, education, and social service sectors about victimization issues.

2. There are few statistics regarding the number of people with disabilities who are crime victims.

Research and statistics often play a vital role in driving policy and funding decisions. Many disability advocates have long insisted that there is an epidemic of victimization of people with disabilities, but there is little data available and, potentially, tremendous under-reporting.

3. People with disabilities who are abused by their caregivers may fear institutionalization if they report the abuse.

People who are dependent on caregivers (including family members) may be frightened to report abuse to the proper authorities, due to the fear that if their caregivers are arrested and prosecuted, the individuals with disabilities will be without care and have to be institutionalized.

4. The “Not In My Back Yard” syndrome stifles the location of group homes for people with disabilities in residential neighborhoods and contributes to the overwhelming problem of a lack of community-based alternatives.

One of the biggest hurdles to integrating people with disabilities into community settings is a lack of housing (including affordable accessible housing and group homes). One part of this problem stems from the “not in my back yard” syndrome, in which residential neighborhood associations resist the placement of group homes for people with disabilities in their neighborhoods.

5. Recidivism rates are high among convicts with mental illness, often due to absent or inappropriate recognition and treatment of their medical condition within the criminal justice system.

Some people with mental illness repeatedly cycle through the criminal justice system without receiving appropriate medical assistance. The criminal justice system’s lack of attention to mental illness issues results in inappropriate and sometimes cruel confinement of some persons and a tremendous burden on law enforcement, judicial, and correctional agencies due to behavior difficulties during incarceration and increased recidivism rates. If appropriately treated, many people with mental illness may be fully integrated members of society, without running further afoul of the law.

6. Police officers may respond inappropriately to mental disturbance calls, sometimes with tragic results.

When police respond to calls involving people with mental illness, they may respond inappropriately, sometimes escalating tensions and making situations more dangerous for themselves and the community, as well as those who are mentally ill. Early involvement by trained mental health professionals in these situations could significantly reduce the danger to the police, the subject individuals, and the community.

C. Blueprint for Future Action.

To address the barriers identified in this report, the Department recommends the following specific actions to meet the essential needs of individuals who are moving from institutions into the community, or to keep them from becoming adversely involved in the criminal justice system:

1. The Department will educate victim advocates and shelter operators regarding their responsibilities under the ADA.

The Department will provide information in grant solicitations regarding grantees’ responsibilities under the ADA and Section 504 of the Rehabilitation Act. Additionally, the Department will make information available at conferences to reach the victim assistance community and inform them of responsibilities under the ADA and Section 504 of the Rehabilitation Act.

2. The Department will encourage States to earmark a portion of funding from the Victims of Crimes Act to eliminate disability-based discrimination in victim assistance programs and facilities.

The Department will inform State agencies responsible for implementing programs under the Victims of Crimes Act (VOCA), 42 U.S.C. " 10601, *et seq.*, of their responsibility in ensuring that individuals with disabilities have access to programs and facilities.

The Department will provide technical assistance to State agencies and inform States about the possible uses of VOCA funds to make facilities or services accessible to victims with disabilities.

3. The Department will make available the best practices of mental health courts.

Mental health courts are designed to respond to the problem of mentally ill misdemeanants and, in some jurisdictions, low-level felony offenders who repeatedly cycle through the criminal justice system without receiving needed assistance. Jurisdictions with mental health courts have recognized the recurring issue of inadequate screening and treatment of mentally ill/mentally impaired defendants and offenders. Although every mental health court is different in its design and operation, each seeks to reduce recidivism, increase cost-effectiveness, and provide equal justice under the law. The Department will make information, especially best practices, available to the field.

4. The Department will integrate questions on disability status into the National Crime Victimization Survey.

The Crime Victims with Disabilities Awareness Act, passed in October 1998, directed the Department's Bureau of Justice Statistics (BJS) to include in the National Crime Victimization Survey (NCVS) statistics relating to "the nature of crimes against individuals with developmental disabilities; and the specific characteristics of these crimes." NCVS is the Department of Justice's primary vehicle for measuring the characteristics of victims of crime, including violent crime. It is conducted at about 90,000 sample households per year to measure the occurrence of a set of serious crimes such as rape, robbery, assault, burglary, theft, and motor vehicle theft.

In order to carry out the legislative mandate of the Crime Victims with Disabilities Awareness Act, BJS and the Census Bureau have worked to develop questions that can identify disabilities and have researched modifications that must be made to existing questionnaires, survey procedures, and interviewer training to collect victimization data of the disabled population. In order to most accurately and efficiently evaluate both the survey questions and procedures, BJS is planning a study in California to collect information on criminal victimization from a sample of people who

receive disability-related services. The study, called the Victimization of People with Disabilities Study, will begin in October 2002 and will last two to three months. Data collection will be done by the United States Census Bureau. For the study, the Census Bureau will conduct approximately 200 face-to-face interviews with persons with mild to moderate mental retardation. Ultimately, the results from this study will assist BJS and the Census Bureau in refining and modifying the questions and procedures that will ultimately be incorporated into the NCVS to collect data on the victimization data of people with disabilities.

5. The Department will make technical assistance available regarding mental health crisis intervention programs.

Technical assistance will be made available on how to implement mental health crisis intervention programs in law enforcement offices. In addition, best practices will be identified and publicized.

6. The Department will seek to develop a nationwide training program for law enforcement addressing mental illness issues, through the RCPI's.

The Department will explore the development of a curriculum for the Regional Community Policing Institutes (RCPI's) to educate law enforcement officers about how to interact appropriately with people with mental illness who are victims, witnesses, suspects, arrestees, prisoners, or those otherwise involved in the criminal justice system. The RCPI's are partnerships created to provide comprehensive and innovative community-policing education, training and technical assistance to COPS grantees and other policing agencies throughout a designated region. Currently, there are 28 Institutes located across the country.

7. The Department will explore the development of a new program to enable local jurisdictions to hire new community-oriented police officers trained to respond to mental health disturbance calls.

The Department will seek funding for a new program to hire additional community-oriented police officers with special training in mental health issues, whose primary assignment would be to respond to mental health disturbance calls. Such a program would be patterned after the COPS in Schools (CIS) Program. The CIS Program provides funding to local, State, and tribal jurisdictions for the direct hire of entry-level police officers and sheriff's deputies. The newly hired officers must be deployed into primary or secondary schools to engage in community-policing activities, or the agency may elect to deploy a veteran officer into the schools and hire an entry-level replacement for the vacated position. Through CIS, COPS provides a maximum of \$125,000 for the salaries and benefits for new, entry-level officer positions over the course of the three-year grant period. Any additional amount of funding needed for salary and benefit costs exceeding \$125,000 per officer must be paid through local cash match.

8. The Department will use its presence in Weed and Seed community sites nationwide to address access to community facilities, services and activities for people with disabilities.

OJP's Executive Office for Weed and Seed (EOWS), with technical assistance from the Civil Rights Division (CRT), will assess how Weed and Seed sites, which receive DOJ funding to strategically approach crime and neighborhood service concerns, are addressing issues related to people with disabilities. These sites are coordinated through the United States Attorney's Offices in partnerships that include local law enforcement, social service providers, and faith-based groups. These sites will report on accessibility to Weed and Seed services and facilities; and identify any special programs, housing, services and community-based alternatives for individuals with disabilities.

EOWS and CRT will distribute informational packets on disability issues nationwide to all 270 Weed and Seed sites. (The number of sites is expected to reach 300 in 2002). These packets will include contact information of alternative dispute resolution programs that handle disability matters and a videotape highlighting Weed and Seed sites with community-based service facilities which comply with the ADA. CRT will provide technical guidance in compiling materials and information about matters related to the *Olmstead* decision, the ADA, and any Federal resources designed to assist States and communities with compliance issues.

9. The Department will use its CRS network to disseminate *Olmstead*-related technical assistance materials in the broadest possible manner.

One of the requirements of the Executive Order is to increase information flow. The Department is committed to doing so both within the government and among persons affected by the *Olmstead* decision. The Department's Community Relations Service (CRS) will help to distribute the technical assistance pieces dealing with the rights of individuals with disabilities under the ADA and *Olmstead* to a racially, ethnically, religiously, and linguistically diverse audience. (See discussion of Technical Assistance, above). The Department plans to provide these technical assistance pieces in a variety of languages other than English.

APPENDIX A

OLMSTEAD WORK DONE PURSUANT TO THE CIVIL RIGHTS OF INSTITUTIONALIZED PERSONS ACT as of October 1, 2001

I. Cases and Investigations

NAME & LOCATION	TYPE OF INSTITUTION	STATUS & SIGNIFICANT EVENTS
ALABAMA		
<u>Wyatt v. Hanan</u> Bryce Hospital Greil Memorial Psychiatric Center Eufaula Adolescent Center North Alabama Regional Hospital Searcy Hospital Thomasville Mental Health Rehabilitation Center	Mental health	DOJ participated in trial as <i>amicus curiae</i> in 1995; <i>Wyatt v. Rogers</i> , 985 F. Supp. 1356 (M.D. Ala. 1997)
<u>Wyatt v. Hanan</u> Brewer Dev. Center Ireland Dev. Center Partlow Dev. Center Tarwater Dev. Center Wallace Dev. Center	Developmental disabilities	DOJ participated in trial as <i>amicus curiae</i> in 1995; <i>Wyatt v. Rogers</i> , 985 F. Supp. 1356 (M.D. Ala. 1997)
CALIFORNIA		
Laguna Honda Hospital and Rehabilitation Center	Nursing home	Under investigation
Sonoma Developmental Ctr	Developmental disabilities	Under investigation
Agnews Developmental Ctr	Developmental disabilities	Under investigation
DISTRICT OF COLUMBIA		

<u>Evans & U.S. v. Williams</u> Forest Haven Dev. Center	Developmental disabilities	Monitoring settlement
<u>U.S. v. District of Columbia</u> D.C. Village Nursing Home	Nursing home	Case closed
FLORIDA		
<u>Johnson and U.S. v. Murphy</u> G. Pierce Wood Memorial Hospital	Mental health	Trial in 2000; in June 2001, court found no liability
Landmark Learning Center	Developmental disabilities	Under investigation
GEORGIA		
Banks-Jackson-Commerce Medical Center and Nursing Home	Nursing home	Under investigation
INDIANA		
<u>U.S. v. Indiana</u> Fort Wayne State Dev. Ctr Muscatatuck State Dev. Ctr	Developmental disabilities	Monitoring settlement
New Castle State Dev. Ctr	Developmental disabilities	Monitoring settlement
IOWA		
Woodward State Hospital & School Glenwood State Hospital & School	Developmental disabilities	Under investigation
KENTUCKY		
Oakwood Developmental Ctr	Developmental disabilities	Under investigation
LOUISIANA		
Pinecrest Developmental Ctr Hammond Developmental	Developmental disabilities	Under investigation

Ctr		
MARYLAND		
Holly Center	Developmental disabilities	Under investigation
NEW JERSEY		
Bergen Regional Medical Center	Nursing home	Under investigation
NEW MEXICO		
<u>U.S. v. New Mexico</u> New Mexico School for the Visually Handicapped	School for visually impaired students	Monitoring settlement
NORTH CAROLINA		
John Umstead Hospital Dorothea Dix Hospital Cherry Hospital Broughton Hospital	Mental health	Under investigation
PENNSYLVANIA		
<u>U.S. v. City of Philadelphia</u> Philadelphia Nursing Home	Nursing home	Monitoring settlement
PUERTO RICO		
<u>U.S. v. Puerto Rico</u> Center for Integral Services Centro de Reeduccion para Adultos Centro de Servicios Multiples Rosario Bellber Facilidad de Cuidado Intermedio Hogar de Grupo Las Mesas Centro de Servicios Multiples de Camaseyes	Developmental disabilities	Monitoring settlement
TENNESSEE		

<u>U.S. v. Tennessee</u> Clover Bottom Dev. Center Greene Valley Dev. Center Harold Jordan Center Nat T. Winston Dev. Center	Developmental disabilities	Monitoring settlement
<u>U.S. v. Tennessee</u> Arlington Dev. Center	Developmental disabilities	Trial in 1993; monitoring court orders
Hamilton County Nursing Home	Nursing home	Case closed
VIRGINIA		
<u>U.S. v. Virginia</u> Central State Hospital	Mental health	Case closed
<u>U.S. v. Virginia</u> Northern Virginia Training Center	Developmental disabilities	Case closed
<u>U.S. v. Virginia</u> Northern Virginia Mental Health Institute	Mental health	Case closed
Western State Hospital	Mental health	Monitoring settlement
WASHINGTON		
Ranier School Frances Haddon Morgan Center	Developmental disabilities	Monitoring settlement
WISCONSIN		
<u>U.S. v. Wisconsin</u> Southern Wisconsin Center for the Developmentally Disabled Central Wisconsin Center for the Developmentally Disabled	Developmental disabilities	Monitoring settlement

II. Olmstead cases in which DOJ has participated under CRIPA as *amicus curiae*

MARYLAND *Williams v. Wasserman*, 937 F. Supp. 524 (D. Md. 1996)

ALABAMA *Wyatt v. Rogers*, 985 F. Supp. 1356 (M.D. Ala. 1997)

CALIFORNIA *Davis v. California Health and Human Services* (N.D. Cal. 2000)

TENNESSEE *Newberry v. Menke* (M.D. Tenn. 2001)