



Advocacy Steps for Consumers and Advocates Regarding the Home Care Rule: **Update on Requirements of the Americans with Disabilities Act and *Olmstead***

Disability and aging advocates, together with worker advocates, have been working to ensure that their states implement the Department of Labor's new Home Care Rule, which becomes effective January 1, 2015, in a way that helps, not harms, consumers and the workers who provide services to them. Advocacy is vital because depending on how the rule is implemented it could result in unintended consequences, such as cuts to services, dismantling of programs that allow consumers to control their own care, or further limiting this critical workforce. The U.S. Department of Justice and the Department of Health and Human Services Office of Civil Rights have just released important guidance that will assist disability, aging and worker groups in their advocacy efforts. This guidance describes states' obligations under the Americans with Disabilities Act (ADA) and the Supreme Court's decision in *Olmstead v. L.C.* as they are implementing the Home Care Rule. The full text of the guidance is available here: <http://www.dol.gov/whd/homecare/hhs-doj.htm>.

If your state is considering any policies restricting, capping or limiting worker overtime or travel, this guidance is available to help advocates push for a robust exceptions process and monitoring system.

The ADA and *Olmstead* prohibit public entities (state or local governments or departments) from administering their programs in a way that causes unjustified institutionalization or segregation of people with disabilities. Public entities are also required to make "reasonable modifications" to their programs when necessary to avoid discrimination, unless such modifications would "fundamentally alter" its service system.

The guidance makes clear that the ADA and *Olmstead's* obligations apply not only when a public entity directly operates or funds a home care program but also "when a home care program is delivered through non-public entities." This means that public entities must

consider the ADA and *Olmstead* even when their home care programs are operated through, for example, managed care organizations or home health agencies.

The guidance acknowledges that while some public entities may fund all or some worker overtime and travel, others may be considering implementing the rule through policies that restrict, limit or cap direct care workers' hours or travel time. The ADA and *Olmstead* generally prohibit across-the-board restrictions or caps and require an individualized exceptions process for people who will be placed at serious risk of institutionalization or segregation by the policies. The guidance provides examples of individuals who may be at serious risk:

[I]mplementation of across-the-board caps risks violating the ADA if the caps do not account for the needs of individuals with disabilities and consequently places them at serious risk of institutionalization or segregation. For example, if a state prohibits home care workers from exceeding 40 hours a week of work, individuals who need more than 40 hours a week of care may not receive their full hours where home care workers are scarce. And even where home care workers are available, consumers with extraordinary medical or behavioral needs may not be able to tolerate multiple workers in their home. Emergency situations may also arise where a scheduled second worker is not available and the individual's home care support needs would not be met without immediate authorization of overtime hours and pay.

To prevent ADA and *Olmstead* violations, the guidance directs states considering caps or restrictions on overtime and travel time to implement "reasonable modifications" to these policies to make sure participants are not at serious risk of institutionalization or segregation. Reasonable modifications should include a robust exceptions process to overtime and travel caps, a way for consumers to quickly obtain an exception if necessary, and a monitoring system to ensure that the process is working.

For more information on advocacy strategies around the Home Care Rule, see [*Action Steps for Consumers and Advocates Regarding the New Home Care Rule: How to Prevent Service Cuts and Protect Consumer-Directed Programs*](#). A summary of the guide, *Home Care Rule Advocacy Fact Sheet*, is also available.