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United States Senate

COMMITTEE ON HEALTH, EDUCATION,
LABOR, AND PENSIONS

WASHINGTON, DC 20510-6300

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<http://help.senate.gov>

June 22, 2012

The Honorable Andrew Cuomo
Governor of New York State
NYS State Capitol Building
Albany, New York 12224

Dear Governor Cuomo:

Today marks the 13th anniversary of the United States Supreme Court's landmark decision in *Olmstead v. L.C.*, holding that the Americans with Disabilities Act (ADA) requires that States administer services to individuals with disabilities in the most integrated settings appropriate to their needs. The decision marked the beginning of the end of the segregation of individuals with disabilities in institutions, and spurred a move towards providing individuals with disabilities the opportunity to live, work, and receive services in the greater community.³²

In this time of budgetary constraints, it is important to policy makers to know which tools are working the best to meet the joint goals of ensuring all individuals with disabilities have the opportunity to live independently while also providing the necessary services and supports in a cost effective manner. To that end, I am seeking information regarding how New York is working to meet its obligations under the ADA and *Olmstead*, and obtain a better understanding of which of the new tools and funding streams made available by the federal government in recent years are proving the most effective at helping people with disabilities who are residents of your state to live independently.

Yesterday, as Chairman of the United States Senate Committee on Health Education Labor and Pensions (HELP Committee), and one of the original authors of the ADA, I convened a Senate hearing to assess the progress that we have made among the various states. At the hearing, we heard about the enforcement activities of the U.S. Department of Justice's Civil Rights Division, efforts by the U.S. Department of Health and Human Services to promote services in the community, recent reform efforts in Delaware and Alabama, and the story of a resident of the

³² The U.S. Department of Justice has stated the "most integrated setting" is "a setting that enables individuals with disabilities to interact with non-disabled persons to the fullest extent possible."³² Integrated settings are "those that provide individuals with disabilities opportunities to live, work, and receive services in the greater community, like individuals without disabilities."

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District of Columbia who successfully transitioned from life in an institution to a full life in the community.

Notwithstanding clear examples of progress around the country that were highlighted in yesterday's hearing, I remain concerned that too many individuals with disabilities continue to be forced to live in segregated settings in order to receive services. Thousands of individuals with disabilities remain in nursing homes, board and care homes, intermediate care facilities for people with intellectual disabilities, large group homes, and other segregated settings when they could be better and more cost-effectively served in their own homes with supports.

As you know, providing services to people with disabilities in community based settings not only yields immeasurable benefits to the individuals with disabilities, it also yields benefits to states, from a budgetary and administrative perspective, because in most instances, it is less expensive to provide services to individuals with disabilities in their own homes or apartments than in institutions or other segregated settings. While many state disability service systems may have once been considered state of the art, they are now antiquated. With new technologies and approaches, we have seen that even individuals with the most significant disabilities can live successfully in truly integrated settings, living in their own homes, engaged with family, friends, and their community.

Congress has taken steps to afford states a variety of tools through the Medicaid program to make it easier to provide community based services. Those include:

- The Community First Choice option that provides an enhanced federal Medicaid match for states choosing to cover a package of attendant services and supports that enable individuals with disabilities to live in home and community settings rather than in nursing homes, hospitals, intermediate care facilities, or institutions for mental diseases. 42 U.S.C. § 1396n(k).
- An option to cover a package of home and community-based services for a targeted group of people with disabilities under a state's Medicaid plan (the "1915(i) option"). 42 U.S.C. § 1396n(i).
- The Money Follows the Person program that allows states to receive an enhanced Medicaid match when they move people out of nursing homes, hospitals and other institutions and into home and community-based settings. 42 U.S.C. § 1396a note.
- The Balancing Incentives Payment Program that offers an opportunity through 2015 for states that rely heavily on institutional facilities to receive an enhanced federal Medicaid match for expanding home and community-based services. 42 U.S.C. § 1396d(y).

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- The Medicaid home and community-based waivers that, since 1981, have enabled states to serve individuals with disabilities in home and community-based settings rather than in nursing homes, hospitals, and intermediate care facilities. 42 U.S.C. § 1396n(c).
- The Medicaid rehabilitation and personal care options that have also served as cornerstones of state efforts to finance services for individuals with disabilities in their own homes and communities. 42 U.S.C. §§ 1396d(a)(13), (24).

In conjunction with yesterday's hearing, and in an effort to develop a comprehensive understanding of which federal programs are working best for states, I am asking you to provide information to the Committee about efforts to ensure that the ADA's promise of the opportunity to live, work, and receive services in the greater community is being met, including whether you have, or intend to, utilize the new tools provided by Congress to do so. I ask that you provide the Committee with the following information by September 7, 2012:

(1) For each year from FY 2008 to the present: The number of people who moved from nursing homes, intermediate care facilities for individuals with intellectual or developmental disabilities, long term care units of psychiatric hospitals, and board and care homes (often called adult care homes or residential health care facilities), to living in their own home, including through a supportive housing program.

(2) The amount of state dollars that will be spent in this fiscal year serving individuals with disabilities in each of these settings: nursing homes, intermediate care facilities for individuals with intellectual or developmental disabilities, board and care homes, psychiatric hospitals, group homes, and their own homes, including through a supportive housing program.

(3) For each year from FY 2008 to the present, the extent to which your state has expanded its capacity to serve individuals with disabilities in their own homes, including through a supportive housing program -- including the amount of state dollars spent on the expansion (which may include reallocated money previously spent on segregated settings) and the specific nature of the capacity added.

(4) The contents of your state's Olmstead Plan for increasing community integration, a description of the strategic planning process used to create it as well as any revisions that have been made since its creation, the extent to which it incorporates any of the new tools created by the federal government to support home and community-based services, and the extent to which you have been successful in meeting any quantifiable goals identified within it.

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(5) Any policy recommendations you have for measures that would make it easier for your state to effectively implement Olmstead's integration mandate and take advantage of new federally available assistance.

(6) Any successful strategies that your state has employed to effectively implement Olmstead, particularly strategies that could be replicated by another state or on a national scale.

Thank you for your cooperation. If you have any questions, please contact Andrew Imparato on my HELP Committee staff at Andrew_Imparato@help.senate.gov or 202-224-8535. I look forward to hearing from you.

Sincerely,

A handwritten signature in black ink, appearing to read "Tom Harkin". The signature is fluid and cursive, with a long horizontal stroke at the end.

Tom Harkin
Chairman

cc: Michael B. Enzi, Ranking Member, Senate Committee on Health, Education, Labor and Pensions

cc: Chairman Max Baucus, Senate Finance Committee

cc: Ranking Member Orrin G. Hatch, Senate Finance Committee

cc: Senator Kirsten Gillibrand

cc: Senator Charles Schumer