



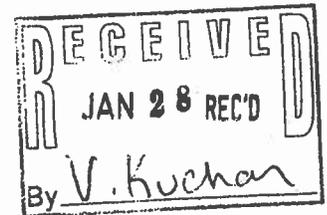
U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

JAN 27 2010



Governor Pat Quinn
Office of the Governor
207 State House
Springfield, IL 62706

Mr. Michael Gelder
Senior Advisor for Health Policy
Chair, Nursing Home Safety Task Force
Capitol Building
401 S. Second Street, Room 207
Springfield, IL 62706-1150

Re: Preliminary Recommendations of Nursing Home Safety Task Force

Dear Governor Quinn and Mr. Gelder:

As part of its ongoing disability rights work, the Department of Justice (Department) has been monitoring reports in the *Chicago Tribune* relating to conditions in Illinois' nursing homes. We commend you for taking swift action to address the problems revealed by those reports. The Department has reviewed the preliminary recommendations of the Nursing Home Safety Task Force, and appreciates the opportunity to offer its comments on those recommendations.

The full and fair enforcement of the Americans with Disabilities Act (ADA), including its mandate to integrate individuals with disabilities into their communities, is a major priority of the Civil Rights Division. In June of 2009, President Obama proclaimed the Administration's commitment to community integration, coining 2009 the "Year of Community Living." See "President Obama Commemorates Anniversary of *Olmstead* and Announces New Initiatives to Assist Americans with Disabilities," June 22, 2009, Office of the Press Secretary, available at http://www.whitehouse.gov/the_press_office/President-Obama-Commemorates-Anniversary-of-Olmstead-and-Announces-New-Initiatives-to-Assist-Americans-with-Disabilities/. The Department has a long history of protecting the rights of people with disabilities to live in the community. In the past year alone, the Department has filed briefs in integration cases in Illinois, Florida, Connecticut, Virginia, New York, and North Carolina.

The Department of Justice has a special interest in ensuring that people with disabilities are integrated into their communities. When Congress enacted Title II of the ADA, which applies to state and local governments, it directed the Attorney General to issue regulations implementing the Act. As the Supreme Court has recognized, “[b]ecause the Department is the agency directed by Congress to issue Title II regulations, its views [on Title II] warrant respect.” *Olmstead v. L.C.*, 527 U.S. 581, 597-98 (1999).

Consistent with its congressional mandate, the Department has promulgated several regulations relating to the integration of people with disabilities in state and local government programs. These regulations include 28 C.F.R. § 35.130(d), which requires public entities to “administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.” The most integrated setting is one that “enables individuals with disabilities to interact with nondisabled persons to the fullest extent possible” 28 C.F.R. §35.130(d), App. A, at 571 (2009).

In 1999, the Supreme Court interpreted these regulations and found that unnecessary institutionalization of people with disabilities may itself constitute unlawful discrimination. *Olmstead*, 527 U.S. at 597. Public entities are required to provide community-based services for persons with disabilities who would otherwise be entitled to institutional services when (a) the public entity’s treatment professionals reasonably determine that such placement is appropriate; (b) the affected persons do not oppose such treatment; and (c) the placement can be reasonably accommodated, taking into account the resources available to the entity and the needs of others who are receiving disability services from the entity. *Olmstead*, 527 U.S. at 607.

In its preliminary recommendations, the Task Force has taken an important first step to ensure that the right to community-based services recognized by *Olmstead* becomes a reality for Illinois residents. In the context of civil rights enforcement and integration into the community, the Department is particularly encouraged by recommendations I.1, I.2, I.4, III.1, III.2, III.3, and III.4. These recommendations reflect the Task Force’s apparent commitment to integration and community living. As the Task Force recognized, every nursing home resident who wishes to live in the community, and is able to do so, should have the opportunity to live in “the most community integrated setting” with “more independence.” The Task Force’s recommendations to “expand permanent supportive housing options where tenants hold the lease and have full right of tenancy with support services on the premises” and “maximize federal financial resources for home and community-based options, using supported living waiver and/or Medicaid home and community-based services waiver” are vital to making community integration possible. The Department is hopeful that the Task Force’s final recommendations will include more details about how and when Illinois intends to achieve these important goals. We applaud the Task Force’s action in promptly reviewing this matter, and encourage action that will improve Illinois’ ability to serve current nursing home residents in the community.

While the Department is heartened by many of the Task Force's recommendations, it is concerned by some "issues still under consideration." Although the possibility of establishing specialized programs for people with serious mental illness or people who are a risk of harm to others remains under review, the Task Force should avoid recommending separate facilities for these populations, except in very limited circumstances. Although there may be certain circumstances where patients cannot safely be served in an integrated setting, such decisions must be made by a qualified professional on an individualized basis, not based solely on a patient's diagnosis. Consigning a person with a disability to a separate facility because he or she has been diagnosed with a "serious mental illness" poses a grave risk of stereotyping and segregating individuals based on their conditions. This approach could reinforce the stigma associated with certain psychiatric conditions, and perpetuate assumptions that people with some disabilities "are incapable or unworthy of participating in community life." *Olmstead*, 527 U.S. at 600. Each person with a disability, regardless of their diagnosis, must be evaluated individually to assess whether they actually pose a serious risk of harm to others, are able to live in facilities with people who do not have serious mental illness, or are able to live in the community.

The Department looks forward to reviewing the Task Force's final report. In addition, we are always available to provide any technical assistance you would find useful. Thank you for your attention to this important civil rights issue.

Sincerely,

A handwritten signature in black ink, appearing to read "T. E. Perez", with a stylized flourish at the end.

Thomas E. Perez
Assistant Attorney General