

Honorable Marilyn Tavenner
Administrator
Centers for Medicare & Medicaid Services
7500 Security Boulevard
Baltimore, Maryland 21244

September 29, 2014

Dear Administrator Tavenner,

The undersigned organizations representing people with disabilities write to express our appreciation for the Centers for Medicare and Medicaid Services' (CMS') recent guidance on Medicaid coverage for autism-related services and our hope that these services are provided in a manner consistent with the Supreme Court's holding in *Olmstead v. L.C.*¹

On July 7, 2014, CMS issued an Informational Bulletin on approaches that State Medicaid agencies may take toward providing services for individuals with autism spectrum disorders (ASD). The Informational Bulletin explained that a variety of recognized and emerging autism-related services could be covered through Medicaid State plans, Home and Community-Based Services Waivers, or research and demonstration waivers. It further explained that states are required to provide medically necessary services for Medicaid-eligible individuals under the age of 21, including many autism-related services, as part of the Early and Periodic Screening, Diagnostic and Treatment services (EPSDT) program regardless of whether those services are otherwise included in the State Plan or waiver programs.

We appreciate CMS' initiative in setting forth states' options and obligations with respect to Medicaid coverage for autism-related services. We hope that CMS will also clarify that Medicaid recipients are entitled to receive these covered services in the most integrated setting appropriate to their needs, as required under *Olmstead v. L.C.* The Supreme Court held in *Olmstead* that the Americans with Disabilities Act (ADA) prohibits unnecessary segregation of individuals with disabilities in public services and programs. These public services include state Medicaid programs.

According to 2010 report that CMS cited in its Informational Bulletin, recognized and emerging services for individuals with ASD may vary widely in intensity. Individuals, especially children, often receive many hours of autism-related behavioral health services per week. Although it is considered best practice to provide these more intensive interventions in naturalistic settings such as the home, school, or community, they are sometimes also offered in disability-specific clinical settings.²

Olmstead's integration mandate applies not only to where people live, but how they spend their day. When individuals with disabilities are required to spend a large number of hours per week in disability-specific settings in order to receive services that could instead be provided in the home, school, or

¹ 527 U.S. 581 (1999).

² Impaq International, Autism Spectrum Disorders (ASDs) Services Final Report on Environmental Scan, p. 25, Table 5 (2010) (cited in CMS guidance), available at <http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Long-Term-Services-and-Supports/Downloads/Autism-Spectrum-Disorders.pdf>.

community, their rights to integration into the community are compromised.³ Nevertheless, because few Medicaid-covered services other than HCBS approach this level of intensity, State Medicaid directors may not be accustomed to evaluating these services in light of the requirements of *Olmstead*.

As a result, we urge CMS to alert State Medicaid directors to the fact that *Olmstead* governs States' coverage decisions regarding autism-related services and, as a result, that States may not require as a condition of coverage that intensive autism-related services be delivered in clinical or facility-based settings. They must ensure that individuals are entitled to receive intensive autism-related services in natural, community-based settings such as the home, school, or other locations in the community.

Sincerely,

Autistic Self Advocacy Network

American Association of People with Disabilities

Association of People Supporting EmploymentFirst

Autism Society

The Disability Rights Center

National Coalition for Mental Health Recovery

National Down Syndrome Congress

National Organization of Nurses with Disabilities

Not Dead Yet

Quality Trust for Individuals with Disabilities

Sibling Leadership Network

TASH

³ Cf. U.S. Department of Justice Letter of Findings regarding its Title II ADA Investigation of Employment, Vocational, and Day Services for Persons with Intellectual and Developmental Disabilities in Rhode Island (Jan. 6, 2014), available at http://www.ada.gov/olmstead/olmstead_cases_list2.htm.