

Your Rights to Treatment in the Least Restrictive Environment: ADA, *Olmstead v. L.C.*, and C.R.S. §§27-65-116, 117

Title II of the Americans with Disabilities Act of 1990 (ADA):

Require[s] public entities to “administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.”¹ (often called the “**integration mandate.**”)

According to U.S. Department of Justice Guidance, the “*most integrated setting*” means:

“a setting that enables individuals with disabilities to interact with non-disabled persons to the fullest extent possible.”² Integrated settings are those that provide individuals with disabilities opportunities to live, work, and receive services in the greater community, like individuals without disabilities. Integrated settings are located in mainstream society; offer access to community activities and opportunities at times, frequencies and with persons of an individual’s choosing; afford individuals choice in their daily life activities; and, provide individuals with disabilities the opportunity to interact with non-disabled persons to the fullest extent possible.

In 1999, the U.S. Supreme Court issued a ruling in the case of *Olmstead v. L.C.*, **527 U.S. 581** that interpreted how the integration mandate applied to people living in facilities. The court held that public entities must provide community-based services to people with [mental] disabilities when:

1. Treatment professionals feel that community-based services are appropriate
2. The person with a disability does NOT oppose community-based treatment
3. Community-based services can be reasonably accommodated, taking into account the resources available in the community and the needs of other people with disabilities receiving the service

“[I]nstitutional placement of persons who can handle and benefit from community settings perpetuates unwarranted assumptions that persons so isolated are incapable or unworthy of participating in community life... Second, confinement in an institution severely diminishes the everyday life activities of individuals, including family relations, social contacts, work options, economic independence, educational advancement, and cultural enrichment.”

-Justice Ginsburg, writing in *Olmstead v. L.C.*

Since the *Olmstead* decision, courts have continued to interpret this area of law. In 2019, a U.S. District Court in Mississippi³ examined the structure of community-based mental health services in that state, and the court determined that Mississippi’s mental health system violated the integration mandate of the ADA. Because the state did not have enough appropriate community-based services for mental health, people were being unnecessarily placed in the state psychiatric hospitals.

Colorado state law also guarantees the right to treatment in the least restrictive setting:

C.R.S. §27-65-116 specifically states that all people receiving care and treatment under Title 27, Article 65, which includes ALL people who have been civilly committed or ordered to complete involuntary treatment, have a right to treatment “*in the least restrictive environment.*”

¹ 35 C.F.R. §35.130(d)

² 28 C.F.R. pt. 35 app. A (2010).

³ *U.S. v. Mississippi*, 400 F. Supp 3d 546 (S.D. Miss, 2019)

**Your Rights to Treatment in the Least Restrictive Environment:
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IF you feel that your right to treatment in the least restrictive environment is being violated, here are some ways you can advocate for yourself:

1. File a complaint with the U.S. Department of Justice, Office of Civil Rights, Disability Rights section (information available at https://www.ada.gov/filing_complaint.htm). They have the ability to investigate your claim and to even bring a lawsuit against the state if they believe it is necessary.
2. Submit a grievance to the facility stating that you do not believe you are being treated in the least restrictive environment. Pursuant to facility policy (if CMHIP or CMHIFL), you can ask that this grievance be sent straight to the Office of Behavioral Health, which supervises the mental health institutes.
3. If you are civilly committed, you can request a hearing within 10 days of a petition for short-term or long-term certification being filed. You have a right to have an attorney represent you in such hearings.
4. You can file a motion with the court that has issued your commitment, pursuant to C.R.S. §13-45-102, asking that you be released to a less restrictive setting or released from the facility because the treating facility is failing to provide “adequate medical and psychiatric care.”

If you have concerns about your treatment or the conditions or rights violations within a psychiatric facility, you can also:

- File a complaint with the Centers for Medicare & Medicaid Services (CMS), a facility accreditation organization (<https://www.cms.gov/Regulations-and-Guidance/Administrative-Simplification/Enforcements/FileaComplaint>);
- File a complaint with the Joint Commission, another facility accreditation organization (<https://www.jointcommission.org/resources/patient-safety-topics/report-a-patient-safety-concern-or-complaint/>);
- Submit a complaint with the Colorado Department of Public Health and Environment (CDPHE), Colorado’s health facility accreditation organization (<https://cdphe.colorado.gov/health-facilities-complaints>);
- File complaints with Colorado’s Department of Regulatory Agencies (DORA), where you can file complaints about health care and other related professionals (<https://dora.colorado.gov/file-complaint>);