



FAQs ABOUT IMDs, *OLMSTEAD*, AND SECURE RESIDENTIAL TREATMENT FACILITIES

Does the IMD Exclusion apply to secure residential treatment facilities?

No. The IMD exclusion, which is found in section 1905(a)(B) of the Social Security Act, applies to “institutions for mental diseases” with more than 16 beds and to individuals between ages 21-65. The IMD exclusion was intended to ensure that states, not the federal government, be responsible for funding psychiatric services and substance use disorder residential treatment. Secure residential treatment facilities will not be IMDs as they will have less than 16 beds.

Does *Olmstead* require that all individuals with SMI must receive services in the least restrictive setting possible?

No. *Olmstead*, or *Olmstead v. LC*, 527 U.S. 591 (1999), is the decision from the United States Supreme Court that protects people with disabilities from being inappropriately institutionalized.

Importantly, the Supreme Court explained that admission to any facility always depends, first, on the treating professionals’ assessment that the facility is appropriate for the individual either as an alternative to a more restrictive setting such as a hospital or a less restrictive setting such as housing in the community. *Olmstead* at 597. Second, *Olmstead* deals with housing in “less restrictive” community settings compared to institutions, specifically, a state hospital. *Olmstead* held that placement in the “least restrictive” setting is “not mandatory.” *Olmstead* at 599.

ACMI is not seeking more psychiatric hospitals or more beds at the Arizona State Hospital. ACMI also does not want secure residential treatment facilities to operate like “mini-hospitals” or “mini-jails.” ACMI seeks to create safe, secure, community-based, licensed residential treatment facilities where individuals with chronic SMI can continue their recovery journey without cycling in and out of clinically inappropriate housing, jail, or prison, or face homelessness and even death on the streets.

Does *Olmstead* forbid secure community settings other than a psychiatric hospital?

No. Secure residential facilities are the kind of option that the Supreme Court seemed to anticipate and encourage when it said that states “need to maintain a **range of facilities** for the care and treatment of persons with **diverse** mental disabilities ...” *Olmstead* at 597 (emphasis added). Individuals with chronic serious mental illness face unique challenges and may benefit during their recovery from services delivered in a clinically appropriate, secure residential setting. Such a setting is “more restrictive” than other community-based housing options, but “less restrictive” than inpatient care or incarceration. It can offer an alternative to jail, prison, the state hospital, or life and death on the street.

Olmstead requires that states offer services, programs, and activities in the most integrated setting appropriate to the needs of the individual. Secure residential treatment facilities can be the most integrated and most appropriate setting for people struggling to survive with current services and treatment settings. Secure facilities can provide needed services and support, including the full range of clinical and therapeutic services and peer support consistent with an individualized treatment program. Personal choice and independent living skills will be promoted consistent with maintenance of a therapeutic and safe environment for all residents. There will be a full range of recreational and educational opportunities. All residents will have ongoing contact with an assigned outpatient clinical team who will follow the individual after discharge to a lower level of care.

Will secure residential treatment facilities meet due process requirements.

Yes. *Olmstead* requires, first, that treatment professionals determine what is appropriate clinically for each person. Second, all due process protections apply as to who may be admitted and why and periodic review of appropriateness of continued stay and criteria for discharge. and the ability at any time to petition for discharge. There must be periodic reviews about whether transfer to a less restrictive setting is clinically appropriate. The individual can petition for discharge at any time.

No person will be admitted to a secure residential treatment facility *except* under a court-order. The court order must be based on and follow an assessment and recommendation by an *individual's treatment professionals* that the secure facility is the most integrated setting appropriate for the individual's clinical needs and the individual likely cannot succeed in a less restrictive community placement. Individuals considered for admission generally will have been unsuccessful in other types of housing and treatment settings.