

# P&A Tidbits

LEGAL NEWS & other

Disability-Related info

June 2021

22 YEARS AGO

**EXTRA!  
EXTRA!**  
The Olmstead Decision  
June 22, 1999

25A 11 Denver (Rocky Mountain) News Wednesday, June 23, 1999  
**World & Nation**  
boulders.com/keyword: AP News Desk — (303) 892-2728 e-mail — newsdesk@denver-mn.com

## Court rules in favor of disabled

Supreme Court says group homes appropriate for some hospitalized mental patients

By Linda Greenhouse  
The New York Times

**WASHINGTON** — Including people with disabilities in big state institutions when there is no medical reason for their confinement is a form of discrimination that violates federal disability law, the Supreme Court ruled Tuesday.

The 6-3 decision, in a case brought against the state of Georgia by two women with mental impairment, was a substantial victory for a disabilities rights movement. That movement was linked to the Americans With Disabilities Act of 1990 as a tool for breaking down physical and mental barriers to the mainstream.

The ruling affirmed, in effect, the Supreme Court's decision last year by the 5-4 vote in *Adarand*, which held that it is unconstitutional to discriminate against people with disabilities when medically appropriate.

In 1994 the federal appeals court in Philadelphia, in the only other appellate decision on

### IN COLORADO

Advocates for the disabled in Colorado said Tuesday's Supreme Court decision is a major victory.

"It's a real landmark case," said Linda Greenhouse, who wrote the book "The End of Solitary" about the Colorado Attorney General's lawsuit against the state of Georgia. "The ruling will have little impact on the disabled," she said.

"It says to (Gov. Bill) Owens that people have a right to choose where they live, and that the state has a responsibility to provide services to people with disabilities."

Colorado advocates said the ruling would be a major step toward deinstitutionalization. As a nationally known grassroots campaign sprung up around the case, leading 13 of the 22 states that had originally supported Georgia to change the state's position in the Supreme Court.

The case involved a 1995 lawsuit filed on behalf of Lois Curtis and Elaine Wilson, both of whom were committed to the Georgia Regional Hospital where they had lived, of and on, for years. The state doctors had concluded that they could be more appropriately cared for in small group homes.

On Tuesday, the decision Tuesday was the court's right, rather than left, word on the case. It required more cases to be decided by the full court of the ruling.

Justice Ruth Bader Ginsburg's majority opinion held that states' obligations to care for people in small, neighborhood-based settings was limited to some degree by available resources. States are not required to close their big hospitals — which, the court stressed, may still be appropriate for some people — or to create group home programs that they do not now have. In fact, though, every state now has such a program.

The decision interpreted a regulation that requires states to make "reasonable modifications" in their programs to avoid discriminating against people with disabilities, while at the same time providing that states need not make "fundamental" alterations.

**IN THE June 1999 landmark decision of the U.S. Supreme Court in *Olmstead v. L.C.*, the stage was set for increased community participation and independence of people with disabilities and older Americans back into the community as well as prevention and avoidance of unnecessary institutionalization.**

Before the Olmstead Court, Lois Curtis and Elaine Wilson, two women with disabilities living in Georgia nursing homes, had asked state officials to allow them to move into their own homes in the community. After the State refused, Atlanta Legal Aid attorney Susan Jamieson filed a lawsuit on their behalf. The case eventually was heard by the U. S. Supreme Court, which ruled that Title II of the Americans with Disabilities Act (ADA) prohibits the unnecessary institutionalization of persons with disabilities. In the words of the Supreme Court, services to persons with disabilities must be provided "in the most integrated setting possible."

The Supreme Court held that public entities are required to provide community-based services to persons with disabilities when

- (a) such services are appropriate;
- (b) the affected persons do not oppose community-based treatment; and
- (c) community-based services 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.

**DISABILITY RIGHTS  
ARE HUMAN RIGHTS**



JUNE IS  
**PTSD**  
AWARENESS  
MONTH



June is  
**ALSO**



Alzheimer's  
Awareness  
Month

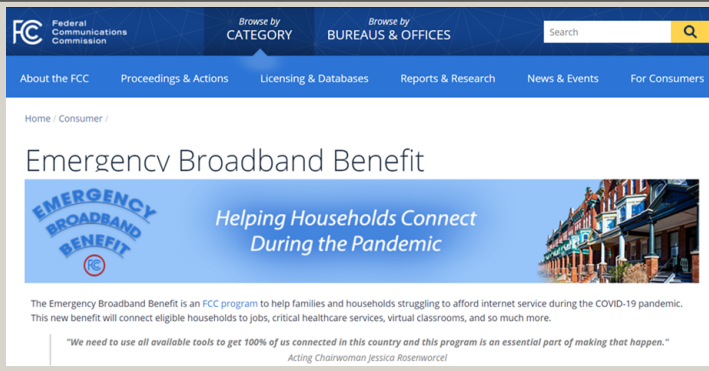
Flag Day

June 14



**MOVEMENT  
FORWARD**





Through the Federal Communications Commission, the **Emergency Broadband Benefit** will provide a discount of up to \$50 per month towards broadband service for eligible households and up to \$75 per month for households on qualifying Tribal lands. Eligible households can also receive a one-time discount of up to \$100 to purchase a laptop, desktop computer, or tablet from participating providers if they contribute more than \$10 and less than \$50 toward the purchase price. The Emergency Broadband Benefit is limited to one monthly service discount and one device discount per household.

The CARES Act allowed centers to assist people with digital access to their services -- remote Independent Living skills classes, face to face (peer support) calls, and as a bonus all the other digital access your community provides. CILs purchased or loaned tablets and laptops to consumers and were able to pay for some of their wireless bills. And CILs have realized that they can't pay for this access long term, and something must be done to allow folks to continue to access their digital world. Centers who did not benefit from CARES Act and areas where their resources are spent are looking for other funding for consumers.

This program is administered through local broadband providers so individuals can go to their participating broadband provider directly and apply through them (in Wyoming, go to: <https://www.fcc.gov/emergency-broadband-benefit-providers#Wyoming>). Another choice is to go to [GetEmergencyBroadband.org](https://www.getemergencybroadband.org) and apply there. It is also possible to visit [fcc.gov/broadbandbenefit](https://www.fcc.gov/broadbandbenefit) for a webinar that provides an overview, and to get other information. The ASL phone line is **844-432-2275**.

### Who Is Eligible for the Emergency Broadband Benefit Program?

A household is eligible if a member of the household meets one of the criteria below:

- Has an income that is at or below 135% of the Federal Poverty Guidelines or participates in certain assistance programs, such as SNAP, Medicaid, or Lifeline;
- Approved to receive benefits under the free and reduced-price school lunch program or the school breakfast program, including through the USDA Community Eligibility Provision in the 2019-2020 or 2020-2021 school year;
- Received a Federal Pell Grant during the current award year;
- Experienced a substantial loss of income due to job loss or furlough since February 29, 2020 and the household had a total income in 2020 at or below \$99,000 for single filers and \$198,000 for joint filers; or
- Meets the eligibility criteria for a participating provider's existing low-income or COVID-19 program.

## WHAT IS THE EMERGENCY BROADBAND BENEFIT (EBB) PROGRAM?

The *EBB* program was launched by the *Federal Communications Commission (FCC)* on May 12 to help connect families in need and enable affordable access to education, work, telemedicine, and all aspects of basic life which now occur online. *Broadband services cover devices, landline connections, and wireless connections (including mobile connections).*

## RESOURCES

- **Apply today:**  
[www.getemergencybroadband.org](http://www.getemergencybroadband.org)
- **List of providers:**  
[bit.ly/EBBproviders](https://bit.ly/EBBproviders)
- **EBB Frequently Asked Questions:**  
[bit.ly/EBB\\_faq](https://bit.ly/EBB_faq)
- **EBB Eligibility Verification Chart:**  
[bit.ly/EBBverify](https://bit.ly/EBBverify)
- **Google Drive Folder of Additional Resources:**  
[bit.ly/EBBbasics](https://bit.ly/EBBbasics)

**DON'T DELAY**



### Enforceable Accessible Medical Equipment Standards: A Necessary Means to Address the Health Care Needs of People with Mobility Disabilities

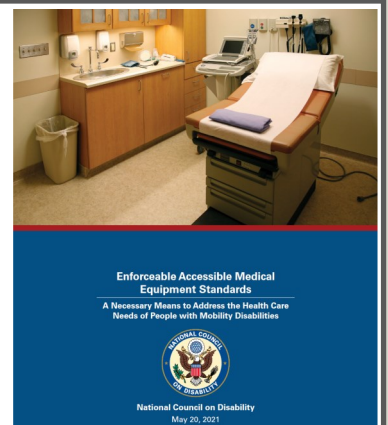
The National Council on Disability (NCD) released this report (cover depicted on the right), calling on federal agencies to issue regulations, update technical assistance materials, and establish training requirements related to accessible medical diagnostic equipment.

For read the report, go to: [https://ncd.gov/sites/default/files/Documents/NCD\\_Medical\\_Equipment\\_Report\\_508.pdf](https://ncd.gov/sites/default/files/Documents/NCD_Medical_Equipment_Report_508.pdf).



### National Council on Disability

An independent federal agency committed to disability policy leadership since 1978





## What People with Disabilities Need to Know about COVID-19

### Dashboard for Accessibility Rankings of State Vaccine Websites

The tool includes accessible data visualizations and expands a recently-launched effort to help people with disabilities determine when they qualify for the COVID-19 vaccine

Johns Hopkins University has launched a tool to measure and rank the accessibility of state vaccine information websites. According to reports, the common barrier to vaccines for people with disabilities is the accessibility of information. Often state websites rely on charts and tables that can be difficult or impossible for people with vision impairments and other disabilities to read.

The dashboard was created as a partnership between the Johns Hopkins Disability Health Research Center and the Center for Dignity in Healthcare for People with Disabilities as a starting point for understanding how the disability community is prioritized in COVID-19 vaccine distribution and intends to help people with disabilities determine when they qualify for a COVID-19 vaccine in their state. The dashboard tool tracks vaccine prioritization plans across five categories for the 50 US states, 5 US territories, and the District of Columbia:

1. Long-term care settings, such as nursing homes
2. Other types of congregate care settings, including group homes
3. People with chronic conditions
4. Additional disability-related groups, including three main groups: (1) people with disabilities who receive direct support care in the community, (2) people with intellectual or developmental disabilities, or (3) recipients of certain Medicaid programs
5. Caregivers of people with disabilities living at home, including both paid and unpaid caregivers

The Johns Hopkins Disability Health Research Center COVID-19 Vaccine Dashboard (link: <https://disabilityhealth.jhu.edu/vaccine-2/>) was created to not only help the disability community get vaccinated, but arm policymakers with data to improve the system. The dashboard expands a recently-launched effort to help people with disabilities determine when they qualify for the COVID-19 vaccine and how different states prioritize the disability community in the vaccine rollout. The dashboard will soon expand further to begin ranking the accessibility of state vaccine registration sites.

The dashboard tracks the accessibility of state and U.S. territory COVID-19 vaccine information websites, and update that information weekly. As of April 6, 2021, the top five most accessible sites according to the tool were: Minnesota, Kansas, Louisiana, California, and Washington. The least accessible states are: Virginia, Illinois, Arizona, Mississippi, and Maryland. (Note: Since the publication of this article, Maryland has moved up to No. 7 in vaccine website accessibility.) As of April 21, 2021, **Wyoming** ranked No. 55 of 57.

People with disabilities can fall into any vaccine prioritization category. Data on vaccine prioritization of five groups is collected from state or territory health department websites by scanning for keywords such as chronic conditions, congregate care, group homes, long-term care, and developmental disabilities. The most up-to-date information available is abstracted and recorded, and each week a random sample of 10 states or territories undergo double data abstraction and data entry for quality control. The dashboard may not reflect current status in each state and persons are encouraged to contact their local health department and provider.

To read more, go to: <https://hub.jhu.edu/2021/04/06/data-visualization-dashboard-ranks-vaccine-websites/>.



### Vaccine Prioritization Dashboard

This dashboard was created as a partnership between the [Johns Hopkins Disability Health Research Center](#) and the [Center for Dignity in Healthcare for People with Disabilities](#) as a starting point for understanding how the disability community is prioritized in COVID-19 vaccine distribution and intends to help people with disabilities determine when they qualify for a COVID-19 vaccine in their state.

| Dashboard (As of 4/21/2021) |                |                             |  |  |  |
|-----------------------------|----------------|-----------------------------|--|--|--|
| Overall Accessibility Rank  | State          | Overall Accessibility Score |  |  |  |
| 51                          | New Mexico     | 472                         |  |  |  |
| 52                          | Virginia       | 491                         |  |  |  |
| 53                          | American Samoa | 499                         |  |  |  |
| 54                          | Illinois       | 522                         |  |  |  |
| 55                          | Wyoming        | 526                         |  |  |  |
| 56                          | Mississippi    | 530                         |  |  |  |
| 57                          | New Jersey     | 546                         |  |  |  |

Showing 51 to 57 of 57 entries Previous 1 2 3 4 5 6 Next

Note that the CDC's information page has been scored as well.

| State:  | Current phase as of 4-21-21: | Long term care phase: | Other congregate care settings phase: | Chronic conditions phase: | Other disability-related group phase: | Caregivers for people with disabilities phase: |
|---------|------------------------------|-----------------------|---------------------------------------|---------------------------|---------------------------------------|--|
| Wyoming | Eligibility for anyone 16+   | 1A                    | 1C                                    | 1B / 1B / 1C              | 1B                                    | 1A / 1B  |

Showing 1 to 1 of 1 entries (filtered from 56 total entries) Previous 1 Next



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#### RESOURCES

NCSL COVID-19 Resources for States

#### CONTACT

Josh Cunningham

#### Labor and Employment

All Documents

Collective Bargaining

Disability Employment

### COVID-19 and Employment for People With Disabilities



### COVID-19 and Employment for People With Disabilities

According to Josh Cunningham and Saige Draeger with the National Conference of State Legislatures, as the COVID-19 pandemic emerged in early 2020, the nation was launched into an economic recession leading to millions of job losses. For people with disabilities, the pandemic presents new challenges and new opportunities to securing and maintaining employment. Increased health risks at the workplace may limit employment opportunities for many Americans with medical conditions that make them more susceptible to COVID-19. But a rapid shift to e-commerce and teleworking may make previously-unviable jobs available to people with mobility challenges. As local, state and federal governments shift into economic recovery mode, policymakers may want to consider workforce development strategies that are inclusive of workers with disabilities.

NCSL's new report series tackles critical ways COVID-19 is impacting people with disabilities. Each report provides policymakers with resources to navigate the various federal actions in response to the pandemic as well as state policy options available to lawmakers to help enhance employment opportunities for people with disabilities.

The reports in the series are:

- The Pandemic's Effect on the Economy and Workers
- The Promise of Telework
- Making Work Safe and Accessible During the Pandemic
- Apprenticeships and Upskilling During COVID-19

This report series was created as part of NCSL's collaboration with the State Exchange on Employment and Disability (SEED). SEED is an initiative funded by the U.S. Department of Labor's Office of Disability Employment Policy (ODEP) that assists states in developing effective and inclusive workforce policies that promote disability employment.

To read the reports or learn more, go to: <https://www.ncsl.org/research/labor-and-employment/covid-19-and-employment-for-people-with-disabilities.aspx>

THINK POSITIVE  
&

KEEP  
INFORMED





## Easterseals Study on the Impact of COVID-19 on People with Disabilities Executive Summary & Key Findings

May 2021



## Easterseals Study on the Impact of COVID-19 on People with Disabilities: Executive Summary & Key Findings

Easterseals commissioned a comprehensive national study to better understand COVID-19's impact on the disability community. The study (cover depicted above) identifies many disparities experienced by people with disabilities during the pandemic, in areas such as health care, employment, and education.

To read the study, go to: <https://www.easterseals.com/shared-components/document-library/media-room/easterseals-study-on-the-impact-of-covid-summary.pdf>.

## ADA and Accommodation Lessons Learned: COVID-19 Edition



An article from the Job Accommodation Network (JAN) shares a list of five ADA accommodation "lessons learned" over the past pandemic year. Throughout the pandemic, JAN staff consulted with thousands of businesses, government employers, and individuals with medical conditions that have been impacted by circumstances linked to COVID-19. This experience identified many lessons about engaging in the ADA interactive process and exploring new ways to accommodate workers in a pandemic. Several lessons learned were shared during the JAN Webcast Series presentation titled ADA and Accommodation Lessons Learned: COVID-19 Edition (link: <https://askjan.org/events/index.cfm?calview=eventdetails&dtid=20E7432B-DB6B-0C59-9816AA1082196F3A>). Moving forward, many lessons will likely inform accommodation policies and practices and the future of work for everyone, but especially workers with medical conditions.

**Lesson 1:** Recognize when the ADA is triggered and respond accordingly.  
**Lesson 2:** It might be necessary to adapt the interactive process to shorten or forgo the collection of medical information in a pandemic situation.

**Lesson 3:** Job restructuring might include temporarily changing whether or how essential functions are performed but these functions can be restored when the employer chooses.

**Lesson 4:** Return to work accommodations are not one size fits all.

**Lesson 5:** State requirements can impact the ADA interactive process.

To read the article, go to: <https://askjan.org/blogs/jan/2021/03/accommodating-employees-with-covid-19-related-symptoms.cfm>

## All of a Sudden — 22



This June marks the twenty-second anniversary of the *Olmstead v. L.C.*, decision by the United States Supreme Court, which came down on June 22, 1999. Somehow, there was a circuitry present prompted by the number "22." Of course, when one refers to "circuitry," there are connotations of a lengthy course or complexity, in which a roundabout quality may exist.

There is no doubt that the passage of the ADA fueled the outcome of the *Olmstead* decision. In many ways, the objectives of the ADA would intertwine to reinforce the legal right of people with disabilities to be given meaningful opportunities to enjoy privileges most people without disabilities take for granted. It was also the flip side to accessibility. It was necessary to achieve the integration mandates and recognize that institutionalization, especially unnecessary institutionalization, created barriers from people with disabilities experiencing independence in settings that expanded their opportunities to seek lives and purpose. It prompted states to develop community programs and services to facilitate the movement from institutional life to life in one's community with needed supports. The time had come.

Over the years, many states facing litigation were required to develop *Olmstead* plans to systematically achieve integration. Although needing the potential of unfavorable outcomes that would require this movement, progress was being seen.

In 2020, the pandemic reared its scary head. It continues through this 2021, and although headway appears to be taking hold, there are tough economic realities are also evident. Not the least of these impacts are felt by funding shortages or terminations directed at community programs and services. What will 2022 bring? Again, the number "22" emerges.

The pandemic caused real disruptions in ordinary life for most of us. These disruptions prompted creative methods to move forward. More methods to compensate emerged, which generated changes in workplaces and at home. The adjustments were not convenient but necessary. We learned that the pandemic had not won and we could do what needed to be done.

It would truly be unfortunate if the pandemic results in the proverbial "two steps back." Perhaps, however, 2022 will be a breakthrough despite the challenges. Perhaps, the circuitry of "22" will be a rallying call for the long journey not yet over. Not by a long shot.

Robert Walters, P&A Staff Attorney



FOR MORE  
INFO

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