

# Community Integration of People with Disabilities: Can *Olmstead* Protect Against Retrenchment?

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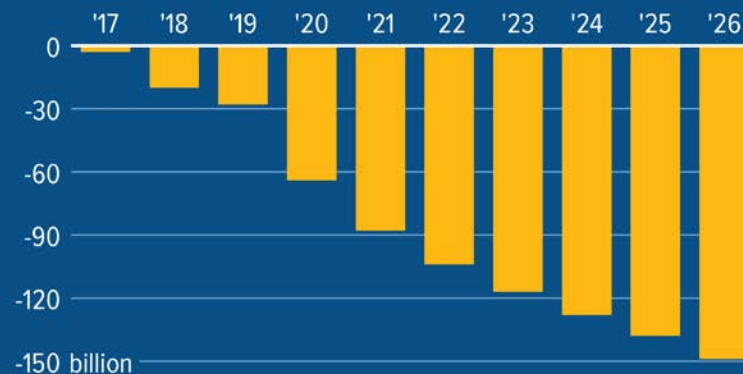


# A preview

- Threat to community integration posed by Republican health care proposals
- *Olmstead's* role in promoting community integration
- *Olmstead* as a potential bulwark against re-segregation
- The power of protest

# Repeal and replace ... Medicaid?

WHAT HASN'T  
CHANGED IN THE  
NEW HOUSE ACA  
REPEAL BILL:  
**\$839 BILLION  
IN MEDICAID  
CUTS**



Source: Congressional Budget Office

CENTER ON BUDGET AND POLICY PRIORITIES | CBPP.ORG

# Proposed Medicaid cuts would “risk a return to widespread institutionalization.”

*-Vallas et al., Center for American Progress, 2017*



Optional HCBS programs/funding streams are low-hanging fruit for state policy-makers figuring out how to absorb cuts



# Decades of re-balancing at risk?

- Congressional creation of *optional* ways for states to cover HCBS eroded Medicaid's bias toward institution-based care (a *mandatory* coverage item)
- 2013: For the first time a majority of Medicaid long-term care spending went to HCBS



# *Olmstead v. L.C. ex rel. Zimring* (1999)



“Unjustified isolation ... is properly regarded as discrimination based on disability.”

States’ failure to provide services to disabled persons in the community *may* violate the ADA, but not if “immediate relief ...would be inequitable”

*Olmstead*: sword or shield?





# Applying *Olmstead* to a retrenchment of HCBS

“A public entity shall make reasonable modifications in policies, ... when .... necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program or activity.” 28 CFR §35.130(b)(7)

- Maintaining the status quo as a fundamental *alteration*?
- Budgetary impact alone does not constitute fundamental alteration
- State has burden of demonstrating program-wide savings to Medicaid from eliminating/limiting HCBS programs

# Moral outrage and the power of protest

