



# Commemorating 40 Years Of Disability Advocacy 1973-2013

September 3, 2013

Secretary Shaun Donovan,  
U.S. Department of Housing and Urban Development

Secretary Kathleen Sebelius,  
U.S. Department of Health and Human Services

Ms. Sylvia Mathews Burwell,  
Director, White House Office of Management and Budget

Ms. Cecilia Muñoz,  
Director, White House Domestic Policy Council

Ms. Claudia L. Gordon,  
Associate Director of Public Engagement, White House Office of Public Engagement

Dear Secretary Donovan, Secretary Sebelius, Director Burwell, Director Muñoz, and Associate Director Gordon,

As Co-Chairs of the Consortium for Citizens with Disabilities Housing Task Force (CCD), and in partnership with the Technical Assistance Collaborative (TAC), we are writing to urge the Obama Administration to undertake a groundbreaking interagency supportive housing initiative for FY 2015. This federal initiative would be anchored by a U.S. Department of Housing and Urban Development (HUD) request for \$100 million in new Section 811 Project Rental Assistance (Section 811 PRA) funding in the President's FY 2015 Budget.

The CCD is a coalition of over 100 national consumer, advocacy, provider, and professional organizations working together with and on behalf of children and adults with disabilities and their families living in the United States. In partnership with TAC, a national non-profit organization, the CCD Housing Task Force advocates on behalf of the housing needs of people with a variety of disabilities, including developmental disabilities, mental illness, sensory disabilities, physical disabilities, and intellectual disabilities.

Working in partnership with the U.S. Department of Health and Human Services (HHS), these HUD Section 811 PRA funds are needed to inaugurate a critically important, high profile state-driven supportive housing initiative to create 8,000 or more new supportive housing opportunities for the most vulnerable people with disabilities who either reside in high cost institutional settings or who are homeless/chronically homeless and most at-risk of institutionalization. This HUD-HHS initiative will also stimulate systematic, sustainable and highly cost effective state-driven policies to seamlessly combine both federal and state resources – including Section 811 PRA and Medicaid – to expand integrated supportive housing at the scale needed to ensure state compliance with the Americans with Disabilities Act (ADA) and to achieve the federal goal to end chronic homelessness.

## The Need

As you know, the need for this type of federal supportive housing initiative in partnership with the states has never been greater. *Olmstead* Settlement Agreements<sup>1</sup> in multiple states require the creation of 40,000 or more new integrated supportive housing units accompanied by a significant expansion of Medicaid-financed community-based care in the next 3-5 years. Most of these Settlement Agreements are the result of aggressive efforts by the Civil Rights Division of the U.S Department of Justice (DOJ) to enforce the ADA. DOJ *Olmstead*-related investigations are also pending in a number of other states.

Many states are also re-evaluating their long-term care policies and systems from a budgetary and policy perspective. Through the Affordable Care Act (ACA) and federal initiatives such as Money Follows the Person (MFP), states are working to reduce their reliance on high cost institutional facilities and expand more cost-effective community-based care. Public officials are also developing a stronger understanding of the correlation between *Olmstead*/institutionalization and homelessness among people with disabilities, particularly those with mental illness who frequently cycle between living in high cost institutional settings and homelessness.

Despite the best efforts of states and their local partners to expand integrated supportive housing opportunities for people with disabilities who are homeless or in institutional settings, the extreme shortage of rental housing subsidies is a major barrier for all the states working to achieve this goal. These most vulnerable people with disabilities typically must rely on Supplemental Security Income (SSI) – the federal income maintenance program for people with the most significant disabilities who have virtually no assets – for all their basic needs, including housing.

*Priced Out in 2012*, the most recent CCD and TAC study of SSI and housing affordability, found that without a permanent rent subsidy such as Section 811 PRA, people who rely on SSI are completely priced out of the nation's housing market. In 2012, the national average SSI payment for an individual living independently in the community in 2012 was only \$726 monthly<sup>2</sup>, while the national average rent for a modest one bedroom apartment<sup>3</sup> was \$755 – 104 percent of SSI. Even studio/efficiency units cost 90 percent of SSI in 2012. Not surprisingly, this huge disparity between income and rents is also a major cause of institutionalization and homelessness among people with disabilities.

On July 18, 2013, Senator Tom Harkin, Chairman of the U.S. Senate Health, Education, Labor, and Pensions (HELP) Committee released a new report, *Separate But Unequal: States Fail to Fulfill the Community Living Promise of the Americans with Disabilities Act*. This important report on state efforts to comply with the ADA recommends that the Secretaries of HUD and HHS inform the governors how states can best leverage federal housing subsidies with HHS policies as part of a national action plan to expand access to affordable, integrated, accessible and scattered site housing for people with disabilities. CCD and TAC believe that a robust \$100 million HUD Section 811 PRA initiative in partnership with HHS in FY 2015 provides an ideal foundation for this expansion of supportive housing.

To produce their report, the HELP Committee received information and data from 31 of the 50 states that sheds new light on the extraordinarily high cost of institutional models of long-term care, and the

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<sup>1</sup> The U.S Supreme Court's *Olmstead vs. LC* decision in 1999 has resulted in numerous recent *Olmstead* Settlement Agreements pertaining to adults with disabilities, including the states of Rhode Island, New York, Connecticut, Delaware, New Jersey, Pennsylvania, North Carolina, Virginia, Texas, Illinois (3 separate Settlement Agreements), Arkansas, and Georgia. Several other states have active *Olmstead* investigations underway and/or have been issued a U.S. Department of Justice "Findings" letter.

<sup>2</sup> This national average includes the federal SSI payment plus any state SSI supplemental payment for people living independently in the community.

<sup>3</sup> The *Priced Out* study compares SSI payments received by people with disabilities living independently in the community to HUD Fair Market Rents for modest rental units.

need for states to access federal resources such as HUD's Section 811 PRA subsidies. Key data from the report includes the following:

- Thirty-eight studies published from 2005 to 2012 found that providing HCBS [Home and Community-Based Services] is less costly than providing institutional care;
- Fourteen states responding to Senator Harkin's survey provided data showing that the average cost for individuals in nursing or intermediate care facilities is greater than the cost per person of providing HCBS. Examples include: \$300 million in savings by the State of Arizona; a HCBS program in Washington that serves seven individuals in the community at the same cost as serving a single individual in an institutional setting; and \$25,000 saved per person in Alabama's Independent Living program compared to an Alabama nursing facility;
- Approximately 200,000 individuals younger than 65 reside in nursing homes – almost 16 percent of the total nursing home population.

It is clear that to address *Olmstead* and state efforts to comply with the ADA – and to finish the job of ending chronic homelessness for an estimated 100,000 people with significant disabilities and chronic health conditions – a bold federally lead supportive housing initiative in partnership with the states is needed.

### **Why Section 811 PRA?**

A robust HUD-HHS Section 811 PRA initiative for FY 2015 provides the ideal foundation to rapidly accelerate state-driven supportive housing activity to meet these needs:

- States have already indicated their positive support for the innovations included in the new Section 811 PRA program through their robust response to the HUD FY 2012 Notice Of Funding Availability (NOFA) for Section 811 PRA<sup>4</sup>;
- The Section 811 PRA option is the only HUD supportive housing program requiring a formal Interagency Partnership structure between the State Housing Agency and the State HHS/Medicaid agencies. This partnership is essential for states to significantly expand sustainable models of integrated supportive housing through the Medicaid program;
- Section 811 PRA subsidies are more cost effective than other HUD subsidy programs. The average one year PRA subsidy cost from the FY 2012 competition is approximately \$5,000 per year – significantly less than the average annual cost of a Non-Elderly Disabled (NED) Housing Choice Voucher or a Shelter Plus Care project-based subsidy. In addition, the capital cost of PRA units is covered through mainstream affordable housing financing programs primarily controlled by State Housing Agencies;
- The FY 2012 Section 811 PRA applications also indicate that innovative HUD policies to leverage Section 811 PRA funding to secure additional rental subsidies to expand supportive housing are highly feasible. For example, the State of Illinois will be doubling the number of subsidies that will be provided by obtaining commitments of an equal number of non-PRA rental subsidies. Using this HUD leveraging policy in FY 2015 would mean that 8,000 or more new supportive housing units could be secured from a federal investment of \$100 million in PRA funds;
- Section 811 PRA is the only HUD supportive housing resource that can be highly targeted to the highest cost chronically homeless and institutionalized populations, and therefore has the greatest potential to lower health care costs through innovative Medicaid service approaches/definitions.

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<sup>4</sup> 35 of the 50 states plus the District of Columbia applied for competitive Section 811 PRA funding the first year it was made available, an extraordinary response for the first year of an innovative supportive housing program with complex interagency partnership application requirements.

A Section 811 PRA supportive housing initiative is also essential because certain barriers in HUD's mainstream housing programs continue to prevent a robust expansion of supportive housing with HUD mainstream resources such as Housing Choice Vouchers and federal public housing units. Specifically:

- The negative effects of sequestration policies have significantly reduced the availability of turnover Housing Choice Vouchers and prevented needed repairs to substandard public housing units;
- Current HUD tenant selection preference policies are a major barrier to efficiently using HUD's mainstream programs to expand supportive housing. In many instances, these policies do not permit supportive housing opportunities created with Housing Choice Vouchers, federal public housing units, and HUD Assisted Housing, etc. to be targeted effectively to specific populations targeted by the state to receive certain Medicaid-financed supportive services unless HUD's Office of General Counsel approval is obtained.<sup>5</sup> As a result for the foreseeable future, states desiring to expand supportive housing at scale for both institutionalized and homeless people with disabilities will look to the Section 811 PRA program to help fund this expansion.

### **Designing the FY 2015 Section 811 PRA Initiative**

HUD's innovative FY 2012 PRA NOFA – undertaken in partnership with HHS – resulted in numerous policy responses from the states that could be further leveraged in a FY 2015 HUD-HHS Section 811 PRA initiative. CCD and TAC are also committed to continuing our efforts with the Melville Charitable Trust and other philanthropic partners to provide the technical assistance that may be needed to help position states with promising supportive housing models and policies to be competitive in the FY 2015 HUD NOFA process. We also plan to offer some of this technical assistance in the very near future, beginning in the fall of 2013 and continuing in 2014.

The CCD Housing Task Force and TAC believe the Section 811 PRA initiative policies suggested below would produce numerous competitive Section 811 PRA applications from the states in FY 2015, including replicable strategies to significantly expand the creation of new integrated supportive housing units. We recommend that HUD and HHS:

1. Highly target FY 2015 PRA funding to states that agree to assist the highest cost populations of people with disabilities who are institutionalized, or homeless. HUD and HHS could require hard data on the cost of these individuals in their current settings, as well as the cost savings which are proposed to be achieved through the PRA initiative;
2. Incentivize or require states to achieve at least a 1:1 leveraging of PRA units to non-PRA units. This policy would produce as many as 8,000 new supportive housing units, rather than the estimated 4,000 that could be created solely through \$100 million PRA funding. TAC also proposes to use philanthropic funding to provide the technical assistance necessary for states with Olmstead Settlement Agreements or Olmstead Plans that require state subsidy programs to achieve this goal;
3. Incentivize or require states to achieve the lowest possible PRA subsidy costs through creative financing that produces units at 30-40 percent AMI rents. TAC proposes to use philanthropic

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<sup>5</sup> For example, according to HUD's Section 504 regulations, it is discriminatory to create a tenant selection preference in the Housing Choice Voucher program or the Shelter Plus Care program for chronically homeless persons with mental illness, and/or institutionalized persons with mental illness, who would qualify for Assertive Community Treatment (ACT) services funded under Medicaid's Rehabilitation option because this preference would discriminate against other chronically homeless people who do not qualify under Medicaid's rules to receive ACT services. This policy is a barrier to the essential partnerships that need to be created between housing providers and mental health service providers who are certified to bill Medicaid for ACT services.

funding to provide the technical assistance necessary for states with creative affordable housing financing models to achieve this goal;

4. Incentivize or require that states utilize the innovations available through the ACA and the Medicaid program to ensure that the highest cost supportive housing tenants receive the medically necessary housing-related services and supports they need in order to achieve and maintain housing stability. TAC proposes to use philanthropic funding to provide the Medicaid technical assistance necessary for states to modify their Medicaid policies in order to achieve this goal;
5. To create equitability and a streamlined systems approach in the selected states, incentivize/require that states administer the non-PRA subsidies leveraged in the application in a manner consistent with Section 811 PRA policies in terms of tenant rent policies, Fair Market Rents, housing quality, leasing, etc. This policy will help create a “level playing field” between PRA and non-PRA subsidy resources, and could help states improve the design of state-funded subsidies.<sup>6</sup>

The CCD Housing Task Force and TAC recognize that the current budgetary environment is extremely difficult, but we also believe that innovative programs and policies – such as the Section 811 PRA option authorized by the Melville Act and the Obama Administration’s signature achievement through the ACA – are part of the solution to the budgetary problems that lay ahead. We also urge HUD, HHS, the White House Office of Management and Budget and the White House Domestic Policy Council to work together – and with the Congress – to reform rigid and outdated scoring criteria that prevent innovative cross-agency supportive housing initiatives from moving forward.

Identifying, shaping, and replicating highly cost effective and proven models of intervention for the most vulnerable populations – such as integrated supportive housing – are policies that must be embraced as the nation moves forward. HUD and HHS have taken bold and creative steps towards those types of policies, and a \$100 million FY 2015 HUD-HHS Section 811 PRA initiative will promote and ensure that essential systematic changes to community-based systems for people with disabilities continue to be put in place as a legacy of the Obama administration’s housing and health care reforms.

Sincerely,

Andrew Sperling, National Alliance on Mental Illness

T.J. Sutcliffe, The Arc of the United States

Co-Chairs of the CCD Housing Task Force

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<sup>6</sup> It is very important that state-funded rental subsidies created through Olmstead Settlement Agreement requirements follow federal housing policies with respect to rent levels, tenant rent, leasing policies, etc. Otherwise, the state subsidies created can have the effect of undermining federal subsidy program requirements. For example, if state subsidy rent requirements permit rents higher than local PHA payment standards, local landlords could begin discriminating against HUD Housing Choice Voucher or Shelter Plus Care recipients. Similarly, tenants with state-funded “bridge” rental subsidies that are not required to pay a tenant rent contribution will have no incentive to apply for PHA resources which require a 30 percent rent contribution.