

Chronic Conditions and Disability Policy: An Overview of Selected Issues

Joel Teitelbaum, J.D., LL.M.

Alexandra Stewart, J.D.

Marisa Cox, M.A.

Center for Health Services Research and Policy
School of Public Health and Health Services
The George Washington University Medical Center

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Session Objectives

- **U**nderstand the major disability issues shaping local and national policymaking, with a focus on appropriate housing and community-based services.
- **U**nderstand the movement to community integration for the delivery of supports to people with chronic conditions.
- **U**nderstand the critical role played by medical necessity and other definitions in public and private health insurance for persons with chronic conditions.

Facts of *Olmstead v. L.C.* (527 U.S. 581 (1999))

1. Two women, diagnosed with mental health disabilities.
2. Residents of a Georgia public hospital, receiving psychiatric treatment.
3. Treatment team determined that institutionalized care was no longer necessary, community care appropriate.
4. Remained hospitalized for years despite the recommendation for community placement.
5. GA had funded only 700 of 2109 federally-approved community services program slots.

ADA Title II

Nondiscrimination Principle

“No qualified individual with a disability, shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs or activities of a public entity, or be subjected to discrimination by any such entity.”

Reasonable Modification Regulation

“A public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination based on disability...unless the public entity can demonstrate that making the modification would *fundamentally alter* the nature of the service, program or activity.” (emphasis added)

Most Integrated Setting Regulation

“A public entity shall administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.”

The Supreme Court Speaks: Title II and Community Placement

Unnecessary segregation of individuals with disabilities in institutions as a condition of treatment constitutes unlawful discrimination under Title II.

- Perpetuates incorrect assumptions;
- Diminishes individual's capacity for work, economic independence, cultural enrichment, etc.

States must make reasonable accommodations to ensure that services are furnished in the most integrated setting, or bear the burden of proving that integration would require fundamental alteration in existing programs.

Olmstead's Community Placement Requirement

Community Placement is Required When:

Treatment professionals have determined community placement is appropriate;

Transfer is not opposed by the affected individual; and

Community placement can be reasonably accommodated, taking into account resources available and needs of others.

Reasonable Modifications Standard

Satisfied if State has:

- *A comprehensive, effectively working plan* for placing persons with disabilities in less restrictive settings, and
- *A waiting list* that moved at a *reasonable pace* not controlled by the state's efforts to keep institutions fully populated.

Key Issues Shaping Policymaking: *HOUSING*

Barriers to Obtaining Housing:

- Affordability gap
- Lack of appropriate housing stock and long waiting lists
- Need for home-based long-term supports and services
- Discrimination in obtaining housing
- Resistance when requesting permission to alter housing units
- Lack of collaboration or policy development among various community and government agencies

Key Issues Shaping Policymaking: *HOUSING*

Characteristics of a Supportive Housing Model

- Government funded housing assistance
- Provides an individual control over the environment and housing
- Provides permanent housing
- Provides readily available individualized supportive services

Key Issues Shaping Policymaking: *HOUSING*

Recommended Fundamental Changes in Service Delivery

- Conversion of facility-based services to more flexible mobile services
- Assurance that services are accessible and responsive
- Integration of and communication between agencies
- Coordination of care among support housing environments

Key Issues Shaping Policymaking: *HOUSING*

The Situation in the District

- Housing Finance for Elderly, Dependent and Disabled (HoFEDD)
- Handicapped Access Improvements Program (HAIP)
- Senior Citizen Home Repair and Improvement Program (SCHRIP)
- Roofing Assistance Program (RAP)

Key Issues Shaping Policymaking: *HOUSING*

The Situation in the District

FY 2003 HUD Budget Requests Include

- Housing Opportunities for Persons with AIDS (\$11 million)
- Section 8 Incremental Vouchers (34,000 vouchers)
- Considering application of funding under HUD's Section 811 Program for Disabled Persons
- Community Development Block Grant Program (\$23.7 million)

Key Issues Shaping Policymaking: *IN-HOME SUPPORT*

Sources of Community Support

- Most people who receive services in the community rely on unpaid support from family members.
- Medicaid is the single largest provider of paid home health care, largely through the Home and Community-Based Care waiver program.
- State general funds
- Consumer out-of-pocket
- Private long-term insurers

Key Issues Shaping Policymaking: *IN-HOME SUPPORT*

Types of Services Provided:

- Case management
- Home health aide services
- Adult day health, habilitation
- Transportation
- Special communication services
- Minor home modifications
- Adapted equipment
- Occupational, speech, physical and behavioral therapy
- Homemaker services
- Personal care services
- Respite care
- Meal services
- Adult day care
- Psychosocial rehabilitation

Key Issues Shaping Policymaking: *IN-HOME SUPPORT*

Barriers to the Provision of In-Home Supports

- State governments are facing budget shortfalls
- Shortages of direct care workers
- Increasing numbers of persons competing for limited slots, producing long waiting lists

Key Issues Shaping Policymaking: *IN-HOME SUPPORT*

The Situation in the District

Three waiver programs each with an enrollment cap of 225 by year 3:

- Elderly Waiver (1/04/99) (current enrollment 175)
- Mental Retardation and Developmental Disabilities Waiver (9/1/98) (current enrollment 225)
- HIV/AIDS Waiver (1/1/97) (current enrollment unknown)

Key Issues Shaping Policymaking: *IN-HOME SUPPORT*

The Situation in the District

- In 2000, the District initiated three new Medicaid waiver programs targeted to various populations:
 - Aged and Disabled
 - Mentally Retarded
 - AIDS
- By FY 2001, expenditures for these programs totaled \$1.5 million.

“Most Integrated Setting” Complaints In the Wake of Olmstead: Who is Impacted by the Decision?

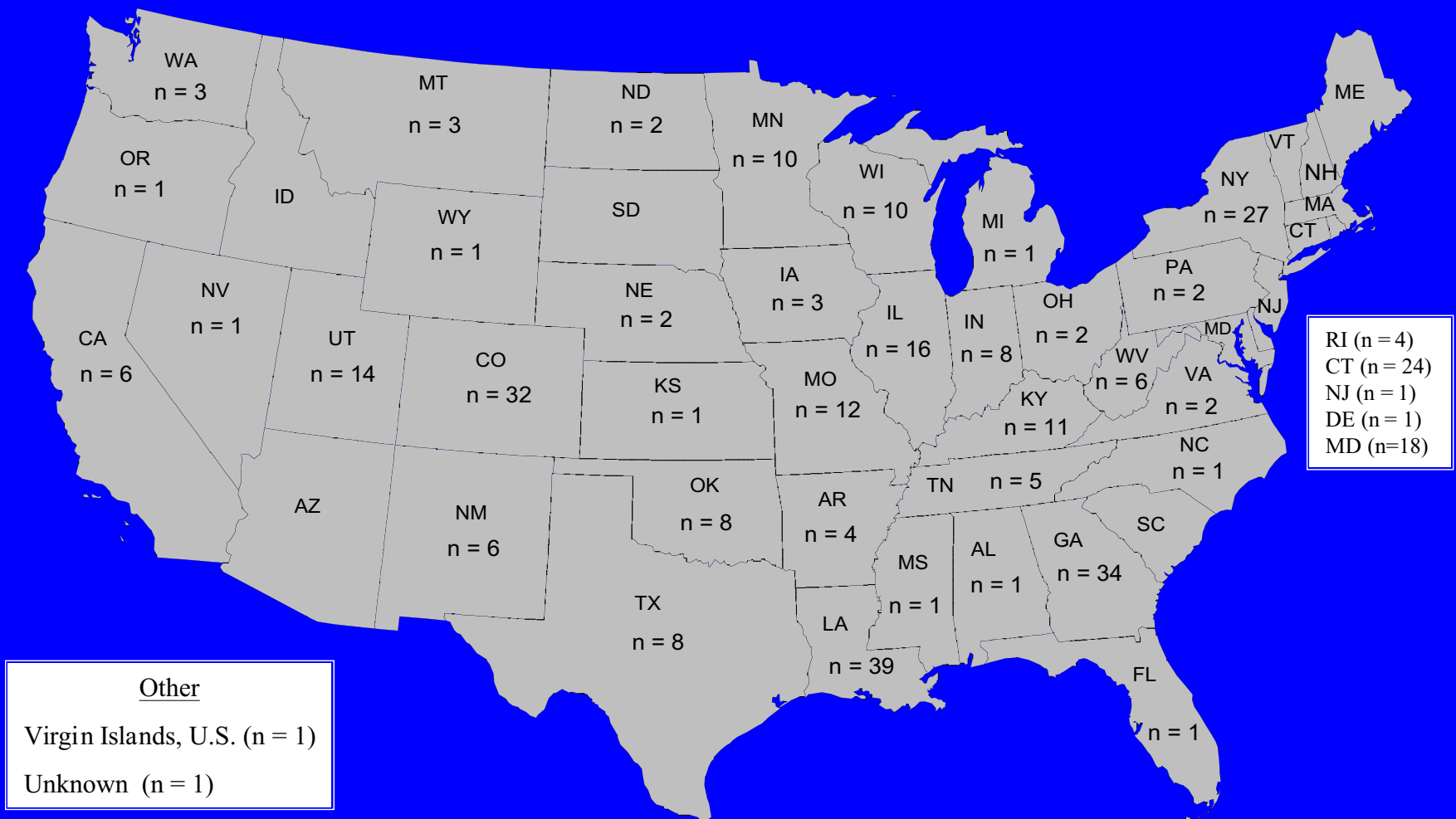
As of the summer of 2001, approximately 334 individual complaints were filed with the Office for Civil Rights in the U.S. Department of Health and Human Services.

Generally, the complainants are:

- Concentrated in certain regions of the nation;
- Of adult age; and
- Individuals with physical disabilities, either as a single diagnosis or in combination with one or more mental disabilities.

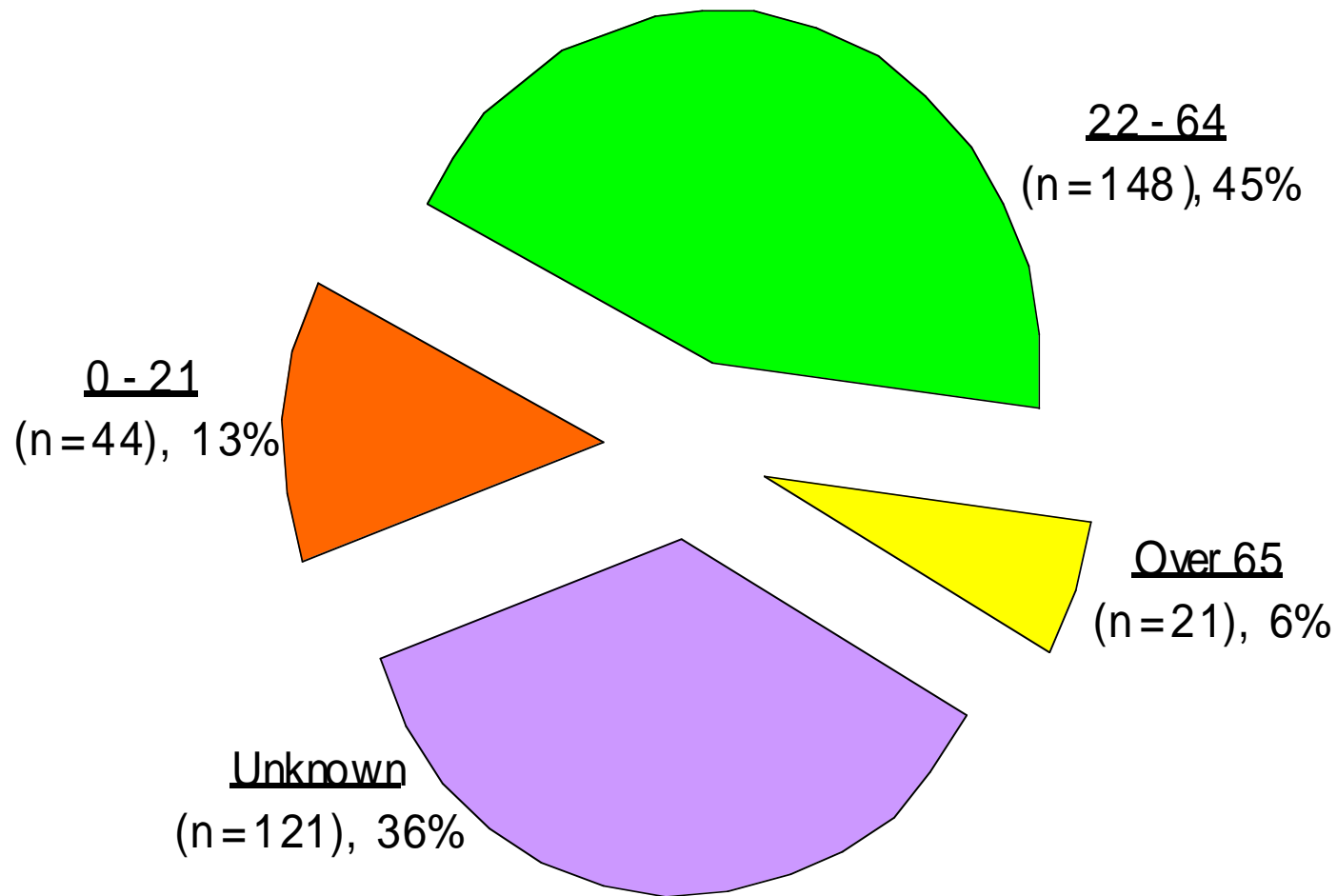
Identifying Olmstead Complainants

Total Complaints = 334



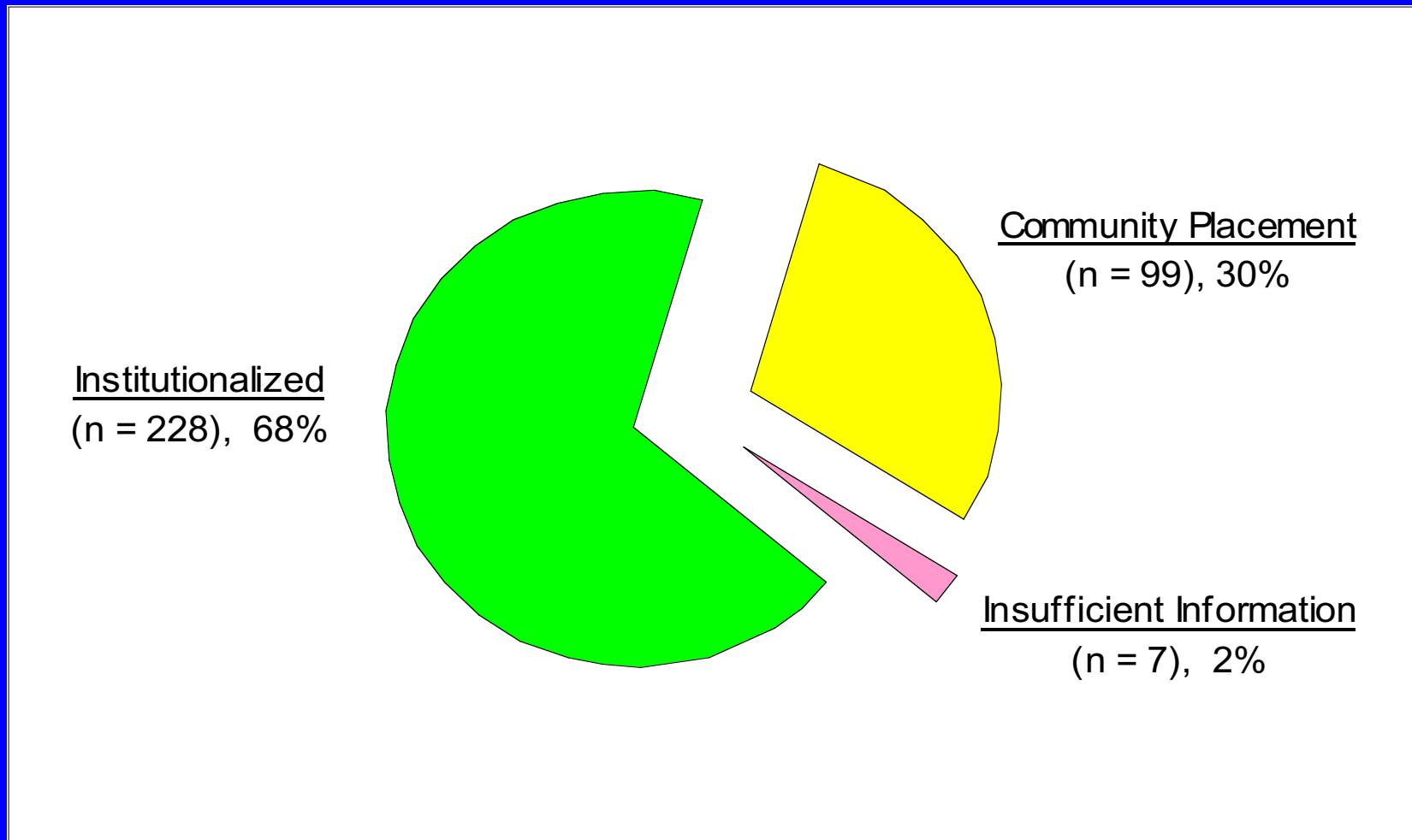
Age Range of Complainants

Total Complaints = 334



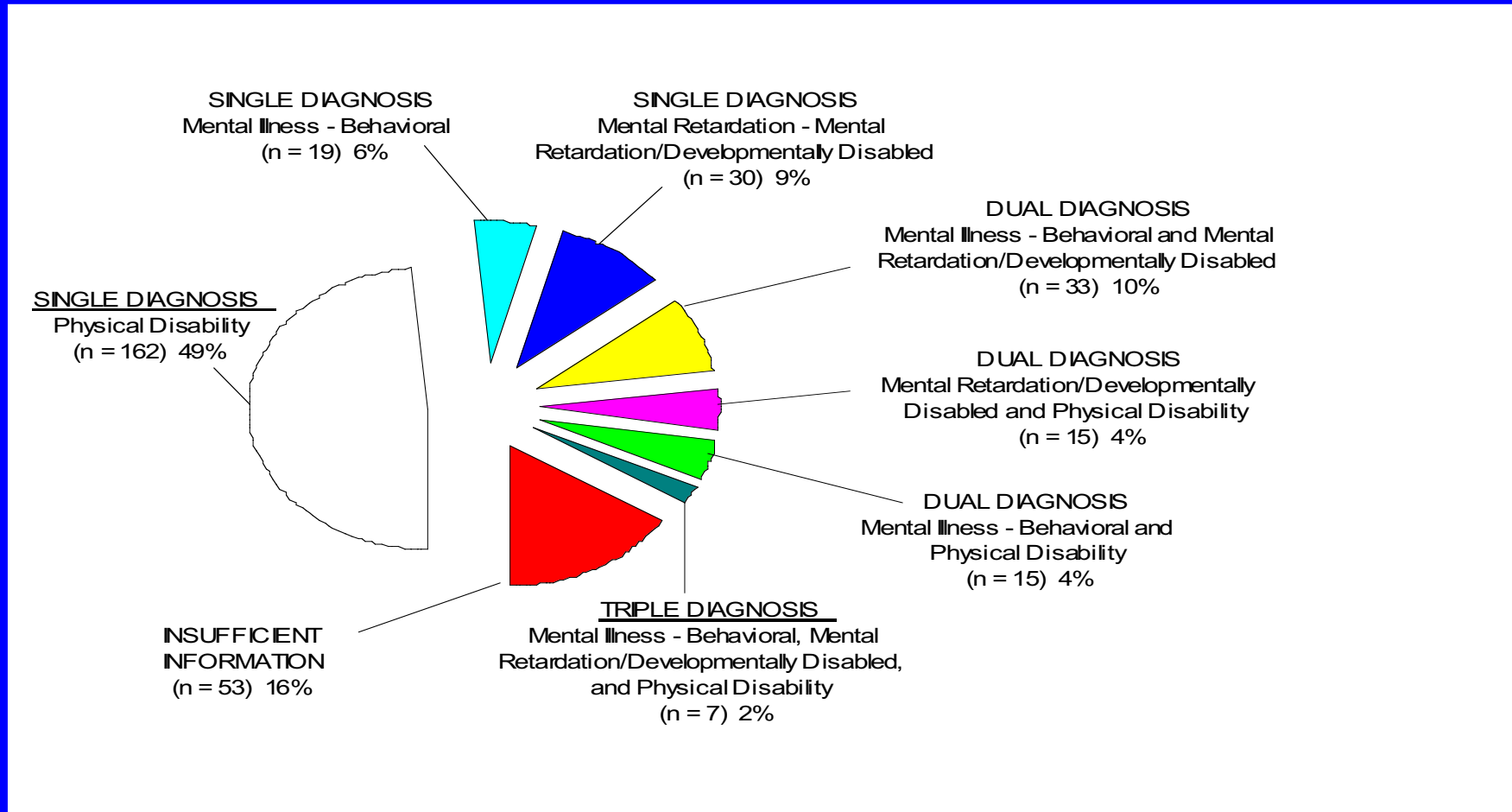
Complainant Residential Status

Total Complaints = 334



Nature of Complainant's Disability

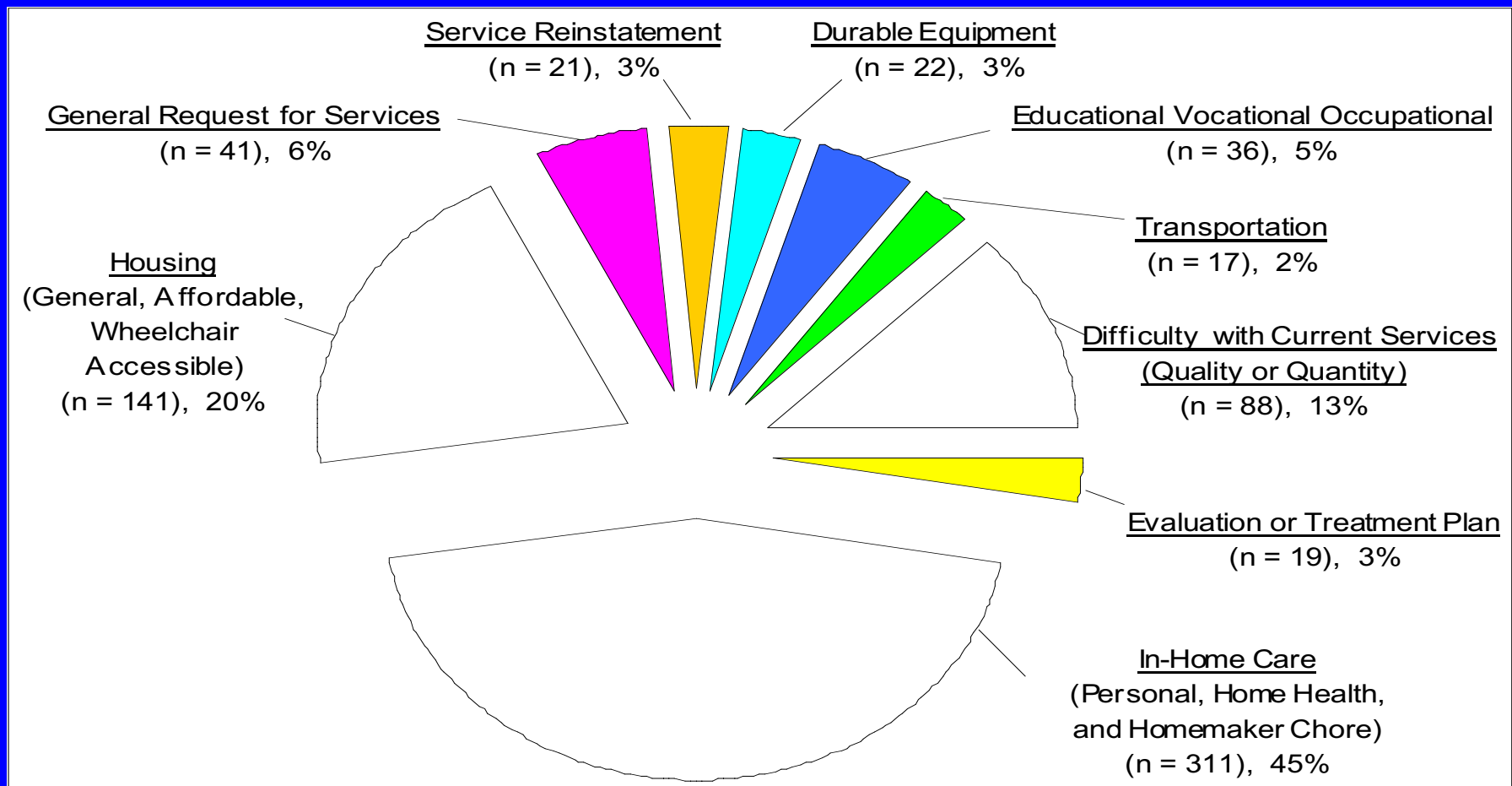
Number of Complaints = 334



Complainant's Service Requests

Total Complaints (n = 334)

Total Service Requests (n = 696)



Regulation of Private Insurance Coverage

State Law

- Health insurance policies are contracts that state law interprets according to 2 major principles:
 - Ambiguities are resolved against the drafter insurer
 - There is an implied covenant of Good Faith and Fair Dealing
- ERISA Preemption

Regulation of Private Insurance Coverage

Federal Law

The Employee Retirement Income Security Act of 1974 (ERISA)

- The statute applies to all employee benefits plans provided by private employers
- The statute preempts state law, including the laws governing insurance, contract, tort, and other law applicable to health plans.

Regulation of Private Insurance Coverage

The ADA

Does Title III Reach the Content of Private Insurance Policies?

Title III

“No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation
.....”

Regulation of Private Insurance Coverage

The ADA

Does Title III Reach the Content of Private Insurance Policies?

The Circuits are Split

- Circuits 1, 2: Title III Applies
- Circuits 3, 5, 6, 7, 9: Title III Does Not Apply
- Circuits 4, 8, 10, 11, DC: Question Has Not Been Addressed
- The Supreme Court will have to decide

Private Insurance Coverage: *Benefit Reductions*

HIV and “Fair Discrimination”

- Insurers are permitted to discriminate against persons with HIV/AIDS as long as the discrimination is FAIR.

BECAUSE

- The Unfair Trade Practices Act (UTPA), authorizes insurers to charge higher premiums to individuals with higher risk of illness, injury or death.

Private Insurance Coverage: *Benefit Denials*

Defining Medical Necessity

- Insurers will deny payment for services deemed not medically necessary as defined by the payer.
- Patients have challenged payment denials in state and federal courts,

HOWEVER

- The courts have not developed a consensus to define medical necessity

Private Insurance Coverage: *Benefit Denials*

Defining Medical Necessity

- 23 states have introduced legislation to define the term
- 3 states (ND, GA, MT) have enacted legislation

The Most Common Proposed State-offered Definition:

“[T]he standard for health care services as determined by physicians and health care providers in accordance with the prevailing practices and standards of the medical profession and community.”

Private Insurance Coverage: *Benefit Denials*

Defining Medical Necessity

The Private Sector has Proposed an Alternative:

“[R]ecommended by the treating physician and determined by the health plan’s medical director or physician designee.” Treatment must be “cost-effective for this condition compared to alternative interventions, including no intervention.” Cost-effective “does not necessarily mean lowest price.”