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HOUSE JOINT MEMORIAL 59

45TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2002

INTRODUCED BY

W. Ken Martinez

A JOINT MEMORIAL

REQUESTING THE GOVERNOR'S COMMITTEE ON CONCERNS OF THE
HANDICAPPED TO CONVENE A TASK FORCE, INCLUDING THE AFFECTED
DEPARTMENTS AND AGENCIES, TO DEVELOP A COMPREHENSIVE AND
COORDINATED STATE PLAN TO BRING THE STATE INTO COMPLIANCE WITH
THE 1999 UNITED STATES SUPREME COURT DECISION IN *OLMSTEAD V.*
L. C.

WHEREAS, the United States supreme court decision in
Olmstead v. L. C. provides the legal framework to enable
persons with disabilities to live in the most integrated
setting appropriate to their individual needs; and

WHEREAS, the court affirmed that no person should be
forced to live in an institution or a nursing home if he can
live in the community with the appropriate support; and

WHEREAS, the goal of the court's *Olmstead v. L. C.*

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1 decision is to integrate persons with disabilities into the
2 mainstream of society, promote equality of opportunity and
3 maximize individual choice; and

4 WHEREAS, under the court decision, the state of New
5 Mexico is required to provide community-based services for all
6 persons with disabilities who would otherwise be entitled to
7 institutional services; and

8 WHEREAS, on June 18, 2001, President Bush signed
9 Executive Order No. 13217, entitled "Community-Based
10 Alternative for Individuals with Disabilities", which calls
11 upon the federal government to assist states and localities to
12 implement swiftly the decision of the United States supreme
13 court in *Olmstead v. L. C.*; and

14 WHEREAS, the executive order said that the United States
15 is committed to community-based alternatives for individuals
16 with disabilities and recognizes that alternative services
17 advance the best interests of the United States and its
18 citizens; and

19 WHEREAS, in their initial response to the federal
20 department of health and human services office of civil
21 rights, the human services department and the department of
22 health indicated that all people in institutional settings
23 would be assessed for capacity to live in a community-based
24 setting; and

25 WHEREAS, the federal Americans with Disabilities Act of
. 140503. 1

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1 1990 obliges the state of New Mexico to make reasonable
2 modifications in policies, practices or procedures that are
3 necessary to avoid discrimination on the basis of disability;
4 and

5 WHEREAS, the court suggested that the state of New Mexico
6 could be in compliance with *Olmstead v. L. C.* and the Americans
7 with Disabilities Act of 1990 and could have a defense against
8 long-term services discrimination lawsuits if the state can
9 demonstrate that it has a comprehensive and effective working
10 plan for placing qualified persons with disabilities in less
11 restrictive settings and has developed a waiting list for
12 long-term services that moves at a reasonable pace; and

13 WHEREAS, the development of the plan should actively
14 include people with disabilities or their representatives and
15 the family members of persons with disabilities in its design
16 and implementation;

17 NOW, THEREFORE, BE IT RESOLVED BY THE LEGISLATURE OF THE
18 STATE OF NEW MEXICO that the governor's committee on concerns
19 of the handicapped convene a task force consisting of affected
20 departments, agencies, advocacy groups, groups whose members
21 belong to the disabled community and groups whose members are
22 family members of persons with disabilities to begin work on
23 the development of a comprehensive and coordinated plan to
24 bring the state into compliance with the *Olmstead v. L. C.*
25 decision, including a study of the plan's fiscal impact on the

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1 state; and

2 BE IT FURTHER RESOLVED that the human services department
3 and the department of health report, no later than October 1,
4 2002, to the legislative health and human services committee
5 on their assessments of the status of people in the state
6 currently in institutional settings and their ability to live
7 in community-based settings, including the number of people
8 assessed to be inappropriately placed and, of those, how many
9 would choose community-based living; and

10 BE IT FURTHER RESOLVED that copies of this memorial be
11 sent to the chair of the legislative health and human services
12 committee, the secretary of human services, the secretary of
13 health and the governor's committee on concerns of the
14 handi capped.

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