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SENATE JOINT MEMORIAL 54

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

INTRODUCED BY

Dede Feldman

FOR THE LEGISLATIVE HEALTH AND HUMAN SERVICES COMMITTEE

A JOINT MEMORIAL

REQUESTING THE GOVERNOR'S COMMITTEE ON CONCERNS OF THE  
HANDICAPPED TO CONVENE A TASK FORCE TO DEVELOP A  
COMPREHENSIVE, COORDINATED AND EFFECTIVE STATE PLAN IN  
RESPONSE TO 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 who can be  
cared for in the community with the support appropriate to  
their individual needs should be forced to live in an  
institution or a nursing home; and

WHEREAS, the goal of the court's *Olmstead* decision is to

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

4 WHEREAS, under this decision states are required to  
5 provide community-based services for all persons with  
6 disabilities who would otherwise be entitled to institutional  
7 services, such as nursing homes, intermediate care facilities  
8 for the mentally retarded or the state mental hospital, as the  
9 individual chooses; and

10 WHEREAS, on June 18, 2001, President George W. Bush  
11 signed Executive Order No. 13217, Community-Based Alternatives  
12 for Individuals with Disabilities, which calls upon the  
13 federal government to assist states and localities to swiftly  
14 implement the decision of the United States supreme court in  
15 *Olmstead v. L. C.*, stating: "The United States is committed to  
16 community-based alternatives for individuals with disabilities  
17 and recognizes that such services advance the best interests  
18 of the United States and its 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, under Title 2 of the federal Americans with

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1 Disabilities Act of 1990, the state of New Mexico is obliged  
2 to "make reasonable modifications in policies, practices or  
3 procedures when the modifications are necessary to avoid  
4 discrimination on the basis of disability"; and

5 WHEREAS, the court suggested that states could be in  
6 compliance with the *Olmstead* decision and Title 2 of the  
7 Americans with Disabilities Act of 1990 and could have a  
8 defense against long-term services discrimination lawsuits if  
9 they produce a comprehensive, effective working plan for  
10 placing qualified persons with disabilities in less  
11 restrictive settings and have developed a waiting list for  
12 long-term services that moves at a reasonable pace; and

13 WHEREAS, the development of such a plan should include  
14 people with disabilities and family members of persons with  
15 disabilities or their representatives as active participants  
16 in its design 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 lead a task force, with the cooperation and  
20 participation of the human services department, the department  
21 of health and other appropriate agencies and stakeholders, to  
22 develop a comprehensive and coordinated state plan in response  
23 to the *Olmstead* decision, including timelines for  
24 implementation and fiscal impact on the state; and

25 BE IT FURTHER RESOLVED that the human services department

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1 and the department of health report to the legislative health  
2 and human services committee and the legislative finance  
3 committee at their respective October 2002 meetings on the  
4 assessments of people currently in institutional settings in  
5 the state and their ability to live in community-based  
6 settings; and

7 BE IT FURTHER RESOLVED that these reports include the  
8 numbers of people assessed to be inappropriately placed and  
9 the numbers of people who choose community living; and

10 BE IT FURTHER RESOLVED that copies of this memorial be  
11 sent to each of the named agencies and to the legislative  
12 health and human services committee and the legislative  
13 finance committee.