

A MEMORIAL

REQUESTING THE DEPARTMENT OF HEALTH AND THE HUMAN SERVICES DEPARTMENT TO REPORT PROGRESS ON DEVELOPING A STATE PLAN IN RESPONSE TO THE UNITED STATES SUPREME COURT DECISION IN *OLMSTEAD v. L. C.*

WHEREAS, the 1999 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 needs; and

WHEREAS, the court affirmed that no person should have to live in an institution or a nursing home if they can live in the community with the right support and that the goal is to integrate persons with disabilities into the social mainstream, promote equality of opportunity and maximize individual choice; and

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

WHEREAS, under the federal American with Disabilities Act of 1990, the state of New Mexico is obliged to "make reasonable modifications in policies, practices or procedures when the modifications are 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"; and

WHEREAS, the court suggested that the state of New Mexico could be in compliance with the *Olmstead* decision and Title II of the American With Disabilities Act of 1990 if it demonstrates that it has developed a comprehensive, effective working plan for placing qualified persons with disabilities in less restrictive settings and has developed a waiting list that moves at a reasonable pace not controlled by the state's endeavor to keep its institutions fully populated; and

WHEREAS, the working plan should actively include people with disabilities, family members of persons with disabilities or representatives in the design, development and implementation of the plan; and

WHEREAS, the department of health and the human services department are charged with the provision of services to the population of persons covered by the *Olmstead* court decision; and

WHEREAS, the legislative finance committee is charged with the financial review of the implementation of the *Olmstead* court decision;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF NEW MEXICO that the department of health and the human services department, in collaboration with stakeholders, be requested to, no later than October 1,

