F I S C A L I M P A C T R E P O R T

SPONSOR: Martinez DATE TYPED: 02/06/02 HB HJM 59/aHJC

SHORT TITLE: State Plan to Address Olmstead Decision SB

ANALYST: Chabot

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY02	**FY03**	**FY02**	**FY03**		
			$50.0 See Narrative	Non-Recurring	General Fund

Duplicates SJM 54

SOURCES OF INFORMATION

Response Received
Division of Vocational Rehabilitation (DVR)
Governor's Committee on Concerns of the Handicapped (GCCH)
LFC Files

No Responses
Department of Health (DOH)
Human Services Department (HSD)

SUMMARY

Synopsis of HJC Amendment

The House Judiciary Committee amendment changes line 20 on page 3 to read as follows:

> "departments, agencies, advocacy groups, providers of services to people with disabilities, groups whose members"

This amendment adds providers of services to the membership of the task force to assess the impact of the Olmstead decision.

Synopsis of Original Bill

House Joint Memorial 59 resolves that GCCH lead a task force, with the cooperation and participation of HSD, DOH and other appropriate agencies and stakeholders, to develop a comprehensive and coordinated state plan in response to the United States Supreme Court's *Olmstead* decision including timelines for implementation and fiscal impact on the state. It is further resolved that HSD and DOH will report to the interim legislative Health and Human Services Committee in their October 2002 meeting and that these reports include an assessment on the numbers of people currently in institutional settings statewide and their ability to live in community-based settings.

Significant Issues

The United States Supreme Court in 1999 in the case of *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. The court ruled that "States are required to place persons with mental disabilities in community settings rather than in institutions when the State's treatment professionals have determined that community placement is appropriate, the transfer from institutional care to a less restrictive setting is not opposed by the affected individual, and the placement can be reasonably accommodated, taking into account the resources available to the State and the needs of others with mental disabilities." It further stated that "Undue institutionalization qualifies as discrimination 'by reason of disability.'"

On June 18, 2001, President Bush signed Executive Order No. 13217, Community-Based Alternatives for Individuals with Disabilities that provides for the federal government to assist states and localities in implementing the court's ruling throughout the United States. The development of a statewide plan will enable will allow individuals to return to less restrictive settings. A comprehensive action plan could also serve as a defense against lawsuits filed under title 2 of the American with Disabilities Act and the Olmstead decision.

FISCAL IMPLICATIONS

No appropriation is included in this Joint Senate Memorial but costs by participants will be incurred.

GCCH states that they have the administrative capacity to lead the task force; however, an appropriation of $50.0 would allow them to contract facilitators, arrange meeting rooms throughout the state, and contract with experts in compiling the report. Considerable staff time will be needed to gather the information, analyze the data and write the report. With a staff of only seven FTE, GCCH could use outside assistance in preparing the report. GCCH has a history of working with the New Mexico disability community and will solicit their support in the study.

DVR states there may be individuals currently in institutional settings that should be in settings with increased independence. When this occurs, some of these need to be referred to DVR for assessment of attaining a vocational goal, planning for and providing the services to secure that employment. This could have an impact on the division in the form of increased referral and assessment costs and staff time for the case management. This would need to quantified during the study.

ADMINISTRATIVE IMPLICATIONS

GCCH will have to determine who will participate in developing the plan especially other state agencies not specified in the joint memorial and representative stakeholders. A meeting schedule, objectives and timelines will need to be developed to ensure that the required reports are made to the interim legislative Health and Human Services Committee in their October 2002 meeting.

TECHNICAL ISSUES

The joint memorial specifies that GCCH will lead the task force but does require the agency to report to the interim legislative Health and Human Services Committee. Recommend that page 3, line 25 and page 4, line 1 be changed to read:

"BE IT FURTHER RESOLVED that the governor's committee on concerns of the handicapped, the human services department and the department of health jointly report to the legislative health"

OTHER SUBSTANTIVE ISSUES

Since DOH and HSD did not respond to this joint memorial, they should testify on their willingness to support the task force.

POSSIBLE QUESTIONS

1. Do you have a rough estimate on the numbers of individuals that are currently institutionalized but could live satisfactorily in more independent settings?

2. What problems are anticipated in complying with this joint memorial?

GAC/ar/njw