

A MEMORIAL

REQUESTING THE DEPARTMENT OF HEALTH AND NEW MEXICO'S PROTECTION AND ADVOCACY SYSTEM TO COLLABORATE TO TAKE THE NECESSARY STEPS TO BRING AN END TO THE JACKSON LAWSUIT.

WHEREAS, the federal civil rights lawsuit commonly known as the *Jackson* lawsuit was filed to address inadequate or inappropriate services for people with developmental disabilities living in state-run institutions and to address the lack of community-based services for these individuals; and

WHEREAS, this lawsuit is now more than twenty years old; and

WHEREAS, the department of health is under a court-ordered joint stipulated agreement on disengagement that sets out the steps that must be taken to bring the case to an end; and

WHEREAS, this agreement includes three hundred twenty-five requirements, two hundred forty-five of which were accomplished as of the end of 2008, according to the department of health; and

WHEREAS, the department of health has promulgated rules that are designed, in part, to satisfy the requirements in the joint stipulated agreement and that establish a framework for planning, designing and implementing individual service plans

for individuals with developmental disabilities; and

WHEREAS, as a result of these rules, providers of community-based services to individuals with developmental disabilities find the requirements of the delivery system to be more costly and compliance with the rules to be complex and burdensome; and

WHEREAS, while the department of health, the protection and advocacy system, advocates, the courts, court-mandated experts, the community practice review process and other activities and persons are all striving to satisfy elements of the joint stipulated agreement, individual plaintiffs have less personal control over the lawsuit and the delivery system intended to serve them; and

WHEREAS, the developmental disabilities supports division of the department of health has established an office of *Jackson* disengagement to continually address steps and strategies that remain to be accomplished before the *Jackson* lawsuit is ultimately ended; and

WHEREAS, the department of health has hosted a series of strategy sessions statewide seeking input on *Jackson* disengagement issues, the outcomes of which have identified possible solutions for disengagement from the *Jackson* lawsuit; and

WHEREAS, despite these measures, the legislature finds that the lawsuit remains unresolved; and

WHEREAS, this lawsuit costs the state of New Mexico an estimated four million dollars (\$4,000,000) per year in legal fees, compliance monitoring and administrative expense; and

WHEREAS, these ongoing expenditures inhibit the state's ability to expand services, compensate providers adequately and meet the needs of the developmentally disabled individuals that the joint stipulated agreement is intended to reach;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF NEW MEXICO that the department of health and New Mexico's protection and advocacy system be requested to collaborate to take the necessary steps to bring an end to the *Jackson* lawsuit; and

BE IT FURTHER RESOLVED that the department of health intensify efforts to comply with the joint stipulated agreement on disengagement and meet the requirements by the end of fiscal year 2010; and

BE IT FURTHER RESOLVED that if the department of health is unable to comply with the request made in this memorial due to economic constraints, changed standards of care or other reasons, the department of health be requested to modify the joint stipulated agreement on disengagement and thereby bring the *Jackson* lawsuit to an end; and

BE IT FURTHER RESOLVED that a report of the progress of the department of health to bring the *Jackson* lawsuit to an end be presented to the interim legislative health and human

services committee by November 1, 2009; and

BE IT FURTHER RESOLVED that a copy of this memorial be transmitted to the secretary of health.