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SENATE MEMORIAL 33

45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

INTRODUCED BY

Timothy Z. Jennings

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;

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1 and

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

6 WHEREAS, under the federal American with Disabilities Act  
7 of 1990, the state of New Mexico is obliged to "make reasonable  
8 modifications in policies, practices or procedures when the  
9 modifications are necessary to avoid discrimination on the  
10 basis of disability, unless the public entity can demonstrate  
11 that making the modifications would fundamentally alter the  
12 nature of the service, program or activity"; and

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

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

25 WHEREAS, the department of health and the human services

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1 department are charged with the provision of services to the  
2 population of persons covered by the *Olmstead* court decision;  
3 and

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

7 NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE  
8 OF NEW MEXICO that the department of health and the human  
9 services department, in collaboration with stakeholders, be  
10 requested to, no later than October 1, 2001, report progress in  
11 the development of a comprehensive state plan, its  
12 implementation and fiscal impact to the legislative finance  
13 committee; and

14 BE IT FURTHER RESOLVED that the development of the plan,  
15 review and recommendations should include all stakeholders,  
16 including persons with disabilities, their families, guardians  
17 and advocate organizations; and

18 BE IT FURTHER RESOLVED that the report should include how  
19 principal stakeholders were included in the planning, review  
20 and implementation, how the plan prevents and corrects current  
21 and future unjustified institutionalization, how the plan  
22 assists persons with disabilities and their families to make  
23 informed choices and how the implementation ensures quality  
24 assurance, quality improvement and management support to  
25 implement the plan; and

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