

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

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

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

WHEREAS, in their initial response to the federal department of health and human services' office of civil rights, the human services department and the department of health indicated that all people in institutional settings would be assessed for capacity to live in a community-based setting; and

WHEREAS, under Title 2 of the federal Americans 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"; and

WHEREAS, the court suggested that states could be in compliance with the *Olmstead* decision and Title 2 of the Americans with Disabilities Act of 1990 and could have a defense against long-term services discrimination lawsuits

if they produce a comprehensive, effective working plan for placing qualified persons with disabilities in less restrictive settings and have developed a waiting list for long-term services that moves at a reasonable pace; and

WHEREAS, the development of such a plan should include people with disabilities and family members of persons with disabilities or their representatives as active participants in its design and implementation;

NOW, THEREFORE, BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO that the governor's committee on concerns of the handicapped lead a task force, with the cooperation and participation of the human services department, the department of health, providers of services to people with disabilities and other appropriate agencies and stakeholders, to develop a comprehensive and coordinated state plan in response to the *Olmstead* decision, including timelines for implementation and fiscal impact on the state; and

BE IT FURTHER RESOLVED that the human services department and the department of health report to the legislative health and human services committee and the legislative finance committee at their respective October 2002 meetings on the assessments of people currently in institutional settings in the state and their ability to live in community-based settings; and

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

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

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