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HOUSE JOINT MEMORIAL 5

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

Miguel P. Garcia

FOR THE LEGISLATIVE HEALTH AND HUMAN SERVICES COMMITTEE

A JOINT 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

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1 requirements, two hundred forty-five of which were accomplished
2 as of the end of 2008, according to the department of health;
3 and

4 WHEREAS, the department of health has promulgated rules
5 that are designed, in part, to satisfy the requirements in the
6 joint stipulated agreement and that establish a framework for
7 planning, designing and implementing individual service plans
8 for individuals with developmental disabilities; and

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

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

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

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

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

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

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

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

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

24 BE IT FURTHER RESOLVED that if the department of health is
25 unable to comply with the request made in this memorial due to

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1 economic constraints, changed standards of care or other
2 reasons, the department of health be requested to modify the
3 joint stipulated agreement on disengagement and thereby bring
4 the *Jackson* lawsuit to an end; and

5 BE IT FURTHER RESOLVED that a report of the progress of
6 the department of health to bring the *Jackson* lawsuit to an end
7 be presented to the interim legislative health and human
8 services committee by November 1, 2009; and

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

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