

**MINUTES OF THE MEETING OF
THE LEGISLATIVE COMMISSION'S SUBCOMMITTEE TO
STUDY STATE PROGRAM
FOR PROVIDING SERVICES TO PERSONS WITH DISABILITIES**

November 6, 2001

The first meeting of the Legislative Commission's Subcommittee Study of State Program for Providing Services to Persons with Disabilities was called to order by Chairman Dina Titus on November 6, 2001, at 10:17 a.m., in Room 4412 of the Grant Sawyer State Office Building, Las Vegas, Nevada. This meeting was videoconferenced to Room 4100 of the Legislative Building, Carson City, Nevada.

SUBCOMMITTEE MEMBERS PRESENT IN LAS VEGAS:

Senator Dina Titus, Chairman
Senator Raymond D. Rawson
Assemblywoman Vonne S. Chowning
Assemblyman Jerry D. Claborn

SUBCOMMITTEE MEMBERS PRESENT IN CARSON CITY:

Assemblywoman Sharron E. Angle

SUBCOMMITTEE MEMBERS EXCUSED:

Senator Randolph J. Townsend

LEGISLATIVE COUNSEL BUREAU (LCB) STAFF PRESENT:

Bob Guernsey, Principal Deputy Fiscal Analyst, Fiscal Analysis Division
Jim Rodriguez, Program Analyst, Fiscal Analysis Division
Leslie K. Hamner, Principal Deputy Legislative Counsel, Legal Division
Jo Rasey, Secretary, Fiscal Analysis Division

EXHIBITS:

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| Exhibit A | Meeting Notice and Agenda |
| Exhibit B | Attendance Record |
| Exhibit C | Meeting Packet distributed by Staff |
| Exhibit D | "Department of Human Resources, Services Provided to the Disabled, FY 2002," a corrected copy of information provided in the meeting packet under the tab "Services to the Disabled," submitted by Michael J. Willden |
| Exhibit E | "Department of Human Resources, Strategic Health Care Plans, Assembly Bill 513," submitted by Michael J. Willden |
| Exhibit F | "Sign-In Sheet – RFP 1246, Strategic Plan for Seniors and Persons with Disabilities, Opening: October 31, 2001 @ 2:00 p.m.," submitted by Michael J. Willden |
| Exhibit G | "Sign-In Sheet – RFP 1250, Development of a Strategic Plan for Rural Health Care in Nevada, |

Opening: October 31, 2001 @ 2:00 p.m.," submitted by Michael J. Willden

Exhibit H "Governor Guinn's Task Force on Disability, Created for Strategic Planning as set forth in A.B. 513," submitted by Michael J. Willden

Exhibit I "Supplemental Information Concerning Olmstead, Prepared by the Legislative Counsel Bureau, November 6, 2001," submitted by Leslie K. Hamner

Exhibit J "Las Vegas Disability Pocket Guide," copyright 2000, submitted by Mary Evilsizer

Exhibit K "Legislative Commission's Subcommittee – Study of State Program for Providing Services to Persons with Disabilities, Summary of Previous Studies Related to Service to the Disabled," submitted by Jim Rodriguez

Exhibit L "Legislative Commission's Subcommittee – Study of State Program for Providing Services to Persons with Disabilities, Summary of Legislation Relating to the Disabled," submitted by Jim Rodriguez

Roll Call

Chairman Dina Titus called the meeting to order at 10:17 a.m. and introduced the members of the subcommittee and the Legislative Counsel Bureau staff.

Opening Remarks and Introductions

Chairman Titus stated this interim subcommittee was created as a result of a joint effort between Senator Rawson and herself. It began as Senate Concurrent Resolution No. 32 to conduct an interim study concerning Nevada's services for the disabled. Chairman Titus said that while there have been advocates for the disabled, discussions of increased funding for certain pet projects, and a few sporadic bills passed, there has been no overriding policy, and no real direction. Since the 2001 Legislature passed Assembly Bill 513 that called for a strategic plan in the area of health services for the aged, the disabled, and seniors, it seemed an appropriate time to coordinate legislative efforts with those of the Executive Branch to formulate a single plan.

Chairman Titus outlined the goals of the subcommittee. The first goal, she said, is to take an inventory of all federal, state, and local services, programs, agencies and statutes that currently serve and affect the disabled community. Public and private agencies will be included. Once that inventory is determined, a clearinghouse of information will be created to determine the best method to disseminate that information to as many people as possible. The second goal is to evaluate the feasibility of creating a one-stop system of services for the disabled. That may not be totally possible, but it would be helpful to provide a number of services or at least access to information about available services and referrals under one roof. The subcommittee will be working very closely with the Department of Human Resources who, under Assembly Bill 513, received a grant to create four long-term strategic plans concerning the health care needs of the citizens of Nevada.

Chairman Titus assured the audience it is not her intent that this subcommittee be used as a "window dressing" or as a camouflage to streamline government or to collapse programs for the disabled. Nor is it a facade for more efficiency or more economy which would result in less funding. It is intended to identify the needs of the disabled and to hopefully come forth with additional funding.

Chairman Titus told her audience she was delighted they were in attendance and welcomed their input and suggestions for upcoming agenda items.

Assemblywoman Vonne S. Chowning expressed her pleasure in serving on this subcommittee and paid tribute to former Assemblywoman Jan Evans and her efforts in helping the disabled community. The main goal of the disabled, Assemblywoman Chowning said, is independence. Progress has been made through the Transportation Committee to pick up the disabled up at their residence and transport them to training centers. The Salvation Army has assisted with its mentally ill homeless center. However, there exists a patchwork quilt-type assistance for the disabled. Assemblywoman Chowning said she was very hopeful that this subcommittee, in concert with the Executive Branch, the Department of Human Resources, the public, the private, and the non-profit sectors, all working together with a goal

of independence, dignity, and meaningful lives for the disabled, would implement meaningful measures rather than the patchwork quit-type programs of the past.

Senator Raymond D. Rawson reported that this is an historic occasion. For the first time in his memory there is a concentrated effort with all branches of government working toward the same goal. There is great expectation but with that comes the potential for disappointment. People will be looking at the results this subcommittee, both nationally as well as within our state; this subcommittee can set the pace.

Bob Guernsey

Bob Guernsey, Principal Deputy Fiscal Analyst, Fiscal Analysis Division, Legislative Counsel Bureau, presented a brief overview of the origin of the subcommittee. The subcommittee, he said, is one of six interim study committees approved by the 2001 Legislative Commission and is based upon SCR 32. It consists of six members and has a limited budget for five meetings. The subcommittee has the advantage that it is able to work with the Department of Human Resources and with other agencies of the Executive Branch and the interim study it is currently working on. Michael Willden, Director of the Department of Human Resources, has done an excellent job in bringing many groups together and in formulating a number of committees, subcommittees and task forces to try to bring something very meaningful to bear.

**Services Provided to Persons with Disabilities by the
Department of Human Resources**

Michael J. Willden

Michael J. Willden, Director, Department of Human Resources, reported he was pleased to share information on what the department's "A.B. 513 Work Group" has been doing. Referring to Exhibit D, Mr. Willden said this document is similar to a summary prepared for Senator Rawson's Task Force for the Fund for a Healthy Nevada held in Carson City November 5th. It is a high level-type document that lists services provided to the disabled by the Department of Human Resources and is intended to help identify gaps in services. He highlighted the services provided by the various divisions as follows:

- Division for Aging Services
 - Disabled Seniors
 - Community Home Based Initiatives Program (CHIP)
 - Group Care Waiver Program
 - Long Term Care Ombudsman Program
 - Services that serve a large number of disabled, but which are not restricted to the disabled
 - Community Ombudsman
 - Elder Protective Services
 - ElderCare Helpline
 - ElderCare Website
 - Services provided for senior and disabled adults
 - Homemaker Program
 - Senior Ride Program (subsidized taxicab rides in Clark County)
 - State Health Insurance Advisory Program (SHIP)

Mr. Willden reminded the subcommittee that many senior issues and disabled issues blend together and his presentation will show how the A.B. 513 Work Group approaches that. The services of a contractor have been employed to look at both of these issues.

- Welfare Division
 - Temporary Assistance for Needy Families (TANF)
 - Medical Assistance for the Aged, Blind and Disabled (MAABD) Program
 - Temporary Assistance for Needy Families – Family Preservation Program (TANF-FPP). This is a partnership with Mental Health and Developmental Services which provides an additional \$350 per month in TANF funds to help expand services to families who are providing care for children in their homes rather than having them institutionalized or placed out of their home. This allows Mental Health and Developmental Services to use their funds and serve families who are not TANF-eligible.
 - Ill or Incapacitated (Ill/Incap) Program – This program will become effective January 1, 2002. It represents a change in philosophy in the Temporary Assistance for Needy Families Program. One reason many families cannot participate in a work program is that the primary wage earner is ill, incapacitated or disabled, or is required to care for an ill, incapacitated or disabled family member. This program will increase the monthly payment to those families, similar to that paid in the Non-Needy Caretakers Program.

Chairman Titus reported she had heard Governor Guinn may move \$30 million in his budget from one program to another, some of it dealing with the TANF payment. Will any of that money be moved from these programs, or are all of these programs locked in?

Mr. Willden responded that the money Governor Guinn may move from one program to another would have no effect on the TANF Programs. The Governor has no intent to take money from the programs authorized during the 2001 Legislative Session. A TANF reserve fund exists for use by the money committees. This fund has been building since welfare reform legislation was passed. Money has been set aside for five or six years to be used in times of need. That is the program Governor Guinn has recently referenced.

- Division of Health Care Financing & Policy
 - Medicaid – General
 - Medical Rehabilitation Case Management Program
 - Disabilities Waiver
 - Mental Retardation Waiver
 - Information and Referral Services
 - Case Coordination
- Division of Child and Family Services
 - Northern, Southern and Rural Regions
 - (0-17 years) Centralized Intake
 - (0-17 years) Community Based Residential Services
 - (6-17 years) Intensive Family Services
 - Northern and Southern Regions, MHDS in Rural Region
 - (6-17 years) Outpatient Counseling
 - Northern and Southern Regions
 - (0-6 years) Early Childhood Services
 - (6-17 years) Mojave
 - (3-17 years) Day Treatment
 - (6-17 years) Family-Oriented Treatment Group Homes
 - (13-17 years) Short-Term and Long-Term Residential Treatment
- Community Connections
 - Individuals with Disabilities Act (IDEA) – The department is attempting to increase spending of IDEA

funds. It may be possible to accelerate draws from the Federal Government and to make a one-time accounting shift.

- Division of Mental Health and Developmental Services
 - Information Referral
 - Assessments for Eligibility for Mental Retardation and Related Conditions
 - Service Coordination – Service Planning, Access, Monitoring and Eligibility
 - Family Support
 - In-Home Supported Living/Habilitation
 - Jobs and Day Training
 - Residential Support
 - Intermediate Care Facility/Mental Retardation (ICF/MR) Program
 - Supported Living Arrangements (SLAs)
 - Family Preservation Program
- Mental Health Services
 - Medication Clinic
 - Community Services
 - Residential Support
 - Psychosocial Rehabilitation
 - Inpatient Psychiatric Hospital

In response to Senator Titus' question on how many people currently receive these services compared to how many need these services, Mr. Willden reported he has figures in his office that could indicate the number of people receiving services from the various programs. However, a large portion of the contractor's job, selected from the RFPs, will be to identify services, gaps, number of individuals receiving services, number of additional waiting lists, and numbers of services still needed.

**Overview of the Development of the Strategic Health Care Plans
by the Department of Human Resources
(Assembly Bill 513, 2001 Legislative Session)**

Michael J. Willden

Michael J. Willden commented that as the new Director of the Department of Human Resources, he is extremely gratified to have the opportunity to work on such a comprehensive strategic planning process. Using A.B. 513 as the avenue and as the funding source, the department will have an opportunity to examine nearly everything that it does in a global strategic process. It will examine rural health care, disabled services, senior services and rates. The only area that will not significantly be reviewed will be health in general. As a strategic planning process, the Division of Child and Family Services has been examined in great detail through Assembly Bill 1. Mr. Willden expressed that his commitment to this subcommittee and to the A.B. 513 process is that the department will provide a good working document, a good strategic plan, and will "keep people at the table." The department is committed to moving the process along, to being an open and receptive body, and to producing a good document for everyone to use moving forward.

Chairman Titus concurred that it is very important to keep people at the table. Often, when the pie is small, groups that should be natural allies often find themselves in adversarial positions when they must compete for the few resources available. It will be very helpful if everyone moves together in the same direction.

Mr. Willden admitted that his background is not one with a great understanding of the services Nevada provides for people with disabilities. He is, however, committed to learning a great deal more in the coming months, along with many other people.

Referring to Exhibit E, Mr. Willden called the subcommittee's attention to the Organization Chart. Four studies are included in A.B. 513. Each study has a specified amount of money and specified requirements to accomplish. First, a 12- to 14-person Steering Committee for Strategic Plan A.B. 513 was created. The primary role of the Steering Committee will be to work with and coordinate activities of the three Legislative Committees that have similar issues: (1) the Legislative Interim Study Committee on Services for People with Disabilities, chaired by Senator Titus; (2) the Task Force for the Fund for a Healthy Nevada, chaired by Senator Rawson; and (3) the Legislative Interim Study Committee on Health Care, also chaired by Senator Rawson.

Four task forces were created which report to the Steering Committee: (1) Rural Health Issues, coordinated by Alex Haartz, Deputy Administrator for the Health Division; (2) Rates Issues, co-chaired by Chuck Duarte, Administrator for the Division of Health Care Financing & Policy, and David Luke, Ph.D., Associate Administrator for Developmental Services at the Division of Mental Health and Developmental Services; (3) Senior Issues, coordinated by Mary Liveratti, Administrator for the Division of Aging Services; and (4) Disabled Issues, co-chaired by Janelle Mulvenon, Administrator, Community Connections, Department of Human Resources, and Donny Loux, Chief, Community Based Services, Department of Employment Training and Rehabilitation.

Associated with the four task forces are three Requests For Proposals (RFPs) that have been let. The department is looking for a consultant to assist the Rural Health Issues Task Force. Nine vendors have submitted proposals to accomplish this work. The department is looking for a consultant to assist the Rates Issues Task Force, and a third consultant will assist the Senior Issues Task Force and the Disabled Issues Task Force. Organizationally, the department is prepared to move forward and keep this project on task. A primary issue for these groups is to recognize that the study is not only very important for long-term strategic planning, but is also important for developing information for the next budget cycle to be submitted to Governor Guinn by September 1, 2002. Mr. Willden gave the subcommittee Exhibits F and G, the Sign-In Sheets for RFPs 1246 and 1250.

Chairman Titus added that would be helpful in preparing any Bill Draft Requests (BDRs) that may result from this subcommittee.

Mr. Willden called the subcommittee's attention once again to Exhibit E and the A.B. 513 Strategic Plan Project Timelines. This, he said, will be a living document. It is on the Department of Human Resources' Website along with every document that will be created from this process including agendas, minutes, RFPs, etc. The Website also contains an area called "Send Us Your Feedback," where anyone can submit comments, information or concerns. The Website has turned out to be quite popular: the home page has received over 450 "hits," the RFPs 110 "hits," and the various committees 274 "hits." The department is committed to keeping the Website up-to-date so that those who are interested can be kept informed at all times. As additional detail is received from contractors on meeting schedules and various deliverables, that information will be updated on the Project Timelines.

Chairman Titus expressed her desire that the department report progress as it is made so that this subcommittee can work in tandem with the department.

Mr. Willden pointed out on the first page of the Project Timelines that December 11, 2001, is a critical date for the department. A project kick-off was recently held which included approximately 200 people. The real kick-off, however, will be December 11th at the Board of Examiners' Meeting when the contract will officially begin. Carson City has agreed to host a kick-off party at that time where contractors will have an opportunity to interface with the various people they will work with.

Mr. Willden said the department is very aware of the requirements in the bill and in the Letter of Intent from Chairman William J. Raggio and Chairman Morse Arberry, Jr. of the money committees where the department is instructed to

examine the Community Training Centers (CTC) and the Supported Living Arrangements (SLA) rates. The money committees also requested that those rates be applied in the construction of the agency's state budget for the 2003-05 biennium that is to be prepared for final review and distribution on or about May 15, 2002.

Again referring to Exhibit E, Mr. Willden pointed out the various lists of people involved in the project. The Steering Committee Members include John P. Comeaux, Director of the Nevada Department of Administration; Myla C. Florence, Director of the Nevada Department of Employment, Training and Rehabilitation; Robert Hadfield, Executive Director of the Nevada Association of Counties; Sherrada James, Executive Director of the Indian Commission, Department of Human Resources; Senator Raymond D. Rawson, Chairman of the Legislative Interim Study Committee on Health Care; Assemblywoman Bonnie Parnell, Legislative Interim Study Committee on Health Care; Alice Molasky-Arman, Commissioner, Insurance Division, Department of Business and Industry; and himself. The Steering Committee also includes two individuals from each of the four task forces: Dr. Tom Pierce, UNLV; Paul Gowins; Diane Ross; Mark Innouye; Robin Keith; Steve Tognoli; Susan Robinson; and Karen Mabry.

The co-chairs of the Disabled Issues Task Force are Janelle Mulvenon and Donny Loux. The Chairman of that Task Force is Brian Lahren from the Washoe Association for Retarded Citizens (WARC); the Vice Chair is George Brown, Chairman, Governor's Planning Council on Developmental Disabilities.

Mr. Willden said a \$20,000 grant exists, which is not part of the A.B. 513 funding, that has been divided among each task force to assist with travel, clerical support, etc.

Chairman Titus added she would be coordinating hearings for this subcommittee with some of the task force meetings to enable people who must travel to economize and assist those individuals participating.

In referring to the resource list provided by Mr. Willden, Chairman Titus asked if Larry Spitler was going to participate in any of the task force activities.

Mr. Willden responded he did not know if Larry Spitler, American Association of Retired People, was involved with any of the task forces. Individuals will be added to the lists when they are confirmed. Anyone interested in the hearings, who would be a good resource, was invited to contact the Human Resources Department through its Website.

Referring to Exhibit H, Mr. Willden pointed out that the Task Force has created five working groups to carry out their work: (1) Children's Services; (2) Adult Services; (3) Housing and Independent Living; (4) Rural Issues; and (5) Olmstead Technical Advisory Group. The Advisory Group will assure that everything in the strategic planning process considers and complies with the Olmstead requirements.

Review of Requests for Proposals (RFPs)
For Strategic Health Care Plans
(Assembly Bill 513, 2001 Legislative Session)

Michael J. Willden

Referring to Exhibit E, Michael J. Willden drew the subcommittee's attention to Request for Proposal (RFP) No. 1246, "Strategic Plan for Seniors and Persons with Disabilities." This RFP has been let and six bidders have submitted proposals (see Exhibit F). The successful bidder should be selected by the end of November. A.B. 513 appropriated \$100,000 for Seniors and \$150,000 for Persons with Disabilities. In total, \$800,000 was appropriated under A.B. 513 and additional matching federal funds will be applied for through Medicaid and Title XXI funds.

Mr. Willden pointed out that Attachment C of Exhibit E, "Strategic Plan Components," lists some of the questions the contractor will specifically be asked to examine:

- Who are Nevada’s people with disabilities?
- Who are Nevada’s seniors?
- What services are needed?
- How many people need them?
- How many people are in the woodwork?
- What services are available?
- If service availability appears to meet or exceed demand, what is the reason?
- What options are available?
- If service availability does not meet demand, what options are available?
- What gaps in services are caused by program rules?
- What is the estimated cost of identified unmet need?
- What are the growth projections in need areas over the next 10 years?
- What are the advantages and cost saving if unmet need for service is provided?
- What are the preferences of consumers and families in receiving services?
- What training in disability issues/information/in-service/inclusion/services is available?

Attachment D, “Sample Listing of Existing Studies,” is a list of related studies previously conducted that the contractor should become knowledgeable of and use as a basis of work so as “not to recreate the wheel.” Each contractor, Mr. Willden reported, will prepare a Monthly Status Report, which he would be happy to share with this subcommittee.

Mr. Willden informed the subcommittee that Exhibit E includes the other two RFPs: RFP 1250, “Development of a Strategic Plan for Rural Health Care in Nevada,” and RFP 1249, “Strategic Plan Relating to Rates.” Page 6 of RFP 1249 lists the rates the contractor will examine in order of priority:

- Supportive Living Arrangements (SLA)
- Community Training Centers (CTC)
- Personal Assistance Services
- Autism Services
- Case Management
- Assisted Living
- Out-Patient Rehabilitation Services
- Adult Day Care
- Transportation
- Financial Intermediary for Families
- Medical Health Rehabilitation Services
- Mental-Rehabilitation or Specialty Hospital-Inpatient

In response to Chairman Titus’ inquiry, Mr. Willden stated that other than the rate studies for the Supported Living Arrangements and the Community Training Centers set by the letter of intent, the Task Force established the order of priority.

Senator Rawson reported he had recently attended a meeting where the State of Oregon reported it had examined its upcoming retiring population and the resources it will have. The Milbank Foundation has established a computer program to analyze the retirement plans of all people in the public sector. They have offered that program to Nevada if it would be helpful in our study. It would require the cooperation of the Public Employees’ Retirement System (PERS) to provide them with the information. The program costs about \$20,000 and the Milbank Foundation would be willing to underwrite that for the state. It turns out that Oregon is woefully under prepared to deal with what they are facing.

Mr. Willden agreed with Chairman Titus that one-stop shopping, putting all information “under one roof,” is a goal of the Task Force.

Assemblywoman Angle informed the subcommittee that Donny Loux had reported that Larry Spitler wants to serve as a consultant to the Adult Services working group rather than as a member of the subcommittee as he has very pressing time commitments. He currently is a consultant on the Senior Issues Task Force.

Chairman Titus acknowledged the mammoth task ahead and stated how impressed she is with what the Department of Human Resources had accomplished to date.

Presentation Concerning
Olmstead v. L.C. ex rel. Zimring, 119 S.Ct. 2176 (1999)

Leslie K. Hamner

Leslie K. Hamner, Principal Deputy Legislative Counsel, Legal Division, Legislative Counsel Bureau, read from her prepared notes as follows:

Today I will be providing you with a brief discussion of the United States Supreme Court’s opinion on Olmstead. As I am sure you are aware, Olmstead deals with the placement of persons with disabilities in community settings rather than in institutions.

I initially presented the Legislative Health Care Committee with a summary of the decision less than a year after the case was decided. At that time, I had a difficult time finding information on the case. Now, just a couple of years later in preparing for this presentation, I found myself in the opposite situation in that there is a lot of information concerning Olmstead. In putting together the handouts for today, I tried to condense some of the relevant information into the packet before you titled, “Supplemental Information Concerning Olmstead,” (Exhibit I). Also, in your meeting packet under the Olmstead tab is a brief summary of the case, including some of the relevant laws the court relied on for its opinion. Please let me know if there is any additional information concerning the case that you would like to have and I will be glad to provide it to you.

I will begin my presentation with a summary of the Olmstead decision and then will briefly discuss three issues which have resulted from the case. These are: (1) direction provided by the United States Department of Health and Human Services; (2) the President’s Executive Order concerning Olmstead; and (3) subsequent relevant case law.

Olmstead was decided by the Supreme Court in June of 1999 and it involves Title II of the Americans with Disabilities Act, or the ADA. Title II of the ADA prohibits discrimination in public services furnished by governmental entities.

I will begin my discussion of Olmstead with a summary of the facts of the case. The respondents in Olmstead are two mentally retarded women, L.C. and E.W., who filed suit against the State of Georgia.

L.C. was voluntarily admitted to a hospital where she was confined for treatment in a psychiatric unit. A year later her condition had stabilized and her treatment team agreed that her needs could be met appropriately in a community-based program supported by the State. However, she remained institutionalized for almost three additional years until the State placed her in a community-based treatment program.

E.W. was voluntarily admitted to the same hospital in early 1995 and was also confined for treatment in a psychiatric unit. By 1996, her treating psychiatrist concluded that she could be treated appropriately in a

community-based setting. However, she remained institutionalized until 1997, a few months after the District Court issued its opinion in the case.

In bringing this case against the State of Georgia, the two women argued that the State's failure to place them in a community-based program, once their treating professionals determined that such placement was appropriate, violated Title II of the ADA. They requested that the State place them in community care residential programs and that they receive treatment with the goal of integrating them into the mainstream of society.

The question in this case, as framed by the United States Supreme Court, was whether the proscription of discrimination in Title II of the ADA may require the placement of persons with mental disabilities in community settings rather than in institutions.

The court answered this question with a qualified yes. It concluded that a disabled person must be placed in a community setting rather than an institution when three criteria are satisfied. First, the State's treatment professionals must have determined that community placement is appropriate. Second, the transfer must not be opposed by the affected person; and third, the placement can be reasonably accommodated, taking into account the resources available to the State and also the needs of others with mental disabilities in that state.

The Supreme Court's decision in Olmstead is based solely on statutory grounds - the ADA and the regulations adopted pursuant to the ADA. The court emphasized the opening provisions of the ADA in which Congress stated that society has tended to isolate and segregate individuals with disabilities, and that such forms of discrimination continue to be a serious and pervasive social problem. Congress additionally noted in the ADA that "discrimination against individuals with disabilities persists in such critical areas as institutionalization."

The provision of Title II of the ADA specifically at issue in Olmstead prohibits a public entity from discriminating against a disabled person based on his or her disability. In enacting the ADA, Congress instructed the Attorney General to issue regulations implementing this provision. The Attorney General enacted two regulatory provisions that are relevant to the Supreme Court's decision in Olmstead. The first relevant provision requires a public entity to "administer services, programs and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities."

The second relevant provision requires a public entity to "make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program or activity."

The Supreme Court began its analysis of these provisions by examining whether undue institutionalization constitutes discrimination by reason of disability. The Court noted that in its opinion in enacting the ADA, Congress had a rather comprehensive view of the concept of discrimination. In addition, the Court recognizes that institutional placement of persons who can handle and benefit from community settings perpetuates unwarranted assumptions that persons so isolated are incapable or unworthy of participating in community life. The Court further recognizes that confinement in an institution severely diminishes the everyday life activities of persons, such as family relations, social contacts, work options, economic independence, educational advancement, and cultural enrichment. Thus, the Court concluded that unjustified isolation is properly regarded as discrimination based on disability.

However, the Court's analysis does not stop after it reaches this conclusion. The Court further concludes it would be inappropriate to remove a person from a more restrictive setting if such a move was not supported by the State's treatment professionals. In addition, the Court notes that there is no federal requirement imposing community-based treatment on a person who does not desire such treatment.

Finally, the Court addresses the issue of the State's defense to a claim of discrimination such as the claim brought against the State of Georgia. The Court concludes that a State is required to provide community-based treatment for persons with mental disabilities only when the placement can be reasonably accommodated by the State. The Court recognizes the States' need to maintain a range of facilities for the care and treatment of persons with diverse mental disabilities, and the States' obligation to administer services with an even hand. Thus, a court determining whether a placement can be reasonably accommodated by a State must consider these factors. That is, a court must consider, in view of the resources that are available to the State, not only the cost of providing community-based care to the individual, but also the range of services the State provides to others with mental disabilities and the obligation of the State to mete out those services equitably.

Significantly, the Court indicated that a State might satisfy the requirements of Title II of the ADA if it had a comprehensive, effectively working plan for placing qualified persons with mental disabilities in less restrictive settings, and the State had a waiting list that moved at a reasonable pace that was not controlled by the State's endeavors to keep its institutions fully populated. Unfortunately, the Supreme Court did not elaborate on these suggestions for complying with Title II of the ADA. Thus, in assuring that they are complying with the mandates of the ADA, States are not provided much guidance from the Court in determining whether a plan is comprehensive and effective, or whether a waiting list is moving at a reasonable pace. As I will discuss later, these issues have been addressed to a certain extent by the United States Department of Health and Human Services.

In addition, the Court emphasized that its opinion in Olmstead did not impose on the States a "standard of care" for whatever medical services the State renders. Further, the ADA does not require States to provide a certain level of benefits to individuals with disabilities. However, a State is required to adhere to the ADA's non-discrimination requirement with regard to the services that it does, in fact, provide.

In summary, the Supreme Court concluded in Olmstead that Title II of the ADA requires a State to provide community-based treatment for persons with mental disabilities when: (1) the State's treatment professionals determine that such placement is appropriate; (2) the affected persons do not oppose such treatment; and (3) the placement can be reasonably accommodated, taking into account the resources available to the State and the needs of others with mental disabilities in that State. While Olmstead only deals with persons with mental disabilities, because the case is based on the ADA, it applies to all persons with disabilities who are protected from discrimination by Title II of the ADA. Thus, it is not limited to persons with mental disabilities. In addition, the case is not limited to Medicaid, as Title II of the ADA prohibits discrimination in the provision of services by any public entity which includes a state or local government and any department, agency, or other instrumentality of a state or local government. Therefore, areas such as transportation, housing and education also may be affected by the decision.

As a result of the Supreme Court's opinion in Olmstead, the United States Department of Health and Human Services has sent various letters to State Medicaid directors to provide guidance and support to States in their efforts to enable persons with disabilities to live in the most integrated setting appropriate to their needs, consistent with the ADA. Your handout with the heading "Supplemental Information Concerning Olmstead" contains an overview of the contents of these letters. The first letter is particularly instructive as it sets forth guidelines for a State to follow as it develops a comprehensive, effectively working plan for placing qualified persons with disabilities in less restrictive settings. As you can see from the list of considerations recommended by the Department, many issues are involved in developing an effective plan, including gathering much data concerning disabled persons and also receiving input from such persons. In addition, the Department has noted that there is not one perfect plan, in that each State will require a different plan based on the needs of the citizens of that State and the policies of that State.

In addition to this first letter, the Department has provided other information to the States concerning the

Olmstead decision, including answering various questions, providing descriptions of changes and clarifications in federal policies that may assist the States in ensuring that they are in compliance with the decision, and finally, providing additional tools, including grants, to assist States. Specifically, the Department has noted that its Office for Civil Rights is responsible for investigating any complaints that it receives alleging discrimination on the basis of disability by public entities related to health and human services, and by entities receiving funds from the Department. The Department has emphasized that its response to these complaints has been to work with the States to obtain voluntary compliance before referring a complaint to the Department of Justice for resolution, which may involve litigation.

Also included in your handout of supplemental information is a summary of the executive order issued in June of 2001 by President Bush concerning Olmstead. This executive order is part of the New Freedom Initiative which is the President's broader effort to remove barriers to community living for persons with disabilities. The executive order, entitled "community-based alternatives for individuals with disabilities," states the Supreme Court's holding in Olmstead and provides that the United States seeks to ensure the country's community-based programs effectively foster independence and participation in the community for persons with disabilities. To implement Olmstead, the executive order directs various federal agencies to work together to ensure that the decision is implemented in a timely manner by working with and providing technical guidance to States. In addition, these federal agencies are directed to evaluate their policies, programs, statutes and regulations to determine whether any should be revised or modified to improve the availability of community-based services for persons with disabilities. The results of this review were due to the President by October 16, 2001. Finally, the executive order requires the Attorney General and the Secretary of the Department of Health and Human Services to fully enforce Title II of the ADA, working cooperatively with States to resolve any complaints.

Finally, before concluding, I would just mention that various cases concerning the ADA have been decided since Olmstead. Some of these involve the issue of whether a State is complying with Title II of the ADA in light of Olmstead. For example, persons with mental retardation who were on a waiting list for Hawaii's Medicaid home and community-based waiver program brought a case against the State arguing that the State was violating Title II. The waiting list for the program included about 800 people because of an alleged lack of state funding. Over 750 of the people were on the waiting list for longer than 90 days, and some had been waiting for more than 2 years.

The State of Hawaii argued that any modification to the program would require them to ignore state funding limits and would therefore fundamentally alter the program to an unlimited state funded program. In addition, the State argued that requiring it to ignore the population limits was a fundamental alteration. Finally, the State argued that providing more persons with services would force it to exceed its federal funding limits making it take on 100 percent of the costs of those persons' care. The federal district court rejected these arguments by the State and concluded that the State failed to show how the modification would fundamentally alter the program, since the State merely argued that it would potentially have a problem funding the program. The court also noted that the State may be able to amend the "population limits" approved by the Federal Medicaid agency to provide services for more persons. In addition, the only evidence presented by the State to decrease the waiting list was an increase in "slots" over the next few years. The court concluded that this single piece of evidence did not show the State was complying with the ADA by acting responsibly. Thus, the court concluded that there were material questions of fact surrounding whether reasonable modifications should be made and whether any such modifications would "fundamentally alter" the program, and the court denied the defendants' motion for summary judgment.

In a class action brought against the City of New York, the plaintiffs argued that New York's failure to provide safety-monitoring services along with other personal care services to Medicaid recipients violated the ADA. The plaintiffs, who suffered from mental disabilities, argued that without the provision of safety monitoring as an independent service, the services provided were inadequate to meet their medical needs and to allow them to continue living in their homes. The federal court of appeals first noted that New York provides identical services to mentally and physically disabled Medicaid

recipients. The court then emphasized that Olmstead does not stand for the proposition that States must provide disabled persons with the opportunity to remain out of institutions; it holds only that States must adhere to the ADA's nondiscrimination requirement with regard to the services that it does provide. Thus, the court concluded that New York did not violate the ADA by failing to provide the benefit, as it is not the court's role to determine the Medicaid benefits the State should provide, and the ADA does not mandate the provision of new benefits. These cases are being decided on a case-by-case basis and will turn on the specific circumstances that exist in the State and the specific issues raised by the plaintiffs. These decisions should also provide clarification on the extent of the requirements on States as a result of Olmstead.

In addition, last term the United States Supreme Court decided another important ADA case, Board of Trustees of the University of Alabama v. Garrett. This case involved Title I of the ADA, which deals with disability-based discrimination in employment. The court held in Garrett that a private individual may not recover money damages for a State's failure to comply with Title I of the ADA. In this case, the court specifically declined to address whether a similar analysis would apply to Title II of the ADA, and thus preclude individuals from bringing actions for monetary damages against the State for a violation of Title II. Therefore, the Olmstead decision was not directly affected by the Supreme Court's holding in Garrett. However, even if the Supreme Court eventually determined that such suits brought by individuals for monetary damages pursuant to Title II of the ADA were prohibited, other avenues would be available for enforcing the integration mandate of Title II. The United States could enforce the provisions of Title II in actions for money damages. In addition, private individuals might also be able to enforce the provisions of Title II by bringing actions for prospective injunctive relief. Thus, a State would still be required to comply with the provisions of Title II of the ADA. Again, however, the Olmstead decision has not been modified by the court's holding in Garrett, as the court specifically declined to address Title II of the ADA.

Chairman Titus thanked Ms. Hamner for her excellent presentation and said it stresses the importance that Nevada's plan includes Olmstead accommodations and addresses how Nevada looks at the different program areas to ensure Nevada examines the need of people on waiting lists and that those waiting lists are moving forward.

Senator Rawson expressed curiosity at how the United States Supreme Court defines a word like "unworthy," and thought it was unfortunate language to use when deciding if someone is worthy of a certain treatment or not.

Assemblywoman Chowning complimented Ms. Hamner on the efficiency of her presentation, and Ms. Hamner responded to her questions as follows:

- Are there deadlines or penalties for Nevada if the State does not develop a plan within certain specifications?

The ADA has been law for 11 years, being enacted in 1990. There had been a precursor law to the ADA for some time which prohibited states from discriminating based on the disabilities of people. States are required to follow the ADA. An individual would file a complaint with the Federal Department of Health and Human Services who would then investigate the complaint. Ms. Hamner was unaware if any complaints have been filed against Nevada. There are, however, over 200 complaints nationwide concerning Olmstead, which the Department of Health and Human Services is working to resolve. They would prefer not to resort to litigation but rather work with the states and the individuals bringing the complaint to reach a resolution. They could refer a complaint to the Department of Justice who has the power to enforce the ADA against a state by bringing a suit if the state indicated it was doing nothing at all.

- What is Nevada doing to develop a plan?

The 2001 Legislature appropriated money for certain services for persons with disabilities, which is one indication of the state's compliance. Also, A.B. 513 and its associated studies, the gathering of information, the planning for the future, and all that is leading toward developing a comprehensive plan that the United States

Supreme Court referred to. Ms. Hamner thought that if the Department of Justice were to look at what Nevada is doing it would determine it is taking a significant step.

- Have any discrimination suits using the Olmstead case been brought against the State of Nevada?

As far as Ms. Hamner knew, no suits have been filed against Nevada. She would investigate whether or not the Health and Human Services Department had received any complaints against Nevada and have that information available before the next meeting.

Chairman Titus stated that the plan the state is compiling is not the Olmsted Plan, but is much broader than that. However, the plan would, as much as possible, meet many of the requirements set forth in the Olmstead Act.

Mr. Willden added that he agreed and that the plan is a “work in progress.” It is a “we are making progress concept” rather than working with a specific deadline. The process involves going to the Legislature, seeking funding, addressing waiting lists, and addressing issues.

Mr. Guernsey reported that during the 1999 Legislative Session, the money committees established a subcommittee specifically to examine the budgets of the Department of Human Resources and the services it provides. That Session made an attempt to fully meet the waiting list demands of the services provided to the mentally retarded by the Division of Mental Health and Developmental Services and they added a considerable sum of money (millions of dollars). Matching funds were received from the federal government through the Medicaid Program. Services were greatly expanded in an attempt to meet all the waiting list demands. During the 2001 Legislative Session, Governor Guinn took into account what the 1999 Legislative Session had done and attempted to meet the waiting list demands in his proposed 2001-03 budget. The Legislature, in working with the Department of Human Resources, augmented that and provided rate increases. Governor Guinn took a major step last session and the Legislature fully supported him. The needs were identified quite appropriately in the Executive Budget.

Chairman Titus remarked that most programs have waiting lists and it becomes a matter of prioritization as to which ones to address in what period of time. It may become a consequence of this study to determine where the greatest need lies.

Public Testimony

Mary Evilsizer

Mary Evilsizer, Executive Director, Southern Nevada Center for Independent Living, expressed her enthusiasm for the prospect that the strategic plan will address the needs of seniors and individuals with severe disabilities. She offered her support, that of the Center for Independent Living, as well as that of the members of the disability community with whom she works to the members of the subcommittee.

In response to Assemblywoman Chowning’s questions, Ms. Evilsizer reported that the Centers for Independent Living began in the United States in 1973 and is funded by the Department of Education. There currently are 400 Centers in the United States. One Center is in Clark County and one in Sparks. The Southern Nevada Center developed the Disability Pocket Guide (Exhibit J). One of the services provided by the Center is information and referrals, and the Pocket Guide is the result of five years of tracking data. It was first used as a tool to assist the staff, all of whom are severely disabled, in answering the many questions they were asked time after time. A company or service must complete a questionnaire prior to being listed in the guide in an effort to assure they understand the disability community to the letter of the law. It is to determine if they are accessible, if they provide equal access for their programs, if they are treating all individuals, whether it be an individual with a disability or not, with integrity and dignity. This is very important to the Center. The funding of the guide comes from the Center’s budget. Very few state funds are accepted and most funding comes from the federal government. The cost to print a guide is \$7.

In answer to Chairman Titus' question, Ms. Evilsizer responded the Pocket Guides are available at no cost to all Clark County libraries, to all consumers and agencies, to the Clark County school system, to the special education schools, and to the non-profit organizations in the community. The guides are available to all others at a \$7.00 charge.

Dr. Tom Pierce

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Dr. Tom Pierce, Chairperson, Department of Special Education, University of Nevada, Las Vegas, related that six years ago he and a family with a young man with autism had met with Senator Rawson. The family had been devastated by the lack of services it received and decided to attend a Medicaid hearing to discover if Nevada was following the letter of the law. At the hearing, disability or developmental disability in the state was defined as "people with mental retardation and other related conditions," autism being a related condition. Dr. Pierce was an expert witness and testified that autism was considered nationally to be a related condition. At that point the hearing officer took her pencil and crossed out the word "autism" and said, "Now it does not include it." The family had been devastated that a callous act by a bureaucrat could erase an entire category of disabilities. That, he said, was when his anger and disappointment with how people with disabilities were treated by some people started him down the road which led to a discussion about an office of disability or perhaps an office of disability and aging. Senator Rawson, he reported, had been an ear to him and he appreciated the wisdom and guidance he had given in this process. To hear the words "patchwork quilt" services, and "one-stop shopping," and to hear people being very mindful that everyone be included, is very exciting. Dr. Pierce acknowledged the support Mr. Willden had already given, saying he has done his best to ensure everyone is included in this process. It is very educational and enlightening that people with disabilities all want to be part of the process to develop a good system for everyone.

Robert Desruisseaux

Robert Desruisseaux, Northern Nevada Center for Independent Living, echoed the sentiments of Ms. Evilsizer and Dr. Pierce, and thanked the subcommittee for being here and proceeding with this process. He also thanked Senator Rawson, Senator Titus, and Assemblywoman Chowning for their efforts over the years in implementing strides forward for the disabled community. He noted that Assemblywoman Chowning has used the analogy of a patchwork quilt to describe assistance for the disabled. He preferred to use "foods" in his analogies, such as "tossing a bone." One can only suck on a bone for so long before the gums begin to ache. He thought that this process would give the opportunity to begin thinking about "cake," and said it was a definite stride forward. He expressed his appreciation to Mr. Willden and the efforts he has made over the months on behalf of the disabled community.

Reggie Bennett

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Reggie Bennett, Assistive Technology Loan Coordinator, Independent Living Program at the Nevada Community Enrichment Program (NCEP), reported that the NCEP provides services not covered by Medicaid/Medicare or by any other private program in Nevada. He is in attendance today, he said, because he hears the concerns of the community and knows some of the services required. He commended Chairman Titus for chairing this subcommittee, and Mr. Willden for his help in putting it together. He added that his action has been needed for some time and he wants to see it progress forward and offered his assistance.

Jay Segarra

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Jay Segarra, Assistive Technology Loan Coordinator, Independent Living Program at the Nevada Community Enrichment Program (NCEP), stated the NCEP is a state facility program housed in a non-profit organization to help

people with disabilities obtain a sense of technology and independent living. A year-and-a-half ago he was afflicted with a spinal cord injury. On March 17, 2000, he had been a telecommunications engineer making \$75,000 a year. The only thing he knew about disability issues was that one could not park in handicap accessible parking. Education is key for the disabled and for those around them. Information referral must be a priority. At the time of his injury, he admitted, he had no idea what sources of help were available. Fortunately he is a veteran and the Department of Veteran Affairs stepped in with assistance. Had he not been fortunate enough to have served his country, he would not have known what services were available. The one-stop shopping concept is an excellent idea. Reorganizing the Regional Transportation Commission to assist those with disabilities is also a major issue. At the time of his injury he drove a large four-wheel drive vehicle. As a result of his injury he could no longer physically get into that vehicle. In conclusion, outreach must be a priority. What good are services if a person in need is unaware of them? Many disabled people are homebound and need to be informed of services available to them. Mr. Segarra stressed he was very enthusiastic of the outcome of these proceedings.

Chairman Titus agreed that Mr. Segarra made a very good point when he said that a disability is something that could happen to anyone at any time. It knows no economic boundaries, no color lines, and no language barrier. It is, however, something we do not prepare for. When it comes, we do not know what to do; it is never anticipated. That makes the need to have information readily available and the services accessible all the more critical.

George Mayes, Jr.

George Mayes, Jr., Housing and Independent Living, said he applauded the subcommittee when some of its members admitted they did not know a great deal about disabilities but felt that serving on the subcommittee would be an opportunity to learn and to serve. He also applauded Chairman Titus' statement that she would not attempt to take anything away from current committees or groups. He felt history would be made here. He said it is important not to lump people with disabilities into one category, but to examine them separately as individuals. People with different disabilities have different needs. Mr. Mayes suggested that the subcommittee take a close look at the community and to make itself visible. It is one thing, he said, to sit behind desks and make decisions for people with disabilities, it is quite another to do some outreach and talk with individuals with disabilities so that they can become a part of the process.

Chairman Titus thanked Mr. Mayes for his excellent idea and suggested the subcommittee could plan a field trip to various facilities in order to view programs in operation. She said the subcommittee would not simply meet in the conference room.

Brian Lahren

Brian Lahren, Executive Director, Washoe Association for Retarded Citizens, and Chairman of the Governor's Task Force on Disability, seconded what many others had said about the incredible breath of fresh air that Mr. Willden has brought to this process. He said it has been so difficult for so long for the disability community to work with the Department of Human Resources and it is absolutely no effort now. In every possible way, he and his staff have reached out to people. They have made it clear that this process is to be an inclusive one and they are dedicated to making the process available to everyone. If an individual has something to say, every effort will be made to listen and incorporate those comments into the final product. The communication networks that are developing will help create the type of political constituency that will make brave people like those serving on this subcommittee able to take even larger steps on behalf of Nevada's citizens with disabilities. Olmstead is not the most important thing. What is important is that Nevada, for the very first time, has the opportunity to have a vision of what needs to be developed over time; a vision that will be shaped by people who consume the services. What is interesting is that we will, in the process, develop a much better network of communication. We will find ways of working together and that has not happened in the past in the disability community. Mr. Lahren also expressed appreciation for the support received from Donny Loux and Janelle Mulvenon, and to Senator Rawson for his support.

Chairman Titus confirmed that the product certainly is important, but the process is equally valuable. It will bring people together and enhance the communication process. Many will become more informed and advocates for this cause will be created in the Legislature that will never waver after having gone through this process. Relationships will be strengthened that existed in the past but might have been spotty as opposed to ongoing.

Senator Rawson expressed his thanks to those who had been generous in their comments to him. He wanted everyone in the disability community to know he is very pleased that Senator Titus is the chairman of this subcommittee and is fully supportive of everything she is doing.

Chairman Titus thanked Senator Rawson for his remarks and for his help, and said she has a great subcommittee and looks forward to the final result.

Jim Rodriguez

Jim Rodriguez, Program Analyst, Fiscal Analysis Division, Legislative Counsel Bureau, referred to Exhibits K and L. Exhibit K, he said, lists previous legislation that has lead to this point in time. Exhibit L lists studies that have been examined by other committees and presented to previous legislative sessions. Some of the bills were approved while others were not. Some had appropriations associated with them. These Exhibits represent issues that have previously been examined and presents a history that can be utilized to examine points the subcommittee wants to emphasize without "recreating the wheel." These Exhibits are summaries and are not all-inclusive. They are living documents and the results of this subcommittee and others will be added to them as they occur.

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Scheduling of future Meetings

The next meeting of the subcommittee was scheduled for sometime during the second week of January 2002.

Adjournment

There being no further business before the subcommittee, the Chairman adjourned the meeting at 12:18 p.m.

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Respectfully submitted,

Jo Rasey
Secretary

APPROVED BY

Senator Dina Titus, Chairman

Date

Copies of exhibits mentioned in these minutes are on file in the Research Library of the Legislative Counsel Bureau, Carson City, Nevada. You may contact the Library at (775-684-6827).