

STUDY OF THE OLMSTEAD COMMISSION - BACKGROUND MEMORANDUM

Section 33 of Senate Bill No. 2015 (2019) ([Appendix A](#)) provides for a Legislative Management study of issues relating to the North Dakota Olmstead Commission. The study is to include consideration of the implementation of the new Olmstead Commission structure and any emerging Olmstead issues related to services for elderly individuals and individuals with behavioral health issues, physical disabilities, or intellectual disabilities. The Legislative Management is to report its findings and recommendations, together with any legislation required to implement the recommendations, to the 67th Legislative Assembly.

BACKGROUND

Olmstead v L.C. 527 U.S. 581 (1999) (Olmstead) is a United States Supreme Court case regarding discrimination against people with mental disabilities. In Olmstead, the Court found mental illness is a form of disability and unjustified isolation of a person with a disability is a form of discrimination under Title II of the federal Americans with Disabilities Act (ADA). The Court held community placement is required and appropriate only if "[a] the State's treatment professionals have determined that community placement is appropriate, [b] the transfer from institutional care to a less restrictive setting is not opposed by the affected individual, and [c] the placement can be reasonably accommodated, taking into account the resources available to the State and the needs of others with mental disabilities." Since this 1999 decision, there has been litigation in each of the 12 United States Circuit Courts of Appeal. In addition to enforcement of the Olmstead decision through the court system or through agreements, the United States Attorney General published regulations for implementing the requirements of the ADA, including requirements from Olmstead, such as Title II, regarding state and local government services, and Title III, regarding public accommodations and commercial facilities.

NORTH DAKOTA OLMSTEAD COMMISSION Creation of Commission and Development of State Plan

The Olmstead Commission was created in 2001 through an executive order issued by Governor John Hoeven ([Appendix B](#)). The order provided the commission was to develop a plan to implement the Olmstead decision by providing appropriate community-based placement for individuals with disabilities in a manner consistent with the needs and resources of the state.

In 2002, the Olmstead Commission held public meetings across the state to gather information on how to serve individuals with disabilities. The commission developed a working plan that included historical information regarding efforts to serve individuals in less restrictive settings and a record of state actions to comply with the Olmstead decision.

Executive orders issued by the Governor in 2010 ([Appendix C](#)) and 2018 ([Appendix D](#)) continued the Olmstead Commission and adjusted the membership of the commission. The 2018 executive order also provided the commission may create subgroups for purposes of seeking expertise and input on community services and supports, health care, housing employment, education, and transportation.

Olmstead Commission Membership

The 2001 executive order establishing the Olmstead Commission provided for the commission to consist of 13 voting members and for a representative of the Governor's office and the executive director of the Department of Human Services to co-chair the commission. The 2010 executive order adjusted the commission by adding representatives of the Indian Affairs Commission and State Council on Developmental Disabilities and removing representatives from the Office of Management and Budget and Attorney General's office. The 2018 executive order provides for the commission to consist of 10 voting members and 8 nonvoting members with a representative of the Governor's office and a member representing the public to serve as co-chairs. The following schedule summarizes the membership of the commission under each executive order:

Voting Members		
2001 Executive Order	2010 Executive Order	2018 Executive Order
Representative of the Governor's office (co-chair)	Representative of the Governor's office (co-chair)	Representative of the Governor's office (co-chair)
Executive director of the Department of Human Services, or designee (co-chair)	Executive director of the Department of Human Services, or designee (co-chair)	One member of the Senate
One member of the Senate	One member of the Senate	One member of the House of Representatives

Two members of the House of Representatives Representative of Mental Health Association of North Dakota Representative of The Arc of North Dakota Representative of the Protection and Advocacy Project Representative of the AARP of North Dakota Representative of the Statewide Independent Living Council Representative of the public Attorney General, or designee Director of the Office of Management and Budget, or designee	Two members of the House of Representatives Representative of Mental Health Association of North Dakota Representative of The Arc of North Dakota Representative of the Protection and Advocacy Project Representative of the AARP of North Dakota Representative of the Statewide Independent Living Council Representative of the public Representative of the Indian Affairs Commission Representative of the State Council on Developmental Disabilities	Representative of Mental Health America of North Dakota Representative of the Protection and Advocacy Project Representative of the Statewide Independent Living Council Two representative of the public (one to serve as co-chair) Representative of the State Council on Developmental Disabilities Representative of the judicial branch
Non-Voting Members		
2001 Executive Order	2010 Executive Order	2018 Executive Order
None	None	Executive director of the Department of Human Services, or designee State health officer, or designee Superintendent of Public Instruction, or designee Commissioner of the Department of Commerce, or designee Executive director of Job Service North Dakota, or designee Director of the Department of Transportation, or designee Indian Affairs Commissioner, or designee Executive director of the Housing Finance Agency, or designee

Agency Administration

When the Olmstead Commission was created, the Department of Human Services provided staff services for the commission. However, no funding or positions were added for support of the commission. In 2018, an informal advisory group reviewed the structure and operations of the Olmstead Commission and recommended a centralized point of contact be established for the commission. The group determined the Protection and Advocacy Project had the appropriate structure and organization to respond to inquiries, make referrals, and provide education about the *Olmstead* decision. As a result, the Protection and Advocacy Project requested additional funding in its 2019-21 biennium budget request for a staff person to assist in Olmstead Commission duties. The Legislative Assembly, in Senate Bill No. 2014 (2019), added 1 full-time equivalent position and related funding to the budget for the Protection and Advocacy Project for support of the Olmstead Commission. Total funding added was \$238,929, of which \$164,314 is from the general fund.

PREVIOUS STUDY

The 2017-18 interim Health Services Committee, Senator Judy Lee, Chairman, studied state and federal laws and regulations relating to the care and treatment of individuals with developmental disabilities or behavioral health needs. As part of the study, the committee received information regarding the Olmstead decision and state efforts to comply with the decision. The committee also received updates regarding the restructuring of the Olmstead Commission.

PROPOSED STUDY PLAN

The following is a proposed study plan for the committee's consideration:

1. Receive information regarding the requirements of the Olmstead decision;

2. Receive information regarding the new structure of the Olmstead Commission;
3. Receive updates from the Protection and Advocacy Project regarding the development of the agency as a main point of contact for the commission;
4. Receive updates regarding the actions of the commission, including the appointment of subgroups for specific issues;
5. Receive testimony from stakeholders regarding the commission;
6. Receive updates regarding emerging issues related to services for elderly individuals and individuals with behavioral health issues, physical disabilities, or intellectual disabilities;
7. Receive comments from interested persons;
8. Develop recommendations and any bill drafts necessary to implement the recommendations; and
9. Prepare a final report for submission to the Legislative Management.

ATTACH:4