

TESTIMONY – PROTECTION AND ADVOCACY PROJECT

SB 2012 (2011)

HOUSE Appropriations-Human Resources Division

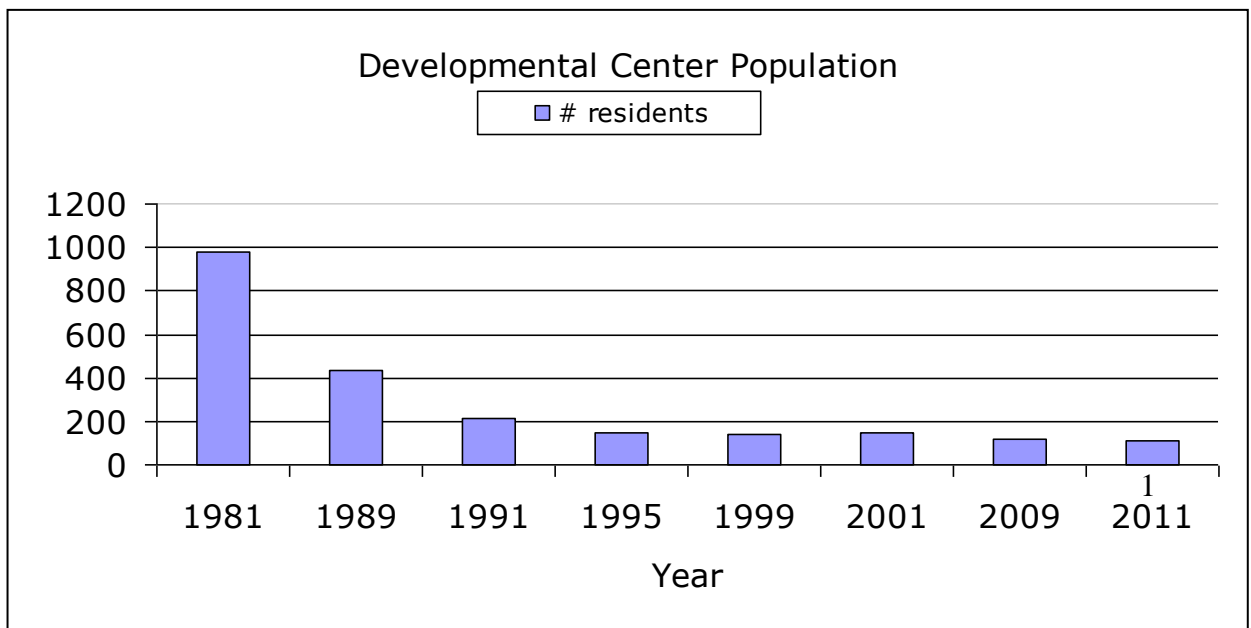
Honorable Chet Pollert, Chair

March 8, 2011

Chair Pollert, and members of the House Appropriations Human Resources Division, I am Christine Hogan, a lawyer with the North Dakota Protection and Advocacy Project (P&A). The Protection & Advocacy Project is an independent state agency that acts to protect persons with disabilities from abuse, neglect, and exploitation, and advocates for the disability-related rights of persons with disabilities. Although we do support the merits of the SB 2012, my testimony solely addresses the bill’s effects on persons with disabilities. My testimony today focuses on three primary areas in the DHS budget that have particular relevance to P&A priorities. P&A’s first priority in the DHS budget is actually P&A’s first priority as an agency—community integration.

**Developmental Center**

The Arc’s law suit with the State of North Dakota ended in 1995. The population at the Developmental Center at that time had been reduced from just under one thousand



residents to just 144 residents. The state agreed to continue reducing this number.

The 12<sup>th</sup> anniversary of the U.S. Supreme Court's *Olmstead* decision will arrive in June. The *Olmstead* case stands for the proposition that it is unlawful discrimination for a state to place a person with a disability in an institution unnecessarily.

Now, twelve years after *Olmstead* and sixteen years after the *Arc* case, 107 individuals with developmental disabilities still remain at the institution. Despite the mandate of the *Olmstead* decision, the financial assistance of *Money Follows the Person*, and the target goals set by the Transition to the Community Task Force, we have discharged a net of fewer than three individuals per year for the last sixteen years. Sadly, most of this net decrease is due, not to community integration, but to deaths of the people residing at the Center.

#### *The law*

In the *Olmstead* case, the Supreme Court defined the least restrictive setting for an individual with a disability as “a setting that enables individuals with disabilities to interact with non-disabled persons to the fullest extent possible.”

In the context of the Developmental Center, this means a resident must have placement in a less restrictive setting when:

- 1) The State's treatment professionals determine a community placement is appropriate;
- 2) The individual resident does not oppose community placement; and
- 3) The State can reasonably accommodate that placement, taking into account the resources available to the State and the needs of others.

The federal trial court that initially decided the *Olmstead* case found that the State of Georgia could provide services to the plaintiffs in the community at considerably *less* cost than was required to maintain them in the institution. This is also true in North Dakota. The average cost per patient at the Developmental Center is well over \$500/day, over \$200,000/year.

### *The history*

Since the economies favor community integration in North Dakota, why has de-institutionalization been so slow?

Here are the facts. The Developmental Center Transition to the Community Task Force has been in place since 2005. The Task Force's mission was to establish target populations—beginning in 2006—for the Developmental Center. The first target was to reach a population of **127** residents by July 1, 2007. This target was achieved.

The Task Force's next goal was to reach a patient population of **97** by July 1, 2009. This goal was not achieved. The goal was then revised to 115. The actual population of the Developmental Center on July 1, 2009, however, was **123**.

The long-term goal of the Task Force was to be at **67** residents by July 1, 2011. This goal cannot be achieved, and has also been revised. It is now a target of **95**. However, since the current population at the Developmental Center is at **107**, barring some form of divine intervention, that goal of **95** is also not likely to be achieved by July.

The Task Force has now reset its long-term population goal of **67** residents for July 1, 2013. Realistically, without legislative intervention in the form of funds for transition to group homes, how likely is it that goal will be achieved?

### *The problem*

Here is the problem—there is a barrier to de-institutionalization. The patients must have a place to live in the community, with appropriate services and supports. The developmental disabilities service providers, along with other Task Force members, have been working together to address this issue. A Centralized Project Development Team has been assembled to encourage creative ways to address community capacity issues.

Transition funds, for the purpose of moving residents to the community, while downsizing the institution, have been made available in the DHS budget: in the 05-07 biennium - \$50,000; in 07-09 biennium - \$2.5 million (\$1.6 million Federal and \$900,000 General); in 09-11 biennium - \$0.

*The solution*

Here is the solution—DHS submitted an OAR (# 407) to the Governor for transition funds for the 11-13 biennium in the amount of \$6,095,817 (\$3,382,849 Federal and \$2,712,968 General). This will reportedly provide for 28 ICF/MR beds, phasing in 4 beds each quarter. DHS has indicated that it cannot approach the goal of 67 by July 1, 2013 without these monies.

There are currently at least twenty-five individuals on a list, compiled by Developmental Center staff, who have already been determined by state professionals to be appropriate for community placement, and who want to move. This means these folks meet all the elements of an *Olmstead* action if they are not moved. The State of North Dakota has the resources to make community integration happen for these citizens.

As of June 2009, at least eight states and the District of Columbia have closed all state-operated residential facilities with sixteen or more residents who have intellectual or developmental disabilities. Those states are Alaska, Hawaii, Maine, New Hampshire, New Mexico, Rhode Island, Vermont, and West Virginia. The first of these states, New Hampshire, closed its facilities in 1991. Recently, federal court judgments and out-of-court settlements have required several more states to close their residential institutions. No court decisions have held in favor of keeping persons with developmental disabilities isolated in institutions. The law is clear. *Olmstead* is being enforced everywhere the issue is pressed. It is the right time for North Dakota to step up and act proactively.

There is no good reason why individuals with developmental disabilities should still be moving into the Developmental Center. There is every reason why they should be moving out. It is the law. Many residents are desperate to move out. North Dakota has the resources and support systems in the community for individuals with disabilities to remain near their families and friends in small home settings. This is their right. This is the law.

OAR (# 407) ought to be included in the DHS budget to provide for local group homes for Developmental Center residents. Now is the right time to honor plans made and promises made back in 1995 to bring our citizens back to their own communities.

### **Increased Compensation for Provider Staff**

North Dakota's use of the Medicaid Waiver has expanded greatly over the years. This has been a good thing for people with developmental disabilities and the State, allowing for the use of federal dollars to help provide more residential services in non-institutional settings.

Providers for individuals with developmental disabilities in our state deliver quality services. But in order to continue to so, adequate staff salaries and benefits are essential. Without adequate compensation, we have seen turnover rates from 41% to 51% in the last ten years.

For the year ending June 30, 2010, salary increases were authorized at \$1.00/hour, along with a 6% inflationary increase for providers. This brought the turnover rate down to under 33%, and it was a much-needed gain for providers and the individuals they serve. It is imperative for people with developmental disabilities and the people who support them to stay on this path. P&A strongly supports providing another hourly increase as well as a benefit multiplier to cover increased health insurance premiums.

Without these compensation enhancements, our state's services for individuals with disabilities will go backwards. We will surely lose some quality staff to other businesses that are currently offering significantly higher pay.

P&A supports the \$1.46/hour market adjustment for provider staff along with the 7.65% benefit multiplier.

### **Aging Services**

#### *Ombudsman Program*

P&A supports additional staff for the long-term-care ombudsman program. The purpose of the program is to provide services to protect the health, safety, welfare, and rights of residents, and to advocate on behalf of all individuals living in nursing facilities, assisted living, swing beds, transitional care units, and basic care facilities.

Currently, the program has one full-time State Ombudsman to administer the program. 2.45 FTE's are spread among the eight regions to implement the services. For example, with current staffing, the Bismarck/Mandan region has only 8 hours/week of ombudsman services to cover more than forty facilities and approximately 1,500 residents. This is not adequate to meet the outlined responsibilities.

    OAR 409, as submitted to the Governor by DHS, is for one additional FTE at a cost of \$135,665 for the biennium. This will help in addressing the service gap but not close it.

#### *Guardianship Services*

    P&A supports OAR 408, as prepared by DHS, for guardianship services. This would provide for necessary guardianships for those who do not have a developmental disability but who have a mental illness, traumatic brain injury, or other serious disability. Only \$40,000 per biennium has been available for these services, which is not addressing the need. No monies have been available for the costs of providing actual guardianship

services. This OAR would provide funds of \$80,000 for the establishment of guardianships, plus an additional \$24,000 to pay for professional guardianship services. These services are needed when there is no appropriate relative or other responsible person available to be the guardian.

Thank you very much for your consideration. I would be happy to answer any questions.

*P&A is an independent state agency established in 1977 to advance the human and legal rights of people with disabilities. P&A strives to create an inclusive society that values each individual.*

*Under Title II of the federal Americans with Disabilities Act, "states are required to place persons with mental disabilities in community settings rather than in institutions when the State's treatment professionals have determined that community placement is appropriate, the transfer from institutional care to a less restrictive setting is not opposed by the affected individual, and the placement can be reasonably accommodated, taking into account the resources available to the State and the needs of others with mental disabilities." [Olmstead v. L.C and E.W.](#)*