



MEMORANDUM

To: Education, Public Institutions, and Local Government Committee of the Ohio Constitutional Modernization Commission

From: Michael Kirkman, Executive Director, Disability Rights Ohio

Re: Proposal / Recommendation on Article VII, Section 1 of the Ohio Constitution

Date: April 13, 2017

Thank you for this opportunity to provide reaction to the proposal and recommendation made at the last meeting to remove and replace the existing language in Article VII, Section 1 of the Ohio Constitution. I have spoken with various members of the disability community and they uniformly support the overall change as positive, in particular the removal of antiquated and discriminatory language. Two more specific concerns were voiced, however, and are summarized in this memorandum.

The language recommended to the Committee is:

Facilities for and services to persons who, by reason of disability, require care, treatment, or habilitation shall be fostered and supported by the state, as may be prescribed by the General Assembly.

The first concern is related to terminology. The term “habilitation” is a term of art, specific to federal Medicaid regulations. It is sometimes referred to, also in regulations, as “active treatment.” Our recommendation is that the term should not be used out of the regulatory concept and is also too specific to belong in a general provision of the Constitution. “Care” and “treatment” are broad enough to encompass services delivered as “habilitation.”

The second issue is that the language should specify that services must be provided in a manner that fosters independence and integration.

Interestingly, this concept also appeared in the 1970 recommendation, in the requirement that people “not be civilly confined unless, nor to a greater extent than, necessary to protect themselves or other persons from harm.” This idea of “least restrictive environment” has been phrased various ways, but has been a guiding principal in both constitutional litigation related to institutionalization of people with disabilities or in various federal statutes and regulations for the last 50 years.

Professor Colker suggested language that addressed this concern:

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The state shall always foster and sustain services and supports for people with disabilities who need assistance to live independently; these services and supports will, to the maximum extent possible, be provided in the community, rather than in institutions.

Resolving these issues in the proposed language would result in this recommendation:

Facilities for and services to persons who, by reason of disability, require care; OR treatment, ~~or habilitation~~ shall be fostered and supported by the state, AND TO THE MAXIMUM EXTENT POSSIBLE, SUPPORT INDEPENDENCE AND INTEGRATION IN THE COMMUNITY, as may be prescribed by the General Assembly.

We all express our appreciation to the Committee for its interest in updating this provision, and for allowing the disability community to have input into the process.