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April 6, 2015

Delivered by Email and by U.S. Mail

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Minnesota Olmstead Sub-Cabinet
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RE: *Olmstead* Plan Revisions Dated March 20, 2015

Dear Subcabinet Chair Tingerthal, Commissioners and Subcabinet:

The Minnesota Disability Law Center of Mid-Minnesota Legal Aid (MDLC), Minnesota Employment First Coalition, and the Miller O'Brien law firm are following up on our numerous

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Commissioner Mary Tingerthal
Commissioner Lucinda Jesson
Commissioner Katie Clark Sieben
Commissioner Dr. Brenda Cassellius
Minnesota Olmstead Sub-Cabinet
April 6, 2015
Page 2

previous communications regarding the *Olmstead* Plan. As with our letter of January 8, 2015, we are providing a copy to the Court, the Court Monitor, Special Consultants to the Court in *Jensen*, Roberta Opheim and Colleen Wieck, *Jensen* class counsel, and *Jensen* defense counsel.

We commend the Subcabinet for making improvements to the Plan in its March 20, 2015 submission. However, the Plan falls short of being acceptable because it still does not contain sufficient sound baseline data, measureable goals, or outcomes. In this letter, as in our letters of January 8, 2015 and October 9, 2014 (which was also copied to the Court Monitor), we focus our comments on the sections of the Plan related to employment and day programming.

Employment Section Shows Improvement But Still Falls Short:

The Employment section of the Plan is improved from the January 8, 2015 version. However, many of the reporting and data problems we noted before have not been addressed. The Plan still does not provide a clear road map to effectuating an Employment First Policy in Minnesota.

- **The Plan Still Lacks Key Data and Metrics:**

As we have noted in previous letters, for the State's measurable goals to be meaningful, they must be based on comprehensive, reliable, and relevant data. This will require the state to improve its current data collection process. This draft of the Plan does not set out a plan to collect key data.

The Plan offers no system for reporting choices individuals make between integrated work, sheltered work, non-work, and why they make those choices. Since person-centered planning, supported decision-making, and independent choices by individuals with disabilities are key elements of the *Olmstead* Plan, gathering and tracking this data is essential.

Because the Plan describes no system for ongoing reporting on how people are spending their days, or for tracking hours in various work and non-work activities, it is not possible to set a clear baseline, to set transparent goals, or to track progress toward them. Moreover, the Plan does not identify a system for reporting substantive details of competitive employment (i.e. hours, wages, types of employers.) In addition, the Plan is still using the \$600 per month figure as an indicator of competitive employment without adequate explanation for what it means. Anyone who earns \$600 or more per month is considered to be competitively employed under the state's definition, even if they are working in a sheltered workshop or other segregated setting.

We urge the state to develop a comprehensive, cross-agency data collection system that tracks basic information about an individual's employment. Much of this information is now available from providers and counties. We suggest that the state obtain this basic data from billing data

Commissioner Mary Tingerthal
Commissioner Lucinda Jesson
Commissioner Katie Clark Sieben
Commissioner Dr. Brenda Cassellius
Minnesota Olmstead Sub-Cabinet
April 6, 2015
Page 3

already in its possession and from existing county reports, augmented by surveying providers, to ascertain the number clients who are currently working for competitive wages, the number of hours they work in a week, whether that work is integrated, the location and type of work, and the overall percentage of integrated work compared to other day activities for each individual.

- **Intermediate Steps and Funding Plan are Still Inadequate**

The Plan continues to suffer from a lack of firm timetables for creating person-centered career plans for youth exiting secondary school and for people currently in sheltered workshops or segregated day programs. The Plan needs measurable goals and aggressive timetables for facilitating career exploration and volunteer programs so that these youth can engage in meaningful career planning.

Furthermore, without robustly acknowledging and addressing the role of providers, the Plan is not realistic and implementation will not be successful. The Plan lacks a narrative description, measurable goals, and outcomes for engaging service providers in the transition to significantly more integrated competitive employment and integrated day programs. Providers need clear guidance for funding the internships, trainings, volunteer facilitation and integrating other creative solutions already being tested by providers across the state into their programs. An important piece of this, of course, is funding. Currently, there is scant description of the financial incentives and technical support that will be needed for many employment services and day services providers to transform their current business model. For integration to be successful, the Plan must fully acknowledge the need to create or increase the capacity of many providers to serve clients with programming and supports consistent with the more integrated, person-centered approach required by *Olmstead*.

- **Youth Employment Goals Have Improved But Still Fall Short**

Although the Subcabinet has adopted an Employment First policy for Minnesota, the Plan still does not aim for all youth exiting school and not attending post-secondary education to obtain competitive employment. This is inconsistent with the Employment First approach. In addition, it not does present goals or a pathway to integrated non-work day opportunities for youth exiting school who choose not to pursue the goal of integrated, competitive employment.

The data in this section of the Plan is still too limited and unacceptably opaque. The November 2014 draft Plan aimed to go from about 263 of survey cohort respondents having competitive employment to 388. The March 2015 Plan aims to go from 263 to 623. This is a substantial jump, especially considering the survey population is generally around 783. If the survey cohort (survey respondents from 1/5 of school districts) remains constant, this would be a jump from

Commissioner Mary Tingerthal
Commissioner Lucinda Jesson
Commissioner Katie Clark Sieben
Commissioner Dr. Brenda Cassellius
Minnesota Olmstead Sub-Cabinet
April 6, 2015
Page 4

33% to nearly 80% of students in competitive employment. But the survey cohorts may grow, limiting this effect.

In any case, as noted in our previous comments, this survey represents an unacceptably small slice of students who get special education services to provide a baseline for change. Even if one were to accept the survey as the appropriate baseline, the Plan does not address the fact that the voluntary survey may over-represent community-minded youth who are more likely to seek and find integrated opportunities.

Extended Employment Goals are Based on Restrictive Data and Speculative Analysis and are Still Too Low

In an improvement over the last draft Plan, this Plan now provides a figure for how many people are in segregated extended employment. The total number of people in this group is small: 923. These individuals are served in center-based, “segregated settings.” The Plan’s description of this population is oddly limited. It includes some basic demographic information (age and rural/urban living area) but makes certain “assumptions” about these individuals being served, such as whether this group would be likely to choose more integrated work options, and the likelihood that many of these individuals have worked in the same setting for many years. For such a small number of people, rather than basing a plan on speculation, the state should obtain this actual information from county case managers and the individuals themselves.

According to the Plan’s data, 38% of those 923 people (about 351 people) are under 45 years old. The Plan states that 23% are under 35 (about 212 people). The Plan focuses on the under 35 group as the most likely to be interested in exploring competitive employment opportunities. This is unduly restrictive. Even whittling down the size of the group of intended targets, the Plan only seeks to move four of these individuals into competitive employment in the first year. This represents just 1% of the under- 45-year-old group.

Over five years, the Plan’s goal is to move 86 of these individuals into competitive employment. This is just under 25% of the group that is currently under age 45. We question whether this goal is aggressive enough and think that the basis for setting goals and projecting progress is speculative.

HCBS Services Data is Not Clear and Goals are Too Weak:

The Plan’s section discussing HCBS (p. 42) better describes the data the Plan is based on than the previous draft Plan. However, the numbers in this section still lack sufficient definition and clarity regarding basic information needed to make a Plan that includes measurable goals and outcomes.

Commissioner Mary Tingerthal
Commissioner Lucinda Jesson
Commissioner Katie Clark Sieben
Commissioner Dr. Brenda Cassellius
Minnesota Olmstead Sub-Cabinet
April 6, 2015
Page 5

The Plan does not indicate a total number of people receiving employment-related supports as part of their HCBS services. The Plan identifies 53,689 people getting HCBS Long-Term Services and Supports. It is not clear how many of these people are on HCBS waivers (which are a common way of paying for long-term employment supports).

The Plan does not indicate how many of the 53,689 people are of working age (elsewhere described as being people who are 18-64 years old); although it does state a subset figure for what number of working age individuals within the 53,689 are competitively employed.

The Plan indicates that 15,001 people receive HCBS waiver services in “segregated” settings. But it is not clear what is included in “segregated settings.” For example, the Plan does not state whether this includes DT&Hs, adult day programs, or other residential programs of some sort. Nor is it clear whether some or all of these “segregated settings” provide employment-related supports.

Even more confusion regarding this data arises when one attempts to reconcile information in this section of the Plan with the section that appears to set goals for individuals who are in segregated day settings that are not identified as work. For example, in the section of the Plan focused on moving individuals into integrated settings, on page 71, the Plan uses an estimated number of “individuals in segregated day settings” of 20,055 as a baseline for the goal of moving 500 individuals—approximately 2.5 percent of the total—into “more integrated settings” by the end of a five-year effort. It is not clear whether this number overlaps with the HCBS data, how many of these individuals are on HCBS waivers, or how this number overlaps with data on individuals employed in segregated settings. We know that many individuals spend part of their time in segregated day settings that include some work activities and some activities that are not work. They may also spend some of their time in segregated day activities, and some of their time in integrated competitive employment. There is no way to parse out who falls into the stated categories based on the data in the Plan. We also note that, regardless of these key unsolved data questions, the Plan’s goal on page 71 of providing more integrated day options to less than 3% of this opaque baseline number of 20,055 individuals at the end of a five-year process is shockingly inadequate.

Other data used in the HCBS section of the Plan are also questionable as appropriate baseline figures. The Plan states that 4,263 people – about 8% of the 53,689 total HCBS recipients – are working age and competitively employed. This is the “base” number the Plan uses for people being successfully served. However, as in the previous draft Plan, here “competitively employed” is still measured using the clumsy, “\$600 of earnings/month” metric. We do not know whether that is an earnings level that is tracked over time, or whether anyone who manages to earn that amount in any given month is included in the base number.

Commissioner Mary Tingerthal
Commissioner Lucinda Jesson
Commissioner Katie Clark Sieben
Commissioner Dr. Brenda Cassellius
Minnesota Olmstead Sub-Cabinet
April 6, 2015
Page 6

We also find that the goals stated in this part of the Plan remain too low for a number of reasons. It is commendable that the Plan has increased the numbers of people receiving services who will meet the definition of competitive employment. The total new/additional people who will be competitively employed over five years is 4,835, compared to 3,378 from the prior draft. That represents a sizable increase.

However, the Plan does not discuss the expected growth in the service programs overall. We know from other documents that DHS forecasts the number of people using HCBS to expand over the next five years. Without knowing the “N” – the expected number of people using services – we cannot tell whether the proposed increase from 3,378 to 4,835 is merely proportional to expected growth overall or represents a more aggressive goal to obtaining competitive employment for people than the prior Plan draft.

In this part of the Plan—as throughout—setting an appropriate baseline from which goals are set and progress is measured is critical. Taking the current numbers reported, there are 15,001 people who are currently receiving HCBS services in segregated settings, and 4,263 people in competitive employment. If all 4,835 additional people to be moved to integrated settings come out of that segregated settings group, then by 2019, there would be a total of 9,098 people being served in integrated settings, and 10,166 people remaining in segregated settings. That would be progress, but slightly more than half (53%) the total number of people would still be segregated after 5 years. As a goal, that projected result is too low.

However, if the target population is the total 53,689 population of all people receiving HCBS services—in our view, a more appropriate target—then the 9,098 represents an overly modest 17% in competitive employment. That is unacceptably low.

Also, even assuming (1) the 15,001 figure of persons receiving waiver services and being served in segregated settings remains constant over the next five years, and (2) that all of the 4,835 additional people come out of that 15,001 group (and are not new people to services generally), the Plan would still leave over 10,000 people on the HCBS waivers in segregated settings. That is not sufficient progress.

VRS Data is Not Clear and Goals are Too Weak

We appreciate the clarity that the current iteration of the Plan added to the goals regarding Vocation Rehabilitation Services. It is now clear that the state views the VRS as a key engine in driving the move towards increased competitive employment. Yet the goals remain unacceptably modest. As a percentage of the FY 2014 “base” number of 2,738 people, the Plan posits a 4.2% increase in FY 2015, followed by a 6.3% increase in FY 2016, up to an 11.7% increase in FY 2019. These incremental annual goals do not represent the sort of change Minnesota needs.

Commissioner Mary Tingerthal
Commissioner Lucinda Jesson
Commissioner Katie Clark Sieben
Commissioner Dr. Brenda Cassellius
Minnesota Olmstead Sub-Cabinet
April 6, 2015
Page 7

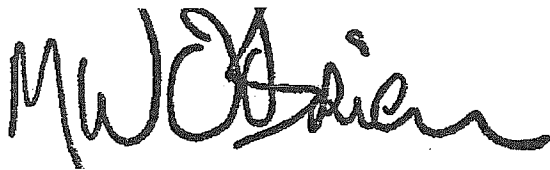
Conclusion

This version of the Plan does not provide an acceptable road map to integration based on sound baseline data with measurable goals and timelines to integrate individuals with disabilities into competitive employment and integrated day programs consistent with *Olmstead*. We urge the Subcabinet to rectify these grave shortcomings so that the promise of the *Olmstead* planning process can be fulfilled. We would welcome the opportunity to discuss future updates to the Olmstead Plan with the key authors. We believe continued dialogue between our respective groups and state leaders could lead to better development of not only key objectives but in the development of systemic changes that will be needed to achieve these goals.

Sincerely,



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Commissioner Mary Tingerthal
Commissioner Lucinda Jesson
Commissioner Katie Clark Sieben
Commissioner Dr. Brenda Cassellius
Minnesota Olmstead Sub-Cabinet
April 6, 2015
Page 8

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cc: The Honorable Donovan Frank, U.S. District Court Judge
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