August 19, 2015

ECF Filed

The Honorable Donovan W. Frank
United States District Court - District of Minnesota
Warren E. Burger Federal Building
316 North Robert Street
St. Paul, MN 55101

Re: Jensen et al v. Minnesota Department of Human Services et al

Court File No: 09-CV-1775 DWF/FLN

Our File No.: 7400-001

Dear Judge Frank:

On behalf of the Settlement Class, pursuant to the Court's Text Only Order (Doc. 490), we provide the following response and objections with regard to the proposed revised *Olmstead* Plan (Doc. 486-1) recently filed by the State and DHS.

As background, there have been years of delay and non-compliance by the State and DHS to develop and submit to the Court an *Olmstead* Plan required by the *Jensen* Class Action Settlement. *See*, *e.g.*, March 19, 2015, Order (Doc. 400) at 5 ("In addition, Defendants' request needlessly delays closure on final approval of the Olmstead Plan. The Court reminds Defendants of their promise to "develop and implement a comprehensive Olmstead Plan" more than three years ago at the time of the Settlement Agreement. (See Doc. No. 136, Ex. A at 18.) Defendants have failed to meet previous Olmstead Plan filing deadlines, resulting in revised deadlines and additional delays. (See, e.g., Doc. No. 265 (extending Defendants' November 1, 2013 filing deadline to July 15, 2014).) The Court encourages Defendants to timely fulfill their obligations under the Settlement Agreement."); January 9, 2015, Order at 12 (Doc. 378) ("The Court finds that many of the State's specific proposals to accomplish these strategies are inadequate. . . ."); id. at 14 ("The Court urges the State to apply the same passion, care, and concern with persons with disabilities that the State proclaimed when it agreed to 'develop and implement a comprehensive Olmstead Plan' more than three years ago at the time of the

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SHAMUS P. O'MEARA

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¹ "Plaintiffs' Counsel shall submit any comments or objections to the revised Olmstead Plan by August 28, 2015." *Id.*

Settlement Agreement." Meaningful progress must be realized across the State. Justice requires no less."); id at 4 ("As the Court has reiterated in prior orders, these topical goals must be assessed as to whether they are concrete, realistic, strategic, measurable, and timely."); December 5, 2011 Final Approval Order for the Stipulated Class Action Settlement Agreement (Doc.136, Ex. A at 18) ("Within eighteen (18) months of the Court's approval of this Agreement, the State and the Department shall develop and implement a comprehensive Olmstead Plan that uses measurable goals to increase the number of people with disabilities receiving services that best meet their individual needs and in the 'Most Integrated Setting,' and is consistent and in accord with the U.S. Supreme Court's decision in Olmstead v. L.C., <u>527 U.S. 582</u> (1999)."); April 25, 2013, Order at 9 (Doc. 212) (requiring a November 1, 2013, deadline for "the State of Minnesota and the Department of Human Services ("DHS") to develop and implement a comprehensive Olmstead Plan that[] uses measurable goals to increase the number of people with disabilities receiving services that best meet their individual needs, in the 'most integrated setting' and is consistent and in accord with the U.S. Supreme Court's decision in Olmstead v. L.C."); Jan 22, 2014, Order (Doc. 265) (requiring a revised Olmstead Plan by July 15, 2014); September 18, 2014, Order at 7-8 (Doc. 344) (declining to adopted State's Olmstead Plan submission, requiring revised Olmstead Plan by November 10, 2014 and stating, "Although the Court identifies only two of the most glaring flaws in the Proposed Olmstead Plan, the Court reminds the State of its comprehensive responsibilities under the Settlement Agreement and the Olmstead decision.").

Over the past four years, our office, on behalf of the Settlement Class, has repeatedly conveyed to the *Olmstead* Committee, DHS, counsel, the Independent Court Monitor and the Court our ongoing concerns relating to the proper development and implementation of an *Olmstead* Plan. For example, in our April 13, 2015, letter to the Court (Doc. 412), we again stated our comments and objections and asked for an evidentiary hearing on the *Olmstead* Plan:

The March 20 version of the Revised Olmstead Plan offers little substantive variance from the prior deficient version (Doc. 369). Importantly, it continues to ignore the vital need for specific, detailed, measurable goals, specific timelines to accomplish the goals and system changes, fundamental protocol to engage person-centered planning, comprehensive data collection for people with disabilities to be served under the Olmstead Plan, transition specifics, and important funding criteria and details, among many other deficiencies. Moreover, many of the goals identified in the March 20 Revised Olmstead Plan are underwhelming, short-sighted and far from the promises made to people with disabilities and their families in the Jensen Settlement Agreement and to the Court. The Court has repeatedly admonished DHS for its failure to comply with prior Orders involving the timely development of an Olmstead Plan consistent with the *Jensen* Settlement Agreement, even offering DHS several examples to

clearly illustrate and clarify the approach the Court wanted DHS to undertake (after previous failed attempts by DHS to comply with the Court's Orders) in formulating measurable goals and objectives for the entire Olmstead Plan to carry out DHS obligations to people with disabilities. *See* March 19 Order at 3 (Doc. 400) ("Moreover, the Court has repeatedly provided Defendants with the standards against which the Olmstead Plan is to be measured. (See, e.g., id. at 4 (reiterating that "these topical goals must be assessed as to whether they are concrete, realistic, strategic, measurable, and timely"); Doc. No. 344 (providing that "the Proposed Olmstead Plan must contain concrete, reliable, and realistic commitments, accompanied by specific and reasonable timetables, for which the public agencies will be held accountable").) The Court encourages Defendants to review the requirements set forth in Olmstead v. L.C., <u>527 U.S. 582</u> (1999), and in the numerous prior orders of this Court.")

It is important to note that this Court's specific, important guidance has been repeatedly rejected by DHS which now offers another Revised Olmstead Plan without the fundamental measures needed to be successful, and accountable, to the people with disabilities and their families DHS seeks to serve. The result remains an incomplete plan in violation of the *Jensen* Settlement Agreement, the many prior Orders of this Court, and the civil rights of people with disabilities in Minnesota.

On behalf of the Settlement Class, we object to the March 20, 2015, Revised Olmstead Plan and reiterate our request for an evidentiary hearing on this subject. The issue of DHS non-compliance with the *Jensen* Settlement Agreement as well as this Court and the Independent Court Monitor's many findings of substantive non-compliance by DHS concerning the Olmstead Plan and other important aspects of the Jensen Settlement Agreement must be halted. As we stated in our February 3, 2015, letter to the Court (Doc. 384) objecting to the Revised Olmstead Plan (Doc. 369), the *Jensen Class Action Settlement Agreement* is the agreed upon, Court ordered baseline upon which DHS conduct must be measured, including the best practices promised in the Settlement Agreement to which DHS expressly agreed. See generally December 5, 2011, Final Approval Order for Stipulated Class Action Settlement Agreement (Doc. 136). A centerpiece of the Settlement Agreement is the DHS promise to develop and implement a statewide Olmstead Plan for the benefit of people with disabilities and their families. The importance of such a wide sweeping promise is of paramount concern to the thousands of Minnesotans with disabilities who stand to benefit from the Olmstead Plan. If properly developed, funded, implemented and administered, the Olmstead Plan would imbue dramatic, positive life changing approaches to how we address people with disabilities and their families across the state, from ensuring their freedom from abuse, to housing and employment opportunities, transportation, and listening and acting on their own goals and dreams to live within and be part of their communities.

On behalf of the Settlement Class, we respectfully request that March 20, 2015, Revised Olmstead Plan be rejected as insufficient and in violation of the Jensen Class Action Settlement Agreement. We also respectfully request that an evidentiary hearing be held in which DHS must answer to the Court and families for its non-compliance over the past three years and be held accountable for its actions

April 13, 2015, Letter from Settlement Class Counsel to Court at 2-3 (Doc. 412).

It is important to note that the current version of the proposed *Olmstead* Plan is an improvement over prior rejected versions, and good work has been done by many on behalf of people with disabilities and their families.

However, as we conveyed to the State and DHS on August 7, 2015, our office remains concerned about several aspects of the revised *Olmstead* Plan and has expressly objected to portions of the plan:

Thank you very much for your efforts on behalf of people with disabilities and their families in Minnesota.

We provide the following with regard to the State and DHS's draft Olmstead Plan. The Court's December 5, 2011, Order (Doc. No. 136) requires the State and DHS to develop and implement an Olmstead Plan. *See* Final Approval Order for Stipulated Class Action Settlement Agreement, Exhibit A (Class Action Settlement Agreement) at 18 ("Within eighteen (18) months of the Court's approval of this Agreement, the State and the Department shall develop and implement a comprehensive Olmstead plan that uses measurable goals to increase the number of people with disabilities receiving services that best meet their individual needs and in the "Most Integrated Setting," and is consistent and in accord with the U.S. Supreme Court's decision in Olmstead v. L.C., <u>527 U.S. 582</u> (1999)").

In providing our comments with respect to the draft Olmstead Plan, we expressly reserve, and do not waive, all rights and positions of the Settlement Class with respect to the *Jensen* Class Action Settlement Agreement and under applicable law.

Over the years we have provided our position and comments with regard to the Olmstead Plan to the Olmstead Committee, DHS, counsel, the Independent Court Monitor, and the Court. Among other items, we have stated that the Olmstead Plan should:

- Apply to all people in Minnesota with a disability as defined by the Americans with Disabilities Act
- Expressly prohibit the use of restraint and seclusion for all people with disabilities to which the Olmstead Plan applies with a single emergency exception for the use of limited manual restraint consistent with the Jensen Settlement Agreement
- Include sufficient funding necessary to meet and implement the goals set forth in the plan.
- Use measurable goals to increase the number of people with disabilities receiving services that best meet their individual needs and in the most integrated setting
- Be consistent and in accord with the Olmstead decision
- Comply with all applicable Court Orders

We object to any Olmstead Plan provision, omission, or interpretation of the Olmstead Plan that is inconsistent with these positions.

With regard to waiver waiting lists, this morning we have provided to DHS the enclosed draft revisions to the State/DHS August 6th 3:15 PM revisions to section 8 of the Olmstead Plan (Waiting List). We reiterate our ongoing objections to this section and expressly reserve all rights and positions. Our draft revisions to the State/DHS revisions are conveyed as a draft only and are subject to change. Our revisions speak to some of the issues we discussed in our August 5th meeting at the Attorney General's office (e.g., early elimination of the waiting lists, State/DHS commits to eliminate the lists without qualification, State/DHS commits to request funds from the Legislature, and to locate and secure current unspent funds, some background information edits, etc.). Home and Community Based Waiver programs are extremely important to individuals with disabilities and their families. Yet there are several thousand people eligible for these services who remain on waiting lists for services (many waiting for years) due to a failure to sufficiently spend the monies appropriated by the Minnesota Legislature for these citizens. As we have recently discussed with DHS and counsel, unfortunately, it appears that we are far apart on these important items.

August 7, 2015, e-mail to State, DHS and consultants with draft revisions to proposed Waiting List section (enclosed).

CASE 0:09-cv-01775-DWF-BRT Document 493 Filed 08/19/15 Page 6 of 15

The Honorable Donovan W. Frank August 19, 2015 Page 6

We reiterate these ongoing concerns and objections. In addition, we take issue with the statement in the DHS Commissioner's August 12, 2015 amended letter to the Court (Doc. 491) stating that our office is "in agreement" with all but two sections of the revised Olmstead Plan.² Our positions and objections regarding the Olmstead Plan, and how it should be developed and implemented, have been repeatedly conveyed to DHS. It is inaccurate to now state that Settlement Class Counsel is "in agreement" with the revised provisions or that there is consensus on the proposed plan. While our office may not have present objections to many of the proposed revised provisions, we remain concerned about how these provisions, goals and objectives will be interpreted and implemented including through DHS Working Plans not yet developed. We have also expressed our ongoing concern about the commitment of the State/DHS to properly seek and secure funding for the Olmstead Plan's goals and objectives to ensure they bring about actual tangible achievements rather than empty statements on a piece of paper.

In addition, we have stated that there is a significant need for ongoing judicial oversight regarding any *Olmstead* Plan that may be approved by the Court. We respectfully request that the Court maintain jurisdiction over the *Olmstead* Plan for a reasonable period of time as determined in the Court's discretion to ensure proper compliance and implementation.

Thank you,

Respectfully submitted,

O'MEARA, LEER, WAGNER & KOHL, P.A.

/s/ Shamus P. O'Meara

Shamus P. O'Meara SPO:tlb

Enclosure

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² The DHS Commissioner's August 12, 2015, amended letter to the Court (Doc 491), states, "We submit this Plan with the understanding that all parties - plaintiffs' class counsel, the Ombudsman for Mental Health and Developmental Disabilities, the Executive Director of the Governor's Council on Developmental Disabilities, and DHS-are in agreement, except for certain features of the Positive Supports and Waiting List portions of the Plan, where plaintiffs' class counsel is not in full agreement."

CASE 0:09-cv-01775-DWF-BRT Document 493 Filed 08/19/15 Page 7 of 15

The Honorable Donovan W. Frank August 19, 2015 Page 7

cc: Mr. David Ferleger, Independent Court Monitor

DHS Counsel

Dr. Colleen Wieck Ms. Roberta Opheim

CASE 0:09-cv-01775-DWF-BRT Document 493 Filed 08/19/15 Page 8 of 15

From: Shamus O"Meara

To: <u>Tessneer, Michael L (DHS)</u>; <u>Wieck, Colleen (ADM)</u>; <u>Opheim, Roberta (OMHDD)</u>;

Danielle Mair@mnd.uscourts.gov; Ikeda, Scott (Scott.Ikeda@ag.state.mn.us); Al.Gilbert@ag.state.mn.us
Tingerthal, Mary (MHFA); Jesson, Lucinda E (DHS); Gray, Gregory N (DHS); Akbay, Amy K (DHS); Sullivan, Beth

G (DHS); Sullivan Hook, Karen E (DHS); Vollmar, Rosalie (DHS)

Subject: RE: 8-7-15 Draft Olmstead Plan
Date: Friday, August 07, 2015 8:29:00 AM

Attachments: Olmstead waiting list section 8 6 15 pm (O"Meara rev. 8-7).docx

Mike and All:

Cc:

Thank you very much for your efforts on behalf of people with disabilities and their families in Minnesota.

We provide the following with regard to the State and DHS's draft Olmstead Plan. The Court's December 5, 2011, Order (Doc. No. 136) requires the State and DHS to develop and implement an Olmstead Plan. *See* Final Approval Order for Stipulated Class Action Settlement Agreement, Exhibit A (Class Action Settlement Agreement) at 18 ("Within eighteen (18) months of the Court's approval of this Agreement, the State and the Department shall develop and implement a comprehensive Olmstead plan that uses measurable goals to increase the number of people with disabilities receiving services that best meet their individual needs and in the "Most Integrated Setting," and is consistent and in accord with the U.S. Supreme Court's decision in Olmstead v. L.C., 527 U.S. 582 (1999)").

In providing our comments with respect to the draft Olmstead Plan, we expressly reserve, and do not waive, all rights and positions of the Settlement Class with respect to the *Jensen* Class Action Settlement Agreement and under applicable law.

Over the years we have provided our position and comments with regard to the Olmstead Plan to the Olmstead Committee, DHS, counsel, the Independent Court Monitor, and the Court. Among other items, we have stated that the Olmstead Plan should:

- Apply to all people in Minnesota with a disability as defined by the Americans with Disabilities Act
- Expressly prohibit the use of restraint and seclusion for all people with disabilities to which the Olmstead Plan applies with a single emergency exception for the use of limited manual restraint consistent with the *Jensen* Settlement Agreement
- Include sufficient funding necessary to meet and implement the goals set forth in the plan.
- Use measurable goals to increase the number of people with disabilities receiving services that best meet their individual needs and in the most integrated setting
- Be consistent and in accord with the Olmstead decision
- Comply with all applicable Court Orders

We object to any Olmstead Plan provision, omission, or interpretation of the Olmstead Plan that is inconsistent with these positions.

With regard to waiver waiting lists, this morning we have provided to DHS the enclosed draft revisions to the State/DHS August 6th 3:15 PM revisions to section 8 of the Olmstead Plan (Waiting

List). We reiterate our ongoing objections to this section and expressly reserve all rights and positions. Our draft revisions to the State/DHS revisions are conveyed as a draft only and are subject to change. Our revisions speak to some of the issues we discussed in our August 5th meeting at the Attorney General's office (e.g., early elimination of the waiting lists, State/DHS commits to eliminate the lists without qualification, State/DHS commits to request funds from the Legislature, and to locate and secure current unspent funds, some background information edits, etc.). Home and Community Based Waiver programs are extremely important to individuals with disabilities and their families. Yet there are several thousand people eligible for these services who remain on waiting lists for services (many waiting for years) due to a failure to sufficiently spend the monies appropriated by the Minnesota Legislature for these citizens. As we have recently discussed with DHS and counsel, unfortunately, it appears that we are far apart on these important items.

Thank you,

Shamus

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RELATIONSHIPS • RELIABILITY • RESULTS

From: Tessneer, Michael L (DHS) [mailto:mike.tessneer@state.mn.us]

Sent: Thursday, August 06, 2015 6:24 PM

To: Shamus O'Meara; Wieck, Colleen (ADM); Opheim, Roberta (OMHDD);

Danielle_Mair@mnd.uscourts.gov; Ikeda, Scott (Scott.Ikeda@ag.state.mn.us); Al.Gilbert@ag.state.mn.us Cc: Tingerthal, Mary (MHFA); Jesson, Lucinda E (DHS); Gray, Gregory N (DHS); Akbay, Amy K (DHS);

Sullivan, Beth G (DHS); Sullivan Hook, Karen E (DHS); Vollmar, Rosalie (DHS)

Subject: 8-7-15 Draft Olmstead Plan

Hello you all,

Attached is the most recent draft of the Plan for your review. The attachments include a track change version and a clean version. It will be reviewed tomorrow by the Olmstead Subcabinet Executive Committee.

Please feel free to provide comments or questions. Any suggested changes would be best received by noon on Monday as the Plan must be filed by end of business.

Contact me if you have any questions

Mike

Caution: This e-mail and attached documents, if any, may contain information that is protected by state or federal law. E-mail containing private or protected information should not be sent over a public (nonsecure) Internet unless it is encrypted pursuant to DHS standards. This e-mail should be forwarded only on a strictly need-to-know basis. If you are not the intended recipient, please: (1) notify the sender immediately, (2) do not forward the message, (3) do not print the message and (4) erase the message from your system.

Waiting List

Stakeholder Comments:

Description: What this Topic Means

In this topic, "waiver" refers to two services for people with disabilities: 1) Community Access for Disability Inclusion (CADI); and, 2) Developmental Disabilities (DD). Waivers are funded by a combination of federal Medical Assistance (MA) and state funds. They are called "waivers" because the federal government waives the institutional requirements of MA to allow funds to be used for services in the home and community when people would otherwise require the level of care provided in institutional settings.

MA funding for home and community-based waiver services is not an entitlement can be obtained through an application process through which a person with a disability becomes eligible for these services. This means that states can set limits on the growth of these programs. In Minnesota, waiver waiting lists occur because: 1) the budgets for the waivers are limited by: 1) the amount the federal government approves in the state waiver plans; and, 2) the amount the Legislature appropriates for the state share of the service costs, or 3) not spending the money appropriated by the Legislature for eligible people with disabilities on the waiver waiting lists. A waiting list is created when people who are eligible for the service do not have immediate access to the service because of the funding limits or through underspending of legislatively appropriated monies. In addition to the waivers, Minnesota may provide other services to people with disabilities while they are on the waiting list for waiver services although many people with disabilities on the Minnesota waiting lists have not received other services.

The urgency of an individual's need for waiver services varies. Some people are waiting to exit institutional settings; some people are at serious risk of institutionalization because they lack supports to remain in the community; some people in the community are not at risk of institutionalization, but will need waiver services within a year in order to remain in the community, or to access employment or housing opportunities, among other items. We will prioritize access to waiver funding and services according to these levels of urgency. Additionally, the waiver waiting list will move at a reasonable pace, according to urgency of need, and not controlled by endeavors to keep institutions populated.

In this topic area, we will use statutory priorities for accessing waiver service planning and funding so that the waiver waiting lists moves at a reasonable pace according to urgency of need.

Vision Statement

Individuals who qualify for home and community based waiver services will be approved for services at a reasonable pace, determined by the individual's urgency of need, and will promptly receive the services for which they are approved.

What We Have Achieved

- The Department of Human Services (DHS) worked with stakeholders to create four categories for
 individuals currently on the waiting list to indicate urgency for waiver services and reasonable pace
 standards for each category. The four categories are: institutional exit, immediate need, defined
 need, and future need. The categories, reasonable pace standards and recommendations were
 published in the Home and Community-Based Supports and Services Waiver Waiting List Report.
- DHS conducted an analysis of the waiver waiting lists and funding that would be required to eliminate the waiting list and provided the information to the Legislature in a "Report on Program Waiting Lists" in December 2014. In 2015, after identifying significant underspending of the monies appropriated by the Legislature for eligible people with disabilities on the waiver waiting lists, the Legislature authorized changes to the management of the waivers, including strategies that increase the state's ability to use funds to serve people on the waiting list. Under the new legislation, county and tribal agencies (Lead Agencies) are required to spend at least 97% of their waiver funding allocation while maintaining a list of persons waiting for waiver services, or the Lead Agency must submit a corrective action plan to DHS' Commissioner for approval stating actions the Lead Agency will take to assure reasonable and timely access to waiver services for persons waiting for services. Minn. Stat. §§ 256B.0916, subd. 12 and 256B.49, subd. 27.
- Technical assistance and communications have occurred with Lead Agencies to maximize funding utilization; increase numbers served, and redistribute funding across Lead Agencies where necessary to meet statutory priorities. Minn. Stat. §§ 256B.0916, subd. 12 and 256B.49, subd. 27
- In 2015, the Legislature appropriated \$300 million towards elimination of waiting lists <u>[add more specific information about this appropriation is it a biennium appropriation, how much has been appropriated for CADI and DD waiver programs, does the DD calendar year mean DD receives lower appropriated amounts, etc.</u>
- Truven Health Analytics September 2014 reports shows that Minnesota ranks number one in the country for serving people with a disability at home and in their communities as measured by home and community based service waiver recipients per 1,000 people based on CMS federal reporting, 2010-2011. [if this pertains to a particular waiver type (e.g. class C waiver) then state it here]

Measurable Goals

Goal One: By October 1, 2016, the Community Access for Disability Inclusion (CADI) waiver waiting list will be eliminated and CADI services will have been provided in accordance with applicable law.

Baseline: As of May 30, 2015, the CADI waiver waiting list was 1,420 individuals.

Goal Two: <u>Effective immediately,</u> The Developmental Disabilities (DD) waiver waiting list will move at a reasonable pace.

Baseline: In April 2015, there were 3,586 individuals on the DD waiver waiting list.

Persons exiting institutional settings will move off the waiting list at a reasonable pace, which means that:

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• Effective immediately, Beginning December 1, 2015, Aas people residing in an institutional setting are assessed, waiver service planning and funding will be authorized as soon as possible, but no later than 45 days after the person makes an informed choice of alternative community services that are more integrated, appropriate to meet their individual needs, and the person is not opposed to moving, and would like to receive home and community based services.

Persons with an immediate need will move off the waiting list at a reasonable pace, which means that:

• Effective immediately, Beginning December 1, 2015, as people are assessed, waiver service planning and funding will be authorized as soon as possible, but no later than 45 days after the person meets criteria under Minnesota Statutes, sections 256B.49, subdivision 11a(b) and 256B.092, subdivision 12(b).

The current statutory criteria are: The person has an unstable living situation due to age, incapacity, or sudden loss of primary caregivers; is moving from an institution due to bed closure; experiences a sudden closure of their current living arrangement; requires protection from confirmed abuse, neglect, or exploitation; experiences a sudden change in need that can no longer be met through state plan services or other funding resources alone, or meet other priorities established by DHS.

Persons with a defined need of requiring services within a year of assessment will move off the waiting list at a reasonable pace, which means that:

Effective immediately Beginning December 1, 2015, as people are assessed as having a defined need
for waiver services within a year from the data of assessment, and within available funding limits,
waiver service planning and funding will be authorized as soon as possible, but no later than 45 days
of the defined need

Goal Three: By March 1, 20167, the DD waiver waiting list will be eliminated for persons leaving an institutional setting and for persons with immediate need as defined by Minnesota Statutes, sections 256B.49, subdivision 11a(b) and 256B.092, subdivision 12(b).

Goal Four: By March 1, 2017 December 31, 2018, within available funding limits, waiver funding will be authorized and provided for persons who are assessed on or after December 1, 2015 to have a defined need and have been on the waiting list for more than two three years.

Goal Five: By June 30, 20<u>1820</u>, the DD waiver waiting list will be <u>completely</u> eliminated, <u>within</u> available funding limits, for persons with a defined need.

Goal Six: No later than March 1, 2016, the State of Minnesota and DHS shall submit a request to the Legislature for an appropriation in an amount sufficient to fund the elimination of the DD waiver waiting list by the dates identified above.

Rationale

- The Legislature authorized sufficient funding to end the CADI waiting list over the 2016-2017 biennium by allowing previous legislative limits on growth to expire. It is projected to take 15 months to complete assessments and funding authorizations. DHS will establish targets for Lead Agencies to expedite the process of authorizing funding.
- The reasonable pace standards outlined in Goal Two will be implemented <u>immediatelyon December 1, 2015</u>, <u>when and planned</u> new data systems <u>are available</u> and training <u>will behas been</u> provided on the new urgency categories and standards to Lead Agencies. Annual data will be available by December 20156 at which time, a baseline will be established and the reasonable pace goals will be reevaluated, including reevaluation of sufficiency of funding and what funding would be needed to eliminate any remaining waiting list. An interim analysis of data will be conducted throughout the first year to monitor progress and assess targets.
- While it is anticipated that the waiting list for persons exiting an ICF/DD and persons with immediate need will be eliminated by January 15, 20167, which is 45 days from the completion of annual assessments of those on the waiting list, there is a lag in the data before analysis can be completed, which is why March 1, 20167, is the goal date. The assumptions for this goal will be evaluated as the baseline of the number of people in these two urgency categories is obtained.
- Although there was a legislatively authorized increase in funding for DD waivers beginning July 1, 2015, to the limits of the DD waiver plan, it may not be is not likely sufficient to completely eliminate the waiting list for persons in the "defined need" category. Limits on growth are based on legislative appropriations and the federally approved waiver plan. The federally approved DD waiver plan currently has a limit on funding growth of 300 persons/year although DHS can apply for an increase in this limit at any time.
- To assist the successful implementation of the goals identified above,—the State and DHS commit to submitting a request to the Legislature, by March 1, 2016, for an appropriation in an amount sufficient to fund the elimination of the DD waiting list no later than the dates identified above.

- In addition, the State and DHS will promptly identify and secure any remaining fiscal year funding (e.g., monies appropriated for the waiver programs but not spent for the programs), or other immediate funding sources, and will use these funds for the immediate reduction of the waiting lists.-
- Individuals are considered as moving off the waiting list once they are authorized for funding.
- An individual will be identified as having a "future need" if, after assessment, the individual does not meet criteria for the other three categories (institutional exit, immediate need, and defined need) and instead identified a future need for services that is over a year from the assessment date. An individual with a future need will be placed on a waiver eligibility list, but will not be placed on the waiting list. People will be offered an assessment annually, or any time that their needs or situation change. At that point, the reasonable pace standards will be applied.
- Kentucky and Tennessee have implemented similar urgency categories for individuals on the waiting
 list. The experience from these states shows that people in the emergent categories move off the
 waiting list quickly. Those with planned needs tend to wait longer. DHS anticipates that the urgency
 category populations will be similar to those states.

Strategies

Reform Waiting List Protocols to Incorporate Urgency of Need

- Implement new urgency of need categorization system and report to the Subcabinet as outlined in the Home and Community-based Supports and Services Waiver Waiting List Report, dated March 3, 2015.
- There will be semi-annual reporting, to the Subcabinet and Legislature on the new categorization system and reasonable pace standards as well as an estimate of funding needed to eliminate the waiting list for sub-cabinet and legislative consideration
- Revise notice of action and process, as necessary, to reflect new waiting list protocols.
- A workplan will be developed for the analysis of baseline data on urgency of need and reasonable pace as it becomes available to understand the needs of persons waiting, identify potential options to meet their needs, complete evaluation of existing programs to determine if there are changes which would enable programs to be more effective, conduct analysis of options and provide recommendations for a plan that will meet the needs of those with disabilities to receive needed services in the most integrated settings. This plan will be provided to the subcabinet.

Implement Initiatives to Speed Up Movement from Waiting Lists

- Technical assistance will be provided to Lead Agencies to help them expedite required assessments
 and authorization of funding so people can begin services and come off the waiting list. This will
 include strategies such as allowing case managers to use the DD Screening and Long Term Care
 Consultation documents to begin planning for services, and completing required assessment
 updates, rather than limiting assessments to certified assessors. This draws on additional capacity of
 contracted private agency case managers in addition to Lead Agency staff, allowing planning to
 begin more quickly.
- Targets for progress will be given to Lead Agencies, particularly those with the highest numbers of
 people waiting, and their contracted case management providers, to assure progress. This will
 include data on those who have been waiting the longest, so that priority can be given to those
 waiting the longest within each category, in addition to those with a known urgent need. Technical

assistance will be provided to these parties to streamline processes where appropriate to facilitate access to funding over the year.

Reform Management of Waiting List Management Systems

 The Waiver Management System, which is used with Lead Agencies and DHS to manage waiver funding, will be revised to capture needed data on waiting list categories of need, and when funding is authorized.

Responsible Agency

• Department of Human Services