Olmstead Barriers and Disincentives Identification Survey Results

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Introduction

Addressing the needs of Minnesotans with disabilities has never been simply a matter of more money. The state already spends a significant amount of federal and state funds. A crucial issue is how well those funds are used.

During the next biennium, funds will be allocated to meet the concerns of today. However, those funds are directed by the flow and use of laws, statutes, rules, regulations, policies, procedures, and program manuals generated over several decades. Minnesota has many regulations and processes that were considered innovative back when they were created 30 or 40 years ago, or even 70 or 80 years ago. Yet not only are they archaic today, but they may inadvertently help lead to new policies that maintain out-of-date policy and funding approaches. The best of intentions can be mired in the procedures of the past.

The 2013 Minnesota Olmstead Plan calls for a transformation, a rethinking of how the State addresses disability. As legislative proposals move forward, it becomes important to ask some basic questions. For examples, do proposals:

- Help people live, learn and work in the most integrated setting?
- Develop a robust system of supports?
- Ensure individual choice and self-direction?
- Keep people in, or let them return to, their home communities?
- Safeguard each person's respect and dignity?

This document does not propose new statutes or allocations. Rather, it begins a re-look at what Minnesota already has, in order to identify existing barriers and disincentives that may not be the most effective use of money while inhibiting the transformative promise of Olmstead.

Background

In order to achieve the vision and goals identified in the 2013 Minnesota Olmstead Plan, the State adopted a set of overarching strategic actions, intended to be the foundation of the transformation that is needed to increase integration and inclusion of individuals with disabilities. One of these actions is to instill an Olmstead perspective in state action. Specifically, the Olmstead Plan action is to:

> *"Review **all** policies, procedures, laws, and funding through the perspective of the Olmstead decision (including related case law and guidance), identifying where and how current systems unintentionally create barriers to integration or create disincentives to development and use of integrated settings.*
>
> *Wherever such a barrier or disincentive exists, develop a concrete plan for change, through administrative alignment and collaboration, legislative action, policy and rule changes, and funding changes and prioritization. This action includes other agencies and departments in Minnesota (not only subcabinet agencies.)"* *Pages 31-32 of the Olmstead Plan*

The state has identified immediate actions that have been taken administratively in 2014. State agencies (and other stakeholders) are preparing legislative proposals for the 2015 legislative session.

Timeline elements in the strategic action include: "By December 31, 2014, identify barriers to integration that are linked to federal legislation, regulation, or administrative procedures; identify options to address them" OV 2B; and "By January 6, 2015, prepare proposals for legislative and fiscal changes for the 2015 legislative session." OV 2C *Page 32 of the Olmstead Plan*

Document development

To initiate action items OV 2B and OV 2C of the Plan, the Olmstead Implementation Office sent a survey to a wide array of stakeholders (listed on pages 28 and 29 of this document): self-advocates, advocacy organizations, service providers, research and education groups, and local and state government agencies. The survey listed each of the Olmstead Plan's seven topical goals:

> *Employment:* People with disabilities will have choices for competitive, meaningful, and sustained employment in the most integrated setting.
>
> *Housing:* People with disabilities will choose where they live, with whom, and in what type of housing.
>
> *Transportation:* People with disabilities will have access to reliable, cost-effective, and accessible transportation choices that support the essential elements of life such as employment, housing, education, and social connections.
>
> *Support and Services:* People with disabilities of all ages will experience meaningful, inclusive, and integrated lives in their communities, supported by an array of services and supports appropriate to their needs and that they choose.
>
> *Lifelong Learning and Education:* People with disabilities will experience an inclusive education system at all levels and lifelong learning opportunities that enable the full development of individual talents, interests, creativity, and mental and physical abilities.
>
> *Healthcare and Healthy Living:* People with disabilities, regardless of their age, type of disability, or place of residence, will have access to a coordinated system of health services that meets individual needs, supports good health, prevents secondary conditions, and ensures the opportunity for a satisfying and meaningful life.
>
> *Community Engagement:* People with disabilities will have the opportunity to fully engage in their community and connect with others in ways that are meaningful and aligned with their personal choices and desires.

For each of these topical goals, the questionnaire asked people to list barriers or disincentives that prevent each goal from happening. For each barrier or disincentive, people were asked to list the federal or state policies, procedures, laws or funding that created the barrier or disincentive.

The results were compiled, and then discussed in meetings with groups of stakeholders (listed on page 28 and 29 of this document).[1] Through the multiple steps, the raw results of the questionnaire were improved in terms of clarity and consistency. (Some responses were removed if they noted only that current funding levels were too low, or if they noted only that societal attitudes needed to change. While valid, the responses were outside the framework of what was requested.) The results, however, were not edited in terms of acceptability. The results are similar, in a sense, to an opinion survey in that they reflect perspectives articulated by some involved stakeholders, but do not represent the formal positions of any organizations or agencies. There is no presumption that all organizations and agencies find all the results to be acceptable, or even accurate in their assertions. All of the results, however, do have some support among stakeholders and require further consideration.

Purpose

The process and results provided in this document are an inaugural effort to identify Olmstead barriers and disincentives in existing laws, regulations and policy statements. The results are being shared with stakeholders as they develop and advance legislative proposals for the 2015 legislative session to use as appropriate to their work. This is being given to agencies and advocates to use as a tool as they review proposals. The intent is to use this and subsequent survey results to help develop an Olmstead perspective.

Before the 2016 legislative session, the Olmstead Implementation Office will work with state agencies in determining priority requests to the governor's office and the legislature for changes in law and policy to eliminate Olmstead perspective barriers and disincentives.

[1] For example, one group (the Governor's Council on Developmental Disabilities) spent their council meeting time answering survey questions. After the meeting a national literature review of barriers and disincentives was conducted and supplemented the member input. At the following meeting, the input was refined and edited.

Survey Results

The grid included here is the compilation of the unedited responses received from survey respondents. The responses were reviewed with stakeholders but were not necessarily verified in terms of accuracy. While all responses have some stakeholder support, this compilation does not represent the formal position of any agency or organization.

Barrier or disincentive	Relevant document	Survey Participant Responses (unedited)
A. EMPLOYMENT		
A.1 Employment: labor statistics Confusion in the measurement, reporting and definitions about Labor Force Participation—unemployment, underemployment, employment.	*FEDERAL:* • Social Security definition 42 U.S.C. 423(a)(1)(E) *STATE:* • State disability definitions in statute (partial list in the barrier description) • Governor's executive order re: state employment • M.S.256C.26	• There is confusion in understanding disability in the context of unemployment statistics. It is unclear which disabilities types are included. Unemployment and employment are measured, but not underemployment. The available data is not presented in a way that clearly describes the disability-related employment situation. • One root cause may be multiple definitions of disabilities in both state and federal laws. And the definition of under-employment needs to be clarified, and separated out, in a disability context. Another issue is that Department of Employment and Economic Development DEED is required to report labor statistics but that requirement does not require disability data. For more background, see: http://www.house.leg.state.mn.us/hrd/pubs/ss/ssdisdetr.pdf • M.S.256C.26, passed in 1980, requires DEED to develop a plan on underemployment of deaf, deafblind and hard of hearing people, has yet to be implemented. State disability definitions include: Human Rights Act, 363A.03 Judges retirement plan, 490.121 Local relief association benefit plans, 353B.02 Minneapolis Police Relief Association, 423B.01 Property Tax Refund Act, 290A.03 Teachers retirement, Saint Paul and Duluth, 354A.011 Uniform Probate Code, 524.1-201 Commitment and Treatment Act, 253B.02 Developmentally disabled persons, support services, 245B.02, 245B.06 Facility, abuse and maltreatment, reporting, 626.556 Health threat procedures, 144.4172 Housing Finance Agency, 462A.03 Long-term care consultation services, 256B.0911 Missing Children's Act, 299C.52 Public Guardianship for Adults with Developmental Disability Act, 252A.02 State institutions, 246.51

Barrier or disincentive	Relevant document	Survey Participant Responses (unedited)
A.2 Employment: benefits loss Disincentives to employment include fear of benefits loss due to Social Security practices and multi-law confusion of benefits	*FEDERAL:* • Social Security Administration practices with Substantial Gainful Activity and asset limits. • Affordable Care Act *STATE:* • Asset limit in statute ($3K household of 1; $6K household of 2)	• Disincentives include possible loss of social security, health insurance and living situations. Social Security still creates disincentives. Fear of loss of benefits – fear of losing health insurance or Medicaid or Social Security Insurance (SSI) or Social Security Disability Insurance (SSDI) or loss of housing, especially if one works fulltime. • The Social Security Administration uses Substantial Gainful Activity and asset limits. There are benefits counselors and an online disability benefits calculator; however, there is a firm belief among many that you don't want to work. • The Affordable Care Act allows people to enter through a MAGI (Modified Adjusted Gross Income) door but most people with disabilities still enter through SSI participation. • There are asset limits in Minnesota Statute ($3 thousand, household of one; $ 6 thousand, household of two). • The federal Department of Labor allows for payment of subminimum wages under 16C exemptions for businesses and providers/vendors.
A.3 Employment: training limits Training and Postsecondary Education—there are limits imposed on hours and options.	*FEDERAL:* • 22014 Reauthorized Workforce Investment and Opportunity Act (WIOA) • There are federal limits on training and postsecondary education.	• Skills for competitive employment: there are hard skills (academic and vocational) and there are soft skills (work experience and grooming for competitive jobs). Minnesota is lagging behind in creation of post-secondary opportunities for persons with disabilities. Training for a job (if it exists) is not enough—it could be two hours a day. Federal limits in terms of what can be put into this training so need to set expectations. If the person is employable then how will training occur? • There is a perception that Vocational Rehabilitation Services (VRS) policy and practice is biased against higher education options, preferring any employment. WIOA provides an existing opportunity to address training limits.

Barrier or disincentive	Relevant document	Survey Participant Responses (unedited)
A.4 Employment: transition quality Transition programs are not structured to promote quality outcomes. Students are not leaving school and entering employment.	*FEDERAL:* • Individuals with Disabilities Education Act (IDEA) legislation has the most detail about transition policy. • Workforce Innovation and Opportunity Act (WIOA) • Rehabilitation Act, Section 101(a)(11)(D), 34 C.F.R. 261.22; C.F.R. 300.154; 34 C.F.R. 300.348 *STATE:* • MN special education law describes regional committees: M.S.125A.22. The 2014 Legislature deleted the statute's required yearly summary and follow-up report. • Transition service plan documents • DEED program manuals • Memorandum of Agreement between DEED and MDE	• People get stuck in transition programs and cannot transition to actual employment before their Individual Education Plan (IEP) eligibility ends. There is a need to get opportunities earlier to move toward integrated competitive employment. • During high school, get students into employment and work evaluation so they can get employment after high school. Students with disabilities may not be experiencing paid employment, unpaid employment, volunteer work or internships. • Transition Service Plans (and CSSP) are not structured to prompt creation of an employment plan. • Supported Employment Services funding should be available to students before they leave a transition program. • WIOA requires 15% of Vocational Rehabilitation (VR) funding to provide pre-employment transition services. To this opportunity, the barrier is a lack of engagement of stakeholders in the implementation planning process. • The Rehabilitation Act requires Minnesota Department of Education (MDE) and DEED (VRS, State Services for the Blind (SSB)) to establish a coordinated delivery system to improve transition planning. A barrier is vagueness in the Memorandum of Agreement (MoA. It should support Olmstead goals.

Barrier or disincentive	Relevant document	Survey Participant Responses (unedited)
A.5 Employment: work segregation There is a lack of available options and choice in education and employment.	*FEDERAL:* • Centers for Medicare and Medicaid Services (CMS) Medicaid policy *STATE:* • Department of Human Services (DHS) policy • County funding policy	• Medicaid and county funding policies have a bias toward segregated services (Day Treatment & Habilitation (DTH) & sheltered); policy needs to shift this funding to fully integrated services.
A.6 Employment: state marketing State website lacks important information.	*STATE:* • DHS website	• DHS website does not have any mention of employment in the section describing day training and habilitation. No mention of employment as part of licensure.
A.7 Employment: discriminatory hiring Job application systems, position descriptions and hiring decisions may be discriminatory.	*FEDERAL:* • Americans with Disability Act (ADA) *STATE:* • M.S.43A.191 • M.S.363A.36 • Governor's employment executive order	• Online applications and interview processes may be screening people out and may limit employment and may be discriminatory and illegal. • Public and private businesses need to look at people with disabilities as a talent pool. There is abundant talent. • Knowledge and support people who want to work. This is similar to the situation affecting other diverse populations. • Position descriptions may be discriminatory. Affirmative Action (AA) plans are not in place in a timely fashion in state government (see M.S. 43A.191) and there must be AA plans in place for state contractors (see M.S. 363A.36). • In Minnesota, no one ensures that employers have ADA-compliant application and hiring processes, or workplaces.
A.8 Employment: waiver policies Federal and state waiver policies include employment barriers.	*FEDERAL:* • CMS waiver policies *STATE:* • DHS waiver policies	• Federal and state waiver compensation policies for hourly services don't allow for service-related time with employers, social workers, other team members, and family, integral to people finding and maintaining competitive employment; or related to getting to work like setting up Metro Mobility rides. Also, work options are limited by staffing patterns in living arrangements. Risk assessments state people must have staff on premises to work, but rates limit options.
A.9 Employment: contradictory policy AbilityOne contracting contradicts ADA and Olmstead rulings.	*FEDERAL:* • 41 CFR Ch. 51 • FAR Part 8 Subpart 8.7 • FAR Part 6.3022-5	• Providers with SourceAmerica or AbilityOne contracts are required to complete all with a workforce that is non-integrated; 75% of the work must be completed by individuals with disabilities. This is a contradiction of ADA and Olmstead rulings.

Barrier or disincentive	Relevant document	Survey Participant Responses (unedited)
A.10 Employment: rehab categories Vocational rehab categories are too limiting.	*FEDERAL:* • Vocational Rehabilitation policy	• VR categories are limiting. It is a selective process, and some categories get closed. Also, since the law says those with most severe disabilities get served first, there are no resources left for those needing minimal help. This can lead to more people being homeless or in the criminal justice system. • VR pushes some people to DTH but don't provide interpreters or staff who sign, keeping people out of needed courses.
A.11 Employment: rural areas DHS waiver services rate framework discriminates against rural areas	*STATE::* • Medical Assistance (MA) statute • DHS policy and practices • County policy and practices	• The MN DHS rate framework for waivered services discriminates against Minnesotans with disabilities living in rural areas. For example the rate framework for Supportive Employment Services and look at the Client programming and supports section http://mn.gov/dhs/partners-and-providers/continuing-care/reform-initiatives/rate-setting/rate-setting-frameworks.jsp -- 8.6% of the reimbursement rate is expected to be utilized for participation costs, reinforcers and mileage. This equated to approximately $1. Per service hour allocated for mileage - or less than 2 miles. In rural Minnesota there may be 50 miles one way to get to the nearest clinic or shopping area. Basic tier 3 mileage reimbursement non-commercial transportation – i.e.: mileage may be reimbursed at the IRS rate of $.56 per mile when program participants require transportation and there is no public or free transportation available - County staff are told they may not authorize mileage although there is a mechanism for it - they are told it is in the reimbursement rate.
A.12 Employment: supports policy State support focuses on getting a job, but not on keeping a job.	*FEDERAL:* • VRS law, rule • WIOA *STATE:* • M.S. 268A.16 • DEED policy • DEED program procedures	• Vocational Rehabilitation and State Services for the Blind assist people in finding work, but shortly after they do, their needed employment supports end. People, after a period of time, have their cases closed and they have to go through the process of having it reopened if they need even a small piece of assistive technology to remain employed. • A new federal set-aside for transition (in WIOA) needs implementation. • State law requires employment transition support for some disabilities, but others only if an appropriation is made by DEED. Workers who quality should be able to obtain services in American Sign Language.
A.13 Employment: health costs MAEPD copayment rates are a barrier to employment	*STATE:* • MAEPD policy	• Medical Assistance for Employed Persons with Disabilities (MAEPD) copayment rates need to change in order to increase employment of people with disabilities.

Barrier or disincentive	Relevant document	Survey Participant Responses (unedited)
A.14 Employment: state accommodation A lack of a centralized accommodation fund is a disincentive to MN state employment policy.	*STATE:* • FY 14 Session Law Chapter 312 Article 4 Section 26 • Governor's executive order on employment	• All public agencies are expected to employ people with disabilities but only the largest agencies absorb accommodation expenses. Not providing resources that are enterprise-wide, rather than agency-specific, is a barrier to public employment.
A.15 Employment: workforce centers Workforce centers are not accessible in their equipment and training opportunities.	*STATE:* • DEED workforce policies and standards	• Workforce centers are intended to be accessible, but only 1 of 50 offers training classes in American Sign Language (ASL). Some equipment is not accessible. Work Force Centers (WFCs) often refer people to VRS instead of making their services accessible. The problem isn't policy, but the program application of policy.
B. HOUSING		
B.1 Housing: Section 8 vouchers Potential disconnect between federal and state policy decisions.	*FEDERAL:* • Housing Act of 1937 (42U.S.C.§1437f) • HUD Section 8 Voucher policy *STATE:* • State participation policy	• Housing and Urban Development (HUD) sets policies for its money but the state participation can be designated for people with disabilities. There is a waiting list for Section 8 vouchers; it is virtually closed in most counties. Bonding funds dictate the terms and how many units are designated for low income. IRS & HUD determine rents in tax credit programs so rent can be higher than what Section 8 allows.
B.2 Housing: GRH & MSA segregation State program has negative restrictions.	*STATE:* • State GRH, MSA statutes • DHS GRH, MSA policies • County MSA policies	• Group Residential Housing (GRH) is a state program that congregates and segregates people. Funds can only be used in licensed settings and not in independent living. MN Supplemental Aid (MSA) Shelter Needy program results in county-created segregated housing. • GRH doesn't fully address personal choice and results in little roommate selection. Affordable options outside of GRH tend to be in unsafe areas for vulnerable adults.

Barrier or disincentive	Relevant document	Survey Participant Responses (unedited)
B.3 Housing: policy alignment Federal, state, county policies not aligned.	*FEDERAL:* • Federal housing policies *STATE:* • State housing policies • County housing policies	• There is no alignment across federal, state, county funded housing programs in terms of how funds are used and who can live there. Example: Minnesota Housing Finance Agency (MHFA) issues bonds with restrictions on how buildings are used, who lives there, who pays what. Not all units pay the same rent. Another example: Minn. Stat. § 245D policy limits staff pay, in turn limiting housing options.
B.4 Housing: asset limits Caps result in requiring perpetual poverty.	*FEDERAL:* • Federal housing policies *STATE:* • State housing policies	• Subsidies and spend-downs leave people in perpetual poverty (Note: people with disabilities experience poverty at twice the national average level.) People with disabilities cannot earn or save money because of asset limits. • M.S.256B.0658 has the Housing Access Services grant, which has successfully placed over 1,000 in homes or their own or homes they control.
B.5 Housing: visitability Current statute lacks standards.	*STATE:* • State statute • State rule, policy (lacking)	• Visitability refers to single-family or owner-occupied housing designed so that it can be lived in or visited by people who have trouble with steps. MN does have a statute covering visitability for new construction, but no standards are in place. • MN law makes it impossible for individual communities to institute changes that would be helpful.
B.6 Housing: affordable accessibility Not all cities require affordable, accessible housing in new developments.	*STATE:* • State statute • City ordinances, policies	• Cities should require all new housing developments to include accessible affordable housing. Much "affordable" housing is not affordable to low income families. State standards are not in place. • Requirements are met by one bedroom units to the exclusion of multi-bedroom or family units which are needed.
B.7 Housing: transition practices Case managers impeded from transition planning.	*STATE:* • State policy • County policy	• High caseload numbers impede and discourage case managers from intensive planning to transition out of corporate foster care into their own homes. Housing options are not available.
B.8 Housing: neighborhood accessibility Pedestrian access limited in some communities.	*STATE:* • State statute, policy • Municipal ordinance, policy	• There is a lack of pedestrian access to services such as grocery stores, pharmacies, banks, etc. For blind, deaf/blind and deaf people in particular, there are few non-urban alternatives.

Barrier or disincentive	Relevant document	Survey Participant Responses (unedited)
B.9 Housing: rural areas DHS waiver service rate framework discriminates against rural areas.	*STATE:* • DHS policy	• The MN DHS rate framework for waivered services discriminates against Minnesotans with disabilities living in rural areas. For example if you look at the rate framework for Independent Living Skills Training or Supportive Living Services and look at the Client programming and supports section http://mn.gov/dhs/partners-and-providers/continuing-care/reform-initiatives/rate-setting/rate-setting-frameworks.jsp you will see that 8.6% of the reimbursement rate is expected to be utilized for participation costs, reinforcers and mileage. This equated to approximately $1. per service hour allocated for mileage - or less than 2 miles. In rural Minnesota there may be 50 miles one way to get to the nearest clinic or shopping area. • Also: People with disabilities in rural Minnesota could continue to remain independent if chore services had a better rate structure. The reimbursement rate is $14.88 per hour. If someone lives in rural Minnesota and they need a person to come out and remove snow for example, the person doing the snow removal needs to cover their time and gas to get to the home and then be paid for their time. People could remain independent in their homes if the payment mechanism would allow for travel costs.
B.10 Housing: fire safety State law could be used to assist with visual fire alarms.	*STATE:* • M.S.237.51 telecommunications	• Smoke detectors and carbon monoxide detectors with flashing strobe lights should be made part of the Telecommunication Equipment Distribution Program as they are in other states to ensure people with hearing loss are safe in their homes.

Barrier or disincentive	Relevant document	Survey Participant Responses (unedited)
C. TRANSPORTATION		
C.1 Transportation: Greater MN Much of the state lacks a coordinated local system	*FEDERAL:* • FTA: Section 5310 Enhanced Mobility of Seniors and Individuals with Disabilities Program. STATE: • M.S.174.24 • State transit policies • Regional or local policies	• 5310 program provides vehicles and buses can be made available on weekends and evenings, but that rarely happens. M.S.174.24 requires MnDOT to meet 80% of needs by 7-1-15. Insurance and maintenance also are barriers. • School buses for students with disabilities operate separately, not full day, and are not available for after-hours activities. • The local nature of system design means there is no uniform approach to coordination and suggests state legislation is not likely to assist in improving coordination. • In rural areas, transportation systems cannot cross county lines for employment or medical services. Other systems have too-restrictive mile limits or time limits.
C.2 Transportation: paratransit systems Metro Mobility is unreliable for employment	*STATE:* • Statutes regarding accessibility of paratransit systems. • Metro Mobility policies, procedures	• Para-transit systems lack flexibility and their lack of on-time performance affects employment of people with disabilities. Metro Mobility gives priority to people with medical appointments. Metro Mobility follows mainline bus schedule for start and end times but has no standards for waiting times, which are excessive and makes it unreliable. Driver training is inconsistent. Other alternatives should be explored: hour cars, car coops, etc. Asset limits means cars for people with disabilities must be junkers. Off-hour employment not feasible without transit. • The Metro Mobility model is not sustainable due to capacity limits. • Metro Transit (MTC) should hire transportation coaches to move people from paratransit to mainline systems.
C.3 Transportation: mainline systems	*STATE:* • State policies on transit safety, snow removal, curb cuts. • Local laws and policies on snow removal, curb cuts. • State service animal policy	• Lack of safety on mainline transit makes people feel vulnerable waiting for a bus. • There is a lack of snow removal and curb cuts. The transit system includes streets, sidewalks, crosswalks, curb ramps and crossing signals. • Workers are not required to have adequate training regarding service animals, or other disability concerns.

Barrier or disincentive	Relevant document	Survey Participant Responses (unedited)
C.4 Transportation: funding streams Allow individuals to combine funding streams.	*FEDERAL:* • Transportation laws, policies *STATE:* • Transportation statutes, policies	• People with disabilities sometimes have access to multiple transportation funding streams: from vocational providers, residential programs, etc. Let them combine the funds to best fit their needs.
C.5 Transportation: MA policy Medical Assistance can favor institutional over community settings	*STATE:* • M.S.256B.69, subd.4(b)	• Medical Assistance recipients may have access to better coordinated transportation services in institutional care settings than in the community. In a documented case, a person had a care coordinator through a managed care plan when the client lived in an institutional care setting and then transitioned the community. When moved to the community, the person was deemed ineligible for managed care. In theory, the client's access to transportation services should have been the same. In practice, the client missed a number of medical appointments due to deficiencies in coordination of transportation. • Minn. Stat. § 256B.69, subd. 4(b) is the authority cited for why some Medical Assistance recipients, specifically those with medical spenddowns, are ineligible for managed care. • 2014 Session created a non-emergency medical transit advisory committee. Recommendations should be considered.
C.6 Transportation: accessibility Transportation, including planes and trains, is not fully accessible	*FEDERAL:* • ADA	• Although ADA requires accessibility, airlines and trains continue to have accessibility problems. Poor enforcement mechanisms for existing law are a barrier.

Barrier or disincentive	Relevant document	Survey Participant Responses (unedited)
D. SUPPORTS & SERVICES		
D.1 Supports & services: availability Needed services aren't available	*STATE:* • M.S.256A.0656 (CDHC repeal 2014) • M.S.256B.0657 (self-directed supports) • M.S.256B.0659 (PCA change) • M.S.256B.0711 (SEIU)	• While change is happening, too many services are too limited. Issues include: high Personal Care Attendant (PCA)turnover; crisis homes not available; no group home or day program options in some counties; limited housing options; waiting lists for waivers and unspent funds; some counties don't keep waiting lists; some people need but don't get 24 hour help; caregivers don't get respite. There are few options between family homes and group homes. The system is complex and people don't know what to do. • Different settings such as Anoka and St Peter have different barriers. Need specialty courts. Counties have inconsistent civil commitment practices and prosecution. There are poor reintegration practices from county to county. • The services that are available often are not coordinated by full team planning. Policy should not require this, but should encourage it when in order.
D.2 Supports & services: self-determination CDCS still is not person-centered	*STATE:* • State CDCS policy and practice • County CDCS policies and practices	• Consumer Directed Community Supports (CDCS) is still not person-centered. Counties still make the decisions; there are county differences with no universal approach to individual planning. Some counties say they don't do CDCS; they protect funds. They don't trust families with public funds. They don't listen to individuals who have guardians. This is contrary to Olmstead, which is about shifting from a service model to a supports model. Policies should be rewritten to be person-centered. • A separate but related concern is that Child Protection is called when children with disabilities exhibit behaviors. Counties try to remove the child rather than support the family.
D.3 Supports & services: training Inadequate training for professionals and support people.	*STATE:* • State policy	• Lack of quality training programs for personal care attendants, job coaches and other support people. Lack of training (and low wages) leads to staff turnover. • Professionals need consistent, continuous training on the employment first concept. Actions indicate that segregated employment is still considered an appropriate starting point. • State regulations don't assume provider competence, resulting in resources going to testing and paperwork. • Policies don't support adequate parent training.

Barrier or disincentive	Relevant document	Survey Participant Responses (unedited)
D.4 Supports & services: MA policy Medical Assistance provides less service coordination for people with fee-for-service than with managed care.	*STATE:* • M.S.256B.69, subd.4(b)	• Medical Assistance enrollees whose care is paid through fee-for-service should have access to the same supports and services as those whose care is through managed care plans. In practice, enrollees in fee-for-service experience less connection and coordination in their services. • Managed care is not currently available for Medical Assistance recipients with a medical spend down. Minn. Stat. § 256B.69, subd. 4(b): Under this policy's application, a person may be eligible for managed care while in an institutional care setting but then lose eligibility by moving to the community if he/she has an income above 100% of federal poverty guidelines. The person is eligible for Medical Assistance--because of his or her age or disability—in both the institutional and the community-based setting, but the option of services through managed care are not available if he or she elects to live in the community, precisely where the loss of integration and coordination in the provision of care through managed care may be most acutely felt.

Barrier or disincentive	Relevant document	Survey Participant Responses (unedited)
D.5 Supports & services: rural areas DHS waiver service rate framework discriminates against rural areas.	*STATE:* • DHS waiver policy, procedures • DHS 245D rules, practices	• The MN DHS rate framework for waivered services discriminates against Minnesotans with disabilities living in rural areas. For example if you look at the rate framework for Independent Living Skills Training or Supportive Living Services and look at the Client programming and supports section http://mn.gov/dhs/partners-and-providers/continuing-care/reform-initiatives/rate-setting/rate-setting-frameworks.jsp you will see that 8.6% of the reimbursement rate is expected to be utilized for participation costs, reinforcers and mileage. This equated to approximately $1. per service hour allocated for mileage - or less than 2 miles. In rural Minnesota there may be 50 miles one way to get to the nearest clinic or shopping area. Basic tier 3 mileage reimbursement non-commercial transportation - ie: mileage may be reimbursed at the IRS rate of $.56 per mile when program participants require transportation and there is no public or free transportation available - County staff are told they may not authorize mileage although there is a mechanism for it - they are told it is in the reimbursement rate. • The 245D rules for basic services require far too much documentation and their requirements are overkill. Many people with disabilities require a few hours of homemaking per week to remain independent - if a person receives 2 hours per week to get help to wash their floor, change their bed linens etc. their staff person may work 104 hours per year. If they live in rural Minnesota that staff person will only work for one person - but they are required to have 10 hours of orientation, and 12 hours of annual training, a great deal of documentation, etc. Providers have difficulty finding staff willing to do the work and the Minn. Stat. § 245D requirements force providers to refuse people who have low hours because they can't afford to serve them. A typical provider makes $1,896.96 for 104 hours of homemaking service, the wages are $1,060.80, taxes and insurance are $159.12, this leaves $677.04 per year for the provider to cover office overhead costs, payroll administration, staff education, home visits with the corresponding staff time and mileage, service coordination, case manager reporting, licensing and audits.

Barrier or disincentive	Relevant document	Survey Participant Responses (unedited)
E. LIFELONG LEARNING & EDUCATION		
E.1 Lifelong learning: segregation Replace segregation with inclusion	*FEDERAL:* • Federal education laws including IDEA • Federal transition laws STATE: • M.S.125A.62 (Academies; includes LRE language) • State education laws • State charter school laws • School district policies	• Embedded in state and federal laws are the concepts of Least Restrictive Environment (LRE). In many cases, LRE should be replaced with the concept of most integrated setting. Among the exceptions are situations where a full continuum of alternative placements needs to consider communication needs. • Transition programs can be segregated. It seems easier to build a segregated school building than make funds available for inclusion. This is regressive and the opposite of inclusion. • There is confusion about transition and learning. There is inconsistency with lots of funding going to Transition Plus. • Charter schools may lead to more segregation. • School choice has led to new tensions. On one block, 20 students can attend 8 different schools. This trend means neighborhood school is a historical concept. • There tends to be a separation of students especially in testing. In order to drive test scores up, students with disabilities are excluded from the test pool.
E.2 Lifelong learning: measurement Data is not adequate.	*STATE:* • M.S.120B.11	• Education data could be clearer. Graduation rates can be confusing since students can graduate as late as age 21, but most published rates are at age 18, missing the older students. It is unclear how we measure retention beyond a short period. Graduation data for IEP vs. state standards is lacking. There is a disability data hole-disaggregate data to show tracking • M.S. 120B.11 describes a process for a school district to review its curriculum, instruction and student achievement. Within that section is a requirement for customer satisfaction. It would be possible to add a requirement that satisfaction with special education be disaggregated.
E.3 Lifelong learning: positive behavior supports Gaps in positive behavior supports lead to restrictive placement.	*STATE:* • M.S.125A.62 • M.S.125A.0942 • M.S.245D	• In terms of Positive Behavior Support (PBS)—there are gaps in capacity, training, expertise and supports which lead to restrictive placements. • Cultural issues can be a barrier. If a student is not English speaking and in special education and has behavior issues then what is the school staff to do? It can take four adults to assure safety and 911 is called. Staff members need support through training and development. • PBS is too vague in state law. It is mentioned in the Academies legislation (MS. 125A.62) and in 125A.0942 (standards for restrictive procedures). PBS is mentioned in 245D (Human Services).

Barrier or disincentive	Relevant document	Survey Participant Responses (unedited)
E.4 Lifelong learning: self-determination Clarify student self-determination in state law.	*FEDERAL:* • IDEA 2004 *STATE:* • State education law	• Strengthen student self-determination and self-advocacy to state law. Students should be able to learn at their own pace and still graduate on time. • All people want to learn no matter the age. Funding should allow taking classes as an adult.
E.5 Lifelong learning: transition Transition services should be available to all students with disabilities.	*STATE:* • M.S. 268A.16 • State transition policies and practices	• Work skills, volunteering, internships and paid job experiences should be made available to students with disabilities. Employment begins too late for students with disabilities. Schools are not engaged with Work Force Centers. Transition programs shift from academics back to functional skills. Federal 15% budget allocation 268A and independent living training should be taken into consideration. • M.S.268A.16 requires DEED to provide support for deaf, deafblind and hard of hearing people in transition, and a grant program for school-based services, once an appropriation is made. No appropriation has been made.
E.6 Lifelong learning: funding formula Funding formula can drive segregation.	*FEDERAL:* • IDEA STATE: • State education law, funding formula	• Funding formula can drive segregation but the formula is changing and getting more complicated. • Congress has never fully funded IDEA. • Some districts recruit students to get more money but at the same time special education is marginalized. • Inadequate funding to add teachers into general education classrooms; inadequate funding for teacher development.
E.7 Lifelong learning: teacher training Teacher training should not be segregated	*STATE* • Teacher training policy.	• Teacher training is separated for special education and general education, but some could be integrated. • Technology barriers include access, training, support and consistency for all students.
E.8 Lifelong learning: accessibility Modifications needed: buildings, technology, materials.	*STATE:* • M.S. 16E.03 subd.9 & subd.10 • State education regulations • School district policies, practices	• Modifications must be made: buildings, technology, learner materials. The field shifts from standards and access to academic curriculum to individual needs. Schools waive course work to avoid addressing accessibility issues. • Some students are not receiving appropriate help because they fly below the radar. • Many district use “flipped” classrooms with posted video lessons; they are not captioned. • Standardized tests are administered with voice instructions. Contracts for future upgrades should include captioned instructions.

Barrier or disincentive	Relevant document	Survey Participant Responses (unedited)
E.9 Lifelong learning: cognitive disability There is a lack of college programs for people with cognitive disabilities	*STATE:* • State, Minnesota State College and University System (MnSCU) policy	• There is a lack of college programs for people with cognitive disabilities. There are some tech programs, but only ones with certificates.
E.10 Lifelong learning: lifelong skills Adult Basic Education (ABE) and community education can provide ongoing skills training	*STATE:* • M.S. 268A.11 • Education policy • State ABE policy, practices	• Rather than rely on independent living centers, people with disabilities should receive money management, cooking, etc. classes through adult basic education and community education. Universal design and community integration should be elements. • The State doesn't reimburse ABE programs for teaching ASL a necessary prerequisite for many (especially immigrants) who are deaf. At the same time, Independent Learning Center (ILCs) don't provide training in ASL. This is a barrier for some people with disabilities. State policy doesn't recognize second language ASL.
E.11 Lifelong learning: preschool Early education programs can better address disability considerations.	*STATE:* • Education policy • School district policy	• Training for early learning programs needs to include disability awareness and related topics. School districts need to adequately staff integrated preschool programs with a more appropriate staffing ratio.

Barrier or disincentive	Relevant document	Survey Participant Responses (unedited)
E.12 Lifelong learning: school segregation Segregation instead of integration in schools is discriminatory.	*FEDERAL:* • Laws reference least restrictive settings rather than most integrated settings. *STATE:* • M.S.245.487 Children's Mental Health Act (least restrictive environment) • M.S.125A.0942 • State education policies • State juvenile justice policies • Local school district policies • Funding formulas and bonding bills allow new segregated options. • Local school district policies and practices can separate and segregate students. (Note: M.S.125A.12 allows student attendance in other school districts; this can be a positive.)	• Segregation in school hurts students with disabilities and prevents an expectation of lifelong integration. With segregation, many never experience students with disabilities. As students enter junior high school then segregation begins and extends to graduation. • Federal law allows discrimination because individuals interpret "least restrictive setting" to mean it is okay to segregate and you don't have to do inclusion. • Federal contradictions—the term LRE works at the margins but does not get to the heart of the issue—inclusion. • One root cause may be that segregation is built into federal and state laws that continue to use least restrictive environment and least restrictive alternative rather than most integrated setting. • Another issue is financial incentives in funding formulas and bonding bills that allow for construction and financing of segregated options. • Another root cause may be local policy and practice that separates and segregates students. • Environments are segregated including school buildings: "exceptional education" means segregation. Schools have emotional disturbance immersion programs; some behaviors send students to juvenile facilities. Students must connect with the community. (As new terminology, emotional disturbance immersion needs greater understanding in public policy.)

Barrier or disincentive	Relevant document	Survey Participant Responses (unedited)
F. HEALTHCARE AND HEALTHY LIVING		
F.1 Healthcare: access & funding limits Low Medicaid rates and policies can hamper health	*FEDERAL:* • Medicaid law and policy *STATE:* • MDH policy	• Dental/oral health care: there is limited access because of low reimbursement rates (Medicaid), few providers and those who do provide cannot break even. MA covers only certain procedures. Preventative care coverage is limited. Appointments may take longer. Some people need anesthesia. Baseline capacity of dentists, and the actual number needed, is unclear. • Other limits: facilities provide least costly food; preventative care not emphasized; limits on needed equipment; slow equipment deliveries; exams missed; and lack of coverage for some forms of care. Disparities are not studied.
F.2 Healthcare: accessibility Accessibility issues in health facilities	*FEDERAL:* • ADA	• Care clinics: there are accessibility issues (no automatic door openers, narrow aisles, no Hoyer scales for weighing a person, too much furniture, small exam rooms, and inaccessible equipment) which contribute to lack of proper medical exams. • Policies and procedures create barriers such as inaccessible forms and communication • Pharmacies often lack audible bottles; or information in braille, large print. Eye exams are inaccessible because of the set-up of the office and equipment. There is often a lack of interpreters, signage and path finding. • There is a lack of compliance with 508 – patient portals. • ADA lapses result in traumatic emergency room visits for people with disabilities.

Barrier or disincentive	Relevant document	Survey Participant Responses (unedited)
F.3 Healthcare: attitudes Medical bias exists and hampers care.	*STATE:* • M.S.145.986 • M.S.144.661-665 • M.S.62U.02	• Medical professional bias exists against people with disabilities. Assume all people live in group homes. Attitude and culture affect health care. Nursing and professional bias exist about quality of life. If the State pays for performance quality data then some people will be screened out and that could be a person with complex health situations. Being read questions without privacy. • Cultural competence. Professional training is absent. • HRSA has not identified people with disabilities as an underserved group. Accreditation of health care does not cover disability topics. Campaigns about smoking, drinking not aimed at people with disabilities. Some fields like psychiatry have few professionals specializing in helping people with disabilities. Also: doctors often do not make SSB referrals for patients who are blind. • There are disparities in health care and health outcomes for people with disabilities. While there is an Office of Health Equity it is difficult to find disability included in these efforts. There is no statutory reference. The State Health Improvement Program Grants are authorized under M.S. 145.986 and disability is mentioned. There is a statutory section for people with traumatic brain injury and spinal cord injuries (M.S. 144.661 – 144.665). There is a statutory section called community health measures at M.S. 62U.02.
F.4 Healthcare: abuse	*STATE:* • M.S.299C.06	• Vulnerable adult issues: people with disabilities are not trained to know what is appropriate and what is not. Screeners, investigators and first responders need training to judge validity of a claim. Emergency Medical Technicians (EMTS)/Emergency Room (ER) professionals need training; otherwise the default is to do nothing. The transition from a pediatrician to an adult practitioner is difficult. There may not be a transition process or plan in place. • The Department of Public Safety has two sections about crime statistics (M.S. 299C.06 which references using the FBI form; another references bias crimes where disability status is mentioned).
F.5 Healthcare: Medical Assistance standards State standards discriminate against those elderly or with disabilities	*STATE:* • M.A. statute • M.A. policy and practices	• For those elderly or with disability, MN has different qualifying standards for MA. Current MA limit without disability: 138% poverty or $1,342 per month. With disability or elderly, 100% poverty or $973 per month. Also, with disability or elderly is a $3 thousand asset limit; no asset limit for others.

Barrier or disincentive	Relevant document	Survey Participant Responses (unedited)
F.6: Healthcare: health care homes Enforcement and accountability measures are unclear for providers not meeting legislated standards,	*STATE:* • M.S.256B.0751, subd. 2 • M.S.2256B.0757	• For Medical Assistance enrollees not provided the option of managed care enrollment, health care homes are promoted as resources for care coordination. However, list providers are not fulfilling the legislated standards, and measures for enforcement and accountability are unclear. M.S. §256B.0751, subd.2, identifies the services to be coordinated, and M.S. §256B.0757 provides even more detail. However among health care homes listed under the Minnesota Department of Health (MDH) Health Care Home website, at least two health care clinics have directly stated that they do not offer health care home services or offer only a limited spectrum of those services excluding care or services to home-bound patients.
G. COMMUNITY ENGAGEMENT		
G.1 Community: accessibility	*FEDERAL:* • ADA *STATE:* • Olmstead Plan • Local building codes	• There continue to be accessibility issues with public buildings even after renovation. Acoustic standards are not included. Inclusive, universal design needs to be an Olmstead Plan component. • Other accessibility issues include inadequate transportation options and a lack of broadband and internet accessibility in much of the state. Also, communications of state-sponsored events do not meet ADA standards. • Include in the Olmstead Plan the ADA definitions of auxiliary aids and effective communication.
G.2 Community: inclusion Lack of exclusion does not mean full inclusion.	*FEDERAL:* • ADA • CMS guidelines	• The lack of exclusion does not mean full inclusion. Communities need to practice inclusion in order to get used to inclusion. Separate is not equal. Children's community programs are not inclusive but segregated including: sports, church, park and recreation, music, theater and arts.
G.3 Community: staffing Inadequate staff funding limits community engagement.	*STATE:* • Staff funding levels • School district practices • County policies	• Lack of staffing means that a group home does everything together; there is no independent activity in the community. A single staff member cannot accommodate 3-4 people with disabilities when there are no natural supports. • Give more respect to those on the front lines. A school will say that the staff ratio is 1:1 when it is really 1:4. There is an overall staff shortage and high staff turnover. County staffing policies inhibit personal choice.

Barrier or disincentive	Relevant document	Survey Participant Responses (unedited)
G.4 Community: self-determination System is still too top-down	*STATE:* • CDCS policy and manual • Voting laws	• If funding follows the person then there will be better options and more flexibility. The system is top-down and dictating how money is spent and how time is spent. CDCS must be improved. Funds have been reduced. • Disability rights are not taught. People are told what they want to do and what they can do. Adults are treated as 10-year-olds with a curfew. • Lack of understanding of person centered planning and thinking. Some staff members are told that they cannot be friends because of boundary issues. Paid staff members consume a person's life. • Self-determination requires training for people with disabilities on public safety and emergency preparedness. • Voting issues: there are still accessibility problems at polling places; election judges need training about voter assistance and rights; there are still attitudinal barriers; and same day registration has problems for people with disabilities. In the event of challenges, court judges and county attorneys also need relevant accessibility training.

Barrier or disincentive	Relevant document	Survey Participant Responses (unedited)
G.5 Community: choice State policy limits choice.	*STATE:* • MN Constitution Article VII (Elective Franchise) • Statutes (c.f. Description column)	• Very few people have choice. Barriers exist because of how the system is set up. Risk management limits people. We all manage risk but people with disabilities are held to a different standard. There is a need to know what is available and be able to get to community activities. • Technology will continue to drive access which in turns allows greater participation by people with disabilities (and they are recognized as a market or customer segment). • The State Constitution sets barriers on the right to vote for persons with disabilities, using antiquated, flawed constructs. • Service providers are not trained on how to offer informed choice. • Statutes: There is state legislation about peer support (M.S. 256B.0615 and 245.462) but there is no comparable legislation about self-advocacy. Marriage: M.S. 517.03 prohibits marriages and M.S. 246.01 limits choice in the duties of the commissioner. Note limits in Sterilization (M.S. 524.5-310) and Electroconvulsive Therapy (ECT) (M.S. 253B.04). • Informed choice appears in M.S. 256B.49 subdivision 12 and for the consumer support grant in 256.476. Informed consent appears in 253B.03 and informed decision appears in the Health Care Bill of Rights (144.651). • The PCA limited hours appears in 256B.0659 which was amended in 2015 by Chapter 291, Article 8, Section 6, and subdivision 11. The Human Rights Act does prohibit discrimination based on disability (M.S. 363A.) Person centered planning exists in M.S. 245D.07. The Quality Council exists in 256B.097. The Commitment Act mentions least restrictive alternatives (253B.185). Emergency Use of Manual Restraints appears in 125A.0941.

Limitations

The initial timeframe set for the analysis of *all policies, procedures, laws, and funding,* was not sufficient given the magnitude of the action required in the plan. Through the process of the initial survey it was determined that the scope of the initial survey was quite large and overwhelming for a number of the recipients.

Recommendations

There are some recommendations going forward.

- Conduct a survey going forward to review policies, procedures, laws, and funding.
- Develop a series of smaller surveys that are targeted to particular topic areas.
- Send out smaller surveys annually (schedule to be determined).

Each of the subcabinet agencies is in the process of developing their 2015 legislative proposals. The results of 2014 survey will be disseminated to the subcabinet agencies to aid them in their legislative agendas. Once information is available related to the agency requests it will be paired with the survey results and shared with the public so that they have the opportunity to speak to their legislators and potentially influence policy.

Stakeholder List and Survey Participants

Survey participant list

The following agencies, groups and/or individuals were sent a request to respond to the survey developed in consultation with Management Analysis & Development (MAD). Many groups combined input from several individuals into one response document. Others shared the request with other interested parties who responded on their own or in combination with the initial group.

Disability Organizations including:

Advocating Change Together

MN Centers for Independent Living

MN Governor's Council on Developmental Disabilities

MN State Council on Disability

Arc of the Greater Twin Cities

Other Organizations including:

MN Disability Law Center

Substitute Decision Making Network

State Agencies including:

Department of Human Services

Department of Transportation

Department of Human Rights

Health Department

Department of Corrections

Department of Employment and Economic Development

Minnesota Housing Finance Agency

Department of Education

Survey Review Group

Olmstead Implementation Office Advisory Group – Composed of representatives of the 23 Governor appointed disability councils, groups and boards.