

Home and Community-Based Supports and Services Waiver Waiting List Report

March 3, 2015

I. Executive Summary

A. Legal Requirements

Olmstead Plan. The Olmstead Plan requires the Department of Human Services to report to the subcabinet recommendations for improving the home and community-based services waiting list, including prioritizing based on urgency and need, and describing how these practices will result in the waiting list moving at a reasonable pace.(SS 4B, p. 68).

Olmstead v. L.C. The phrase “reasonable pace” comes from the U.S. Supreme Court’s decision in *Olmstead v. L.C.*, where the Court said that a state could meet its responsibility for providing home and community-based services “if, for example, the State were to demonstrate that it had a comprehensive, effectively working plan for placing qualified persons with mental disabilities in less restrictive settings, and a waiting list that moved at a reasonable pace not controlled by the State’s endeavors to keep its institutions fully populated...”¹ The Court also said the state must have “leeway” to “maintain a range of facilities and to administer services with an even hand.” *Id.*

Jensen v. DHS. On January 9, 2015, the Court in *Jensen v. DHS* found Minnesota’s waiting list goals inadequate (specifically, the goal of prioritizing the waiting list and the goal of providing home and community-based services to 80 residents of intermediate care facilities for developmentally disabled persons). The Court stated, “This proposal does not adequately address the current baseline of 3,502 individuals who have requested a ‘Developmental Disabilities (DD) waiver’ and 1,450 individuals who have requested a ‘Community Alternatives for Disabled Individuals (CADI) waiver.’ If the State wishes to address existing services and support needs, the State must provide a deadline for completion of the waiting list.” *Jensen, et.al. v. DHS, et.al.*, (Minn. Dist.) 09-cv-01775 DWF-FLN, Doc. 378, p. 10.

B. Wait List Recommendations

DHS has four recommendations to ensure that individuals will receive the services they need in the community at a reasonable pace that allows the state “to maintain a range of facilities and to administer its services with an even hand.”²

Recommendation 1: Enhanced Assessment.

By December 1, 2015, DHS will require lead agencies to enhance their assessment of individual need through a person-centered planning process that includes planning for when the individual may need waiver services.

¹119 S.Ct. 2176, 2189; 527 U.S 581, 605-6 (1999).

² 119 S.Ct. at 2189; 527 U.S. at 605.

Recommendation 2: Wait list categorization.

DHS will divide the waiting list into four categories:

A. Institutional Exit: This category includes any person in an intermediate care facility for persons with developmental disabilities (ICF/DD) or nursing facility who does not oppose leaving the facility. For this category, service planning will begin within 45 days after a needs assessment or other indication shows the person is not opposed to leaving the facility.

Waivered services will begin as soon as practicable, but no later than 180 days after the indication that the person is not opposed to leaving the facility.

Once waiver services are authorized, the person will be removed from the wait list.

B. Immediate Need: This category includes any person in the community who meets at least one of the criteria listed in Minn. Stat. §256B.092, subd. 12(b) and Minn. Stat. §256B, subd. 11a(b) (has an unstable living situation due to age, incapacity, or sudden loss of 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 meets other priorities established by the department).

Waivered services will begin as soon as practicable, but no later than 90 days after the person meets criteria in Minn. Stat. §256B.092, subd. 12(b) or Minn. Stat. §256B, subd. 11a(b).

Once waiver services are authorized, the person will be removed from the waiting list.

C. Defined Need: This category includes any person who is assessed as needing waiver services within a year from the date of assessment.

Waivered services will begin as soon as practicable, but no later than 365 days after the date of the assessment.

Once waiver services are authorized, the person will be removed from the wait list.

D. Future Need: This category includes any person who is assessed as needing waiver services more than a year after the assessment date.

The person is not placed on the wait list, but will be tracked on a “future interest” list.

The person will be assessed annually, and will be placed on the wait list upon meeting the definition of “defined need or “immediate need.”

Recommendation 3: Data capture and reporting.

The enhanced assessment will capture information we do not have now that will show how long it takes for authorization of a waiver in each category.

By December 1, 2015, DHS will require lead agencies to begin tracking the information captured by the enhanced assessment process. By June 1, 2016 DHS will report the first six months' of data to the Subcabinet. After we have a year of data, beginning December 31, 2016, DHS will report the information twice a year to the subcabinet.

DHS will require lead agencies to track:

- why individuals are on wait lists for services;
- how many individuals are in each urgency category;
- the time it takes for individuals to move off the wait list in each category;
- gaps in services and resources; and,
- any other important information about the pace at which people move off the wait list revealed by the enhanced assessment.

Recommendation 4: Oversight

Through training, technical assistance, outreach, and monitoring, DHS will work with lead agencies to implement the new waiting list process.

II. Discussion

A. What “waiver” means.

Minnesota provides home and community-based services funded by Medical Assistance to people who require the level of care that would otherwise be provided in institutional settings. Because the federal government waives some of the institutional requirements of Medical Assistance funding, these home and community-based services are called “waivers.” Minnesota has five home and community-based service waivers that provide community alternatives to nursing homes, intermediate care facilities for persons with developmental disabilities, and hospital settings. Of these five waivers, two currently have waiting lists: 1) the Developmental Disabilities (DD) Waiver; and 2) the Community Alternatives for Disabled Individuals (CADI) Waiver.

B. What causes a waiver waiting list?

Waiver services are not an entitlement, which means that states can set limits on the growth of these programs. In Minnesota, waiting lists occur because the budgets for the waivers are limited, both 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. A wait list is created when people who cannot access the waiver.

C. How many people are on the waiting list?

As of January 3, 2015, there were 1,412 people on the waiting list for the CADI Waiver and 3,462 people on the waiting list for the DD waiver.

The CADI waiver waiting list, however, is likely to disappear in July 2015. This is because, under current law, as of July 1, 2015, there will be no growth limits for the CADI waiver, effectively eliminating this waiting list. In addition, the DD Waiver allows for greater growth than in the past.³

D. How long do people wait for waiver services?

1. Institutional settings:

CADI Waiver: Data for the last four years shows that individuals who resided in a nursing facility within 90 days of their most recent assessment started CADI waiver services between 224 and 322 days from the time of their initial assessment for services. See Appendix B, Table 4.

DD Waiver: Data for the last four years shows that individuals living in intermediate care facilities for persons with developmental disabilities (ICF/DD) who did not oppose moving to the community and requested to move within a year had a median wait time between 9 days and 84 days. See Appendix B, Table 3.

2. Non-institutional settings:

CADI Waiver: Data for the last four years shows that individuals who did not reside in a nursing facility within 90 days of the most recent assessment started services between a median of 59 days and 134 days from the initial assessment for services. See Appendix B, Table 6.

DD Waiver: Data for the last four years shows that individuals who were not living in an ICF/DD when starting DD Waiver services had a median wait time between 19 and 315 days after they were classified as having a need for services within one year. See Appendix B, Table 5.

³ Appendix A shows the average monthly enrollment limits for the CADI and DD waivers for the past five years.

E. Waiting list totals do not tell the whole story.

While we know how many people are on the waiting list and the median number of days some categories of individuals waited to receive services, these facts do not tell the whole story. Other important information includes:

1. Most people receive other MA-funded services and supports while on the waiver waiting list.

Being on a waiting list does not mean the person is not receiving any supports or services. People typically are eligible for one or more state plan services that are entitlements, such as home care services. Federal and state law requires that people access state plan services first and use waiver services only if the state plan services are insufficient to meet their needs. Minnesota has a robust set of state plan services. Almost all individuals on the DD Waiver waiting list receive some type of service, assessment, or case management. (See Appendix B, Table 7 showing types of state services).

Transition-age youth who have left school and are on a waiver waiting list may be able to access state or county funded services, in addition to Medical Assistance state plan services. As of January 3, 2015, 23.5% of individuals on the DD Waiver waiting list access county funded services, often day training and habilitation, 7.8% access the Family Support Grant and 5.0% access non-ICF/DD or nursing facility respite care. (Appendix B, Table 10).

2. Statute sets priorities for receipt of waiver services.

Where state-funded services are insufficient to meet needs, Minnesota law establishes priorities for waiver services, giving top priority to individuals who:

- (1) No longer require the intensity of services provided where they are currently living; or
- (2) Make a request to move from an institutional setting.⁴

Minn. Stat. §256B.092, subd. 12 (2014)(DD waiver).

The next priority is for individuals who:

- (1) have unstable living situations due to the age, incapacity, or sudden loss of the primary caregivers;
- (2) are moving from an institution due to bed closures;
- (3) experience a sudden closure of their current living arrangement;

⁴ The language—“make a request to move” is different from the standard in the *Olmstead* decision, which requires states to provide community-based care when appropriate and “the affected persons do not oppose” it. 119 S.Ct. at 2190 527 U.S. at 607.

- (4) require protection from confirmed abuse, neglect, or exploitation;
- (5) experience a sudden change in need that can no longer be met through state plan services or other funding resources alone; or
- (6) meet other priorities established by the department.

Id.

3. Waiting list totals don't reveal whether people receive services when they need them.

The total number of people on the waiting lists only tells us the number of people eligible for but not yet receiving waiver-funded services. The wait list totals do not reveal:

- why an individual is waiting for services (e.g., whether it is availability of the waiver or another reason--such as development of the person-centered plan, recruitment of a provider, or completion of modification to housing);
- the urgency of an individual's need for waived services, and, if urgent, how many days have passed since the need became urgent;
- whether an individual does not desire waived services to begin at the time placed on the waiting list, but rather, at some future point, and when (e.g., a family with a child living at home planning for adulthood; a person meeting current needs with state plan services who anticipates a future need for waived services); and
- the extent to which an individual receives other supports and services.

The waiting list does not differentiate between people who have immediate needs and those who desire to reserve a spot for future access to services when the need arises. The data captured by the enhanced assessment process will help answer these questions.

F. Capacity

DHS has forecasted significant growth in the disability waivers during the next biennium (starting July 1, 2015). Enrollment limits on the CADI waiver will expire on that date and the DD waiver will have additional growth. DHS forecasts that nearly \$300 million additional dollars will be spent on disability waivers in the next biennium. This will allow more individuals to access waiver services.⁵

⁵ Appendix A shows the average monthly enrollment limits for the CADI and DD waivers for the past five years.

G. How we will ensure our wait lists move at a reasonable pace.

1. We will enhance our assessment of individual need.

In order to better serve the needs of individuals on the waiting list, we will implement a new, comprehensive needs assessment.

The needs assessment will use person-centered planning to help people make decisions about their goals and to identify which services can meet them. The enhanced needs assessment will connect people to the right services and supports when they are needed, which may include a waiver at the time of assessment or at some time in the future. Lead agencies will conduct the assessments and develop community support plans.

Enhanced assessment will answer why a person is on a waiver waiting list and whether there is an immediate need for waived services.

Lead agencies will begin using enhanced assessment by December 1, 2015.

2. We will divide the waiting list into four urgency categories.⁶

Urgency Category	Definition	Commencement of Services
1. Institutional Exit	Any person in an ICF/DD or nursing facility who does not oppose leaving the facility.	Service planning begins within 45 days after a needs assessment or other indication shows the person is not opposed to leaving the facility. Waivered services begin as soon as practicable, but no later than 180 days after the indication that the person is not opposed to leaving the facility. Once allocated the waiver, the person will be removed from the waiting list.

⁶ Stakeholders recommended this categorization during a series of three sessions held to gather suggestions for improving processes related to waiver waiting lists. Appendix C contains a list of workgroup members.

2. Immediate Need	A person who meets at least one of the criteria listed in Minn. Stat. §256B.092, subd. 12(b) or Minn. Stat. §256B.49, subd. 11a(b).	<p>Waivered services will begin as soon as practicable, but no later than 90 days after the person meets criteria in Minn. Stat. §256B.092, subd. 12(b) or Minn. Stat. §256B.49, subd. 11a(b).</p> <p>Once allocated waiver services, the person will be removed from the waiting list.</p>
3. Defined Need	A person who is assessed as needing waiver services within a year from the date of assessment.	<p>Waivered services will begin as soon as practicable, but no later than 365 days after the date of the assessment.</p> <p>Once allocated waiver services, the person will be removed from the wait list.</p>
4. Future Need	A person who is assessed as needing waiver services more than a year after the assessment date.	<p>The person is not placed on the waiting list, but will be tracked on a “future interest” list.</p> <p>The person will be assessed annually, and will be placed on the waiting list upon meeting the definition of “defined need Or “immediate need.”</p>

3. We will report what the enhanced assessment teaches us to the subcabinet.

The enhanced assessment will answer the questions we do not currently know. By December 31, 2016, we will have enough experience with the enhanced assessment to begin reporting twice each year to the subcabinet what we learn about:

- why individuals are on waiting lists for services;
- how many individuals are in each urgency category;
- the time it takes for individuals to move off the wait list in each category;
- gaps in services and resources; and,
- any other important information about the pace at which people move off the waiting list revealed by the enhanced assessment.

4. We will report available waiting list data to the subcabinet during the transition.

DHS will continue to provide bimonthly status reports to the subcabinet until data from the enhanced assessment is available. DHS will enhance these reports by including information similar to the data contained in this report.

5. We will provide waiting list data to lead agencies during the transition.

By July 1, 2015, DHS will provide waiting list information to lead agencies on a quarterly basis. Information will include a list of people on the lead agency's waiting list and the length of time that has passed since their initial assessment. Statewide summary data of this information will be provided to the subcabinet as described in number 4.

6. We will work to implement the new waiting list process.

Assuring effective implementation of these changes will require technical assistance, outreach and compliance monitoring and reporting. DHS will engage in the following quality implementation activities.

a. We will provide technical assistance to lead agencies.

To ensure individuals are placed in the appropriate waiting list categories and data is collected consistently, DHS will provide statewide technical assistance to lead agencies.

If lead agencies do not comply with timelines, DHS will undertake steps to learn why, and provide appropriate technical assistance. Additionally, DHS will consider reallocating resources if a county is unable to serve individuals with urgent needs within their county waiver budget.

b. We will reach out to individuals and families.

DHS will engage with its partners, including organizations such as Arc Minnesota and local Arc chapters, through July – December, 2015, to educate individuals and families about changes to waiver waiting lists.

c. We will monitor lead agencies' compliance with timelines.

In January 2016, DHS will begin monitoring lead agency compliance on a monthly basis. DHS already reviews county waiting lists and provides technical assistance

during its county waiver review. We will add a monthly compliance report which will include:

- Any assessed individuals who were not assigned an urgency category;
- An overall compliance score based upon assignment of urgency categories; and
- A list of individuals whose service start date is within 30 days of the report.

III. Recommendations Summary

DHS recommends that DHS commence the following actions by the following dates:

A. July 1, 2015:

1. For each lead agency, DHS will report on the number of individuals on disability waiver waiting lists and how long individuals have been on the lists.
 - a) DHS will report each lead agencies' data to each lead agency, and will report aggregate state-wide data to the subcabinet.
 - b) DHS will provide these reports on a quarterly basis until June 1, 2016, at which time DHS will begin reporting on the data specified in Recommendation 3 to the extent it is available.
2. DHS will engage with partners to educate individuals and families about changes to waiver waiting lists.

B. October 31, 2015:

1. Provide lead agencies with a mechanism to track the data specified in Recommendation 3 for all disability waivers;
2. Provide training and technical assistance, as needed, to lead agencies on enhanced assessment, classifying waiting list categories, and using the tracking mechanism.

C. December 1, 2015:

1. Require lead agencies to use the enhanced assessment;
2. Require lead agencies to track data according to the mechanism DHS provides;
3. Require lead agencies to authorize waiver services to individuals within the time periods specified herein;
4. Begin to track lead agencies' compliance and take steps to assist lead agencies with achieving compliance;
5. Collect the data specified in Recommendation 3.

- D. **June 1, 2016:** Report to the Subcabinet on the data collected since December 1, 2015.
- E. **January 15, 2016:** Report the waiting list data specified in Recommendation 3 to the subcabinet twice each year.

Appendix A: Historic Waiver Enrollment Limits

CADI Waiver Average Monthly Enrollment Limits (2010 – 2015)

Fiscal Year	Average Monthly Enrollment Limit
2010	95 people
2011	60 people
2012	60 people
2013	60 people
2014	85 people
2015 ⁷	Unlimited

DD Waiver Average Monthly Enrollment Limits (2010 – 2015)

Calendar Year	Average Monthly Enrollment Limit
2010	15 people
2011	6 people
2012	6 people
2013	6 people
2014	15 people
2015 ⁸	25 people

⁷ As of July 1, 2015

⁸ As of July 1, 2015

Appendix B: Data Analysis Results

Table 1 displays the total number of individuals who started DD Waiver services by calendar year.⁹

Table 1

Calendar Year	Number of Individuals
2011	657
2012	573
2013	631
2014	509
TOTAL	2,370

Table 2 displays the total number of individuals who started CADI Waiver services by calendar year.¹⁰

Table 2

Calendar Year	Number of Individuals
2011	2,958
2012	2,114
2013	2,823
2014	2,432
TOTAL	10,327

Table 3 reports the median number of days that passed between the date an individual indicated they needed waiver services within a year and the start of waiver services. This data is for individuals who resided in an ICF/DD within 90 days of their most recent assessment.

Table 3

Calendar Year	Median Number of Days from Waiver Need Index of "1" to Service Agreement Start
2011	84 days
2012	11 days
2013	19 days
2014	9 days

⁹ Waiver start numbers include all people, not just those starting from a waiting list.

¹⁰ Waiver start numbers include all people, not just those starting from a waiting list.

Table 4 displays the median number of days from the initial assessment to the start of CADI Waiver services for individuals who resided in a nursing facility within 90 days of the most recent assessment.

Table 4

Calendar Year	Median Number of Days from Initial Assessment to Service Agreement Start
2011	224 days
2012	265 days
2013	275 days
2014	322 days

Table 5 reports the median number of days that passed between the date an individual indicated they needed waiver services within a year and the start of waiver services. This data is for individuals who did not reside in an ICF/DD within 90 days of their most recent assessment.

Table 5

Calendar Year	Median Number of Days from Waiver Need Index of "1" to Service Agreement Start
2011	315 days
2012	15 days
2013	23 days
2014	19 days

Table 6 displays the median number of days from the initial assessment to the start of CADI Waiver services for individuals who did not reside in a nursing facility within 90 days of the most recent assessment.

Table 6

Calendar Year	Median Number of Years from Initial Assessment to Service Agreement Start
2011	59 days
2012	62 days
2013	130 days
2014	134 days

Table 7 displays non-waiver services individuals received the year before starting CADI or DD waiver services. These individuals did not reside in a nursing facility or ICF/DD at the time of the last assessment. This data displays totals between calendar year 2011 and 2014.

Table 7

Service	Number of Individuals Using this Service	Percentage of Individuals Using this Service
Mental Health Services	4,421	34.8%
Transportation Services: • Access Services • Transportation	3,839	30.2%
Home Care Services: • Consumer Directed Home Care • Home Health Services • Personal Care • Private Duty Nursing	3,415	26.9%
Assessments: • DD Screenings • Long-Term Care Consultation Pre-Admission Screening • Pre-Admission Screening and Resident Review	2,780	21.9%
Case Management Services: • Child Welfare Targeted Case Management • HIV Case Management • Home Care Targeted Case Management • Relocation Services Coordination • Vulnerable Adult Targeted Case Management	1,974	15.6%
School-Based Services: • IEP Nursing	1,120	8.8%
Nursing Facility Services	865	6.8%
Child & Teen Check-up Services: • Child and Teen Check-Up Outreach • Child and Teen Check-Up Services	324	2.6%
Chemical Dependency Services	286	2.3%
Administrative Services: • Buy-In • Collections, Miscellaneous • Financial Transactions • Premium Payments/Collections • Primary Care Utilization Review • Spenddown	280	2.2%
ICF/DD Services	173	1.4%
HCBS Services: • HCBS Waiver Conversion/Diversion • DT&H • Alternative Community Services • Moving Home Minnesota Waiver Services • Respite Care • Semi-Independent Living Services Diversion	119	1.0%
Other Services: • Undetermined Services	116	0.9%

Table 8 displays the number and percentage of individuals living at home at the start of CADI or DD waiver services between 2011 and 2014.

Table 8

Calendar Year	Number of Individuals Living at Home at Start of Waiver Services	Percentage of Individuals Living at Home at Start of Waiver Services
2011	1,022	28.3%
2012	753	28.0%
2013	991	28.7%
2014	835	28.4%

Table 9 displays characteristics of individuals who are currently waiting to start CADI Waiver services. Service categories displayed indicate that an individual has received a service within the last year. For a description of what is included in service categories, see Table 7. These figures are current as of January 9, 2015.

Table 9

Total Number of Individuals on a CADI Waiver Waiting List	1,412 people
Percentage of Individuals on a CADI Waiver Waiting List who Reside at Home	21.3%
Average Age of Individual Currently Waiting for CADI Waiver	42.1 years old
Median Number of Days on CADI Waiver Waiting List Since Initial Assessment	829 days or 2.3 years
Number of People on a CADI Waiver Waiting list who have started the DD Waiver since September 2014	5 people
Number of Lead Agencies without anyone on a DD Waiver Waiting list	21
Percentage of Individuals Who Have Received Home Care Services	53.5%
Percentage of Individuals Who Have Received School-Based Services	28.4%
Percentage of Individuals Who Have Received Mental Health Services	25.4%
Percentage of Individuals Who Have Received Transportation Services	19.4%
Percentage of Individuals Who Have Received Case Management Services	19.0%
Percentage of Individuals Who Have Received Child & Teen Check-up Services	8.3%
Percentage of Individuals Who Have Received HCBS Services	5.7%
Percentage of Individuals Who Have Received Assessments	2.8%
Percentage of Individuals Who Have Received ICF/DD Services	1.9%
Percentage of Individuals Who Have Received Other Services	1.0%

Percentage of Individuals Who Have Received Administrative Services	0.9%
Percentage of Individuals Who Have Received Nursing Facility Services	0.6%
Percentage of Individuals Who Have Received Chemical Dependency Services	0.6%

Table 10 displays characteristics of individuals who are currently waiting to start DD Waiver services. Service categories displayed indicate that an individual has received a service within the last year. These figures are current as of January 3, 2015.

Table 10

Total Number of Individuals on a DD Waiver Waiting List	3,462 people
Percentage of Individuals on a DD Waiver Waiting List who Reside at Home	91.6%
Average Age of Individuals Currently Waiting for DD Waiver Services	15.4 years old
Median Number of Days on DD Waiver Waiting List Since Initial Assessment	2,012 days or 5.5 years
Number of People on DD Waiver Waiting List who have started the CADI Waiver since September 2014	8 people
Percentage of Individuals who have Received Case Management Services	99.2%
Percentage of Individuals who have Received School-Based Services	75.2%
Percentage of Individuals who have Received Home Care Services	34.1%
Percentage of Individuals who have Received County Funded Services	23.5%
Percentage of Individuals who have Received Family Support Grants	7.8%
Percentage of Individuals who have Received Respite Services (Not ICF/DD or NF)	5.0%
Percentage of Individuals who have Received CCB Waiver Services	3.0%
Percentage of Individuals who have Received Home Modifications or Equipment	2.6%
Percentage of Individuals who have Received ICF/DD Services	2.5%
Percentage of Individuals who have Received Jobs & Training Services	1.8%
Percentage of Individuals who have Received Other Services	0.5%
Percentage of Individuals who have Received Homemaker Services	0.3%
Percentage of Individuals who have Received Relocations	0.2%

Service Coordination	
Percentage of Individuals who have Received Adult Education Services	0.1%
Percentage of Individuals on DD Waiver Waiting List who have Received No Services	0.3%

Appendix C: Olmstead Wait List Workgroup Participants

Workgroup meetings held:

June 26, 2014

July 15, 2014

July 31, 2014

August 21, 2014

Stakeholders:

Sue Abderholden, National Alliance on Mental Illness – Minnesota

Rebecca Covington, Minnesota Consortium for Citizens with Disabilities

Andrew Ervin, Hennepin County

Sandra Foy, Ramsey County

Cindy Grosklags, Renville County

Carol Huot, Dakota County

Tim Jeffrey, Stearns County

Steve Larson, The Arc of Minnesota

Bud Rosenfield, Minnesota Disability Law Center

Bill Velte, Hennepin County

Minnesota Department of Human Services:

Alex Bartolic

Curtis Buhman

Patti Harris

Lorraine Pierce

Colin Stemper

Nan Stubenvoll

Management Analysis & Development:

Renee Raduenz

Barbara Tuckner