

Minnesota Olmstead Planning Subcabinet – 5/14/13 Meeting Notes

Meeting Details

Date: May 14, 2013

Start/End Time: 3:00 – 4:30 p.m.

Location: Anderson Building Room 2380

Chair: Lt. Governor Yvonne Prettner Solon

Facilitator: Judy Plante, Management Analysis & Development (MAD), Minnesota Management and Budget

Subcabinet members (or alternates) in attendance: Cynthia Bauerly, Deputy Commissioner, Department of Employment and Economic Development (DEED); Dr. Edward Ehlinger, Commissioner, Department of Health (MDH); Lynette Geschwind, Affirmative Action Manager, Department of Transportation (MnDOT); Gregory Grey, Chief Compliance Officer, Department of Human Services (DHS); Kevin Lindsey, Commissioner, Department of Human Rights (MDHR); Roberta Opheim, Ombudsman for Mental Health and Developmental Disabilities (*ex officio*); Thomas Roy, Commissioner, Department of Corrections (DOC); Mary Tingerthal, Commissioner, Minnesota Housing Finance Agency (MHFA); Colleen Wieck, Executive Director, Governor's Council on Developmental Disabilities (*ex officio*); Robyn Widley, Supervisor, Interagency Partnerships Team, Department of Education (MDE).

Others in attendance:

Kristie Billiar, MnDOT; Chad Bowe, DEED; Kelly Christenson, MnDOT; Loren Colman, DHS; Janice Jones, MDH; Mary Kay Kennedy, ACT; Ed Lecher, DEED; Derek Nord, University of Minnesota; Tonja Orr, MHFA; Kim Peck, DEED; Mimi Schafer, DEED; Jill Schewe, Care Providers of MN; Dick Strong, DEED; Nan Stubenvoll, DHS; Gerri Sutton, MetCouncil; Mike Tessneer, DHS; Rosalie Vollmar, DHS.

Welcome and introductions

Lt. Governor Prettner Solon asked the subcabinet members and alternates to introduce themselves.

Update on core work group activities

Judy Plante provided an update on the agency core groups' work:

- All agencies have their own group (or groups) to work on agency-level Olmstead planning.
- The groups met on April 5 to develop cross-agency ideas and teams, including the topics work, housing, education, supports, criminal justice, health, and transportation.
- The groups met again on April 30 to review the information developed by each agency and to review initial cross-agency plans. Attendees provided feedback to each other on the drafts.
- The draft document sent to the subcabinet for consideration today includes the materials the agencies have developed to date—it is not an Olmstead Plan.
- On May 29, the working groups will meet again to discuss revisions and to continue cross-agency work.

Gregory Gray and Mike Tessneer from DHS provided additional context regarding the DHS information presented to the subcabinet for this meeting:

- There are several reasons why an Olmstead Plan is important at this time: the plan and the planning process will move the state in the right direction and keep us in line with federal law. Additionally, the settlement agreement in the *Jensen* case has dictated a timetable for developing a plan.
- The court overseeing the settlement agreement recently issued an order which affected DHS's planning. The court is pushing DHS (and the state) to have a comprehensive plan and to make sure it is as publically vetted as possible.
- The information DHS provided so far includes DHS strategies and goals, but does not include much of the information and planning that will be in DHS's later submissions. The overarching goals and strategies cover areas of supports and services, housing, transportation, employment, and community engagement.
- DHS needed additional time to consult with the *ex officio* members of the subcabinet and others and to continue to develop necessary interagency and cross-agency partnerships.
- DHS will provide updated information to the other agencies as soon as possible.

Updates on court action & impact

Robin Vue Bensen, Deputy General Counsel, DHS provided the subcabinet with information about recent court actions related to *Olmstead*:

- In *Pashby v. Delia*, 709 F.3d 307 (4th Cir. 2013), the 4th Circuit Court of Appeals recently held that North Carolina's stricter eligibility requirements for personal care services at home than in adult care homes puts people at risk of institutionalization. The case is consistent with other *Olmstead* related litigation establishing that laws, policies, or practices that favor institutional settings can be seen as coercing individuals into "choosing" institutional placements.
- In Oregon, the US Department of Justice (DOJ) is pursuing a case involving sheltered workshops. The DOJ became involved in *Lane v. Kitzhaber*, 12-CV-00138 (D. OR 2012) after settlement talks between the DOJ and Oregon did not resolve the dispute. DOJ contends that Oregon's practice of providing employment and vocational services primarily through sheltered workshops violates the ADA's (and *Olmstead's*) integration mandate. DOJ has a very broad view of integrated settings—it's not enough to have a goal or mission of integration, a government entity must have outcomes that have an impact on people.

Members of the subcabinet asked for additional information about the court cases and about the *Jensen* settlement. Discussion included:

- There is not a set percentage that the DOJ looks for when deciding whether resource allocation to sheltered workshops is problematic. Oregon was a leader in deinstitutionalization, but when it came to allocation of resources for vocational services, it allegedly steered people to sheltered workshops. For example, people were sent to providers of sheltered workshops to be assessed for whether the individual could work in the community—it seemed to some that the outcome was preordained and that the presumption was that people with disabilities would work in sheltered workshops.
- It is unusual that DOJ is participating as a party in the *Lane* case—many *Olmstead* related settlement discussions result in agreements. Both Oregon and the DOJ likely feel confident in their positions on the issues.
- Regarding the court's recent order in the *Jensen* case, the court granted an extension to the timeline: November 1 is the due date for the Olmstead plan (which is still not very much time). At the hearing, the judge expressed expectations about compliance with the settlement agreement.

DHS is committed to an open and collaborative process on Olmstead planning and other matters related to the *Jensen* settlement.

- DHS intends to retain independent experts to help review Minnesota’s Olmstead Plan to make sure it meets the criteria established in *Olmstead*.
- It is important to remember that the *Jensen* settlement agreement requires the State of Minnesota to develop an Olmstead Plan—though the litigation involved DHS in particular, it’s not just a DHS plan.
- The federal judge overseeing the *Jensen* settlement has indicated that he would consider bringing in the DOJ if necessary to ensure that the state meets all elements of the settlement agreement (including the development of the Olmstead Plan).
- In 2001, most states (37) were developing and implementing Olmstead Plans. Minnesota was not among them.
- Today, DOJ is involved in *Olmstead* related actions in at least 22 states.

Key Dates & Summer Outreach Plans

Judy Plante provided the subcabinet with updated key dates:

- After today: DHS will be providing additional information and engaging in additional cross-agency work, and all agencies will be updating their drafts based on the feedback they receive from the subcabinet.
- May 29: core group meeting to continue cross-agency work.
- June 4: core groups to send revised agency drafts and cross-agency drafts to MAD. MAD will compile the information and send the draft plan to the subcabinet.
- Subcabinet members are asked to block off time before the June 11 meeting to review the draft.
- June 11: subcabinet meeting to discuss the draft plan. At this meeting, the subcabinet will authorize the release of the draft plan for public feedback. The plan will be posted on the website. This will truly be a *draft* plan—we will need feedback and input from identified experts and from the public.
- From June 15 – August 19, the subcabinet will hold listening sessions (details are on the [Olmstead Plan website](#)):
 - Tuesday, July 9 in St. Paul
 - Friday, August 2 in Moorhead
 - Tuesday, August 13 in Duluth
 - Monday, August 19 in Rochester
- After August 19, there will be a flurry of writing and revising based on input from the public, from experts, and from the subcabinet—this will be an iterative process.

Other discussion and information included:

- In addition to the formal subcabinet listening sessions, every agency should invite public comment in whatever way works for each agency.
- Members of the public will be able to provide comments to the plan via the website, and feedback will go to the agencies.
- It is possible that there will be revisions for the subcabinet to review and approve in July and August. The draft that is approved by the subcabinet on June 11 and posted online will not change until the subcabinet approves new versions.

- DEED is hosting a biannual forum of four disability councils on June 19. DEED hopes to use that forum as an opportunity to receive input on the draft Olmstead plan. DEED invites the subcabinet to attend the forum.
- DEED also invites the subcabinet to attend the July 26 ADA anniversary celebration, where there will be opportunities to receive input on the plan.
- The DEED events will not be focused on the vocational or economic development aspects of the plan—the statewide councils that are involved in the forum have expertise in all aspects of community integration, and a number of organizations are involved in the ADA celebration. These are opportunities to gather feedback on the whole draft plan.
- The four councils mentioned are not the only available resources for perspectives from individuals with disabilities—there are gaps in representation there. The DEED forums are not intended as a substitute or replacement for other meetings—this is taking advantage of existing planned events to get feedback on the draft plan.
- Lt. Gov. Prettner Solon indicated that the DEED efforts are an example of what subcabinet agencies can do to increase input on the Olmstead Plan. If agencies have good opportunities for outreach, invite other subcabinet members. The goal is to get the document out broadly and get as much input as possible.
- It will be helpful for subcabinet members to have talking points to discuss the Olmstead Plan.
- The Lt. Gov. hopes that as many subcabinet members as possible can attend the official subcabinet listening sessions, but she realizes that may not be possible. For example, the Lt. Gov. cannot attend the July 9 meeting, so Deputy Commissioner Bauerly will be chairing the meeting.
- The format of subcabinet listening sessions is in development, and there will likely be an elastic approach to gathering input—much will depend on how many people show up at the various meetings.
- In addition to publicizing the plan on the website, it will be necessary to widely publicize the listening sessions and other meetings.
- Planners of all meetings should be aware of the reasonable accommodations that may be necessary for individuals with disabilities to attend and participate.

Review of plan component drafts assembled to date, invitation for further written comment

Judy Plante asked the subcabinet to reference the Collection of Draft Agency and Cross-Agency Information document, which was emailed to the subcabinet prior to the meeting. In addition to discussion at this meeting, subcabinet members are invited to provide written comments on the plan by sending them to Beth Bibus at beth.bibus@state.mn.us. Beth will route the comments to the agencies.

Subcabinet members were reminded that these documents are component parts of a developing document—this is not yet a plan. In reviewing the document, members should consider whether these ideas and plans will meet the objectives of the Governor’s Executive Order and the Subcabinet’s vision statement, as well as the guidance of the DOJ.

Discussion included:

- There is an evident need for more discussion and collaboration among the agencies about baseline data and performance measures:
 - If we need to show we are making positive changes, we need to know where we are starting.

- Olmstead directs that people should be in the most integrated setting—we have to know how many are *not* in an integrated setting to measure whether strategies are working.
- Some data is available in the agencies; some new research may be necessary.
- Different agencies measure differently. We may not be able to rely on existing data.
- It would be helpful to have something like 4-5 countable measures connected to the big issues of the Olmstead Plan like employment or housing. We should have some measures we can all agree on. The plan should not give people the expectation that we'll be able to measure lots of things when we know that's not realistic.
- A combined database may be needed to accomplish our objectives.
- In establishing the plan, there is a need for big picture goals *and* for specific goals that are measurable.
- Some other state plans include phases, where initial plans are implemented while data is being refined and improved.
- It is important not to attempt to neatly define success based on what we have now (in terms of data or programs).
- State plans have differed widely in terms of what outcomes are measured: early plans tended to have softer, aspirational goals; more recent plans reflect the emphasis that advocates and DOJ have placed on demonstrating movement to integrated settings.
- States are in different situations in terms of Olmstead compliance. Other states are in a situation where they are moving large numbers of people from institutions into the community. Minnesota isn't in that phase anymore—necessary changes are more subtle, more challenging to measure.
- In the North Carolina case discussed earlier, for example, the adult care facilities at issue are quite institutional—Minnesota's current situation is different.
- Some Olmstead planning does not lend itself to a mathematical formula—it's about a constant evaluation of processes, policies, and practices to make sure government is not steering people into nonintegrated settings.
- Individuals' perceptions of integration are important—the plan should include measurements of whether individuals feel they have achieved a level of integration. Opinions will likely vary.
- There are some concrete factors that point to integration: Does a person control their own activities (realizing that everyone is regulated in some way)? Do they have access to transportation? Housing? Supports?
- Some relevant survey and other research is available or is in development; some additional research may be necessary.
- The listening sessions and online feedback will provide a starting point to hear what people think. Common themes will emerge.
- Minnesota's Olmstead Plan will be evolving over time. The important thing now is to not get so mired in our data or lack of data that we don't push far enough.

Next meeting

The next meeting of the subcabinet will be on **Tuesday, June 11, 2013 from 3:00 - 5:00 p.m.** The meeting will be held in the Anderson Building, Room 2380.

Notes submitted by: Beth Bibus, Management Analysis & Development, Minnesota Management & Budget