

## ***WHERE PEOPLE WORK***

### ***GOALS & RECOMMENDATIONS***

#### ***INTRODUCTION:***

The Olmstead Planning Committee's vision is that Minnesota will make and carry out a plan that will tap the underused employment potential of the disability community. Consistent with the Olmstead decision, our goal is to increase the number of individuals with all types of disabilities working in integrated community settings and to increase their earnings. Planning and implementation will require sustained coordination across state agencies. The plan must also ensure that people with disabilities who do not choose to work in the community continue to receive services that effectively meet their individual needs. Further, the plan must acknowledge and address the lack of fluidity in access of services across an individual's lifetime. Fear of being unable to have timely access to more intensive (and less integrated) services- should they be needed in the future-prevents many from achieving the highest possible level of independence and integration. The Plan must move away from placing labels and limits on individuals with disabilities and move toward providing services based on individual choice with the supports needed to succeed.

The Olmstead Planning Process must play a key role in improving the employment situation of Minnesotans with disabilities. Despite the legal rights that flow from the Americans with Disabilities Act (ADA), the Individuals with Disabilities Education Act (IDEA), and the Olmstead decision the rates of employment of people with disabilities has not improved. As of June 2012, according to the Bureau of Labor Statistics, only 32 percent of working age people with disabilities were in the labor force (those working plus those actively seeking employment), and only about 27.6 percent were actually working. As an employer, the State of Minnesota is even further behind, despite a project entitled "Minnesota as an Exemplary Employer," which was launched in 2007 to establish State government as a model employer of adults with disabilities.

With the convergence of President Obama's executive order directing the executive branch of the federal government to hire an additional 100,000 federal workers with disabilities by 2015; the National Association of Governors Committee on People with Disabilities "A Better Bottom Line"; Senator Tom Harkin's (D-IA) "unfinished Business"; and the Oregon federal district court's decision that the Olmstead decision's community integration mandate applies to segregated employment programs, the state must to make this the priority it needs to be and foster real change in employment outcomes for people with disabilities.

Employment levels among individuals with disabilities remain unacceptably low even though evidence suggests that the many myths associated with hiring people with disabilities are just that – the state needs to educate employers and the workforce about the benefits associated with an inclusive workforce that far outweigh perceived difficulties. In addition, to create the expectation of work, as opposed to dependency on services, the state needs to help young people with disabilities transition successfully from school to higher education and competitive, integrated employment that can lead to quality careers and economic security. People with disabilities, including those with complex disabilities,

have the right to enjoy their lives as much as do people without disabilities. Working and earning money are basic aspects of typical adult life. To quote the late Justin Dart, a powerful advocate for people with disabilities, “Disabled does not mean ‘unable’”.

## ***EMPLOYMENT POLICY LEADERSHIP***

### ***BACKGROUND:***

Inside state government several agencies work on employment. Accordingly, the Olmstead Plan has to address more than Department of Human Services (DHS) programs and will require ongoing collaboration and coordination across agencies. The Committee recommends requesting that Governor Dayton appoint a sub-cabinet on the topic of employment of people with disabilities. Rationale: There are several initiatives at the federal level that require a coordinated state response; and the goals in the Committee’s recommendation cannot be reached without sustained collaborative leadership.

These federal initiatives include:

- The National Governor's Association has a new employment initiative “A Better Bottom Line”
- Senator Harkin announced that an additional 1 million people with disabilities should be employed
- President Obama announced that an additional 100,000 people with disabilities should be employed in federal government
- The U.S. Department of Labor (DOL) may promulgate rules for any federal contractor to do a 7 percent set aside for people with disabilities
- The U.S. Department of Justice (DOJ) has taken a new interest in the Olmstead decision and day/employment services and filed an amicus brief in the Oregon lawsuit
- The Government Accountability Office (GAO) report on Transition Age Students noted problems with lack of coordination
- The Office of Special Education (OSEP) letter indicating that school work transition programs must also consider the least restrictive environment
- The Office of Disability Employment Policy (ODE) has selected lead states in teaching other states how to increase integrated employment.
- Centers for Medicare and Medicaid Services (CMS) Bulletin dated September 16, 2011 limits the use of Medicaid waiver funding for center-based employment and clarifies that employment services must be provided in the most integrated setting.

In addition to these federal initiatives, the State of Minnesota lags in hiring people with disabilities based upon the Affirmative Action plans that have been approved by the Minnesota Management and

Budget department. The issue of employment of people with disabilities may now warrant a Governor level subcabinet to coordinate and lead future efforts. This leadership team could pick up the recommendations of the Olmstead Planning Committee and move the issues forward.

#### **RECOMMENDATIONS**

- Form a Governor-level sub-cabinet involving representatives from Minnesota Department of Education (MDE), Department of Human Services (DHS), Department of Employment and Economic Development (DEED), the Office of Higher Education (OHE), the business and education communities to lead efforts to increase employment of persons with disabilities. It is further recommended that this sub-cabinet leverage the resources and work currently being done by the State Rehabilitation Council, the Governor's Workforce Development Council, and others as appropriate.
- Charge this sub-cabinet with the task of exploring the possibility of coordinating all employment service funding systems under one state unit.
- Charge this sub-cabinet with the task of improving employment-related policies and practices across all state agencies. Attention should be paid to NOT creating dis-incentives for individuals seeking competitive employment (i.e. reducing health care benefits).

#### **COMMUNICATION AND MESSAGING**

##### **BACKGROUND:**

Among service areas (MDE, DHS, and DEED) terminology and definitions pertaining to work are varied and inconsistent. Unfortunately, the federal definition of disability as it pertains to Social Security benefits requires that a person be unable to participate in substantial gainful employment. For the purposes of this plan and in keeping with the intent of the ADA, this committee broadens this definition to include those people with disabilities who are able to participate in employment because of support services provided. Definitions should correspond to the recent CMS bulletin and get to the idea of "work" being competitive and integrated. The committee recommends that all state websites be reviewed to understand what is being communicated about employment. This review could include all website sections dealing with day programs and other employment-related services. Feedback should be solicited from individuals and families as well as from businesses or employers.

**CORE SERVICE DEFINITIONS – EMPLOYMENT:** The following definitions of employment are based on the descriptions of employment services available under the Centers for Medicare and Medicaid Services (CMS)<sup>1</sup> and the U.S. Department of Health and Human Services (HHS) Substance Abuse Mental Health Services Administration (SAMHSA).

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<sup>1</sup> CMCS Informational Bulletin, *Updates to the §1915 (c) Waiver Instructions and Technical Guide regarding employment and employment related services*, September 16, 2011

- *COMPETITIVE EMPLOYMENT*: Sustained paid employment in the community at prevailing wages and independent of support services.
- *SUPPORTED EMPLOYMENT- INDIVIDUALIZED EMPLOYMENT AND SUPPORT*: Sustained paid employment at or above minimum wage in an integrated setting with ongoing support. The intended outcome of this service is sustained paid employment and work experience which leads to further career development and independent community-based employment.
- *SUPPORTED EMPLOYMENT- SMALL GROUP EMPLOYMENT SUPPORT*: Services and training activities provided in groups of 2-8 workers in businesses and community settings which promote integration into the workplace and interaction with non-disabled co-workers. The intended outcome of this service is sustained paid employment and work experience which leads to further career development and independent, integrated community-based employment paid at or above minimum wage. Note: while CMS defines small-group employment support services including groups as large as 8 individuals, DHS allows as many as 10.
- *CENTER-BASED EMPLOYMENT*: Pre-vocational services provided in facility-based work settings, such as “sheltered workshops.” Work may be paid by piece-rate or productivity rate below minimum wage according to Section 14(C) of the Fair Labor Standards Act. The intended outcome of this service is paid employment and work experience which leads to further career development and independent, integrated community-based employment paid at or above minimum wage.
- *INDIVIDUAL PLACEMENT AND SUPPORT – SUPPORTED EMPLOYMENT (IPS-SE)*: Individual Placement and Support-Supported Employment (IPS-SE) helps people with severe mental illness work at regular jobs of their choosing. Although variations of supported employment exist, IPS-SE refers to the evidence-based practice of supported employment. Refer to the Resources section at the end of this document for more information regarding IPS-SE.

## **RECOMMENDATIONS**

- Across service areas, use consistent definitions of employment support services.
- Ensure that state websites and materials communicate a message that values integrated employment.
- Invest in messaging targeted to re-educate the business community on the value of employing people with disabilities as well as to invalidate current myths that serve as barriers to employment. Ensure that employers have access to current information and technical assistance to support hiring of persons with disabilities.

## **TRANSITION AGED STUDENTS**

### **BACKGROUND:**

Students with disabilities are considered to be “in transition” between educational services and adult services beginning at the age of 14. While special education programs define the end of transition as occurring at age 22, some students covered by their parents’ health plans are actually in transition until the age of 26. For the purpose of this report, “transition aged students” means ages 14 through 22.

Committee members tried to collect employment data on transition aged students from the Minnesota Department of Education (MDE). It appears that MDE has limited information on employment data for these students. MDE does have information about dropout rates, graduation rates, and school inclusion. MDE might work with DHS and Vocational Rehabilitation Services (VRS) unit of the Department of Employment and Economic Development (DEED) in gathering data. The information should be made available by disability type and by regions.

In writing the Olmstead plan, the state will need baseline information for the number of transition aged students who are:

- entering Day Training & Habilitation (DTH) programs
- participating in center-based employment
- participating in community employment
- participating in non-work activities
- entering post-secondary education
- employed including: self-employment, competitive employment, supported employment, customized employment, center based employment, and employment from one’s own home

Of significant concern is in the area of Individualized Education Programs (IEPs) for transition –aged youth. Students and their families should be receiving information, education, and training about integrated employment, work incentives, self-advocacy, and career planning. The MDE’s most recent Part B Annual Performance Report can be viewed at the following URL: <http://education.state.mn.us/MDE/SchSup/SpecEdComp/>. As referenced in the report, an unacceptably high percentage of audited IEPs for transition-aged students did not contain appropriate measureable post-secondary work or education goals.

### **RECOMMENDATIONS**

- Implement MDE initiatives to ensure that all transition aged students have a current Individualized Education Program (IEP) that includes career/employment planning goals based on robust, current vocational assessments

- Implement a data tracking system for the work experiences of transition aged students (number of work experiences, length/hours, level of integration)

### **GOALS**

- Increase the number of transition aged students who enter post-secondary education by a minimum of 5 percent each year for the next 5 years
- Increase the number of transition aged students who enter into integrated employment by a minimum of 5 percent each year for the next 5 years

### **ADULT EMPLOYMENT**

#### **BACKGROUND:**

The Department of Human Services (DHS) has published three goals on the topic of employment:

- Create and promote resources that help individuals plan for economic security.
- Create incentives and supports that increase individuals' opportunities to achieve their employment goals and result in increased income earnings.
- Implement policy and legislative changes to remove barriers to employment for individuals.

The overall goal is to increase the number of people in integrated employment and increase their employment earnings.

The Olmstead Committee received a report from VRS/DEED that they utilize an individual tracking system and submit a detailed performance report to the federal government. This performance report includes placement type, hours worked, earnings, benefits, etc. DHS has periodically surveyed DTH programs for similar information. However, there is currently no tracking system capable of giving real-time data regarding level of integration of services being provided by DTH and Supported Employment service providers. DHS should consult with other states that are leading the nation in integrated employment practices to determine how they are tracking individuals.

Implementation of an improved employment outcome tracking system would set the stage for developing benchmarks for increases. It would enable action steps such as ensuring that current and appropriate vocational assessments are completed. It would also ensure that a county or Vocational Rehabilitation plan is reviewed to ensure informed choice of a continuum of work opportunities (including competitive, integrated employment), and identifying available options and work experiences based on the assessment. Coming rate methodology changes include 15-minute unit service billing rather than per-diem billing which is currently standard for many services. This may afford opportunities to effectively tie information regarding service integration, wages, and hours with service authorization and billing.

Recommendations and goals focus on increased integrated employment in the community. As of this writing, there exist significant concerns in Minnesota and across the nation that center-based employment (“sheltered workshop”) environments violate the spirit and intent of Olmstead and its integration mandate. The solution to these concerns is not an easy one. People with disabilities cannot lose services that effectively meet their individual needs and the employment aspects of Olmstead Plan must take into account the varied needs of individuals with different needs. For this reason, the committee’s recommendations will focus on “positive” efforts to create integrated opportunities, rather than recommend that center-based services be eliminated without viable replacement services that meet those individual needs.

### **RECOMMENDATIONS**

- Restructure funding mechanisms and contracts with providers to encourage investment in integrated community employment and incent innovative services which lead to integrated employment, including increased outreach to community-based employers
- Implement a data tracking system to gather wage/hour/level of integration information for persons receiving DTH and other employment-related services
- Invest in training and technical assistance for people with disabilities, their families, their support networks and employers with a focus on work and employment incentives
- In future updates of the MnCHOICES assessment tool, add specific questions that evaluate whether the individual with a disability is satisfied with the level of integration, the number of hours of employment, earnings/benefits, and his/her career path
- Increase access to Individual Placement Support –Supported Employment (IPS-SE) Services for individuals with mental illness by expanding the number of IPS-SE providers statewide through training, technical assistance and increased service funding.

### **GOALS**

- Increase integrated community employment by a minimum of 5 percent each year for the next 5 years. Integrated community employment includes both individual employment with supports and working in a small group with supports in the community.
- Increase the number of providers who offer Individual Placement Support–Supported Employment (IPS-SE) Services by 5 percent each year over the next 5 years.

## **RESOURCES**

Many resources are available to guide efforts to make integrated employment a reality for people with disabilities. The list below is not meant to be exhaustive. It represents a starting point for current effective practices in employment.

- [www.mnddc.org/asd-employment/index.html](http://www.mnddc.org/asd-employment/index.html)
- [www.communityinclusion.org/](http://www.communityinclusion.org/)
- [www.ntarcenter.org/home](http://www.ntarcenter.org/home)
- [www.dol.gov/odep/ietoolkit/](http://www.dol.gov/odep/ietoolkit/)
- [www.ncstac.org/](http://www.ncstac.org/)
- [www.dartmouth.edu/~ips/page56/page56.html](http://www.dartmouth.edu/~ips/page56/page56.html)
- <http://store.samhsa.gov/product/Supported-Employment-Evidence-Based-Practices-EBP-KIT/SMA08-4365>

Information regarding IPS-SE:

- [www.dhs.state.mn.us/main/groups/disabilities/documents/pub/dhs16\\_137895.pdf](http://www.dhs.state.mn.us/main/groups/disabilities/documents/pub/dhs16_137895.pdf)
- [www.positivelyminnesota.com/Programs\\_Services/Pathways\\_to\\_Employment/IPS\\_SE\\_JJ\\_2009.pdf](http://www.positivelyminnesota.com/Programs_Services/Pathways_to_Employment/IPS_SE_JJ_2009.pdf)