

Smoke & Fire

About Olmstead and Employment First

The Olmstead Plan was the outcome of a class action lawsuit filed against the Minnesota Department of Human Services (DHS) for routinely imposing seclusion and mechanical restraints on residents at the Minnesota Extended Treatment Options (METO) program. The agreement between all the parties in settling the lawsuit was to provide these residents with a safe and humane living environment free from abuse and neglect; and to extend its provisions to all state operated locations serving people with developmental disabilities with severe behavioral problems or other conditions that would qualify for admission to METO, its successor, or the two new adult foster care transitional homes (Civil File No. 09-cv-1775).

The Plan was first adopted by the Olmstead Subcabinet on 9/29/14 and revised on 3/25/19. The Plan is a broad series of key activities the state must accomplish to ensure people with disabilities are living, learning, working, and enjoying life in the most integrated setting. The Plan will help achieve a better Minnesota for all Minnesotans, because it will help Minnesotans with disabilities have the opportunity, both now and in the future to: live close to their family and friends; live more independently; engage in productive employment; and participate in community life. In short, it will offer Minnesotans with disabilities opportunities just like everyone else (MN Olmstead Plan website).

NOTE: The Olmstead Plan was not required because of any issues with services offered by Day Training and Habilitation (DT&H) providers.

SMOKE 1: The Olmstead Plan and Employment First Policy are closing down my son or daughter's day provider.

FIRE: It is true that neither the Olmstead Plan nor the Employment First Policy (EFP) states that day providers will be closed. What is not said is that DHS intends to "redesign" DT&H services in a way that will limit the on-site work option and thereby diminish the use of the 14(c) certificate until it is not sustainable; that Arc MN considered a 2020 legislative objective to phase-out the 14(c) wage certificate that permits providers to pay clients a special minimum wage; and both are vocal advocates of the EFP adopted on 9/29/14 that has the following two core values that are in opposition to the current 14(c) on-site work option: (i) people with disabilities *"can be competitively employed or self-employed, earning at least the minimum wage and benefits"*; and (ii) they *"should be fully integrated physically, functionally and socially within the workplace."*

SMOKE 2: The Olmstead Plan and Employment First Policy will require my son or daughter to work 30 to 40 hours per week, at prevailing wages with benefits.

FIRE: It is true that neither the Olmstead Plan nor the EFP specifies the number of hours, wages, and benefits that people with disabilities are required to earn. What is not said is that the EFP defines employment as: *"full-time, part-time, or self-employment with and without supports"* that *"pays at least minimum wage, but not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by workers without a disability."*

SMOKE 3: The Olmstead Plan and Employment First Policy will force my son or daughter to work in the regular workforce, rather than providing a choice.

FIRE: It is true that neither the Olmstead Plan nor the EFP forces a person with disabilities to work in the regular workforce. What is not said is that Minnesota's EFP defines employment as: *"in the competitive labor force"* and *"on the payroll of a competitive business or industry."* If DT&H programs are "redesigned", one of the proposed primary changes will be a limitation of 48 months of employment support through DT&H services. After that, the only work choice will be in the regular workforce, and day programs will only be able to offer life enrichment services.

SMOKE 4: The Olmstead Plan and Employment First Policy are trying to force my son or daughter off the public benefits and supports (e.g., SSI, Social Security, Medicaid, etc.) they need.

FIRE: It is true that neither the Olmstead Plan nor the EFP states that people with disabilities will be moved off public benefits or out of services. What is not said is that most clients in DT&H programs receive either or both Supplemental Security Income (SSI) and funding from the Developmental Disabilities Waiver (DDW). According to Disability Hub MN, the DDW has a current income limit for a single person of \$1,041 per month (DHS-3461A-ENG). Earning a minimum wage of \$10.00 per hour for 6 hours a day five days a week would reduce the SSI benefit and exceed the DDW limit. As a result, people with disabilities would either not work, or work less than 30 hours a week and spend more time in their home, or have to manage a change in their public benefits and supports.

SMOKE 5: The Olmstead Plan and Employment First Policy require my son or daughter to work in community settings where they may not be safe.

FIRE: It is true that neither the Olmstead Plan nor the EFP requires people with disabilities to work in settings they do not choose. What is not said is that in "redesigning" DT&H programs, DHS will limit 14(c) center-based work to no more than 48 months of prevocational services. After that the only work option left will be in a community setting.

SMOKE 6: The idea of "community-based services" is a trendy topic that the Olmstead Plan and Employment First Policy latched onto.

FIRE: DT&H programs began in the 1960s and, through a recent attestation process, services were found to be in accord with the 2014 federal guidance on Home and Community Based Services. Moreover, DT&H providers, not DHS, have been mostly responsible for expanding new work choices to those with I/DD. In his 2015 order approving the Olmstead Plan, presiding U.S. District Court Judge Donovan Frank wrote ~ *"The Olmstead Plan is not about and should not be construed as forcing the closure of certain facilities or forcing integration where it is neither appropriate nor desirable. Rather, it is about increasing available choice so that each individual can make meaningful decisions about how to live, work, and interact with the community."*

SMOKE 7: Most people with disabilities cannot work in the regular workforce.

FIRE: I coined the acronym VAPOR to describe such things as the EFP statement that *"all working age Minnesotans with disabilities can work, want to work, and can achieve competitive integrated employment"* as a Very Appealing Promise Obfuscating Reality. As a parent, you know best if your son or daughter with an I/DD can and wants to work in the regular workforce. As to the claim that only 44% of Minnesotans with disabilities are working, compared to 81% for other citizens; what is not said is that the entire population was not included in their calculation. The March 2017 report from the MN Demographic Center lists 227,200 Minnesotans with a cognitive disability in 2015. Of these, 37,000 were under the age of 18 and 53,400 were over the age of 64 leaving 136,800 working age adults with disabilities. According to three DHS fact sheets, 498 people with disabilities are on the CAC Waiver (DHS-5711-ENG), 24,896 are on the CADI Waiver (DHS-5712-ENG), and 18,603 are on the DD Waiver (DHS-5713-ENG), for a total of 43,997 people with disabilities served by DHS. Subtracting this number from the 136,800 leaves 92,803, or 71%, of working age adults with disabilities presumed to be making at least minimum wage since they are living without services and supports from DHS (likely high and still a more accurate number than 44%). A 2019 MOHR survey reports that 11,312 clients receive DT&H, 10,233 employment services, 2,790 extended employment, 827 ADS, and 4,782 other services for a total of 29,874 (some duplicates). Of the DT&H clients, approximately 6,565 earn a special minimum wage and 4,747 receive only life enrichment services.

Hubert H. Humphrey used the phrase *"that the moral test of government is how that government treats those who are in the dawn of life, the children; those who are in the twilight of life, the elderly; and those who are in the shadows of life, the sick, the needy and the handicapped."* DHS can do better than redesigning DT&H services and eliminating the 14(c) work option that continues to be a valued work option to 6,565 adults with I/DD and should be adding service options not taking them away,

John Wayne Barker is the sole author of this 01/03/20 document. He is currently the Executive Director of a day program and has 40 years of experience supporting people with I/DD in both residential and day services. A frequent critic of pre-2020 DHS leadership, he is a vocal opponent of the Employment First Policy and the initiative to redesign DT&H for a number of reasons and principally because he believes neither honors client choice nor the Olmstead Plan.