



December 15, 2014

Minnesota Department of Human Services  
Disability Service Division  
444 Lafayette Road  
St. Paul, MN 55155

**RE: Public comment for Minnesota's Home & Community Based Services (HSBS) transition plan**

To Whom It May Concern:

The MN Association of People Supporting Employment First (APSE) is the state chapter representing a national organization committed to promoting Employment First policies and practices across the United States. MN APSE represents a broad base of constituents including self-advocates, family members, providers, researchers, and other professionals. MN APSE is solely focused on making competitive integrated employment the first and preferred option for Minnesotans with disabilities.

It is critical to use a universal definition for terms related to community-based services. As such, MN APSE defines employment as a job where an individual with a disability is included on the payroll of a business, earns a salary at or above minimum wage, has the ability to work with coworkers without disabilities, and interact customers and the public general public (MN APSE, 2007). This is also the definition provided in the outline for the Minnesota Employment First policy passed by the Minnesota Olmstead Subcabinet on September 29, 2014.

MN APSE supports the MN Department of Human Services in the development of a Home and Community Based Services (HCBS) transition plan to address the recent guidance from the Centers for Medicare and Medicaid Services (CMS). As an organization that supports and promotes employment choices for Minnesotans with disabilities, we ask the Department of Human Services consider the following points:

- Minnesotans with disabilities who are served through waived services are still primarily served in segregated employment settings (Butterworth, Smith, Hall, Migliore, Windsor, Domin, 2014).

- Most Minnesotans with disabilities who receive waived services do not have informed choice about employment options available to them, and many employment options that are offered only exist within the confines of segregated employment programs.
- Recently, the Department of Justice conducted investigations in Oregon and Rhode Island and concluded that sheltered work was not considered to be a community-based service and that the individuals in these settings were not being granted the civil rights guaranteed to them through the American with Disabilities Act (1990) and *Olmstead vs. L.C.* (1999).
- Minnesota's recent litigation related to the Jensen Settlement and subsequent development and passage of an Employment First policy provide significant direction and a framework for the development of integrated community-based employment services.

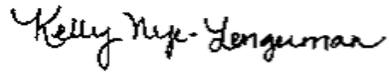
MN APSE feels strongly that segregated work or employment services provided in a disability service provider's facility should *NOT* be considered a community-based setting. Minnesota has an opportunity to improve waived services and supports to ensure that they honor the civil rights of individuals with disabilities while promoting community inclusion. Current state and federal activity and litigation around HCBS and community inclusion point to the need for the state of Minnesota to no longer promote and include segregated employment services as community-based services, which include facility-based Day Training and Habilitation (DT&H) programs.

MN APSE feels strongly that the new CMS guidance and subsequent HCBS transition plan provides an opportunity to set high expectations for our community, our providers, our state agencies, and individuals with disabilities who have been plagued by the subtle bigotry of low expectations when it comes to employment opportunities. Recently, focus groups conducted by DHS also highlighted the state's lack of capacity to provide integrated community-based employment options. *"When asked whether people have support to do what they want to do when they want to do it, one provider responded, 'By and large, in our estimation not really. There is comparatively little individualized employment or day programming'"* (MN Department of Human Services, 2014). This and other similar comments highlight the need for the Department to continue to monitor and challenge providers about the level of community integration in employment programs.

The MN HCBS transition plan provides an opportunity for Minnesota to raise the bar when it comes to informed choice and expectations for Minnesotans with disabilities. There are currently significant barriers to eliminating segregated employment services related to service structure, reimbursement, and provider culture in Minnesota. However, MN APSE will continue to offer the Department of Human Services support, content expertise, and data to facilitate the state's continued progress toward regular, fair-wage employment and away from segregated employment services for Minnesotans with disabilities.

As Minnesota moves forward in the application and implementation of the CMS guidance to its state waived services, we hope that DHS will continue to promote informed choice, expanded community-based options for employment services, and training and support for individuals with disabilities, their families, and disability service providers.

Sincerely,



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Jolene Thibedeau Boyd, MS, CESP  
MN APSE Co-Presidents

#### References

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Butterworth, J., Smith, F. A., Hall, A. C., Migliore, A., Winsor, J., & Domin, D. (2013). *StateData: The National Report on Employment Services and Outcomes* (p. 368). Boston, MA. Retrieved from [http://book.statedata.info/13/2013\\_web\\_F.pdf](http://book.statedata.info/13/2013_web_F.pdf)

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*Olmstead v. L.C.*, 527 U.S. 581, 119 S. Ct. 2176 (1999).