**MEMORANDUM**

**TO:** Governor-Elect Walz/Flanagan Transition Team

**FROM:** Tom Weaver, Norm Munk, John Wayne Barker, Jim Clapper, and Michael Kraines

**SUBJECT:** Services for Minnesotans with Intellectual and Developmental Disabilities (I/DD)

**DATE:** November 7, 2018

It has been said that a society should be judged by how it cares for its most vulnerable citizens. If that is true, then it is our belief that Minnesota will be judged harshly for callously jeopardizing the health, safety, and welfare of Minnesotans with I/DD. This document was created to advise, and offer our support to, Governor-elect Walz and his transition team as he faces the complex and critically important issues outlined below.

Support services for people with I/DD in MN are undergoing unprecedented change – some driven by the federal government, and most manufactured by the MN Department of Human Services (DHS). These changes include:

* Enactment of the Disability Waiver Rate System (DWRS);
* Implementation of three new Employment Service waivers and corresponding new rates;
* Updates to the federal Home & Community Based Services (HCBS) guidelines;
* New federal Workforce Incentive & Opportunity Act (WIOA) provisions; and
* Intent to redesign Day Training & Habilitation and Prevocational services.

Some of these changes are guided by the MN Olmstead Plan, which mandates providing the most integrated settings appropriate to the needs of the individual and community and implementing a more person-centered approach to providing services, which means honoring the choices people make about the services they receive. Most changes have been initiated by the bureaucracy, or their small group of consultants/advisors, that many families and providers feel are misguided and will cause significant harm to those they are intended to benefit. Governor Walz must repair this system and appoint new leadership at DHS that will find the “good middles,” the difficult compromises that matter, so that positive and long-lasting change can benefit those who rely on I/DD services. The signers of this white paper are eager to assist in that effort.

**BACKGROUND**

Minnesota has over 130 Day Training & Habilitation (DT&H) programs, providing support services to roughly 26,000 adults with I/DD. Programs offer an array of employment services including center-based work, work crews, and direct hire placements; along with life enrichment activities, life-skills training, and other social, therapeutic, and recreational opportunities. Our programs address the needs of people with a wide range of disabilities from severe (some are non-verbal, non-ambulatory, and/or need assistance with feeding/toileting, etc.) to slight (people who are largely independent and active within the broader community). The primary source of funding for DT&H services is Medical Assistance (MA), generally half paid with federal funds, and half paid by the state. Historically, providers negotiated individual reimbursement rates with the counties resulting in a patchwork of rates with no uniformity and little correlation to the actual cost of services.

In 2008, the Centers for Medicare & Medicaid Services (CMS), the federal agency overseeing MA, directed DHS to use a rate structure that would be uniform throughout the state and better reflect the actual cost of services. After years of development by DHS, in 2013 the MN Legislature enacted the DWRS that dramatically changed how services were paid. While DHS portrayed the DWRS as being “budget neutral” for DT&H services, the reality is, when fully implemented, the new rates will not adequately fund DT&H programs and we suspect some of our funding was shifted to other services. Instead, the DWRS creates more “losers” than “winners” among DT&H providers and some programs (e.g., Achieve Services) will see MA revenues decline by over 20% when fully implemented.

Recognizing that the new DWRS funding system would be extremely disruptive, the Legislature put in place a 5-year “banding” period to stabilize rates during the transition. During the banding period, “historic” rates do not change up or down by more than 0.5 to 1% per year, until banding expires. Banding was initially scheduled to expire on December31, 2018, but the Legislature later added a sixth year of banding, which expires on December 31, 2019. The Legislature also added a 7th year of banding in 2017, but it is subject to CMS approval which hasn’t been granted yet (DHS submitted request on 7/27/18). If CMS approves the 7th year, protection would be extended through December 31, 2020.

**ISSUES**

**Enactment of the DWRS**

The new DWRS rate system does not cover the cost of providing services to people with I/DD, and when fully implemented (when banding protection expires) it will cause a tremendous disruption in service, and in some cases loss of services altogether, in violation of Olmstead and constitutional protections. The funding formula is woefully inadequate in terms of staff wages and other costs it allows, and fails to account for other expenses that fluctuate beyond our control. For example, Achieve’s healthcare premiums were just increased by 29% and the DWRS has no ability to increase rates for that purpose. Achieve cannot afford to absorb 100% of the additional cost ($150,000) and must pass a considerable increase onto employees - effectively resulting in a wage cut in the midst of a historic workforce shortage. In addition to the limits of the funding formula to work within a dynamic economic environment, the complexity of the DWRS goes well beyond what CMS required in having a consistent statewide rate methodology and even after four years of its launch, case managers and counties continue to struggle to process accurate service authorizations in a timely manner. Recently, Anoka County advised providers they would not be issuing any service authorizations in the foreseeable future because the one person handling this task left the agency. The result is that non-profit providers have to “carry” the state’s payables often requiring them to tap into lines of credit (LOC), resulting in a new and unnecessary interest expense. For example, Merrick, Inc., has over $132,000 in bills it cannot submit for services provided in September 2018 because many client service authorizations have not been issued or more likely are incorrect. This is nearly 3% of its annual MA revenue and more than twice what it experienced under the previous rate structure. For the first time in 15 years Merrick is having real cash flow problems and may have to access its LOC. Do we really want MA funds spent on interest expense because the counties cannot manage the complex system implemented by DHS?

**As the Workforce Crisis Grows, the Suffering Increases**

DT&H programs serve some of Minnesota’s most vulnerable adults. The work our direct support professionals (DSPs) do every day is nothing short of heroic. It is hard work, both physically and emotionally. As the relationship develops between a client and DSP, they learn what can trigger a client’s challenging behaviors, what calms them, and eventually earn the clients’ trust and confidence—all essential to providing what is often extremely personal and intimate care. Without question, the quality of care is directly related to our ability to attract and retain the highest quality DSPs. Additionally, there is growing momentum to raise the minimum wage to $15.00 per hour which is well above the wage factor used in the DWRS, further complicating how providers can recruit and retain the DSPs needed to provide services and supports to people with I/DD.

The average wage of DSPs in the non-profit sector is $12.32/hour, and many are earning less. The DSP wage is a fundamental factor of the DWRS rate calculation that has not kept up with rising costs over the past decade, recent minimum wage initiatives, nor is it comparable to what DHS pays its own employees. (Direct Support Specialists working at state-operated programs in the metro are paid $14.55 – $23.08/hour, according to a 9/25/18 job posting.) With the MN unemployment rate for September 2018 at 2.8%, non-profit providers are also competing with grocery stores, department/discount stores, and restaurants for competent employees. Our disadvantage is that we cannot compete with their starting wages of over $14 an hour. Given the difficulty of the work and low wages, it is not surprising that the annual turnover rate among DSPs in our sector exceeds 40%, creating a crisis that threatens the quality of care for some of Minnesota’s most vulnerable citizens.

Here is just one illustration of the problem: Maria enrolled at Partnership Resources, Inc., (PRI) in November 2016. With English as her second language, and limited verbal communication abilities due to her disability, Maria relies on staff who know her support needs well. She always looked forward to attending PRI until this past summer, when her primary Direct Support Professional, PRI’s Designated Coordinator, and the site’s Program Director all terminated their employment with the organization to pursue higher paying positions. Out of concern for Maria’s safety, and not convinced that the program could meet her daughter’s needs with the reduced staffing, Maria’s parents kept her home until staffing improved. Maria missed 30 days between June and September 2018, resulting in a loss of revenue to PRI of $2,801. This revenue loss was on top of a 7% cut to her rate and the cost of replacing those employees (more than $4,000 per employee to hire and train). In addition to the impacts to PRI, this had a negative effect on Maria and her family. Instead of attending PRI daily and participating in the enriching activities she enjoys, Maria spent her days at her parents’ home. This put her working, tax-paying parents in a bind as they had to juggle a daily schedule to ensure someone was always at home to provide supervision and care for Maria. This affected their jobs and livelihoods. Although, to date PRI is still not fully staffed at Maria’s program, some of the positions were filled and Maria has started attending PRI again. She is forming relationships with the new staff and building trust so they can support her needs.

Maria’s example is one of thousands around the state and proves the reality that low DWRS rates translate to low wages for our employees; low wages mean high turnover, and high turnover results in a degradation of services. It has become a vicious downward cycle that must be addressed.

**Implementation of Three New Employment Service Waivers**

In the midst of these challenges, DHS decided to carve out the employment services that DT&H programs have been providing for decades, defining them as “Employment Exploration,” “Employment Development,” and “Employment Supports.” And, despite the Minnesota Legislature’s clear directive to preserve rate stability through banding, DHS assigned new rates for these “new” services and is thereby circumventing the Legislature’s banding protection and accelerating the rate cuts for individuals in programs like Achieve by 1.5 to 2.5 years. In some cases, the employment services rates are higher than the DWRS rates will be when banding expires, but are much lower than the “historic” banded rates. The result is that providers are seeing immediate rate cuts despite the Legislature’s intent to stabilize rates, or essentially freeze them, during the banding period.

The truth is, DHS has created employment services rates that, when fully implemented, won’t come close to covering the true cost of providing the services. PRI, for example, will suffer a loss of approximately $300,000 per year, a devastating blow to more than 150 clients whose employment and the support needed to hold those jobs, will be put in serious jeopardy as a result. Most other programs will face similar devastation unless the rate formula is abandoned or significantly changed.

These new waivers have needlessly complicated service provision and billing. Not only do we need to track and bill three separate services that were once one, there is an excessive time tracking requirement of “15 minute units” set forth in these new waivers. For an example of the waste this creates, consider what has happened at CHOICE, Inc., a small day services provider serving about 200 people. Prior to the DWRS and new employment services, approximately eight hours of staff time per month was dedicated to billing services. Today over 200 hours per month are spent billing. Furthermore expensive software with ongoing lease costs was necessary to keep billing time from exceeding 200 hours per month. It is an unnecessarily complicated system that appears to have been designed without the end user in mind. Furthermore, this too takes scarce resources from our DSPs - where our money should truly be spent – and does *nothing* to improve services for people we serve.

Parents and caretakers of those affected are also alarmed, and for good reason. One concerned parent, Jim Clapper, observed: “My son Bob, is doing well on a work crew at Kowalski’s on Grand Avenue, 5 days per week. With this change, crews are classified under Employment Supports, out of banding, and into rates that are less than what he was going to receive after banding ends for center-based programs.” Clapper’s comments echo what other parents fear – that the new rates cannot sustain the quality of services their adult children deserve.

**Updates to HCBS Guidelines**

CMS issued new guidelines on 1/1/14 that directed DHS to ensure that waivered services were not funding institutional services by 3/17/21. Principally, CMS wanted to ensure people with I/DD were not being forcibly segregated, and they had a choice to have a minimum wage job in the general workforce. DHS rolled out a complex “attestation” process to evaluate providers. This process came with a promise of further technical assistance that has never been provided. As a result, providers are uncertain if they will be subjected to heightened scrutiny and deemed ineligible for MA reimbursement. Most importantly, very little in this process has improved services to anyone in our programs and has simply added additional administrative strain and waste of providers’ limited resources.

**New Federal Workforce Incentive & Opportunity Act (WIOA) Provisions**

On July 22, 2016, Section 511 of WIOA became effective requiring the Minnesota Department of Employment and Economic Development (DEED) to: (i) implement a “gatekeeping function” so that people with disabilities under the age of 25 receive transition services, vocational rehabilitation, and career counseling before admission to a center-based program; and (ii) annual career counseling, information, and referral (CCIR) sessions to those paid a special minimum wage after admission. To be clear, this was not a decision made by DEED and without having the internal resources they contracted with the Centers for Independent Living to conduct the CCIR sessions for over 15,000 clients in DT&H programs.

Initially these sessions required both the person with a disability and their guardian to attend the session and specifically prohibited participation of the DT&H provider. In the first year approximately 17% of those attending a CCIR session answered “Yes” when asked if they were interested in exploring a minimum wage job in the general workforce and providers know this number is high because clients either did not understand the question and/or were given the impression that all things were possible despite the reality of health and safety issues along with funding constraints. Now in its third year, DEED has determined that guardians are no longer required to attend the annual CCIR sessions and it will be interesting to see how the percentage of “Yes” responses change without their presence. This expensive CCIR requirement added another layer of bureaucracy and fails to provide any useful information not already contained in each client’s Community Services and Support Plan. Even worse, this requirement has left people with disabilities under the age of 25 stranded at home until DEED determines they have “failed” at securing a minimum wage job.

**Unexpected 7% Rate Cut: The Ultimate Betrayal by DHS**

In 2013 and 2014 the Legislature authorized modest rate increases totaling 7%. These adjustments were outside the DWRS rate framework and were intended to address the workforce crisis. In fact the legislation directed that the majority of these funds be used to enhance staff wages and benefits. The 7% rate adjustments were not cost-of-living adjustments (COLAs), but were enacted by the Legislature as permanent adjustments to address the ongoing workforce shortage. The DWRS rate formula also calls for inflationary adjustments every 5 years. On July 1, 2017, the first inflationary adjustment – an increase of 8.5% - was implemented. When CMS inquired about these rate adjustments, DHS erroneously asserted that the 7% out-of-formula adjustments and the 8.5% in-formula adjustment were both essentially COLA adjustments. As a result, CMS rejected the 7% workforce adjustments as being duplicative of the in-formula inflationary adjustment, and refused to provide the federal match—effectively imposing an immediate 7% rate cut on providers.

In the 2018 session, the Legislature repealed the 7% increase and replaced it with a more modest adjustment clearly identified as a workforce enhancement adjustment that was included in an omnibus bill. Governor Dayton vetoed the omnibus bill for reasons unrelated to the workforce enhancement adjustment. Without replacement legislation, the 7% increase is still in effect. DHS has, nevertheless, implemented the cut as a result of CMS’s decision not to pay the federal share. Since July 1, 2017, Independence Center in Waite Park serving 37 clients and one of Opportunity Partner’s programs in Mendota Heights serving 150 clients has decided to close because of this cut on top of all the other changes imposed by DHS. As a result, service providers sued DHS in federal court seeking to restore the 7% increase that remains in law, and that lawsuit is pending.

**Redefining “Day Services”: More instability, and dishonoring personal choice**

Despite the fact that the disability services sector is already experiencing this unprecedented turmoil, DHS recently announced plans to go to the Legislature in 2019 to redefine what’s left of “DT&H services,” and once again change the rates. In the latest version of its amendment, DHS revealed its plan to limit the time people can receive center-based employment support to three years, with a possible one-year extension. In addition to our concern about the ever-changing environment and uncertain rates, the plan to limit time spent working in a DT&H program is completely contradictory to person-centered planning and personal choice embodied in Olmstead.

Olmstead requires that DHS not only honor and respect the right of each person to live, work and play in an integrated setting, but also honor and respect the rights of those who choose to spend time with those who are similar. Since clients have choices, and if they choose to work at a DT&H program with employment supports, then neither DHS nor anyone else should place an arbitrary time limit on that choice.

**Impact on Parents and Family Members of People with I/DD: Confusion, outrage and fear**

Parents and family members of Minnesotans with I/DD are greatly impacted by all these changes. They are struggling to understand the complexity of HCBS, DWRS, rate cuts, MnCHOICES (a web-based application that is used to assess or reassess services and support needs), etc. They struggle to obtain and maintain services for their loved ones, especially on behalf of those individuals with significant disabilities. Many have come to the conclusion that “the system” is not working and they end up providing much of the long-term care - but for how long? Some have said they hope to outlive their loved ones with I/DD because they have lost trust in “the system.”

**CONCLUSION**

The scale and scope of the changes DHS is imposing on DT&H services, and the harmful effects on people served in these programs, clearly illustrate a serious disconnect between DHS policy objectives and the consequences of their actions on the most vulnerable people the department is supposed to serve and protect. The disability services community desperately needs Governor Walz to appoint a DHS commissioner who has a better understanding of these issues and their impact on Minnesotans with disabilities. In addition, we recommend that Governor Walz hit “pause” on any additional system changes until service providers have had time to adjust to the myriad of changes imposed on us during the current administration.

Moreover, we offer our support and assistance to Governor Walz in developing new policies and priorities relating to the above and future issues affecting people with I/DD. And, we respectfully request the opportunity for provider input on the Governor’s appointment of a new Commissioner of Human Services. Minnesota’s 41st Governor has the opportunity, and obligation, to ensure that our most vulnerable citizens receive the quality of care and services that they deserve and that Minnesota is deemed the caring, compassionate, and responsible society WE ALL deserve. The undersigned stand ready and willing to assist, and will remain fully committed to doing all we can to ensure a safe, secure, and life-enriching future for the people we are privileged to serve.

Respectfully submitted by:

Tom Weaver, CEO of Achieve Services in Blaine, established in 1964 and serving 190 adults with I/DD.

Norm Munk, CEO of Partnership Resources, Inc. in Minneapolis and St. Louis Park, established in 1960 and serving 330 adults with I/DD.

John Wayne Barker, Executive Director of Merrick, Inc., in Vadnais Heights and North St. Paul, established in 1964 based on pilot services since 1958 and serving 375 adults with I/DD.

Jim Clapper, parent of a child with I/DD, and Co-Chair of Minnesota Families & Advocates Coalition, whose membership includes over 450 family members and advocates for people with I/DD.

Michael Kraines, Executive Director of CHOICE, Inc. with sites in Maple Grove, Eden Prairie and Minnetonka, established in 1969 and serving 200 Minnesotans with I/DD.