

Olmstead Commission Special Meeting

Topic: statement in support of one-time funding for 21-23 LSTC transitions

April 15, 2021

MEMBERS PRESENT: Wally Goulet, Sen. Judy Lee, Teresa Larsen, Leslie Bakken Oliver, Carlotta McCleary, Rep. Mitskog, Judge Bruce Romanick, Siobhan Deppa, and Scott Burlingame

MEMBERS ABSENT: Julie Horntvedt

OTHERS PRESENT: Dan Gulya, Bruce Murry, Tina Bay, Chris Jones, Jessica Thomasson

Mr. Gulya announced that this meeting is being recorded.

Mr. Goulet stated that he hoped all Commission members had a chance to review the e-mail regarding the Olmstead Commission making a public statement supporting the idea of using COVID monies to facilitate capacity-building for DHS's ongoing transition of individuals with disabilities from the LSTC to the community. Mr. Goulet asked Mr. Gulya to summarize his proposed statement

Mr. Gulya noted that his proposed statement addresses the Senate version of HB 1012, Section 16 which states: Subdivision 2 of section 1 of this act includes the sum of \$5,200,000 from federal or other funds made available to the department for the transition of individuals from the life skills and transition center to community-based providers. To be eligible to receive funding under this section, a provider must accept an individual who has a regular admission to the life skills and transition center and is being discharged, must ensure that all service needs are met including vocational services, and must implement a policy to not decline to provide services in the future to any individual being served under this section. Mr. Gulya stated that it is his understanding that the intent is to provide an incentive to providers over the next biennium for the initial 26 transitions that are proposed in the DHS budget. He added that because the Olmstead Commission focuses on HCBS for individuals with disabilities, it was recommended that the Commission offer something that supports that goal.

Mr. Goulet opened the floor to Commission members and guests to share their position on what is being proposed.

Senator Lee suggested that, in order to save some time, she would like Mr. Chris Jones, DHS Executive Director, to explain the goal set forth in Subdivision 2. Mr. Jones stated that it is DHS' goal to continue to work to find ways to transition individuals from the LSTC that want to transition out, using multiple strategies. He added if there are ways to do this, DHS is open to it, but it has to be something that CMS and the federal government will allow. He added that if the Legislature wants to take the risk and use COVID funds, and if there is an audit, and it is clear to DHS that COVID funds can't be used for this, then the funds could come out of general funds if not acceptable. Mr. Jones stated that if the community is willing to take individuals with higher acuity levels back to the community, DHS is 100% behind that.

Ms. Bakken Oliver asked Mr. Jones if he has talked to the Legislature and explained to them that he feels these funds cannot be used for these transitions. Mr. Jones turned it over to Jessica Thomasson.

Ms. Jessica Thomasson noted DHS' uncertainty that this spending would be appropriate use of currently available federal funds. She added that there are some additional funds coming, i.e. the American

Rescue Plan (ARP). She noted that based on DHS' experience so far with other COVID funds, this would not be deemed ineligible. With more guidance, DHS is open to pursuing additional options.

Mr. Gulya asked if there was any guidance on how the 10% increased FMAP funds for HCBS in section 9817 of the ARP can be used. Ms. Thomasson stated that DHS just talked about this yesterday and there is no more federal CMS guidance available today. Ms. Thomasson did say that states are allowed to create a pool of money as an investment in HCBS that is allowed to accumulate over a year, thus providing for a longer time to use the funds. While this idea is just in the generation mode right now, HCBS is a good candidate for this use.

Mr. Goulet encouraged creative ways to do this while also passing the regulatory test, possibly using any federal resources.

Mr. Gulya stated that the language in the amendment references federal or other funds made available to the department. He noted that the funds aren't specific federal funds but the language included 'other funds made available to the DHS.'

Senator Lee stated that the appropriate people are in tune to what Mr. Jones and Ms. Thomasson are talking about. She understands that DHS supports the goal, but that DHS suggests the goal being subject to availability of federal funds for this purpose. It would be her recommendation that the goal is met and that federal funds be used. We don't want to discount the goal; we don't want to tie the hands of where the funding is coming from, because we don't know what the guidelines are yet. We want to use the funding appropriately. Ms. Bakken Oliver stated that she concurs with what Senator Lee said. Mr. Goulet stated that this falls in line with what Mr. Jones is saying too.

Ms. Larsen stated that, while the wording may have been different, that same kind of suggestion brought up in Senate Appropriations is that, the funds be made conditional, or something similar to what was mentioned in the hearing.

Mr. Gulya asked if we should first note the use of federal funds, then shift to other funding so as not to create a problem for the department to only use federal funds. Senator Lee stated, yes, that is correct.

Mr. Jones stated that there would need to be some direction given to use other funds that weren't appropriated for this.

Senator Lee stated that DHS can't simply re-appropriate funds from another line item and that Mr. Jones knows more about this. The Commission's recommendations would be subject to federal funds being available; as of now there is no policy and we are waiting for guidance. She added that we are not talking about statute, we are just writing a recommendation that federal funds should be put to this use, and then other funds if available and federal funds do not cover this.

Mr. Jones stated that he is super appreciative of the Commission's efforts. He added that, while DHS has a lot of flexibility in its budget, i.e. moving funds around where needed, if it is the intent to use from other specific pots to do this, he gets a little bit nervous and this would be a slippery area for DHS.

Senator Lee stated that the Olmstead Commission should advise Appropriation Committee members of our interest, support the transition of individuals by using federal funds if available; and encourage other sources of funds if federal funds are not available.

Mr. Goulet stated that Mr. Gulya will redraft the recommendation in accordance with today's discussion and send it out to Commission members to approve or disapprove. If we need to get back together, another meeting will be scheduled.

Judge Romanick stated that he understands everybody's concerns, and as part of the Olmstead Commission, he supports the efforts being made. He added that while he supports the use of any available funds, which could be federal, and he understands Mr. Jones' dilemma, he would suggest that the use of "any funds" that can be made available to make this transition happen would be even better.

Mr. Burlingame stated that he agrees with Judge Romanick. Ms. McCleary added that Judge Romanick stating it in the positive, a quick and simple manner, that it makes a lot of sense.

Mr. Goulet expressed that the Olmstead Commission has addressed what it set out to do. Mr. Gulya will circulate a new copy of the resolution to approve or disapprove as Commission members see fit. He will keep the Commission updated on how the Legislative vote turns out.

Ms. Larsen stated that this all sounds great and she appreciates the Commission's quick action. She said a Conference Committee for the DHS' budget should be scheduled soon.

Mr. Gulya stated that he will have the new language out to Commission members by 2:00 p.m. this afternoon.

Mr. Goulet adjourned the meeting at 12:22 p.m.