

**Final Report and Prioritized Recommendations**  
**Diversion Subcommittee – Systems Transformation Grant**  
**May 2010**

**I. Introduction and Summary**

In the fall of 2005, the Commonwealth of Massachusetts was awarded a Systems Transformation Grant (STG) by the federal Centers for Medicare and Medicaid Services (CMS). The STG's mission was to create, strengthen, and integrate systems of community-based long-term supports that are high in quality, allow for effective diversion strategies, are coordinated with accessible and affordable housing, and provide optimal choice for people with disabilities and elders. In order to accomplish this mission, the STG created three Subcommittees that were focused on the issues of Housing, Quality, and Diversion and Alternative Financing Mechanisms. Over the past four and a half years, the STG has worked through these three Subcommittees and many workgroups to fulfill this mission, including being an active participant in the crafting of the 2008 Community First Olmstead Plan.

As the STG winds down, it is time for both reflection on the systems transformation work that has been done since 2005 and a focus on how transformation will continue in the future. Progress has been made in meeting the goals of the mission since 2005, but there are many system change activities that were identified and developed that remain to be completely implemented and some proposed work still to be initiated. This report has been crafted as a tool that can be used by the Commonwealth as it prioritizes the future work on the Olmstead-related activities, and as a summary of the Diversion Subcommittee's work and principles.

Specifically, the Diversion Subcommittee has examined the activities that were contained within the Community First Olmstead Plan of 2008, and has developed both a set of general recommendations and a list of prioritized activities (included in Appendix A). The general recommendations state that the Commonwealth should:

- Focus on continuing to identify and implement mechanisms that will remove barriers that hinder individuals' access to LTS.
- Follow through on those CF Olmstead Plan initiatives that would expand access to and improve the capacity of the LTS system in the community, ensuring that individuals with disabilities and elders have a choice of appropriate and accessible services that meet their needs.
- Continue to pursue any and all opportunities to increase consumers' abilities to direct their own LTS. State agencies should address barriers to consumer direction and adopt those measures that will create culture change related to the provision of consumer direction.
- Expedite implementation of the mechanisms that will improve its and its contractors' efforts to 1) identify individuals who seek to leave facilities and 2) provide the supports necessary to help such individuals transition from facility-based settings to the community.

- Continue its efforts to educate and inform the public and providers about the LTS options available, especially those in the community, in order to increase the scope of choice and control that consumers are able to exert over their LTS needs.
- Convene a Standing Olmstead Advisory Committee that would champion the Community First Olmstead Agenda, as it is delineated in the CF Olmstead Plan.

All the Diversion Subcommittee members supported these recommendations. However, non-state agency members of the Subcommittee felt that they did not go far enough in conveying their view that it is imperative that these aspects of the Commonwealth's Olmstead agenda be addressed. Therefore, this report ends with a section prepared by the non-state agency members that expands upon and augments the report's full discussion of the all the recommendations.

## **II. The Systems Transformation Grant and the Diversion Subcommittee**

The Diversion and Alternative Financing Mechanisms Subcommittee of the Systems Transformation Grant, which was first convened in January 2006, is charged with developing recommendations on the implementation of more effective payment methodologies to promote diversion from facility-based settings and transitions into the community. Its stated objectives are to 1) implement the most effective alternative community based long term support funding models and 2) promote community living options by targeting persons with disabilities of all ages with high service needs and high cost services in order to more effectively manage the delivery of long-term supports.

The strength of the Subcommittee lies in its membership, which is highly knowledgeable about the Massachusetts long-term supports network and is committed to the Subcommittee and its work. The membership has been almost equally comprised of consumers, providers, and state agency staff; please see Attachment B for a complete list of the diverse Subcommittee membership. The group is co-facilitated by grant-funded consultant co-lead Eliza Lake and by grant-funded consumer co-lead Robert Sneirson, who is a former chair and current member of the Disability Policy Consortium. The Subcommittee's members represent providers with decades of experience in providing services to individuals with disabilities in the community, as well as, consumers with years of experience accessing those services in order to meet their own needs. This wealth of experience was brought to bear in every conversation about needed system reforms and the populations that would benefit from them.

## **III. The Olmstead Decision's History in Massachusetts**

In 1999, the U.S. Supreme Court heard a case in which two women who had both mental health and intellectual disabilities and were living in institutional settings sued the state of Georgia. They argued that the state had determined that they had the capacity to live in the community, but were not being moved into the community due to a lack of appropriate services, and that this was a violation of the Americans with Disabilities Act (ADA) of 1990. The Supreme Court agreed, and in *Olmstead v. L.C.* ruled

that under the ADA states are required to serve people with disabilities in the “least restrictive setting” appropriate to their needs. Under the ruling, states must demonstrate that they have a comprehensive, effectively working plan for assisting qualified people with disabilities to reside in the least restrictive setting appropriate to their needs.

The Commonwealth began concerted efforts to meet the requirements of the Olmstead decision in 2003. In 2004, EOHHS launched its “Community First” policy, which has shaped the direction of its long-term care policy and programs in the intervening years. This policy lies at the heart of the Commonwealth’s efforts to provide a range of services, and has been the impetus for a number of initiatives within the state, including the development of the Community First 1115 Waiver application (still pending), the federally-funded Systems Transformation Grant, and many other initiatives directed at meeting elders’ and individuals with disabilities’ long-term support needs in the community.

In fall 2007, Governor Deval Patrick directed the Executive Office of Health and Human Services (EOHHS) to develop an Olmstead Plan that would meet the requirements of the Olmstead decision. EOHHS developed an Olmstead Planning Committee, convened over the winter and spring of 2007-2008. This group was charged with using the *People’s Olmstead Plan*,<sup>1</sup> a plan developed in 2003 by the disability community, as well as with reviewing current and past Olmstead-related activities as a means for developing the contents of the Commonwealth’s CF Olmstead Plan.

In the fall of 2007, the Diversion Subcommittee was asked to participate in the drafting of an Olmstead Plan for the Commonwealth, in order to create a document that would outline the state’s priorities and commitment to serving individuals with LTS needs in the most appropriate setting. Over the next year, the Subcommittee members provided input into what issues and barriers needed to be addressed, helped prioritize them, and contributed to the development of a list of tasks that would move the state toward fulfilling its commitment. The resulting document, the Community First Olmstead Plan (“CF Olmstead Plan”) was released in September 2008, and has served as a roadmap for the state in its work to transform the LTS system.<sup>2</sup> While there has been progress made on a number of activities, there are many that have not moved forward as quickly as projected, or that have been put on hold for various reasons such as dire state fiscal conditions and additional factors beyond the state’s control.

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<sup>1</sup> *The People’s Olmstead Plan* was released by the MA Statewide Independent Living Council, in collaboration with other interested groups, as a response to the state’s 2003 report, *Enhancing Community Based Services (ECBS): Phase One of Massachusetts’ Plan*. The disability and elder communities criticized the ECBS report as not being far-reaching or specific enough. The People’s Plan contains a number of recommendations for action, most of which were result of the feedback and testimony received from consumers and providers during a series of public forums held in the fall of 2001.

<sup>2</sup> For a full copy of the plan, visit [www.mass.gov/hhs/communityfirst](http://www.mass.gov/hhs/communityfirst)

#### **IV. Transforming Massachusetts' Long-Term Supports System: A Statement of the Continuing Need for Transformation**

As the work of the Systems Transformation Grant draws to a close, in making its recommendations for how the Commonwealth can sustain and continue its transformative efforts the Diversion Subcommittee wishes to reiterate the importance of all of the initiatives and activities contained in the CF Olmstead Plan. These are in three categories; those that have been completed, those that have begun to be implemented, and those that have not yet been implemented due to the aforementioned constraints. In this report, the Subcommittee presents to the Administration its recommendations for how to prioritize the activities in the latter two categories, with an understanding of the fiscal constraints of our times. Specifically, the Diversion Subcommittee strongly believes that the recommended actions are imperative to any effort to improve and transform the system of long-term supports in Massachusetts. The Subcommittee suggests that they are those that the Administration, and in particular the Executive Offices of Health and Human Services and Elder Affairs, should consider as priority in their future Olmstead-related and Community First activities. The Subcommittee feels these prioritized systems changes would most significantly result in a delivery system that would allow more individuals to live in the preferred community-based settings appropriate to their needs, rather than face facility-based living as their only option.

While the five priorities listed below are taken from the CF Olmstead Plan, they are general goals, and the issues raised are broad. A discussion of the specific barriers that these recommendations would address and the tasks that need to be accomplished is provided in Appendix A.

##### ***Priority #1: Expand Access to Community-based Supports***<sup>3</sup>

The CF Olmstead Plan states that one of its goals, “expand access to community-based long-term supports,” is necessary because “Massachusetts’ public and private systems of long-term supports are unevenly available to elders and people with disabilities. In the public arena, one of the challenges to access is differing financial and clinical eligibility standards that exist across programs and funding streams that particularly affect persons as they age and/or their conditions change.”<sup>4</sup>

The Diversion Subcommittee would like to underscore this point: currently, individuals’ access to LTS is impeded by barriers, often created by regulations such as those in the MassHealth program, that create different eligibility and other requirements depending on the individuals’ disability and/or age, or the type of service that they need. This creates biases that are related to setting of care, age, type of disability, etc. Specifically, there is a bias toward facility-based care inherent in the fact that nursing facility care, which includes a comprehensive array of services, is an entitlement for people receiving Medicaid who meet a certain level of need and meet certain financial

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<sup>3</sup> CF Olmstead Plan, Goal 2

<sup>4</sup> CF Olmstead Plan, p. 8.

criteria, while individuals with the same clinical and financial status are not able to get a similar level of MassHealth-funded services in the community.

The Commonwealth has focused many of the initiatives for the community-based services expansions on addressing these inequities in access to community-based LTS for similarly situated populations. See Appendix A for a list of specific tasks, originally outlined in the CF Olmstead Plan, related to this recommendation.

**Recommended Action:** The Commonwealth should focus on continuing to identify and implement mechanisms that will remove barriers that hinder individuals' access to LTS, particularly those outlined in the Commonwealth's CF Olmstead Plan under Goal Area 2 and included in the soon-to-be-released recommendations of the Long-Term Care Financing Advisory Group.

### **Priority #2: Improve the Capacity and Quality of Community-Based Long-Term Supports<sup>5</sup>**

Access to home and community based services through the fair and equitable application of eligibility standards is crucial, but if there are not services available to meet individual's needs, expanded eligibility is not enough. In 2007, the Subcommittee conducted a survey of community and institutional providers' opinions about how individuals can be better diverted and transitioned from institutional placements. Respondents were asked through a series of both multiple choice and open-ended questions about changes and improvements to the long-term supports system that they thought would result in more individuals receiving services and supports in the community.

Through the results of the survey, the Subcommittee identified as its target population "Individuals of all ages who 1) have disabilities and 2) face new situations that result in an increase in their need for assistance with ADLs and IADLs. These emerging situations could include changes in functional status due to mental illness, cognitive impairment, dementia, medical conditions, or even a dramatic change in their support network or housing status." It is these individuals who are most in need of a choice of an array of services in the community. Due to lack of appropriate services in the community, they are the most vulnerable for nursing facility admission or for undesirable outcomes such as homelessness.

In the CF Olmstead Plan, the issue of capacity was identified as one of the Commonwealth's six goals. As the CF Olmstead Plan states:

*The success of the state's efforts to effectively assist individuals in returning to live safely in the community relies on enhancing access to high quality community-based services. This requires an adequate workforce, funding for a broad mix of services, flexible choices that*

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<sup>5</sup> CF Olmstead Plan, Goal 3

*respond to diverse needs and preferences, including culture and communication, and a system that is responsive to changing individual needs.*<sup>6</sup>

The Subcommittee concurs with this summary of the challenge facing the Commonwealth. In its 2007 recommendation related to the development of a State Plan Amendment under the 2005 Deficit Reduction Act,<sup>7</sup> it identified a number of services currently not available to some individuals with disabilities and elders that are critical to their being able to avoid admission and a long term stay in a nursing facility. It urges the Commonwealth to make a priority the following tasks from the CF Olmstead Plan:

- Expand the services that are currently available to individuals through the MassHealth program and state agencies. These services include case management and Information (I&R), home health, home-based habilitation services (such as skills training and individual supports), behavioral habilitation services, psychosocial rehabilitation, adult companion services, respite, adult day health, individual supports (including cuing and supervision), assistive technology, transportation, and employment supports.<sup>8</sup>
- Complete improvement activities related to the MassHealth Personal Care Attendant (PCA) program.<sup>9</sup>
- Address the current prohibition on a need for cuing/supervision assistance in the eligibility requirements for the MassHealth PCA program. This would likely require a comprehensive analysis of the financial and programmatic impact of providing cuing and supervision assistance through the PCA program.<sup>10</sup>
- Create better options for public funding for caregivers across the system of long-term supports, including both continued and expanded support for programs that provide respite. Evaluate the viability and appropriateness of paying spouses as caregivers in the delivery system.<sup>11</sup>
- Analyze variations in access to specific assistive technology such as hearing aids and captioned telephones, across public and private benefit plans. Recommending strategies to increase access to these goods and services.<sup>12</sup>
- Establish safeguards to ensure the availability of safe, accountable, and well-informed guardians and conservators and a judicial process that supports appropriate fiduciary relationships.<sup>13</sup>
- Increase the public funding available for supportive housing sites, including sites that have the technology and communication accessible features for elders and individuals with disabilities across disability types.<sup>14</sup>

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<sup>6</sup> CF Olmstead Plan, p. 9.

<sup>7</sup> Diversion Subcommittee Recommendation, August 2007. For a full copy, please visit [www.communityfirstgrant.org/diversionsubcommittee](http://www.communityfirstgrant.org/diversionsubcommittee)

<sup>8</sup> CF Olmstead Plan, Goals 2.1.b & 2.2.a

<sup>9</sup> CF Olmstead Plan, Goal 2.1.e

<sup>10</sup> Diversion Subcommittee Recommendation, August 2007

<sup>11</sup> CF Olmstead Plan, Goal 3.1.b

<sup>12</sup> CF Olmstead Plan, Goal 2.1.j

<sup>13</sup> CF Olmstead Plan, Goal 2.1.f

- Continue to make care coordination a priority, especially for those who are “dually eligible” for both Medicare and Medicaid.

There are a number of mechanisms through which the Commonwealth could increase the choice of services for consumers, all of which should be considered as possible avenues for expansion of options. These include the successful implementation of the proposed MassHealth Community First 1115 Demonstration Waiver program,<sup>15</sup> creation and implementation of a new Medicaid program of home and community-based services (HCBS) available to MassHealth members who are at less than an institutional level of care need, as authorized by the new HCBS State Plan Amendment process outlined in the Deficit Reduction Act of 2005,<sup>16</sup> and possibly provisions included in the recently passed Patient Protection and Affordable Care Act of 2010, also known as the Health Care Reform bill.

It is important to note that while the Diversion Subcommittee has not focused on workforce issues over the last five years, other projects in the Commonwealth have done so. The Subcommittee stresses that an adequate workforce and the system capacity that such a workforce affords is a crucial piece of achieving increased access to services. The Diversion Subcommittee supports activities that promote this including those CF Olmstead Plan tasks that relate to the recruitment and retention of workers, education for workers and caregivers, and the amendment of the Nurse Practice Act, particularly as it relates to medication management.<sup>17</sup>

Finally, the Subcommittee would like to strongly emphasize the need for specialized mental health services for individuals of all ages with behavioral health issues, both to support their continued life in the community and to support those who would be able to leave facility-based settings were there more community-based services available. While this need is addressed to some degree in the CF Olmstead Plan, the Subcommittee would like to stress the importance of these services, and the needs of this vulnerable population.

**Recommended Action:** The Commonwealth should follow through on those CF Olmstead Plan initiatives that would expand access to and improve the capacity of the LTS system in the community, ensuring that individuals with disabilities and elders have a choice of appropriate and accessible services that meet their needs.

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<sup>14</sup> CF Olmstead Plan, Goal 4.1.c

<sup>15</sup> CF Olmstead Plan, Goals 1.2.a, 2.1.a, 3.2.a, 3.4.d, and 6.1.a

<sup>16</sup> CF Olmstead Plan, Goal 2.1.b

<sup>17</sup> CF Olmstead Plan, Goal 3.1.c & 3.1.d

### **Priority #3: Incorporate Self-Direction in the Long-Term Supports System<sup>18</sup>**

Consumer direction and involvement in individuals' planning and provision of their LTS is a critical piece of the development of a responsive and responsible LTS system. As the Diversion Subcommittee stated in its Statement of Principles, consumer direction and involvement results in "maximum choice and control for people who use services or other supports to help with daily activities" and allows for independence and self-determination.<sup>19</sup>

In the CF Olmstead Plan, the Commonwealth made a commitment to the principle of consumer direction: "[c]hoice, accessibility, quality, and person-centered planning should be the goals in developing long-term supports." Further, the CF Olmstead Plan makes a commitment to "Incorporat[ing] self-direction throughout the long-term supports system." The release of the 2008 report, *Recommendations for EOHHS for Advancing Self-Direction in Massachusetts' Long-term Care Delivery Systems*, which contained significant input from the Diversion Subcommittee, was a significant start. The Diversion Subcommittee recommends that continued efforts be made to increase the amount and number of services available to elders and individuals with disabilities that have consumer directed options. The Commonwealth should build upon the recommendations included in that report,<sup>20</sup> ensuring that both state agencies *and their contracted providers* are committed to the principles the Commonwealth has espoused and incorporating them into their provision of services, and that new programs of services in the community embrace them.

**Recommended Action:** The Commonwealth should continue to pursue any and all opportunities to increase consumers' abilities to direct their own LTS. State agencies should address barriers to consumer direction and adopt those measures that will create culture change related to the provision of consumer direction.

### **Priority #4: Help Individuals Transition from Institutional Care<sup>21</sup>**

It is important that the CF Olmstead Plan activities focused on identifying individuals in facility-based settings who seek to leave and providing additional supports to those individuals to expedite their ability to do so remain a central focus of the Commonwealth's Olmstead activities. As the CF Olmstead Plan states, this goal reaches to the "heart of the Olmstead decision and, thus, is a core obligation of this Plan."<sup>22</sup>

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<sup>18</sup> CF Olmstead Plan, Goal 3, Objective 4

<sup>19</sup> [www.consumerdirection.org](http://www.consumerdirection.org)

<sup>20</sup> CF Olmstead Plan, Goal 3.4.b

<sup>21</sup> CF Olmstead Plan, Goal 1

<sup>22</sup> CF Olmstead Plan, p. 7.

Toward this end, the Subcommittee recommends that, in addition to the activities identified in the CF Olmstead Plan in the first Goal Area, that the following additional activities be promoted as priorities:

- Establish mechanisms that will provide transition assistance and develop financial and care coordination supports for all individuals transitioning from institutions, regardless of whether a law suit class distinction or other characteristic entitles them to publicly-funded assistance or not.
- Expand access to certain community-based supports that might facilitate transitions from or prevent admissions to institutions such as respite services.<sup>23</sup> While some of these services have been re-procured recently in the case of some state agencies, such as the Department of Mental Health, there will ideally be adequate funding made available in the future to meet the needs of all populations who could benefit from access to such services.

**Recommended Action:** The Commonwealth should expedite implementation of the mechanisms that will improve its and its contractors' efforts to 1) identify individuals who seek to leave facilities and 2) provide the supports necessary to help such individuals transition from facility-based settings to the community.

#### **Priority #5: Promote Awareness of Long-Term Supports<sup>24</sup>**

Without knowledge of the options available and the systems that support them, consumers are at a disadvantage in choosing which services and supports they need and can access. Likewise, without educated and informed providers, including acute care providers, consumers will not be directed toward the options that fit their needs best. The CF Olmstead Plan identified this need, stating, "Lack of information about long-term support options may impede service decision-making by consumers, their family members, and their health and other care providers."<sup>25</sup> Through campaigns like "Embrace Your Future," designed by the Systems Transformation Grant, the Commonwealth has been working to increase individuals' awareness of the importance of planning for future LTS needs. The Commonwealth must continue, however, to educate providers and develop systems of information that give consumers the ability to choose and direct their LTS in the most appropriate manner. This includes the following prioritized tasks from the CF Olmstead Plan:

- Consumer education efforts:

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<sup>23</sup> CF Olmstead Plan, Goal 1.2.c

<sup>24</sup> CF Olmstead Plan, Goal 6

<sup>25</sup> CF Olmstead Plan, p. 12

- Implementation of the Aging and Disability Resource Consortium statewide to serve as an access point of information for elders and individuals with disabilities.<sup>26</sup>
- The full implementation of the Chapter 211-mandated long-term options counseling “will go a long way towards ensuring that elders and individuals with disabilities have better information about their community-based options when contemplating long-term supports decisions.”<sup>27</sup>
- Conducting outreach on existence and utility of the Massachusetts Aging and Disability Information Locator.<sup>28</sup>
- Public education efforts:
  - Developing and conducting comprehensive outreach and education strategy on long-term support system issues for broad audience including legislators, providers, and the general public.<sup>29</sup>
- Provider education efforts:
  - Develop strategies on how to engage and educate clinicians on the broad array of community-based long-term supports options, including accessible technology, and the availability of long-term care options counseling.<sup>30</sup>

**Recommended Action:** The Commonwealth should continue its efforts to educate and inform the public and providers about the LTS options available, especially those in the community, in order to increase the scope of choice and control that consumers are able to exert over their LTS needs.

## V. Recommended Next Step: Establishment of a Standing Olmstead Advisory Committee

Given that the funding for the Systems Transformation Grant, and therefore for the Diversion Subcommittee, ends in September 2010, it is advisable that an entity be identified and charged with partnering with the Administration to maintain the Commonwealth’s focus on its commitments to its Community First Olmstead Agenda and the ambitious list of tasks it set out in the CF Olmstead Plan. The Subcommittee urges the Executive Offices of Health & Human Services and Elder Affairs to establish a Standing Olmstead Advisory Committee, which would serve as an advisory group to the Administration by:

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<sup>26</sup> CF Olmstead Plan, Goal 6.2.a

<sup>27</sup> CF Olmstead Plan, p. 12.

<sup>28</sup> CF Olmstead Plan, Goal 6.2.c

<sup>29</sup> CF Olmstead Plan, Goal 6.2.f

<sup>30</sup> CF Olmstead Plan, Goal 6.1.b & 6.1.c

1. helping the Administration prioritize and review progress on implementation of the tasks outlined in the Community First Olmstead Agenda, and
2. bringing both the Administration's and the public's attention to areas that the elder and disability communities experience firsthand as being needing continuing focus, and helping ensure that issues of importance do not "fall through the cracks."

The Standing Olmstead Advisory Committee would use the Community First Olmstead Plan, documents from the STG, and other inputs gathered over the past five years of the grant as the focus for quarterly meetings with the EOHHS Secretary and the EHS leadership.

Activities of the Standing Olmstead Advisory Committee would include:

- Meeting with the Secretary of EOHHS to discuss annual Olmstead-related priorities and mechanisms for assessing progress, including continuing to collect and analyze data regarding institutional vs. community-based spending;
- Reviewing the progress of the implementation of the Community First Olmstead Plan in light of adopted priorities and monitoring mechanisms;
- Creating a mechanism including the production of an annual report with which to give feedback, make recommendations and report grassroots/community level ideas and initiatives;
- Serve as one link between community organizations and consumer advocacy groups and the Secretary through which issues can formally be raised; and
- Propose solutions to obstacles in implementation and new opportunities for achieving stated goals.

It is important to stress that a key purpose of the Standing Olmstead Advisory Committee would also be to formally maintain a forum, as was created by the Systems Transformation Grant, that fosters healthy expression by and effective collaboration among those with diverse interests and points of view, including populations of all ages and with different types of disabilities.

**Recommended Action:** The Commonwealth should convene a Standing Olmstead Advisory Committee that would champion the Community First Olmstead Agenda, as it is delineated in the CF Olmstead Plan.

## VI. Non-State Agency Perspectives

Many Diversion Subcommittee members, while recognizing that the recommendations outlined above are appropriate for a group that includes a number of representatives of state agencies, feel that that the previous sections of this report do not accurately convey the depth of concern felt in the community about the state's progress in implementing the CF Olmstead Plan goals and initiatives. The following section is an elaboration and augmentation of, and not a repudiation of, the recommendations above, all of which the full Subcommittee agrees accurately convey the priorities that it would like to see the state pursue.

Non-state agency members of the Diversion Subcommittee are disappointed about the lack of progress that has been made in meeting the CF Olmstead Plan's commitments. They recognize the leadership upheaval created by the change of administration in 2006 and the budgetary constraints facing all states during this recession. Nevertheless, they want to state in the strongest terms that **the reforms that are being prioritized in this report would have a profound effect on the day-to-day lives of thousands of Massachusetts residents who need long-term services and supports, and cannot be pursued vigorously enough.**

Therefore, non-state agency members of the Diversion Subcommittee put forward the following additions or amendments to the tasks prioritized and recommendations presented above:

### *Statement of the Continuing Need for Transformation of the MA LTS System:*

In all of the Recommendations listed above, the Commonwealth is advised that it "should" adopt certain policies and activities, so as to further the CF Olmstead Plan. This language was purposefully used to reflect the sensitivity of a group that includes state agency representatives, who cannot dictate to the Administration its actions. While understanding this semantic necessity, non-state agency members of the Subcommittee would replace the word "**should**" in the Recommendations with the word "**must**" in all cases. This more accurately conveys these members' feeling that these actions are not just advisable but necessary.

### **Priority #1: Expand Access to Community-based Supports**

While non-state agency members of the Diversion Subcommittee agree with the list of prioritized activities listed above under this priority area, they would add to the list of activities the following:

- Comprehensive review of all MassHealth's programs regulations and practices identifying and eliminating institutional bias inherent in MassHealth's programs regulations, statutes and practices.

Non-state agency members of the Subcommittee would also, as mentioned above, change the Recommendation language to state more clearly the imperative involved in

addressing the barriers that limit individuals' access to LTS. Their revised Recommendation language is:

- The Commonwealth **must continue to** identify and implement mechanisms that will remove barriers that hinder individuals' access to LTS, particularly those outlined in the Commonwealth's CF Olmstead Plan under Goal Area 2 and included in the soon-to-be-released recommendations of the Long-Term Care Financing Advisory Group.

### **Priority #2: Improve the Capacity and Quality of Community-Based Long-Term Supports**

Non-state agency members of the Diversion Subcommittee support all of the prioritized activities listed above under Priority #2 as being necessary to increase the capacity of the LTSS system. They would like to more strongly state, however, the need for the Commonwealth to address the issue of capacity, through the following revised Recommendation language:

- The Commonwealth **must take those actions** outlined in CF Olmstead Plan that would expand access to and improve the capacity of the LTSS system in the community, ensuring that individuals with disabilities and elders have a choice of appropriate and accessible services that meet their needs.

In addition, there are a number of funding opportunities that the group felt must be actively considered and pursued by the Commonwealth, all of which could help address the issue of capacity and provide federal support for critical activities. These opportunities, some of which were referenced above, include:

- *The proposed MassHealth Community First 1115 Demonstration Waiver program:* After many years of hard work, the Executive Office of Health and Human Services, in consultation with myriad community organizations, providers, and consumers, submitted an 1115 Demonstration Waiver application in December 2006. While they understand that a number of factors have conspired to put on hold the implementation of this proposal, non-state agency members of the Diversion Subcommittee would like to reiterate their interest in seeing the Administration actively pursue its promised reforms come to fruition.
- *A Medicaid Home and Community-Based Services (HCBS) State Plan Amendment:* First recommended by the Subcommittee in 2007, an HCBS State Plan Amendment would allow the creation and implementation of a new Medicaid program of HCBS available to MassHealth members who are at less than an institutional level of care need, as authorized by the new HCBS State Plan Amendment process (Section 1915(i)) outlined in the Deficit Reduction Act (DRA) of 2005. This option should be actively pursued by the state, and the list of HCBS provided in the section above must be considered.
- *Relevant Provisions of the Patient Protection and Affordable Care Act of 2010 (PPACA):* The following provisions of the PPACA (formerly known as Health Care Reform) provide further opportunities for the state to expand its provision of LTSS in the community while benefiting from greater federal support:

- Community First Choice Option (Section 2401): A state plan option under section 1915 to provide community-based attendant supports and services to individuals with disabilities who are Medicaid eligible and who require an institutional level of care. These services and supports include assistance to individuals with disabilities in accomplishing activities of daily living and health related tasks. Transition costs from nursing homes and other institutions (e.g. first month's rent and utilities, deposits, and household supplies) are also permissible. States that choose the Community First Choice Option will be eligible for an enhanced federal match rate of an additional six percentage points for reimbursable expenses in the program.
- Removal of Barriers to Providing HCBS (Section 2402): removes certain barriers that were part of the DRA of 2005 and makes it easier for states to use a flexible state plan amendment option. Specific changes include:
  - income eligibility criteria would be aligned with other HCBS programs by permitting waiver-eligible enrollees to qualify for the option with incomes up to 300% of SSI;
  - states would have greater flexibility to target certain populations in need, in part by waiving comparability requirements; and
  - current limitations on the scope of services covered would be removed.
- Money Follows the Person (Section 2403): Extends the current Money Follows the Person program until 2016, and allocates \$2 billion for enhanced federal matching funds. Massachusetts, which did not apply in the previous round of funding, now will have another chance to apply for this funding that can help the state move people from a facility to the community.
- Community-Based Care Transitions Program (Section 3026): Funding will be provided to hospitals with high admission rates and certain community-based organizations that improve care transition services for “high-risk Medicare beneficiaries” defined in federal statutory provisions.

### ***Priority #3: Incorporate Self-Direction in the Long-Term Supports System***

While the non-state agency members of the Diversion Subcommittee support the description of Priority #2 above as reflecting the importance of consumer direction and involvement in the provision of LTSS. They would like to more strongly state, however, the need for the Commonwealth to continue its efforts, through the following revised Recommendation language:

- The Commonwealth **must** continue to pursue any and all opportunities to increase consumers’ abilities to direct their own LTS. State agencies **must** address barriers to consumer direction and adopt those measures that will create culture change related to the provision of consumer direction.

#### ***Priority #4: Help Individuals Transition from Institutional Care***

At the heart of the Olmstead decision, and the implementation of the Community First Olmstead Plan, is the ability of individuals with LTSS needs to live in the community. While a critical aspect of this is ensuring that individuals are not admitted unnecessarily to nursing facilities, it is also crucial that there be adequate mechanisms for identifying individuals in facilities to be transitioned to the community and supports for them once they are out of the facility.

The transition process requires a number of systems to work together in order for individuals to be successfully transitioned: they must be identified as being willing and able to transition; they must be supported throughout the transition process by community providers, peer supports, and/or informal supports; and they must have access to adequate and appropriate community-based supports once they are living in the community. In particular, identification of individuals for transition is critical to any effort to address unnecessary institutionalization.

Non-state agency members of the Subcommittee therefore urge the Commonwealth to prioritize the identification of individuals who would like to leave, taking advantage of existing mechanisms, sources of data, and systems of support. Some members of the Subcommittee feel that, in particular, there could be better and more transparent use of existing data regarding individuals in facilities who would like to transition into the community. This information is currently collected by nursing facilities, and were it more accessible to community providers that provide transition services, fewer individuals would be living unnecessarily in facility-based settings.

#### ***Priority #5: Promote Awareness of Long-Term Supports***

Again, while the non-state agency members of the Diversion Subcommittee support the description of Priority #5 in the sections above as reflecting the importance of public awareness of LTSS, they would like to more strongly state the need for the Commonwealth to continue its efforts, through the following revised Recommendation language:

- The Commonwealth **must** continue its efforts to educate and inform the public and providers about the LTS options available, especially those in the community, in order to increase the scope of choice and control that consumers are able to exert over their LTS needs.

#### ***Recommended Next Step: Establishment of a Standing Olmstead Committee***

As stated above, the Diversion Subcommittee strongly endorses the creation of a Standing Olmstead Committee that would “champion the Community First Olmstead Agenda, as it is delineated in the CF Olmstead Plan.” Non-state agency members of the Subcommittee, however, feel very strongly that this group must be more than advisory in nature. Members felt that such a Committee must serve as an unbiased group that serves as a watchdog of state activity, with enough authority to report to the public in a transparent way about the progress made in implementing the CF Olmstead Plan and the CF Olmstead agenda. The concern is that the Standing Olmstead Committee will act

to provide legitimacy to the state's efforts without having the authority to actually influence its actions.

Non-state agency members of the Subcommittee would like to propose the following revised recommendation language:

- The Commonwealth **must** convene a **Standing Olmstead Committee** that champions the Community First Olmstead Agenda, as it is delineated in the CF Olmstead Plan.

***Additional Concerns and Comments:***

In addition to the comments and concerns expressed above, non-state agency members commented on the need for more concrete commitments on the part of the state to implementing the Olmstead Plan. These must include:

- *Budgetary Support for Olmstead Initiatives:* Although the non-state agency members of the Diversion Subcommittee believe that the Commonwealth is committed to its Community First Olmstead agenda, they feel that there needs to be a greater evidence of this through the budgets that are put forward by the Administration. These members feel that there are community-based programs that have been deemed effective that have not been recognized through the budgetary process.
- *Timelines:* In its Appendix A, the CF Olmstead Plan included completion dates for each of its specific activities. The Diversion Subcommittee members understand that some of these deadlines were not met due to political realities and budgetary constraints. They are, however, a helpful benchmark against which progress can be measured. Non-state agency members would recommend that any future work, including the implementation of both the priorities listed in this document as well as new activities undertaken, have completion dates assigned to them. This would enable the Commonwealth, the Standing Olmstead Committee (should it be convened), and interested parties in the community to track the progress of the state in accomplishing its goals.
- *Measurable outcomes:* Stating priorities and outlining tasks is a critical part of implementing the CF Olmstead Plan, but non-state agency Subcommittee members feel that the descriptions of activities must include measurable outcomes that can be assessed. This would enable the Commonwealth, the Legislature, and the public to gauge what progress is being made, and hold the responsible parties accountable.