

MEMO

To: Joint Finance Committee
From: Brian J. Hartman, on behalf of the following organizations:

Disabilities Law Program, Community Legal Aid Society, Inc.
Developmental Disabilities Council
Governor's Advisory Council for Exceptional Citizens
State Council for Persons with Disabilities

Subject: Division of Developmental Disabilities Services FY 13 Budget
Date: February 22, 2012

Please consider this memo a summary of the oral presentation of Brian J. Hartman, Esq. on behalf of the Disabilities Law Program ("DLP"), Developmental Disabilities Council ("DDC"), Governor's Advisory Council for Exceptional Citizens ("GACEC"), and the State Council for Persons with Disabilities ("SCPD"). We are addressing one (1) component of the DDDS budget, i.e., vocational programs for transitioning special education students, a/k/a "special school grads".

VOCATIONAL PROGRAMS FOR TRANSITIONING SPECIAL EDUCATION STUDENTS

Historically, the State has provided funding for vocational, day habilitation, and employment-related services for students with moderate to severe intellectual disabilities "aging out" of the special education system. Services are subsidized by Medicaid funds for many of the students. In FY 13, the Division projects that approximately one hundred and seventy (170) special education graduates will be eligible for such services. We fully support the inclusion of funds in the Governor's proposed budget [\$1,418,500 for part-year (9-month) funding] to serve these individuals.

However, we strongly encourage the adoption of incentives, guidance, or benchmarks to promote the availability of meaningful vocational opportunities for these incoming DDDS clients. Historically, less than 20% of DDDS clients enrolled in day programs are in supported employment in the community. [Attachment "A"] The balance are predominantly served in segregated settings with little prospect of transitioning to real jobs in the community.

The Division maintains a policy of encouraging community-based employment and previously included a restrained goal of increasing such employment for current center-based clients by 5% annually in its expired strategic plan. [Attachment "B"] We are aware of no goal for the incoming 170 special education graduates. The disproportionate use of segregated day programs is not "best practice" and is contrary to national position statements issued by the ARC and the American Association on Intellectual and Developmental Disabilities. [Attachment "C"]¹

The status quo is also an invitation to federal intervention. In a highly-publicized speech presented in March, 2011, the U.S. Department of Justice applied the Supreme Court's Olmstead decision to sheltered workshops, concluding that "(w)here states allocate discretionary money in a way that effectively denies choice and forces people to accept inappropriate and segregated work placements, that is an Olmstead problem." [Attachment "D" at p. 13] The DOJ criticized undue reliance on such programs:

[W]hen individuals with disabilities spend years - indeed, decades - in congregate programs doing so-called jobs like these, yet do not learn any real vocational skills, we should not lightly conclude that it is the disability that is the problem. Rather, the programs' failure to teach any significant, job-market-relevant skills leaves their clients stuck. As a recent review of the literature concludes, "[t]he ineffectiveness of sheltered workshops for helping individuals progress to competitive employment is well established." [Attachment "D"]

¹Apart from national norms, there is likewise some "tension" between low community-based supported employment opportunities and State statutory guarantees:

§5502. Development of abilities.

Persons diagnosed with intellectual disabilities or other specific developmental disabilities have the right to proper...education, training, habilitation and guidance as will enable them to develop their abilities and potential to the fullest possible extent, no matter how severe their disability may be.

§5503. Economic security and meaningful occupations.

Persons diagnosed with intellectual disabilities or other specific developmental disabilities have a right to strive for productive work in meaningful occupations, economic security and a decent standard of living.

Title 16 Del.C. Ch. 55, Subchapter I, Declaration of General and Special Rights of Persons with Intellectual Disabilities and Other Specific Developmental Disabilities.

By analogy, the July, 2011 DOJ Settlement Agreement with Delaware requires the provision of supported employment to hundreds of DSAMH clients. [Attachment "E"]. Buttressing the U.S. DOJ's view, CMS issued a bulletin last September emphasizing that Medicaid programs must comply with the ADA and explaining that "pre-vocational services are not an end point, but a time limited...service for the purpose of helping someone obtain competitive employment." [Attachment "F"] CMS also concluded that all individuals can benefit from employment:

All individuals, regardless of disability and age, can work - and work optimally with opportunity, training, and support that build on each person's strengths and interests. Individually tailored and preference based job development, training, and support should recognize each person's employability and potential contributions to the labor market.

Id. at 3.²

As predicted by the U.S. DOJ, the first class action was filed last month challenging the segregation of individuals with disabilities in sheltered workshops. [Attachment "H"]. The lawsuit was filed by United Cerebral Palsy on behalf of 2,300 constituents in Oregon. The combination of U.S. DOJ and CMS guidance, along with such litigation, merits reassessment of the Department's approach to vocational and employment supports for individuals with developmental disabilities.

In conclusion, we support full funding for the 170 transitioning special education students accompanied by incorporation of incentives, guidance, or benchmarks to promote conformity with the ADA and meaningful employment opportunities in non-segregated settings.

Attachments

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²The concept that all individuals can work is being reinforced by innovative approaches which build on individuals' strengths. See, e.g., September 29, 2011 News Journal article describing employment of young adults with autism to test software. [Attachment "G"]

A. STOCKLEY CENTER POPULATION					68	This Month:	69			
B. COMMUNITY SERVICES POPULATION RESIDENT					NEW CASTLE	KENT	SUSSEX	TOTAL		
SHARED LIVING										
Community Services	24	54	59	137						
NEIGHBORHOOD HOMES										
Neighborhood Home	442	41	109	592						
Community Living Arrangement										
CLA	115	10	25	150						
GRAND TOTAL				879						
SUPPORTED LIVING										
	13	8	4	25						
OUT OF STATE										
	19	0	0	19						
EEHA										
	0	4	1	5						
DRC										
	5	0	5	5						
Sub-TOTAL				933						
FAMILY SUPPORT										
Family Support	1183	503	489	2,175						
TOTAL				3,108						
C. OBRA					NEW CASTLE	KENT	SUSSEX	OF STATE	TOTAL	
Caseload	21	12	9					42		
								TOTAL (A,B,C)		
								3219		
DAY PROGRAMS										
Day Habilitation Programs				653						
Special Populations				1						
OBRA				20						
Pre-Vocational Programs				746						
Special Populations				97						
Supported Employment				380						
Special Populations				1						
TOTAL				1,898						
E. REGISTRY (Family Support only)					NEW CASTLE	KENT	SUSSEX	OF STATE	TOTAL	
EMERGENCY	1	0	0	0				1		
HIGH RISK	131	27	32	3				193		
INTERMEDIATE RISK	48	12	8	0				68		
LOW RISK	953	420	427	0				1800		
SPECIAL GRADS	1	5	0	0				12		
TOTAL				2,074						
F. HOME AND COMMUNITY BASED WAIVER					NEW CASTLE	KENT	SUSSEX	SPECIAL POP	OUT OF STATE	TOTAL
Individuals	427	124	215	102				1	869	
G. RESPITE SERVICES					NEW CASTLE	KENT	SUSSEX	TOTAL		
Individuals/Families Served	117	18	32	167						
Respite Requests Received	117	18	32	167						
H. DAY PROGRAMS (POPULATION)					BEGINNING	END OF	NEW	TRANSFER		
DAY-HABILITATION PROGRAMS					OF MONTH	MONTH	ADMISSION	OUT		
New Edge	65	65	0	0					NEW EDGE	
First State Senior Center (K/S)	32	31	0	1					FIRST STATE SR. CTR	

Completed March 4, 2011

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Delaware Health and Social Services » Division of Developmental Disabilities Services

HOME

SERVICES

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INFORMATION

Employment Services

"Employment First Statement"

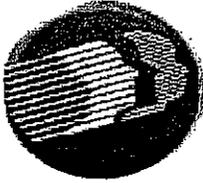
The Division of Developmental Disabilities Services affirms that employment and participation in their communities is an important part of the lives of the individuals it serves. Further, the Division believes that employment in the community should be the first service option considered for individuals. In support of this belief, the Division has set a goal of increasing community employment for individuals receiving Center Based Day Program services.

To that end, Day Program service plans shall be required to address the advancement of individuals towards meaningful participation and employment in their communities. It is the responsibility of the Day Programs funded by the Division to work in collaboration with the relevant Residential Programs and families, to develop these support plans.

Employment Related Resources:

- ["Employment for Persons With Developmental Disabilities"](#)

Last Updated: Wednesday July 01 2009



The Learning Curve

"Enhancing the Knowledge of DDDS Professionals"

Employment for Persons with Developmental Disabilities

Volume 2, Issue 7

July 1, 2009

A Publication of the Office of Training and Professional Development

Did you know that...

- As of 6/15/09 there are 468 individuals within DDDS who are working in Community Employment. In 2009, there are 42 individuals participating in the Early Start to Supported Employment Program and 45 projected for 2010.
- A 2006 survey estimates that 36% of working-age adults with disabilities are employed, compared with 74% of people without a disability.
- In FY 2004, an estimated 20% of individuals receiving day supports participated in integrated employment, down from 24% in FY 2001.
- The federal government spends 4 times more money on segregated adult day programs than on supported employment (\$488 million vs. \$108 million)



- Between 1996 and 2004, Delaware exceeded the National average of persons with DD served in integrated employment per 100K of state population.

DisabilityInfo.gov

Online Resource for People with Disabilities

www.disabilityinfo.gov

Department of Labor

<http://www.dol.gov/>

<http://www.dol.gov/odep/welcome.html>

CS



U.S. Department of Health and Human Services / Administration on Developmental Disabilities (ADD)

The Developmental Disabilities Assistance and Bill of Rights Act of 2000, refers to ten areas of importance or "Areas of Emphasis" that have a strong impact on the lives of individuals with developmental disabilities. Employment related Activities is one of these areas. The Developmental Disability Grantees often work to improve access to employment because the unemployment is so high among individuals with disabilities. There is a great need for advocacy, capacity building, and systemic change activities that result in individuals with developmental disabilities acquiring, retaining, or advancing in paid employment, including supported employment or self-employment, in integrated settings in the community.

Employment Services in Delaware

Employment First

The Division of Developmental Disabilities Services affirms that employment and participation in their communities is an important part of the lives of the individuals it serves. Further, the Division believes that employment in the community should be the first service option considered for individuals. In support of this belief, the Division has set a five year goal of increasing community employment for individuals receiving Center Based Day Program services by 5% per year.

To that end, Day Program service plans should address the advancement of individuals towards meaningful participation and



employment in their communities.

It is the responsibility of the Day Programs funded by the Division to work in collaboration with the relevant Residential Programs and families, to develop these support plans and to incorporate the plan into the individuals' ELP by July 1, 2009. For individuals who are in community employment for less than 20 hours per week the goal should be to increase the number of hours of employment or meaningful activity in their communities. Further, for individuals who are not in a community work setting, it is recommended that they participate in a community based work assessment at least every three years.

Early Start to Supported Employment Pilot

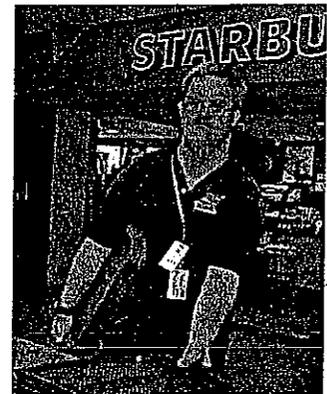
Over the past few years, interagency collaborative efforts in the transition process have yielded some positive results. However, many students with significant disabilities experience difficult and unsuccessful transitions to adult service options. In response to this, DDDS, the Division of Vocational Rehabilitation and the Department of Education have all agreed to pilot a project to align resources which will prevent gaps in services provided to students needing supported employment services upon leaving school and entering the workforce.

"Early Start to Supported Employment"

ment" is intended to demonstrate the feasibility of a more seamless transition for students leaving school and entering the adult workforce. The outcome of paid work with post-school support in place before leaving school is the primary goal of this pilot. There is a commitment from each agency to conduct this pilot study over multiple years in order to learn how to more effectively support successful employment outcomes for students requiring long-term adult services. Early Start began in the spring of 2005.

Early Start Success Story

This is the story of a 21 year old young lady graduating this school year from the Delaware Autism Program. She has Autism and has significant impairments in expressive language, but her receptive language is very good, and she has some reading ability. She has some behavioral support needs, but supports have been put into place by her employment specialist from POW&R (Autism Delaware Productive Opportunities for Work and Recreation) and these issues have been significantly decreased. POW&R began working with her and her school staff during the summer of 2008. In the fall of 2008, she obtained a volunteer



opportunity at a doctor's office in New Castle. During her volunteer period, she learned the tasks associated with her duties and the staff developed checklists, schedules and scripts that would help her become more independent in her job. The volunteer opportunity turned into a paid job and now she completes her job with very little support; she is very independent and meticulous with her work. The school staff did not initially believe she was a candidate for this program; however, her family encouraged them to give it a try. It's truly amazing what happens when folks give people a chance to succeed.



Customized Employment Pilot Project
January 2009

The Early Start Project has increased the number of students transitioning from school to work successfully the past few years. In an effort to serve even more students and adults, a customized employment project focusing on the unique characteristics of the individual offers more opportunities for students and adults with disabilities to become successfully employed.

The project initially proposed to serve between 5 to 15 students or adults with Developmental Disabilities transitioning from school or day services to supported employment. Currently, there are 8 enrolled in this program. Each individual has a team for support to ensure success. Teams consist of one school or day service provider, Division of Vocational Rehabilitation (DVR) Counselor, DDDS Case Manager, one vocational provider and family members involved in the project. Vocational activities start during the exit year from school or may begin one year earlier. Adults who are already receiving DDDS day services can start receiving services immediately.

Each team receives administrative support from the Department of Education (DOE), the DVR, and the provider agency. Each team also receives training and technical support in providing services by George Tilson, from Transcend, Inc. and from the State Employment Leadership Network to implement the Customized Employment Project. "Train the Trainer" sessions are provided to support teams and team leaders.

Each team provides activities that provide critical information for a successful customized job match for their student or adult. A strong em-

phasis to gain information from Essentials of Life Style Planning (ELP) that reinforces the basic components are: knowing the student or adult (skills inventory, support needs and aspirations), finding opportunities/employer partners, negotiating job matches/placements and workplace supports. This is the critical phase in the project, one which ultimately results in a customized job match.

Criteria for selection

- Individual has support needs and/or challenging placement needs that demand a unique work environment that meets individual needs, interests and abilities.
- Individual has not been employed or unsuccessfully employed, but has the potential with a good job match and necessary supports.
- Individual expresses interest/desire to work.
- Parents, family and friends are supportive of the individual's desire to work.
- Traditional supported employment services are not sufficient for success due to the need for a customized work environment and/or support needs required.

Customized Employment Success Stories ...

A friendly, outgoing young man expressed an interest in working in the school system before he graduated high school and entered the Customized Employment program to help him reach that goal. His determination assisted the Employment Specialist from Easter Seals of Sussex County in her endeavors to obtain a volunteer job with the Indian River School District, only a few months after being referred. He was given the opportunity to volunteer at 3 different schools during the week as natural supports were established.

Under this new program, the Employment Specialist was able to help him complete 6 weeks of intensive one-on-one training while he was volunteering, and while he pursued a paid position with the district. This gave her time to teach him the skills he needed while continuing to develop a position. This young man performed a variety of duties that included custodial tasks, assisting in the cafeteria, and assisting the school nurse by making ice packs. He also performed tasks at other schools that included assisting teachers with activities, and document shredding.

After two months of volunteering, he was offered a position and accepted. The natural supports were in place and he was very comfortable at each location. The Employment Specialist coordinated a schedule and a time sheet was developed. Since this was a new Pilot program, several different forms of documentation were developed. These included a Profile, a Portfolio, and Employment plan. Overall, the placement and participation with Customized Employment was a great success and supports continue to

ensure job retention. The last Customized Employment Pilot success story is about a 24 year old young lady with cerebral palsy, a visual impairment and epilepsy. Her employment specialist is from Community Integrated Services. She has limited use of one arm and uses a powered wheel chair for mobility. She has limited speech, but has a very strong will and extremely expressive facial expressions. She requires assistance for personal care needs and has an employment specialist who assists her with her employment related needs. This young lady has three part-time jobs. One job is at C-Line Stables, a horse farm in Townsend DE. Her job is to polish all the saddles - this is not only work for her, but also is therapy as it helps her to improve the use of her arm/hand. Her second job is at Willey Farms, a country food market and nursery also in Townsend, DE. Her job is to scoop dirt and put it into various sized pots. Her third job is at Mechanical Design Solutions, Inc in Smyrna, DE. Her job is to shred sensitive documents. The remainder of her week is made up of various volunteer opportunities as well as some recreational activities. Prior to becoming involved in the Customized Employment Pilot, she was participating in social/recreational activities at a Facility-Based Day Program. Although some of the activities there were enjoyable, her dream was to work just like everyone else does. Today, she is very happy with her life.



ALLIANCE FOR FULL PARTICIPATION

Resources

<http://allianceforfullparticipation.org/>

<http://www.aib.org/> - America's Job Bank - or call 1-877-US-2JOBS.

<http://www.careeronestop.org> - Career One Stop offers info for jobseekers and employers.

<http://www.jan.vwu.edu/> - Job Accommodation Network is a free consulting service.

<http://www.onestoptoolkit.org/>

<http://www.dol.gov/odep/welcome.html> - National Center on Workforce & Disability.

Resources for Youth

<http://www.ncwd-youth.info/>

<http://www.ncset.org/>

Ticket to Work

<http://www.socialsecurity.gov/work/aboutticket.html> - SSA

<http://www.vourtickettowork.com/endor> - Employment Network Directory



Professionals working to support individuals with
intellectual and developmental disabilities

Employment



Joint Position Statement of AAIDD and The Arc

Statement

People with intellectual and/or developmental disabilities* can be competitively employed in their communities. They should be supported to make informed choices about their work and careers and have the resources to seek, obtain, and be successful in integrated community employment.

Issue

The majority of our constituents are either unemployed or underemployed, despite their ability, desire, and willingness to engage in meaningful work in the community. Of those employed, many have had no choice but to work in sheltered, segregated programs that separate people from their communities. Whatever the setting, few have had the opportunity to earn much money, acquire benefits, advance their careers, or plan for retirement. Without appropriate education, career development, job training, technological assistance and support, people cannot enjoy the benefits of employment.

Position

All of our constituents should be prepared for careers and have the opportunity for jobs alongside non-disabled workers based upon their preferences, interests, and strengths.

Employment opportunities should include:

- Ongoing career planning, job advancement, and retirement planning.
- Flexible and comprehensive individualized supports to ensure the person's employment success.
- Wages and benefits that are fair and reasonable.
- Micro-enterprises or small businesses.

Employment preparation should include:

- Instruction regarding principles of career development and social skill development, starting in the early grades and continuing through graduation.
- General and specific job skill training and actual paid work experiences in the community.
- A comprehensive plan for transition to adult life.
- Training in how to travel in the community so they can get to different jobs and enhance their independence.

In addition, employed individuals must have the opportunity for continued education or specialized training to enhance their marketability and to help them advance in careers or chosen areas of interest.

Adopted:

Board of Directors, AAIDD
August 18, 2008

Board of Directors, The Arc of the United States
August 4, 2008

Congress of Delegates, The Arc of the United States
November 8, 2008

**“People with intellectual and/or developmental disabilities” refers to those defined by AAIDD classification and DSM IV. In everyday language they are frequently referred to as people with cognitive, intellectual and/or developmental disabilities although the professional and legal definitions of those terms both include others and exclude some defined by DSM IV.

Sheltered workshop

From Wikipedia, the free encyclopedia

The term **sheltered workshop** refers to an organisation or environment that employs people with disabilities separately from others. The term 'sheltered workshop' is considered outdated in the U.K. and the U.S., and increasingly in Australia.

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United States

In the U.S., both the term "sheltered workshop" and its replacement term, "work center," are used by the Wage and Hour Division of the U.S. Department of Labor to refer to entities that are authorized to employ workers with disabilities at sub-minimum wages.^[1] The term has generally been used to describe facilities that employ people with disabilities exclusively or primarily.^[2]

U.S. public policy at the Federal level has shifted away from sheltered workshops in favor of "administer[ing] services, programs, and activities in the most integrated setting appropriate to the needs of . . . individuals with disabilities. . . . [T]he most integrated setting' is one that 'enables individuals with disabilities to interact with nondisabled persons to the fullest extent possible . . .'"^[3]

Sheltered workshops in the U.S. have become the subject of criticism as exploitative and abusive as well as discriminatory. In January 2011, the National Disability Rights Network, or NDRM, issued a report entitled "Segregated and Exploited: The Failure of the Disability Service System to Provide Quality Work."^[4] The report charged that "hundreds of thousands of people with disabilities are being isolated and financially exploited by their employers."^[4]

In March 2011, a speech by Samuel R. Bagenstos, the Principal Deputy Assistant Attorney General in the Civil Rights Division of the U.S. Department of Justice, cited the NDRM report in explicitly criticizing the entire concept underlying the sheltered workshop.^[5] Bagenstos took the position that the principle articulated in the U.S. Supreme Court decision in *Olmstead v. L.C.* -- which he described as "that persons with disabilities have a right to spend their lives in the most integrated setting appropriate for them as individuals" -- "is just as sensibly applied to the employment setting." He argued that "a full and equal life in the community—the ultimate goal of *Olmstead*—cannot be achieved without a meaningful, integrated way to spend the day, including integrated 'work options.'"^[5] And he stated:

[W]hen individuals with disabilities spend years— indeed, decades—in congregate programs doing so-called jobs like these, yet do not learn any real vocational skills, we should not lightly conclude that it is the disability that is the problem. Rather, the programs' failure to teach any significant, job-market-relevant skills leaves their clients stuck. As a recent review of the literature concludes, "[t]he ineffectiveness of sheltered workshops for helping individuals progress to competitive employment is well established."^[5]

United Kingdom

In the U.K., the term has been replaced with social enterprise. However, the notion of 'social enterprise' implies that the organisation would trade in the market and take on a degree of business risk, and not be completely dependent on government subsidy, as the traditional model of the sheltered workshop may allow. In this newer model, the enterprise might receive a subsidy in compensation for the reduced productivity of its disadvantaged workers, in order to allow it to compete on a "level playing field" with conventional firms.

Samuel R. Bagenstos
Principal Deputy Assistant Attorney General
Civil Rights Division
United States Department of Justice

Remarks as Prepared for Delivery at
Case Western Reserve University School of Law
March 15, 2011

Olmstead Goes to Work

Thank you for that introduction. I'd also like to thank Dean Rawson and Professors Sharpe and Hoffman for inviting me to deliver this year's McKnight Lecture and hosting me on my visit here. Case Western Law School is a place where a lot of exciting things are happening. It's a pleasure to get to spend the day with you.

The title of my lecture is "*Olmstead* Goes to Work." My thesis can be simply stated: The Supreme Court's decision in *Olmstead v. L.C.*, which interpreted the Americans with Disabilities Act to prohibit the unnecessary institutionalization of people with disabilities, is of great relevance to the problem of non-employment of people with severe disabilities. This thesis may strike many of you as counterintuitive. *Olmstead* is most typically understood as addressing the question of *where* people with disabilities live—in institutions or the community. But *Olmstead* is in fact most crucially about *how* people with disabilities live—whether people with disabilities can lead integrated lives, with the same array of day-to-day choices, opportunities, and interactions that people without disabilities take for granted. As I hope to show, integrated, meaningful employment of people with

severe disabilities—notably including significant mental illness and developmental disabilities—is key to making the promise of *Olmstead* a reality.

At the Department of Justice, we have prioritized *Olmstead* in our disability rights enforcement program. Carrying out President Obama's Community Living initiative, we have investigated, filed, or participated in *Olmstead* cases in 21 states and the District of Columbia. In these cases, we have addressed an array of issues. We have sought to ensure that, when people with disabilities leave congregate institutions, they have the opportunity to live integrated, meaningful lives in the community. One key component of this effort is integrated, meaningful employment.

In the remainder of my lecture, I will address three questions: What is *Olmstead*? What does it have to do with employment? And how can we ensure that *Olmstead* goes to work?

What is Olmstead?

In thinking about *Olmstead*, and indeed most questions of disability rights law, I often find it useful to begin with the writings of a man who did not live to witness the adoption of the ADA. That man is Jacobus tenBroek, who famously urged that the "right to live in the world" was key to disability equality, and who also wrote that integration was "the answer" to achieving that right. Professor tenBroek was, without a doubt, a person who lived an integrated life in the world. In 1925, at the age of 14, he lost his eyesight. Fifteen years later, he earned a

Doctor of Laws degree from the University of California at Berkeley. The same year, he was instrumental in founding the National Federation of the Blind—the first major nationwide organization that was run not just “for” people with disabilities but “by” them as well. Professor tenBroek soon took an appointment at his alma mater, where he taught in the speech and political science departments as well as in the law school. He continued to teach at Berkeley, and serve as a national leader of the nascent disability rights movement, until he died in 1968.

Most legal scholars know Professor tenBroek for his contributions to constitutional scholarship: His 1949 article with Joseph Tussman, “The Equal Protection of the Laws,” set forth the analytical framework that structured a generation’s understanding of the Constitution’s equal protection guarantee, and his book on *The Antislavery Origins of the Fourteenth Amendment* remains a classic. Perhaps not surprisingly for a man of his academic and activist background, Professor tenBroek made the key early contributions to the emergent legal theory of disability rights.

When Professor tenBroek wrote about integration as “the answer,” he wrote from experience. His 1966 article in the *California Law Review* describing “The Right to Live in the World” begins with one of the most extraordinary author’s notes I have ever read. In the author’s note, Professor tenBroek responds, defiantly, to what he anticipates will be criticism that the article is based too much on personal experience. (He needn’t have worried, I think; much of the article is taken up with an incredibly thorough canvass of state statutes and court decisions, a canvass that

could leave no doubt that Professor tenBroek had done his homework.) The author's note takes up half a page, in tiny type. But one sentence encapsulates Professor tenBroek's point: "This article is amply flecked with footnotes, citing a wide range of formal materials. The views expressed, the author believes, are verified by his personal experience as a disabled individual far more than by all the footnote references put together."

Professor tenBroek argued that integration for people with disabilities followed from the basic principles of the civil rights movement that was, at the time he wrote, at the apotheosis of its power. "Are humans to be denied human rights?" he asked:

Are persons after all not to be persons if they are physically disabled? Are members of the community to be robbed of their rights to live in the community, their certificates cancelled upon development or discovery of disability? These rhetorical questions, the hallmarks of crusade and reform throughout American history, have in our generation become the plea of the disabled as well. As with the black man, so with the blind. As with the Puerto Rican, so with the post-polio. As with the Indian, so with the indigent disabled.

Although Professor tenBroek argued that a policy of integrationism was immanent in a wide range of legal developments, both statutory and common-law based, he lamented the courts' failure to adopt such a policy to its fullest extent.

"No courts have held or even darkly hinted," he wrote, that

a blind man may rise in the morning, help get the children off to school, bid his wife goodbye, and proceed along the streets and bus lines to his daily work, without dog, cane, or guide, if such is his habit or preference, now and then brushing a tree or kicking a curb, but, notwithstanding, proceeding with firm step and sure air, knowing that he is part of the public for whom the streets are built and maintained in reasonable safety, by the help of his taxes, and that he shares with others this part of the world in which he, too, has a right to live.

Reading Professor tenBroek's words, one can appreciate both the analytic and the emotional core of the case for integration of people with disabilities. Professor tenBroek, of course, wrote against a backdrop of a long history of segregation, a history that did not begin or end with the eugenics movement of the early Twentieth Century. For centuries, people with disabilities were pushed aside, shut out, and ignored. Whether because of fear or because of misplaced paternalism, people with disabilities were forced to live in out-of-the-way facilities where basic, day-to-day decisions were made by others. People with disabilities became effectively invisible in the public square, and unfamiliarity combined with fear to encourage prejudice.

The Twentieth Century phenomenon of institutionalization of people with disabilities, which peaked in the mid-1950s, was but a later chapter in the same story. People with intellectual, developmental, and psychiatric disabilities were confined to institutions for their care and protection, but institutionalization

massively restrained their freedom. And as more and more people moved out of institutions in the 1970s and 1980s, we learned that institutionalization was often unnecessary for their care and treatment. This was true even for individuals who all observers had previously thought needed to live in institutions.

Consider Nicholas Romeo, a resident of Pennsylvania's Pennhurst State School whose case went to the Supreme Court. He had what the Court characterized as a "profound[]" intellectual disability, "with an I.Q. between 8 and 10." His own counsel had conceded, in light of what he called "the severe character of his [disability]," that Romeo could never live outside of an institution. Yet "ten months after the court's decision," as the late Timothy Cook told us, "Nicholas Romeo moved to a community residence in Philadelphia," where he lived successfully. The residents released from Pennhurst were studied extensively, and Mr. Romeo's experience was typical. In the psychiatric disability area, too, individuals who were once thought to need long-term institutionalization have proven that they can live successfully in homes or apartments in the community with supportive services.

Ending the unnecessary institutionalization of people with disabilities is crucial to disability civil rights, we now understand, for two major reasons. First, unnecessary institutionalization deprives people with disabilities of important opportunities that are available to people without disabilities: the opportunity to access what Eleanor Roosevelt called the "small places, close to home"—neighborhoods, schools, factories, farms, or offices, as Mrs. Roosevelt said, but also

movie theaters and sporting arenas, bookstores, and gyms; the opportunity to seek out and make connections with a diverse array of people of one's own choosing; and, indeed, the opportunity to take risks, to be free from constant protection. The disability rights movement has taught us that there is dignity in risk, and that to be denied the right to choose how to live one's life—for good or for ill—is to be denied equal respect as a human being. Segregating people with disabilities into institutions often rests on a too-easy paternalism, a sense that "those folks" need to be protected from the vicissitudes of the world. Sometimes, to be sure, people—both with and without disabilities—need protection. But people with disabilities are too often shut off from important opportunities in the community because of a stereotype-driven view that their disabilities render them uniquely in need of protection.

Second, unnecessary institutionalization reinforces public stereotypes and prejudices against people with disabilities. To make large numbers of people with disabilities live behind the walls of a psychiatric hospital, developmental center, nursing home, or group home is to further entrench the same paternalistic attitudes that lead to institutionalization in the first place. And lack of familiarity breeds fear and prejudice. To break down those attitudes requires public visibility and interactions between people with and without disabilities, precisely what segregation makes impossible.

In her opinion for the Court in the *Olmstead* case, Justice Ginsburg relied on these two points in explaining that unnecessary institutionalization of people with disabilities is properly regarded as discrimination against them:

Recognition that unjustified institutional isolation of persons with disabilities is a form of discrimination reflects two evident judgments. First, institutional placement of persons who can handle and benefit from community settings perpetuates unwarranted assumptions that persons so isolated are incapable or unworthy of participating in community life. [S]econd, confinement in an institution severely diminishes the everyday life activities of individuals, including family relations, social contacts, work options, economic independence, educational advancement, and cultural enrichment.

[D]issimilar treatment correspondingly exists in this key respect: In order to receive needed medical services, persons with mental disabilities must, because of those disabilities, relinquish participation in community life they could enjoy given reasonable accommodations, while persons without mental disabilities can receive the medical services they need without similar sacrifice.

It should be no surprise that Justice Ginsburg, the Thurgood Marshall of the women's rights movement, put point so well. For it was the women's movement that was most responsible for teaching us that discrimination can be paternalistic, well-intentioned, and still wrong. The image of the pedestal as cage, perhaps the central metaphor of the constitutional law of sex discrimination that Justice

Ginsburg created as a lawyer, captures the matter precisely. Just as the constitutional law of sex discrimination strikes a blow against a “romantic paternalism” that shuts women off from important opportunities, the *Olmstead* holding strikes a parallel blow against paternalistic exclusions of people with disabilities.

What Does Olmstead Have To Do With Employment?

You might be saying: This is very interesting, and maybe even important, but why are you talking about deinstitutionalization in an employment law lecture? It's because the principle of *Olmstead*—that persons with disabilities have a right to spend their lives in the most integrated setting appropriate for them as individuals—is just as sensibly applied to the employment setting. As should be evident from the way I have described it earlier, *Olmstead* is not just about where people live. Most fundamentally, it is about how people live. The right to live in the most integrated setting is important because congregate living limits one's ability to make choices about what to do with one's day and how to live one's life. As Justice Ginsburg said, it limits “family relations, social contacts, work options, economic independence, educational advancement, and cultural enrichment.” One cannot be a full and equal citizen if one has to eat meals, go to the movies, and even turn on and off one's lights, at times and with companions chosen by others. And a full and equal life in the community—the ultimate goal of *Olmstead*—cannot be achieved

without a meaningful, integrated way to spend the day, including integrated "work options."

Work is central to a meaningful, integrated day, and to full and equal citizenship. As Professor Kenneth Karst wrote, "work means much more than a paycheck; it is the exercise of responsibility." It is "a means of proving yourself worthy in your own eyes and in the eyes of others." Crucially, work is the place where people with all sorts of group affiliations interact and share common projects. And it is that sort of intergroup interaction that breaks down stereotypes and prejudices. When people with disabilities have an opportunity to work with nondisabled peers, those peers learn what people with disabilities—even severe disabilities—can do, and they also learn not to make presumptions about what people with disabilities cannot do. In other words, they begin to unlearn what Justice Ginsburg called the "unwarranted assumptions" that people with significant disabilities "are incapable or unworthy of participating in community life."

Although the process of ensuring that people with disabilities can live in the community is, unfortunately, far from complete, we have made a great deal of progress. But as people move from inappropriately segregated housing settings like psychiatric hospitals, developmental disability centers, nursing homes, and group homes, we cannot achieve the promise of *Olmstead* unless we ensure that they do not just live in integrated housing but that they also live integrated lives. Opportunities for integrated, meaningful work can be especially important for those who have lived, or been at risk of living, in institutions. Meaningful, integrated

work helps break cycles of dependence. For people with mental illness, “working in one’s community is “central to recovery and,” according to many experts, “should be a major goal of the mental health system.” [Becker et al. 2006] For people with developmental disabilities, meaningful and integrated work teaches skills. For everyone, it provides the chance to earn money which can then be used to engage in whatever activities an individual chooses.

How to Take Olmstead to Work

Unfortunately, the employment rate for people with severe disabilities has remained stubbornly low. In 2010, only 35.3 percent of people with disabilities were working. [RRTC 2010 Statistical Compendium] Among people with severe mental illness in particular, the non-employment rate approaches 90 percent by some estimates. [ODEP] “People with psychiatric impairments constitute the largest and most rapidly growing subgroup of Social Security disability beneficiaries.” [Drake et al. 2009] According to a 2008 study published in the American Journal of Psychiatry, the lack of employment among people with serious mental illness imposes almost a \$200 billion annual drag on the economy. [Kessler et al. 2008]

Entire books have been written about the persistence of non-employment among people with disabilities. I, myself, have devoted a significant chunk of a book to that topic. But what is important here is that, even when they do have the opportunity to work, far too many individuals with severe disabilities today work in segregated settings. A recent report by the National Disability Rights Network

found that “for every one person [with a disability] working in competitive employment, three people remain in segregated settings.” Academic researchers report similar figures. [Wehman et al. 2003] And this is something for which the States, along with many other actors, bear some responsibility. The same report found that States spent one Medicaid dollar for supported employment—which, as I will discuss, enables people with disabilities to work in a market setting—for every four Medicaid dollars they spent on segregated day programs.

Foremost among these programs is what we used to call the sheltered workshop. The sheltered workshop was a well-intended idea that sought to teach people with disabilities (notably those who are blind or have mental disabilities) job skills so that they could join the labor market. But it was soon apparent that the reality was often quite different. In 1960, Professor tenBroek described the sheltered workshop as “a vague combination of the workhouse, the almshouse, the factory, and the asylum, carefully segregated from normal competitive society and administered by a custodial staff armed with sweeping discretionary authority.” He explained that “[b]ecause of their customary role as sheltered (*i.e.*, segregated, covered, and noncompetitive) employment retreats, the social and psychological environment of the workshops is often not conducive to the paramount objective of vocational rehabilitation: that of restoring the disabled person to a vocational status of normality and equality.” Instead, he argued, they had a tendency to “become terminal places of employment in which so-called unemployable may find a drudge’s niche at the workbench.” According to the recent National Disability Rights

Network report, much the same can be said of many congregate employment programs today: they “purport to offer pre-employment and pre-vocational skills,” but in many cases they “only prepare people with disabilities for long term sheltered employment.” The disability researcher Alberto Migliore further explains that “[e]ven when work is the main focus of sheltered workshops, the work environment tends to be different from the one in mainstream businesses.” Unlike mainstream businesses, he explains, sheltered workshops do not seek to “match[] people's skills to the production needs,” nor do they base their internal hierarchy on “contractual parameters.” Instead, hierarchy within the workshop is “shaped by the status of a person as either a consumer or a staff member who supervises consumers.”

There is, to be sure, variation among today's congregate employment programs, and that variation matters when we are identifying problems and solutions. And federal law itself incentivizes sheltered workshops in some circumstances; I do not come to quarrel with those laws. But where states allocate discretionary money in a way that effectively denies choice and forces people to accept inappropriate and segregated work placements, that is an *Olmstead* problem. In many congregate employment programs, the work involves menial tasks like shredding paper, often using outdated equipment and factory set-ups that do not replicate the way businesses performing similar tasks organize their workplaces. These “jobs” are unlikely ever to develop the skills necessary to do the work that enterprises need to carry out their operations. As the National Disability Rights Network explained, “Low challenge work such as sorting, collating, labeling,

folding, mailing, sewing, subassembly, heat sealing, hand packaging or other similarly light assembly work comprise the bulk of services done for businesses on a contract basis. Typically these skills are sometimes not even transferable to traditional work because most sheltered workshops do not have modern tools or machinery. So, in the end, they fail to prepare workers for traditional work—even traditional factory work—at all.”

And for too large a proportion of the clients of these programs, the assigned tasks are even farther removed from real work. In some programs, Professor Susan Stefan notes, clients are assigned “make-work, such as folding and unfolding newspapers.” [Stefan 2010] In one workshop in Oregon, advocates met an individual whose job was to count rocks as he moved them from one box to another. [NDRN 2011] There is, to be sure, a range of different abilities, and no one-size-fits-all answer exists to the question of what sort of employment is right for every person with a disability. But when individuals with disabilities spend years—indeed, decades—in congregate programs doing so-called jobs like these, yet do not learn any real vocational skills, we should not lightly conclude that it is the disability that is the problem. Rather, the programs’ failure to teach any significant, job-market-relevant skills leaves their clients stuck. As a recent review of the literature concludes, “[t]he ineffectiveness of sheltered workshops for helping individuals progress to competitive employment is well established.” [Bond 2004]

From this discussion, it should be apparent that many congregate employment programs bear the essential characteristics of segregation that we saw

in residential institutions. They congregate people with disabilities and separate them from the community, subject them to regimented rules, and fail to provide access to the opportunities to build skills and engage in self-development that nondisabled people have. Available evidence indicates that many people with disabilities would not choose to work in these settings if another alternative were offered. A 2004 study observed that people with severe mental illness want not just work but “competitive employment, defined as community jobs that any person can apply for, in regular places of business, paying at least minimum wage, with mostly nondisabled coworkers.” [Bond 2004] In any event, too many people in congregate settings are not ever offered an alternative. This problem is most poignant for people with significant disabilities finishing school. For their entire educational lives, many of these individuals have studied and been prepared to work in integrated settings. That is the great success of the Individuals with Disabilities Education Act. But once they age out of IDEA services, many are left with only segregated employment options, because their state does not devote sufficient resources to supporting integrated employment.

One might at this point say, “What’s the alternative?” We know that Title I of the ADA has not been effective in moving large numbers of people with disabilities into the workforce—even if some scholars’ claims that the statute has made things *worse* are inconsistent with the weight of the evidence. And it is easy to see that the ADA’s employment provisions will not suffice here. Title I simply prohibits discrimination and requires reasonable accommodations; it does not

require any employer to hire any particular individual with a disability. To the extent that the clients of congregate employment programs require supports that fall outside of the statutory reasonable accommodation requirement—whether because they would be costly or burdensome if provided by the employer, or because courts will conclude that they are the sorts of “personal items” that an employer need not provide—employers on the open market can simply refuse to hire them. One might be forgiven for asking whether segregated, even sheltered, work is just an appropriate response to a sad reality that many people with severe disabilities simply cannot perform work with sufficient skill and efficiency to make it cost-effective for open-market employers to hire them.

If this sounds like justifications that have been offered in the past for the long-term institutionalization of people with mental illness and developmental disabilities, it should. Where institutionalization often rested on a paternalism that underestimated the ability of institutionalized persons to live in the community with appropriate supports, the presumption that congregate employment clients cannot perform work that is desired by open-market employers underestimates the ability of many of those individuals to work in the competitive marketplace with appropriate supports. Again, there is no one-size-fits-all answer, but the ADA requires that people with disabilities receive services in the most integrated setting appropriate for them. There is thus a strong presumption in favor of integration.

Over the past several decades, rehabilitation professionals have developed the model of “supported employment” as an evidence-based practice to promote

integrated employment opportunities for people with severe disabilities. Paul Wehman, one of the leading researchers in the area, explains that “[t]he goal of supported employment programs is to help people with the most significant disabilities to be successful in paid employment in the integrated work setting of their choice.” [Wehman et al. 2003] Supported employment programs do this by “help[ing] clients identify what kind of work they would like to do, find a job as quickly as possible, and succeed on the job or move to another job.” [Drake et al. 2009] As Wehman explains, supported employment rests on a number of key values:

- that “[e]veryone, regardless of the level or the type of disability, has the capability to do a job and the right to have a job”;
- that employment should occur “within the local labor market in regular community businesses”;
- that “[w]hen people with disabilities choose and regulate their own employment supports and services, career satisfaction will result”;
- that “[p]eople with disabilities should earn wages and benefits equal to that of co-workers performing the same or similar job”;
- that “[p]eople with disabilities should be viewed in terms of their abilities, strengths, and interests rather than their disabilities”;
- that “[c]ommunity relationships both at and away from work lead to mutual respect and acceptance”; and

- that “[p]eople with disabilities need to determine their personal goals and receive assistance in assembling the supports for achieving their ambitions.” [Wehman et al. 2003]

Crucially, supported employment reflects what might be called an “employment first” approach—when carried out according to the key principles of the model, “[t]he only requirement for admission to a supported employment program is a desire to work in a competitive job.” [Bond 2004] Rather than asking whether competitive work is consistent with a client’s disability or requiring extensive vocational training *before* an individual can find a job, the supported employment model builds on the client’s strengths and interests and seeks to place the client in competitive employment immediately while providing the necessary supports. These supports include working with employers to find and mold appropriate jobs, job coaching, transportation, assistive technologies, specialized job training, and individually tailored supervision. “[S]upported employment assists people with the most severe disabilities so that they are able to obtain competitive employment directly—on the basis of the client’s preferences, skills, and experiences—and provides the level of professional help that the client needs.” [Salyers et al. 2004] The money for these services can come from a number of sources, including state Medicaid and vocational rehabilitation funds.

Evidence from the implementation of supported employment programs in a number of states suggests that many people with disabilities—even quite severe disabilities—who currently receive services in congregate employment settings

could in fact work in the competitive market. A recent review of the literature found that there are no “specific client factors (such as diagnosis, symptomatology, age, gender, disability status, prior hospitalization, and education) that consistently predict better employment outcomes. In other words,” this review continued, “the literature provides no empirical justification for excluding any consumer from receiving supported employment services, based on the clinical or work history, ‘readiness,’ or any other factor commonly used as screening criteria.” [Bond 2004] And the evidence shows that supported employment is far more likely to result in durable employment in the competitive labor market than is pre-vocational training (up to three times more likely in some studies). [Salyers et al. 2004]

Again, this finding parallels what we have learned about institutionalization. For many years, the prevailing view was that it would not be safe or responsible to allow people with developmental disabilities or mental illness to leave state institutions until they first showed that they had learned sufficient self-care, behavioral, and other skills that they would need to live in a community environment. But evidence mounted that one best learns skills in the setting in which those skills are intended to be used, and the prevailing view shifted. Now most experts in the field will tell you that forcing a person to stay in an institution until he learns self-care and behavioral skills unnecessarily delays the acquisition of those skills at the same time as it unnecessarily prolongs the institutionalization—in many cases, for years. We now understand that the best way to promote positive behaviors or the acquisition of skills that are needed in the

community is to give individuals the opportunity to live in the community with appropriate supports to develop those behaviors and skills. It should not be surprising that, for many people, the same point holds true with respect to job skills.

Moreover, although supported employment has an initial cost for each client—as the job and attendant supports are set up—that cost in most instances declines over time. A meta-analysis of relevant studies “concluded that supported employment programs began to provide a net benefit to the taxpayer through the taxes paid by disabled individuals in competitive employment beginning in the fourth year of the supported employment program.” [Stefan 2010] Other studies conclude that wider implementation of supported employment could save the federal and state governments hundreds of millions in SSDI and SSI costs (as people with disabilities earn more money of their own) and Medicaid costs (because a client’s Medicaid costs tend to go down by between \$5,000 and \$15,000 per year after he transitions into work). [Drake et al. 2009] And once the cost of segregated employment is taken into account—a cost that, for each client, tends to remain stable over time—the fiscal case for wider adoption of supported employment becomes all that much stronger. Indeed, as Professor Stefan reports, a number of studies have “found that supported employment was consistently less costly than sheltered work if measured over at least a four-year period.” [Stefan 2010]

* * *

If you were skeptical that *Olmstead* had anything to do with employment, I hope that I have overcome your skepticism. In our *Olmstead* enforcement at the Department of Justice, we have understood that we cannot simply require that states allow people with disabilities to leave congregate residential settings. We have recognized that people with disabilities must have the opportunity to spend meaningful, integrated days as well. Our landmark *Olmstead* settlement with the State of Georgia this past October, which commits the state to provide community-based services to thousands of people with mental illness and developmental disabilities who were in or at risk of entering state psychiatric hospitals, specifically identifies supported employment as one of the services the State must provide in the community. And in our letter of investigative findings regarding the Commonwealth of Virginia's unnecessary institutionalization of people with disabilities, we have highlighted not just that residential segregation but also the Commonwealth's overreliance on segregated employment and day programs for those people with developmental disabilities who live in community-based residential settings. We will continue to pursue these issues in our *Olmstead* investigations and litigation across the country. They are central to achieving the promise of *Olmstead*.

Thank you.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

UNITED STATES OF AMERICA,

Plaintiff,

v.

STATE OF DELAWARE,

Defendant.

CIVIL ACTION NO:

SETTLEMENT AGREEMENT

I. Introduction

- A. The State of Delaware ("the State") and the United States (together, "the Parties") are committed to full compliance with Title II of the Americans with Disabilities Act ("the ADA"), 42 U.S.C. § 12101 and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794. This agreement is intended to ensure the State's compliance with the ADA, the Rehabilitation Act, and implementing regulations at 28 C.F.R. Part 35, and 45 C.F.R. Part 84 ("Section 504"), which require, among other provisions, that, to the extent the State offers services to individuals with disabilities, such services shall be provided in the most integrated setting appropriate to meet their needs. Accordingly, throughout this document, the Parties intend that the principles of self-determination and choice are honored and that the goals of community integration, appropriate planning, and services to support individuals at risk of institutionalization are achieved.
- B. The United States Department of Justice ("United States") initiated an investigation of Delaware Psychiatric Center ("DPC"), the State's psychiatric hospital, in November 2007 and completed on-site inspections of the facility and community services in May 2008 and August 2010. Following the completion of its investigation, the United States issued a findings letter notifying the State of its conclusions on November 9, 2010.
- C. The State engaged with the United States in open dialogue about the allegations and worked with the United States to resolve the alleged violations of federal statutory rights arising out of the State's operation of DPC and provision of community services for individuals with mental illness.

F. Supported Employment and Rehabilitation Services

1. The State shall develop options for people to work or access education and rehabilitation services. The supported employment and rehabilitation services shall:

- a. Offer integrated opportunities for people to earn a living or to develop academic or functional skills; and
- b. Provide individuals with opportunities to make connections in the community.

2. Supported Employment and Rehabilitation Services Components

a. Supported Employment

- i. Supported employment is a service through which individuals receive assistance in preparing for, identifying, attaining, and maintaining integrated, paid, competitive employment. Among the services that a provider may offer is job coaching, transportation, assistive technology, specialized job training, and individually tailored supervision.
- ii. Supportive employment providers will adhere to an evidence-based model for supporting people in their pursuit of and maintenance of work opportunities.

b. Rehabilitation Services

- i. Rehabilitation services include education, substance abuse treatment, volunteer work, and recreational activities; and other opportunities to develop and enhance social, functional and academic skills in integrated settings. With respect to the State's application for Medicaid funding for such services, the definition at 42 CFR 440.130 shall take precedence over the definition listed herein and the explanation of Rehabilitation Services herein is for the purposes of enforcement of this Settlement Agreement only.

I. Supported Housing

1. By July 11, 2011, the State will provide housing vouchers or subsidies and bridge funding to 150 individuals. Pursuant to Part II.E.2.d., this housing shall be exempt from the scattered-site requirement.
2. By July 1, 2012 the State will provide housing vouchers or subsidies and bridge funding to a total of 250 individuals.
3. By July 1, 2013 the State will provide housing vouchers or subsidies and bridge funding to a total of 450 individuals.
4. By July 1, 2014 the State will provide housing vouchers or subsidies and bridge funding to a total of 550 individuals.
5. By July 1, 2015 the State will provide housing vouchers or subsidies and bridge funding to a total of 650 individuals.
6. By July 1, 2016 the State will provide housing vouchers or subsidies and bridge funding to anyone in the target population who needs such support. For purposes of this provision, the determination of the number of vouchers or subsidies and bridge funding to be provided shall be based on: the number of individuals in the target population who are on the State's waiting list for supported housing; the number of homeless individuals who have a serious persistent mental illness as determined by the 2016 Delaware Homeless Planning Council Point in Time count; and the number of individuals at DPC or IMDs for whom the lack of a stable living situation is a barrier to discharge. In making this determination, there should be due consideration given to (1) whether such community-based services are appropriate, (2) the individuals being provided such services do not oppose community-based treatment, and (3) the resources available to the State and the needs of other persons with disabilities. Olmstead v. L.C., 527 U.S. 581 at 607 (1999).

J. Supported Employment

1. By July 1, 2012 the State will provide supported employment to 100 individuals per year.
2. By July 1, 2013 the State will provide supported employment to 300 additional individuals per year.
3. By July 1, 2014 the State will provide supported employment to an additional 300 individuals per year.

4. By July 1, 2015 the State will provide supported employment to an additional 400 individuals per year.
5. In addition, by January 1, 2012 all individuals receiving ACT services will receive support from employment specialists on their ACT teams.

K. Rehabilitation Services

1. By July 1, 2012 the State will provide rehabilitation services to 100 individuals per year.
2. By July 1, 2013 the State will provide rehabilitation services to 500 additional individuals per year.
3. By July 1, 2014 the State will provide rehabilitation services to an additional 500 individuals per year.

L. Family and Peer Supports

1. By July 1, 2012 the State will provide family or peer supports to 250 individuals per year.
2. By July 1, 2013 the State will provide family or peer supports to 250 additional individuals per year.
3. By July 1, 2014 the State will provide family or peer supports to an additional 250 individuals per year.
4. By July 1, 2015 the State will provide family or peer supports to an additional 250 individuals per year.

IV. Transition Planning

A. Assessment and Placement of People Currently in Institutional Settings

1. Each individual, now in or being admitted to DPC or an IMD, shall have a transition team including clinical staff and a representative of a community-based mental health provider.
 - a. Discharge planning shall begin upon admission.
 - b. Discharge assessments shall begin with the presumption that with sufficient supports and services, individuals can live in an integrated community setting.



Center for Medicaid, CHIP and Survey & Certification

CMCS Informational Bulletin

DATE: September 16, 2011

FROM: Cindy Mann, JD
Director
Center for Medicaid, CHIP and Survey & Certification (CMCS)

SUBJECT: Updates to the §1915 (c) Waiver Instructions and Technical Guide regarding employment and employment related services

This Informational Bulletin is intended to provide clarification of existing CMS guidance on development and implementation of §1915 (c) Waivers regarding employment and employment related services. Specifically, this letter provides updates to several sections of the current Waiver Technical Guide Version 3.5, which was released in January of 2008, in advance of a future release of Technical Guide Version 3.6.

This guidance does not constitute new policy, but rather highlights the opportunities available to use waiver supports to increase employment opportunities for individuals with disabilities within current policy. Further, it underscores CMS's commitment to the importance of work for waiver participants and provides further clarification of CMS guidance regarding several core service definitions.

While States have the flexibility to craft their own service definitions and modify CMS core service definitions, many States rely on CMS language for their waiver core service definitions. We hope that by emphasizing the importance of employment in the lives of people with disabilities, updating some of our core service definitions, and adding several new core service definitions to better reflect best and promising practices that it will support States' efforts to increase employment opportunities and meaningful community integration for waiver participants.

The major changes in the Instructions and Technical Guide are summarized below:

- Highlights the importance of competitive work for people with and without disabilities and CMS's goal to promote integrated employment options through the waiver program
- Acknowledges best and promising practices in employment support, including self direction and peer support options for employment support
- Clarifies that Ticket to Work Outcome and Milestone payments are not in conflict with payment for Medicaid services rendered because both Ticket to Work and Milestone payments are made for an outcome, not service delivery
- Adds a new core service definition- by splitting what had previously been supported employment into two definitions- individual and small group supported employment
- Includes a new service definition for career planning, that may be separate or rolled into the other employment related service definitions

- Emphasizes the critical role of person centered planning in achieving employment outcomes
- Modifies both the prevocational services and supported employment definitions to clarify that volunteer work and other activities that are not paid, integrated community employment are appropriately described in pre-vocational, not supported employment services
- Explains that pre-vocational services are not an end point, but a time limited (although no specific limit is given) service for the purpose of helping someone obtain competitive employment

I hope that you will find this information helpful. States and other interested parties may also find information contained in the attachments at www.hcbswaivers.net. If you have any additional questions about this guidance, please contact Ms. Nancy Kirchner, Health Insurance Specialist, Division of Long Term Services and Supports at 410-786-8641 or nancy.kirchner@cms.hhs.gov.

Attachments (2):

1 - Revisions to the Instructions and Technical Guide for §1915 (c) Waivers - Supported Employment and Prevocational Services

2 - Revisions to the Core Service Definitions for Employment and Employment related services in the Instructions and Technical Guide for §1915 (c) Waivers

Attachment 1

Revisions to the Instructions and Technical Guide for §1915 (c) Waivers for Supported Employment and Prevocational Services

Work is a fundamental part of adult life for people with and without disabilities. It provides a sense of purpose, shaping who we are and how we fit into our community. Meaningful work has also been associated with positive physical and mental health benefits and is a part of building a healthy lifestyle as a contributing member of society. Because it is so essential to people's economic self sufficiency, as well as self esteem and well being, people with disabilities and older adults with chronic conditions who want to work should be provided the opportunity and support to work competitively within the general workforce in their pursuit of health, wealth and happiness. All individuals, regardless of disability and age, can work – and work optimally with opportunity, training, and support that build on each person's strengths and interests. Individually tailored and preference based job development, training, and support should recognize each person's employability and potential contributions to the labor market.

Peer support is a powerful best practice model for helping support people to be successful in the world of employment. Most specifically for people with mental illness, the evidenced based practice of peer support has been a critical component of successful community living, including employment. Additionally, various types of employment and employment related supports may be provided by consumer operated service programs, independent nonprofit organizations that have a majority consumer board of directors. There is broader applicability for peer support and self advocacy for other disability population groups to ease the transition into community living and/or to develop stronger ties in those communities through the support and guidance from others who have navigated those situations and can now mentor others and offer mutual support. States may wish to consider provider qualifications for employment supports that draw on peer support models. Additional information concerning peer support services is contained in the August 15, 2007 State Medicaid Director letter #07-011 at <http://www.cms.gov/SMDL/downloads/SMD081507A.pdf>.

Self directed service delivery models can also be used to provide employment supports. In a self-directed model, individuals may hire their own job coaches and employment support staff, rather than relying exclusively on agency based staffing models. This may be particularly useful as individuals seek to expand the pool of people who can provide employment supports and services to include friends, family members, co-workers and other community members that do not view themselves as part of the traditional Medicaid provider employment supports workforce.

Customized employment is another approach to supported employment. Customized employment means individualizing the employment relationship between employees and employers in ways that meet the needs of both. It is based on an individualized determination of the strengths, needs, and interests of the person with a disability, and is also designed to meet the specific needs of the employer. It may include employment developed through job carving, self-employment or entrepreneurial initiatives, or other job development or restructuring strategies that result in job responsibilities being customized and individually negotiated to fit the needs of individuals with a disability. Customized employment assumes the provision of reasonable accommodations and

supports necessary for the individual to perform the functions of a job that is individually negotiated and developed. (Federal Register, June 26, 2002, Vol. 67, No. 123 pp 43154 -43149).

Co-worker models of support to deliver on the job supports are effective service delivery methods that are often less expensive to provide and less intrusive to the flow of a business, helping the employee with a disability not just learn the task based elements of the job, but also the cultural norms and relationships within that job setting. Co-worker models of support rely on regular employees within the work setting who provide on the job training and ongoing support to the waiver participant that is beyond what is typically provided as part of supervision or training to employees. Co-worker supports may be delivered on a volunteer basis or paid through a stipend or other statewide payment methodology and unit cost as described in the waiver application Appendices I and J. Importantly, payment for co-worker supports is not payment to the employer for hiring the individual. Instead, it is encouraging the forging of natural work relationships with individuals already present and participating in the work environment. These models are not intended to replace the support provider's work, rather, it would be an additional mentoring/support role for which co-workers could receive additional compensation above what they receive in the course of their typical job responsibilities.

The Ticket to Work Program (TTW) is an employment support program offered through the Social Security Administration (SSA) which is available to SSA beneficiaries with disabilities who want to achieve and maintain their employment goals and can work in a complementary fashion with waiver services. Ticket Outcome and Milestone payments do not conflict with CMS regulatory requirements and do not constitute an overpayment of Federal dollars for services provided since payments are made for an outcome, rather than for a Medicaid service rendered. Additional information regarding the receipt of Federal funds under the SSA's Ticket to Work program is contained in the January 28, 2010 State Medicaid Director letter SMD# 10-002 at <http://www.cms.gov/SMDL/SMD/list.asp>.

Supported employment and prevocational services may be furnished as expanded habilitation services under the provisions of §1915(c)(5)(C) of the Act. They may be offered to any target group for whom the provision of these services would be beneficial in helping them to realize their goals of obtaining and maintaining community employment in the most integrated setting. As provided in Olmstead Letter #3 (included in Attachment D), the provision of these services is not limited to waiver participants with intellectual or developmental disabilities, and can be a meaningful addition to the service array for any of the regulatorily identified target groups.

It is important to note that such services may only be furnished to a waiver participant to the extent that they are not available as vocational rehabilitation services funded under section 110 of the Rehabilitation Act of 1973. When a state covers any category of supported employment services and/or prevocational services in a waiver, the waiver service definition of each service must specifically explain that the services do not include services that are available under section 110 of the Rehabilitation Act of 1973 or, in the case of youth, under the provisions of the Individuals with Disabilities Education Act (IDEA), as well as assure that such services are not available to the participant before authorizing their provision as a waiver service.

Waiver funding is not available for the provision of vocational services delivered in facility based or sheltered work settings, where individuals are supervised for the primary purpose of producing goods or performing services. The distinction between vocational and pre-vocational services is that pre-vocational services, regardless of setting, are delivered for the purpose of furthering habilitation goals *such as attendance, task completion, problem solving, interpersonal relations and safety*, as outlined in the individual's person-centered services and supports plan. Prevocational services should be designed to create a path to integrated community based employment for which an individual is compensated at or above the 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 individuals without disabilities.

Although this is guidance with respect to the 1915 (c) Waiver program, we note that states have obligations pursuant to the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, and the Supreme Court's *Olmstead* decision interpreting the integration regulations of those statutes. Consistent with the *Olmstead* decision and with person centered planning principles, an individual's plan of care regarding employment services should be constructed in a manner that reflects individual choice and goals relating to employment and ensures provision of services in the most integrated setting appropriate.

Attachment 2

Revisions to the Core Service Definitions for Employment and Employment related services in the Instructions and Technical Guide for §1915 (c) Waivers

Day Habilitation

Core Service Definition:

Provision of regularly scheduled activities in a non-residential setting, separate from the participant's private residence or other residential living arrangement, such as assistance with acquisition, retention, or improvement in self-help, socialization and adaptive skills that enhance social development and develop skills in performing activities of daily living and community living. Activities and environments are designed to foster the acquisition of skills, building positive social behavior and interpersonal competence, greater independence and personal choice. Services are furnished consistent with the participant's person-centered plan. Meals provided as part of these services shall not constitute a "full nutritional regimen" (3 meals per day).

Day habilitation services focus on enabling the participant to attain or maintain his or her maximum potential and shall be coordinated with any needed therapies in the individual's person-centered services and supports plan, such as physical, occupational, or speech therapy.

Instructions

- Supplement or modify the core definition as appropriate to specify service elements/activities furnished as day habilitation under the waiver.
- Day habilitation may be furnished in any of a variety of settings in the community other than the person's private residence. Day habilitation services are not limited to fixed-site facilities. Supplement the core definition by specifying where day habilitation is furnished.
- If transportation between the participant's place of residence and the day habilitation site, or other community settings in which the service is delivered, is provided as a component part of day habilitation services and the cost of this transportation is included in the rate paid to providers of day habilitation services, the service definition must include a statement to that effect in the definition.

Guidance

- Day habilitation may not provide for the payment of services that are vocational in nature (i.e., for the primary purpose of producing goods or performing services).

- Personal care/assistance may be a component part of day habilitation services as necessary to meet the needs of a participant, but may not comprise the entirety of the service.
- Participants who receive day habilitation services may also receive educational, supported employment and prevocational services. A participant's person-centered services and supports plan may include two or more types of non-residential habilitation services. However, different types of non-residential habilitation services may not be billed during the same period of the day.
- Day habilitation services may be furnished to any individual who requires and chooses them through a person-centered planning process. Such services are not limited to persons with intellectual or developmental disabilities.
- For individuals with degenerative conditions, day habilitation may include training and supports designed to maintain skills and functioning and to prevent or slow regression, rather than acquiring new skills or improving existing skills.
- Day habilitation services may also be used to provide supported retirement activities. As some people get older they may no longer desire to work and may need supports to assist them in meaningful retirement activities in their communities. This might involve altering schedules to allow for more rest time throughout the day, support to participate in hobbies, clubs and/or other senior related activities in their communities.
- If States wish to cover "career planning" activities they may choose to include it as a component part of day habilitation services or it may be broken out as a separate stand alone service definition.

Prevocational Services

Core Service Definition:

Services that provide learning and work experiences, including volunteer work, where the individual can develop general, non-job-task-specific strengths and skills that contribute to employability in paid employment in integrated community settings. Services are expected to occur over a defined period of time and with specific outcomes to be achieved, as determined by the individual and his/her service and supports planning team through an ongoing person-centered planning process.

Individuals receiving prevocational services must have employment-related goals in their person-centered services and supports plan; the general habilitation activities must be designed to support such employment goals. Competitive, integrated employment in the community for which an individual is compensated at or above the 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 individuals without disabilities is considered to be the optimal outcome of prevocational services.

Prevocational services should enable each individual to attain the highest level of work in the most integrated setting and with the job matched to the individual's interests, strengths, priorities, abilities, and capabilities, while following applicable federal wage guidelines. Services are intended to develop and teach general skills; Examples include, but are not limited to: ability to communicate effectively with supervisors, co-workers and customers; generally accepted community workplace conduct and dress; ability to follow directions; ability to attend to tasks; workplace problem solving skills and strategies; general workplace safety and mobility training.

Participation in prevocational services is not a required pre-requisite for individual or small group supported employment services provided under the waiver. Many individuals, particularly those transitioning from school to adult activities, are likely to choose to go directly into supported employment. Similarly, the evidence-based Individual Placement and Support (IPS) model of supported employment for individuals with behavioral health conditions emphasizes rapid job placement in lieu of prevocational services.

Documentation is maintained that the service is not available under a program funded under section 110 of the Rehabilitation Act of 1973 or the IDEA (20 U.S.C. 1401 et seq.).

Instructions

- Supplement or modify the core definition as appropriate to incorporate the specific service elements furnished under the waiver.
- Prevocational services may be furnished in a variety of locations in the community and are not limited to fixed-site facilities. Specify in the service definition where these services are furnished.
- If transportation between the participant's place of residence and the prevocational service site/s is provided as a component part of prevocational services and the cost of this transportation is included in the rate paid to providers of prevocational services, the service definition must include a statement to that effect.
- Specify in the definition how the determination is made that the services furnished to the participant are prevocational rather than vocational in nature in accordance with 42 CFR §440.180(c)(2)(i).

Guidance

- Pre-vocational Services include activities that are not primarily directed at teaching skills to perform a particular job, but at underlying habilitative goals (e.g., attention span, motor skills, interpersonal relations with co-workers and supervisors) that are associated with building skills necessary to perform work and optimally to perform competitive, integrated employment. Vocational services, which are not covered through waivers, are services that teach job task specific skills required by a participant for the primary purpose of completing those tasks for a specific facility based job and are not delivered in an integrated work setting through supported employment. The distinction between vocational and pre-vocational services is that pre-vocational services, regardless of setting, are delivered for the purpose of furthering habilitation goals that will lead to greater opportunities for competitive and integrated employment and career advancement at or above minimum wage. These goals are described in the individual's person centered services and supports plan and are designed to teach skills that will lead to integrated competitive employment.
- A person receiving pre-vocational services may pursue employment opportunities at any time to enter the general work force. Pre-vocational services are intended to assist individuals to enter the general workforce.
- Individuals participating in prevocational services may be compensated in accordance with applicable Federal laws and regulations and the optimal outcome of the provision of prevocational services is permanent integrated employment at or above the minimum wage in the community.
- All prevocational and supported employment service options should be reviewed and considered as a component of an individual's person-centered services and supports plan no less than annually, more frequently as necessary or as requested by the individual. These services and supports should be designed to support successful employment outcomes consistent with the individual's goals.

- Personal care/assistance may be a component of prevocational services, but may not comprise the entirety of the service.
- Individuals who receive prevocational services may also receive educational, supported employment and/or day habilitation services. A participant's person-centered services and supports plan may include two or more types of non-residential habilitation services. However, different types of non-residential habilitation services may not be billed during the same period of the day.
- If States wish to cover "career planning" activities they may choose to include it as a component part of pre-vocational services or it may be broken out as a separate stand alone service definition.
- Prevocational services may include volunteer work, such as learning and training activities that prepare a person for entry into the paid workforce.
- Prevocational services may be furnished to any individual who requires and chooses them through a person-centered planning process. They are not limited to persons with intellectual or developmental disabilities.

Supported Employment -Individual Employment Support Core Service Definition

Supported Employment -Individual Employment Support services are the ongoing supports to participants who, because of their disabilities, need intensive on-going support to obtain and maintain an individual job in competitive or customized employment, or self-employment, in an integrated work setting in the general workforce for which an individual is compensated at or above the 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 individuals without disabilities. The outcome of this service is sustained paid employment at or above the minimum wage in an integrated setting in the general workforce, in a job that meets personal and career goals.

Supported employment services can be provided through many different service models. Some of these models can include evidence-based supported employment for individuals with mental illness, or customized employment for individuals with significant disabilities. States may define other models of individualized supported employment that promote community inclusion and integrated employment.

Supported employment individual employment supports may also include support to establish or maintain self-employment, including home-based self-employment. Supported employment services are individualized and may include any combination of the following services: vocational/job-related discovery or assessment, person-centered employment planning, job placement, job development, negotiation with prospective employers, job analysis, job carving, training and systematic instruction, job coaching, benefits support, training and planning, transportation, asset development and career advancement services, and other workplace support services including services not specifically related to job skill training that enable the waiver participant to be successful in integrating into the job setting.

Documentation is maintained that the service is not available under a program funded under section 110 of the Rehabilitation Act of 1973 or the IDEA (20 U.S.C. 1401 et seq.).

Federal financial participation is not claimed for incentive payments, subsidies, or unrelated vocational training expenses such as the following:

1. Incentive payments made to an employer to encourage or subsidize the employer's participation in supported employment; or
2. Payments that are passed through to users of supported employment services.

Instructions

- Supplement or modify the core definition as appropriate to incorporate the specific service elements furnished in the waiver.
- Supported employment individual employment supports is not intended for people working in mobile work crews of small groups of people with disabilities in the community. That type of work support is addressed in the core service definition for Supported Employment Small Group employment support.
- If transportation between the participant's place of residence and the employment site is a component part of supported employment individual employment supports services and the cost of this transportation is included in the rate paid to providers of supported employment individual employment supports services, the service definition must include a statement to that effect.

Guidance

- Statewide rate setting methodologies, which are further described in I-2-a of the waiver application may be used to embrace new models of support that help a person obtain and maintain integrated employment in the community. These may include co-worker support models, payments for work milestones, such as length of time on the job, number of hours the participant works, etc. Payments for work milestones are not incentive payments that are made to an employer to encourage or subsidize the employer's hiring an individual with disabilities, which is not permissible.
- Supported employment individual employment supports does not include facility based, or other similar types of vocational services furnished in specialized facilities that are not a part of the general workplace.
- In addition to the need for an appropriate job match that meets the individual's skills and interests, individuals with the most significant disabilities may also need long term employment support to successfully maintain a job due to the ongoing nature of the waiver participant's support needs, changes in life situations, or evolving and changing job responsibilities.
- All prevocational and supported employment service options should be reviewed and considered as a component of an individual's person-centered services and supports plan no less than annually, more frequently as necessary or as requested by the individual. These services and supports should be designed to support successful employment outcomes consistent with the individual's goals.
- Supported employment individual employment supports do not include volunteer work. Such volunteer learning and training activities that prepare a person for entry into the paid workforce are addressed through pre-vocational services.
- Supported employment individual employment supports do not include payment for supervision, training, support and adaptations typically available to other workers without disabilities filling similar positions in the business.
- Supported employment individual employment supports may be provided by a co-worker or other job site personnel provided that the services that are furnished are not part of the normal duties of the co-worker, supervisor or other personnel and these individuals meet the pertinent qualifications for the providers of service.

- Personal care/assistance may be a component part of supported employment individual employment supports, but may not comprise the entirety of the service.
- Supported employment individual employment supports may include services and supports that assist the participant in achieving self-employment through the operation of a business; however, Medicaid funds may not be used to defray the expenses associated with starting up or operating a business. Assistance for self-employment may include: (a) aid to the individual in identifying potential business opportunities; (b) assistance in the development of a business plan, including potential sources of business financing and other assistance in including potential sources of business financing and other assistance in developing and launching a business; (c) identification of the supports that are necessary in order for the individual to operate the business; and (d) ongoing assistance, counseling and guidance once the business has been launched.
- Individuals receiving supported employment individual employment supports services may also receive educational, pre-vocational and/or day habilitation services and career planning services. A participant's person-centered services and supports plan may include two or more types of non-residential habilitation services. However, different types of non-residential habilitation services may not be billed during the same period of time.
- If States wish to cover "career planning" they may choose to include it as a component part of supported employment individualized employment support services or it may be broken out as a separate stand alone service definition.
- Supported employment individual employment supports may be furnished to any individual who requires and chooses them through a person-centered planning process. They are not limited to persons with intellectual or developmental disabilities.

Supported Employment - Small Group Employment Support Core Service Definition

Supported Employment Small Group employment support are services and training activities provided in regular business, industry and community settings for groups of two (2) to eight (8) workers with disabilities. Examples include mobile crews and other business-based workgroups employing small groups of workers with disabilities in employment in the community. Supported employment small group employment support must be provided in a manner that promotes integration into the workplace and interaction between participants and people without disabilities in those workplaces. The outcome of this service is sustained paid employment and work experience leading to further career development and individual integrated community-based employment for which an individual is compensated at or above the 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 individuals without disabilities. Small group employment support does not include vocational services provided in facility based work settings.

Supported employment small group employment supports may include any combination of the following services: vocational/job-related discovery or assessment, person-centered employment planning, job placement, job development, negotiation with prospective employers, job analysis, training and systematic instruction, job coaching, benefits support, training and planning transportation and career advancement services. Other workplace support services may include

services not specifically related to job skill training that enable the waiver participant to be successful in integrating into the job setting.

Documentation is maintained that the service is not available under a program funded under section 110 of the Rehabilitation Act of 1973 or the IDEA (20 U.S.C. 1401 et seq.).

Federal financial participation is not claimed for incentive payments, subsidies, or unrelated vocational training expenses such as the following:

1. Incentive payments made to an employer to encourage or subsidize the employer's participation in supported employment services; or
2. Payments that are passed through to users of supported employment services.

Instructions

- Supplement or modify the core definition as appropriate to incorporate the specific service elements furnished in the waiver.
- If transportation between the participant's place of residence and the employment site is a component part of supported employment services small group employment support and the cost of this transportation is included in the rate paid to providers of supported employment small group employment supports services, the service definition must include a statement to that effect.

Guidance

- Supported employment small group employment support does not include vocational services provided in facility based work settings or other similar types of vocational services furnished in specialized facilities that are not a part of general community workplaces.
- Supported employment small group employment supports do not include volunteer work. Such volunteer learning and training activities that prepare a person for entry into the paid workforce are more appropriately addressed through pre-vocational services.
- Supported employment small group employment support does not include payment for supervision, training, support and adaptations typically available to other workers without disabilities filling similar positions in the business.
- Supported employment small group employment support services may be provided by a co-worker or other job site personnel provided that the services that are furnished are not part of the normal duties of the co-worker, supervisor or other personnel and these individuals meet the pertinent qualifications for the providers of service.
- Personal care/assistance may be a component part of supported employment small group employment support services, but may not comprise the entirety of the service.
- All prevocational and supported employment service options should be reviewed and considered as a component of an individual's person-centered services and supports plan no less than annually, more frequently as necessary or as requested by the individual. These services and supports should be designed to support successful employment outcomes consistent with the individual's goals.
- Individuals receiving supported employment small group employment support services may also receive educational, prevocational and/or day habilitation services and career planning services. A participant's person-centered services and supports plan may include two or more types of non-residential habilitation services. However, different types of non-residential habilitation services may not be billed during the same period of time.

• If States wish to cover “career planning” they may choose to include it as a component part of supported employment small group employment support services or it may be broken out as a separate stand alone service definition.

• Supported employment small group employment support services may be furnished to any individual who requires and chooses them. If a state offers both supported employment- individual and small group employment support services, individuals should be provided information to make an informed decision in choosing between these services. Supported employment small group employment support services are not limited to persons with intellectual or developmental disabilities.

Career Planning

Core Service Definition

Career planning is a person-centered, comprehensive employment planning and support service that provides assistance for waiver program participants to obtain, maintain or advance in competitive employment or self-employment. It is a focused, time limited service engaging a participant in identifying a career direction and developing a plan for achieving competitive, integrated employment at or above the state’s minimum wage. The outcome of this service is documentation of the participant’s stated career objective and a career plan used to guide individual employment support.

Instructions

- Supplement or modify the core definition as appropriate to incorporate the specific service elements furnished in the waiver.
- Supplement the core service definition by specifying where in the community career planning may be furnished.
- If transportation between the participant's place of residence and the site where career planning is delivered is provided as a component part of career planning services and the cost of this transportation is included in the rate paid to providers of career planning services, the service definition must include a statement to that effect in the definition.

Guidance

- For young people with disabilities transitioning out of high school or college into adult services, it is important to have the opportunity to plan for sufficient time and experiential learning opportunities for the appropriate exploration, assessment and discovery processes to learn about career options as one first enters the general workforce.
- Individuals who receive career planning services may also receive educational, supported employment, pre-vocational and/or day habilitation services. A participant’s person-centered services and supports plan may include two or more types of non-residential habilitation services. However, different types of non-residential habilitation services may not be billed during the same period of the day.
- If a waiver participant is receiving prevocational services or day habilitation services, career planning may be used to develop experiential learning opportunities and career options consistent with the person’s skills and interests.

- If a waiver participant is employed and receiving either individual or small group supported employment services, career planning may be used to find other competitive employment more consistent with the person's skills and interests or to explore advancement opportunities in his or her chosen career.
- All prevocational and supported employment service options, including career planning, should be reviewed and considered as a component of an individual's person-centered services and supports plan no less than annually, more frequently as necessary or as requested by the individual. These services and supports should be designed to support successful employment outcomes consistent with the individual's goals.
- Career planning furnished under the waiver may not include services available under a program funded under section 110 of the Rehabilitation Act of 1973 or section 602(16) and (17) of the Individuals with Disabilities Education Act (20 U.S.C. 1401(16 and 17)).
- Career planning may include benefits support, training and planning, as well as assessment for use of assistive technology to increase independence in the workplace.
- If a State wishes to cover "career planning" it may choose to include it as a component part of day habilitation, pre-vocational services or supported employment small group or individual employment support services or it may be broken out as a separate stand alone service definition.
- Career planning services may be furnished to any individual who requires and chooses them. They are not limited to persons with intellectual or developmental disabilities.



New sense of pride in the workplace

HIGHLAND PARK, Ill. -- The software testers at Aspiritech are a collection of characters. Katie Levin talks nonstop. Brian Tozzo hates driving. Jamie Specht is bothered by bright lights, vacuum cleaners and the feel of carpeting against her skin. Rider Hallenstein draws cartoons of himself as a DeLorean sports car. Rick Alexander finds it unnerving to sit near other people.

This is the unusual workforce of a U.S. startup that specializes in finding software bugs by harnessing the talents of young adults with autism.

Traits that make great software testers -- intense focus, comfort with repetition, memory for detail -- also happen to be characteristics of autism. People with Asperger's syndrome, a mild form of autism, have normal to high intelligence and often are highly skilled with computers.

Aspiritech, a nonprofit in Highland Park, Ill., nurtures these skills while forgiving the quirks that can make adults with autism unemployable: social awkwardness, poor eye contact, being easily overwhelmed. The company's name plays on the words "Asperger's," "spirit" and "technology."

Clients, nine companies in Aspiritech's first two years, have been pleased.

"They exceeded my expectations," said

Dan Tedesco of Shelton, Conn.-based HandHold Adaptive, which took a chance on Aspiritech to test an iPhone application. "There is a pride in their product you don't usually see in this type of work."

Aspiritech was founded by Moshe and Brenda Weitzberg after their son, Oran, now 32, was fired from a job bagging groceries. Oran was diagnosed with Asperger's syndrome when he was 14. He now works at Aspiritech.

"He went from failing at bagging groceries to being one of the best software testers on our team," said Brenda Weitzberg.

The Weitzbergs modeled Aspiritech on a successful Danish company called Specialisterne, or "the Specialists." Specialisterne also employs software testers with autism. Its satisfied clients include Oracle and Microsoft.

Other companies in Belgium, Japan and Israel are either hiring or training adults with autism as software testers.

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This year, Aspiritech projects \$120,000 in revenue, with 60 percent coming from donations and 40 percent from clients. The Weitzbergs hope to raise the client revenue to 50 percent next year.

"There have been a couple of attempts in the U.S. and Aspiritech is the one that's making it," said Scott Standifer of the University of Missouri's Disability Policy and Studies office and the organizer of a national conference on adults with autism and employment.

The exact unemployment rate for adults with autism is unknown, but it's thought to be high, Standifer said.

"We don't know how many adults have autism and, because of that, we don't know their rate of unemployment," he said. "We do know from tracking adults just emerging from high school that they are having great difficulty finding jobs."

A 2009 U.S. Department of Education survey found the employment rate for young adults with autism was on par with that for deaf-and-blind young adults, and well below the rate of those with blindness alone or learning disabilities or traumatic brain injuries, Standifer said.

Since Asperger's syndrome didn't become a standard diagnosis until the early 1990s, many of Aspiritech's software testers were adults when they first learned they were on the autism spectrum. They are pioneers, the first generation of adults with Asperger's.

Katie Levin, 35, was diagnosed in her late 20s with Asperger's. As a child, she'd been labeled as mentally ill.

"Asperger's is not a mental illness," she said. "I definitely feel like I identify with the Asperger's community more than I did with the mental illness community." She tests software and runs Aspiritech's Facebook page and Twitter feed.

Rick Alexander, 24, another tester, has a degree in computer science from the Illinois Institute of Technology and completed an internship developing software for the city of Chicago.

"I have a lot of social anxiety. I don't like meeting new people," said Alexander, who was diagnosed with Asperger's syndrome as a teenager. Like many of the other testers, he lives with his parents.

He'd rather be a software developer than a tester, he said. But selling himself in a job interview is "very difficult for me."

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"When you're a child, the school is very concerned with you, the state is very concerned with you," Alexander said. Organizations help adults with autism, he said, but "you need to approach them and for somebody with Asperger's syndrome, it's very difficult to do the approaching."

Most research dollars have gone toward studying children with autism while adults have been neglected, said Molly Losh, an autism researcher at Northwestern University.

"Our vocational structure really isn't suited to funnel people with autism into the workforce," Losh said. Aspiritech "is a magnificent and innovative venture," she said.

Many businesses hire offshore companies to test software. Mike Mestemaker, director of engineering for Schaumburg, Ill.-based ISI Telemangement Solutions, chose Aspiritech because it offered competitive rates but was based in the United States.

"They dove right in and worked very quickly," Mestemaker said. "They were very detail-oriented people: They really got the job done."

ISI was happy with the work and has hired Aspiritech for a second project, he said.

Aspiritech provides meaningful work (pay is \$12 to \$15 an hour) in a relaxed environment where bosses never yell if you're late and nobody minds if you need to be alone for a while. What's more, the company is building social skills. The

software testers, who are in their 20s and 30s, are trained to work together and they take part in organized outings: miniature golf, bowling, eating at a restaurant.

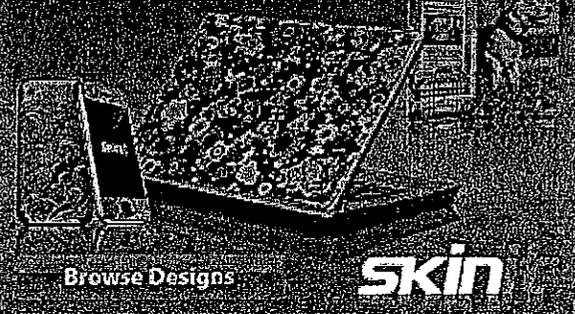
"We want to improve social skills among people who tend to be socially isolated," said Marc Lazar, Aspiritech's autism specialist. For many of them, software testing is not going to be their lifelong career, Lazar said, "but while they're here they're going to improve their job skills and they're going to learn what kind of behavior is expected on the job and they're going to have more to put on their resumes."

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Aspiritech co-founder Moshe Weitzberg works with his son, Oran, on a new program. The job description fits many autistic adults because traits that make great software testers -- intense focus, comfort with repetition, memory for detail -- also happen to be characteristics of autism. / AP/M. SPENCER GREEN

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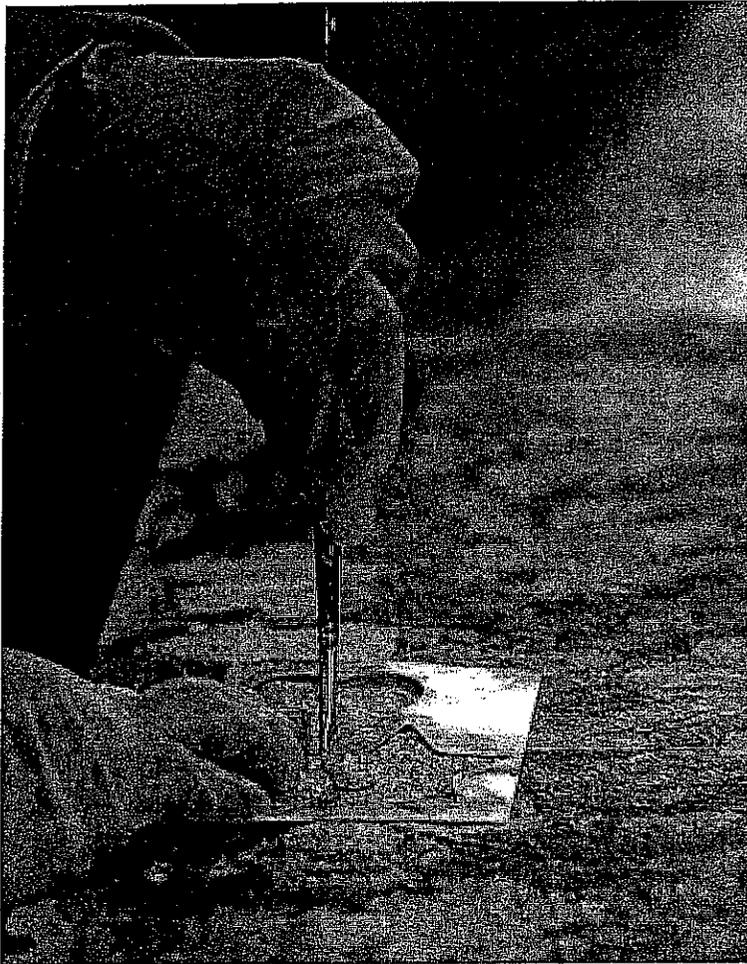
Oregonians with disabilities file class action suit against the governor, state officials

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Michelle Cole, The Oregonian

By



Doug Beghtel/The Oregonian

Project Grow provides a program for developmentally disabled adults as an alternative to traditional piece work. This 2009 photo featured a project combining art and framing.

The United Cerebral Palsy Association of Oregon and Southwest Washington along with eight individuals representing thousands of Oregonians with intellectual or physical disabilities filed a class action lawsuit Wednesday against Gov. John Kitzhaber and top managers at the Department of Human Services.

Advocates hope the lawsuit, filed in U.S. District Court in Portland, will set a national precedent and end the practice of having people with disabilities to spend their days in "sheltered workshops," where they complete repetitive or rote tasks for a sub-minimum wage and without the opportunity for training or advancement.

At any given time, according to the lawsuit, more than 2,300 Oregonians are "stuck in long-term, dead-end, facility based sheltered workshops that offer virtually no interaction with non-disabled peers."

This group of workers includes 48-year-old Paula Lane, who has an intellectual disability, autism and an anxiety disorder. In March 2000, Lane began working at a sheltered workshop in Beaverton where, according to the lawsuit, she spends her

time working on an assembly line in a large room with more than 100 others. Her current tasks include putting parts into boxes, folding bags, packaging gloves and putting bits into slots in a tool holder.

Attachment "H"

"The worksite is segregated, crowded and distracting," the lawsuit claims. Between February 2010 and March 2011, the highest amount Lane earned was \$53.66 for 81 hours in September 2010. The lowest was \$26.82 for 66 hours in March 2010, or approximately 40 cents an hour.

Lane has received high marks for her work, according to papers filed in court, and she has repeatedly asked the state's vocational agency for help finding an outside job. She likes to spend money on pizza parties and had wanted to attend a country music concert, however lawyers note that she "cannot afford to participate in as many community activities."

"Ms. Lane believes she can work competitively and would like the opportunity to do so."

The lawsuit argues that confining people in segregated workshops violates the federal Americans with Disabilities Act and the Rehabilitation Act.

The state of Oregon currently spends \$30 million a year on sheltered workshops for people with disabilities. Over time it would be much cheaper for taxpayers and better for individuals for the state to fund programs that help people with disabilities work in jobs that pay minimum wage or better, said Bob Joondeph, executive director of **Disability Rights Oregon** and an attorney for the plaintiffs.

Last August, advocates sent a letter to Human Services director Erinn Kelley-Siel asking that the state take steps to help people with disabilities find and keep real jobs. On Tuesday, The Oregonian requested a copy of the response under the state's public records law. Human Services spokesman Gene Evans said he could not comment.

Advocates tried to "negotiate a way to avoid filing the case," Joondeph said, "but we were not successful."

--Michelle Cole

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Lawsuit challenges "sheltered workshops" for Oregon's disabled

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By Teresa Carson

PORTLAND, Ore (Reuters) - Thousands of disabled Oregonians are stuck segregated in dead-end jobs at "sheltered workshops," in violation of federal law, because of failed state programs that should help them find mainstream employment, according to a landmark lawsuit filed on Wednesday.

Sheltered workshops, sometimes called "work-activity programs," are facilities funded by state and local agencies and nonprofit groups around the country that provide jobs to disabled people performing basic, unskilled labor such as packaging or simple assembly tasks.

Workers at these facilities are typically paid less than minimum wage, according to U.S. labor standards for piece work.

While intended as stepping stones to jobs in the competitive labor market, sheltered workshops have drawn fire from critics who say too many disabled people are being segregated and exploited by them. Those critics also say sheltered jobs tend to perpetuate a stereotype that disabled individuals are incapable of succeeding at real work.

Wednesday's class-action case, brought on behalf of the Oregon chapter of the Cerebral Palsy Association and eight individuals with intellectual and developmental disabilities, is the first of its kind in any state, said Michael Bailey, president of the National Disability Rights Network.

The federal court suit was filed in Portland, he said, because Oregon once led the nation in providing vocational training services that helped integrate developmentally disabled workers into actual community-based jobs earning minimum wage or better.

But since the mid-1990s, the lawsuit said, "Oregon has reversed course, increasing its reliance on segregated workshops while simultaneously decreasing its development and use of supported employment services."

The plaintiff class the lawsuit seeks to encompass consists of several thousand individuals with various mental and physical disabilities who are qualified for integrated employment or programs to move them into mainstream jobs.

Currently, more than 2,300 disabled people are segregated in sheltered workshops in Oregon at any one time, most of them "stuck in long-term, dead-end" facilities "that offer virtually no interaction with non-disabled peers, that do not provide any real pathway to integrated employment and that provide compensation that is well below minimum wage," the suit says.

In 1988, about half those people were receiving state support in making the transition to mainstream work environments that pay competitive wages, the suit says. By 2010, that number had dropped to less than a quarter.

"We filed this lawsuit in Oregon because they know how to do it and have done it before," Bailey told Reuters. "Oregon has a history of doing this right."

The suit says Oregon's "over-reliance on sheltered workshops and its failure to timely develop and adequately fund integrated employment services" violates protections against discrimination under the federal Americans with Disabilities Act and the Rehabilitation Act.

The Oregon Department of Justice issued a statement saying the state was working "to improve its services to the developmentally disabled, including assistance with employment opportunities for the disabled in the broader community."

It said the latest effort involved a "stakeholder planning process" scheduled to commence on Friday, and that both the United Cerebral Palsy Association and Disability Rights Oregon, whose lawyers filed the suit, had been invited to participate.

The lawsuit comes a year after the National Disability Rights Network published a scathing critique of sheltered workshops, saying they "have replaced institutions in many states as the new warehousing system and are the new favored locations where people with disabilities are sent to occupy their days."

"Segregated and sheltered work," the report said, "keeps people with disabilities in the shadows."

Both the report and the lawsuit cited studies finding that the cost of sheltered workshops runs as much as three times the expense of providing employment support services.

In making the case that such facilities are largely outdated, Bailey cited the example of his own 23-year-old daughter, Eleanor, who has Down Syndrome and is employed at a Portland-area grocery store, thanks in part to help from a strong advocate who guided her into a job there.

(Writing by Steve Gorman; Editing by Peter Bohan)