HIGH IMPACT MISSION-BASED CONSULTING
Allan I. Bergman
Lisa A. Mills, PhD

NATIONAL LANDSCAPE IMPACTING STATES' AND COUNTIES' PROVISION OF EMPLOYMENT AND DAY SERVICES TO INDIVIDUALS WITH DISABLITIES

PREPARED FOR THE OHIO DEPARTMENT OF DEVELOPMENTAL DISABILITIES' PUBLIC FORUMS ON EMPLOYMENT FIRST FUNDING REDESIGN

PURPOSE: The purpose of this document is to summarize recent developments in legislation, regulation, litigation and policy that is impacting how states, counties and other public entities provide employment and day services to individuals with disabilities. This document is current as of July 17, 2014.

BACKGROUND

During the past twenty years, trends in federal legislation, regulation, litigation and state policy-making have been creating a new environment with different expectations and rules for the provision of employment and day services for people with disabilities. At the same time, the general public is becoming more aware of the issues as local and national media are covering this topic more than in the past.

The issue that has received the most media attention is the payment of less than minimum wage to people with significant disabilities. Although this practice is legal under Section 14(c) of the Fair Labor Standards Act, enacted in 1938, much of the recent public discourse has been around the need for reform or phase out of this law that currently impacts about 400,000 individuals with disabilities.

Within the federal government, the focus has been on addressing segregation and congregation of individuals with disabilities in the employment and day service models and programs that are typically used. There has been an increased focus on supporting people with disabilities in jobs in integrated community settings that pay minimum or prevailing wages and offer opportunities for career advancement.

It's also important to note that Congress is becoming more focused on strategies for improving the integrated, gainful employment of people with disabilities, and Members of Congress are becoming more educated on the issues (costs, research data and best practices) related to the provision of publicly funded employment and day services.

LAWS / COURT CASES / ENFORCEMENT / LITIGATION

Olmstead v. L.C. – 1999

The Supreme Court's 1999 decision in *Olmstead v. L.C.*(Lois Curtis) affirms Title II of the ADA and prohibits unnecessary segregation of people with disabilities and requires that people with disabilities receive services in the "most integrated setting" appropriate to their needs. The Olmstead case has driven the movement of people with disabilities out of institutions and into community-based living situations. The emphasis is now shifting to include the expectation that employment and day services also be delivered in the most integrated setting where a person's needs can be met.

The ADA "integration mandate" is administered by the Civil Rights Division of the U.S. Department of Justice and states: "A public entity shall administer services, programs and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities." (28CFR section 35.130(D))

Federal Administration Efforts around Olmstead Enforcement – 2009-2014

In 2009, the tenth anniversary of the Olmstead decision, the Obama administration committed to a federal focus on enforcing the ruling. This has led to efforts by the US Departments of Justice, Health and Human Services, Housing and Urban Development, Labor, and others.[1]

US Department of Justice Efforts

In July of 2011, the US Department of Justice issued a Statement and technical assistance guide detailing public entities (e.g. states; counties; school districts) obligations with regard to the integration mandate in Title II of the Americans with Disabilities Act and the Olmstead decision.[2] In this Statement, the US Department of Justice explained the applicability of the integration mandate to publicly funded employment and day services, saying:

"Segregated settings include, but are not limited to…congregate settings populated exclusively or primarily with individuals with disabilities [and] settings that provide for daytime activities primarily with other individuals with disabilities." States are required to have "a comprehensive, effectively working Olmstead plan [which] must do more than provide vague assurances of future integrated options or describe the entity's general history of increased funding for community services and decreased institutional populations. Instead, it must…contain concrete and reliable commitments to expand integrated opportunities. The plan must have specific and reasonable timeframes and measurable goals for which the public entity may be held accountable, and there must be funding to support the plan, which may come from reallocating existing service dollars. The plan should include commitments for each

[1] http://www.whitehouse.gov/the-press-office/2012/06/22/anniversary-olmstead-obama-administration-reaffirms-commitment-assist-am
[2] http://www.ada.gov/olmstead/q&a_olmstead.htm

group of persons who are unnecessarily segregated, such as individuals residing in facilities for individuals with developmental disabilities, psychiatric hospitals, nursing homes and board and care homes, **or individuals spending their days in sheltered workshops or segregated day programs.** To be effective, the plan must have demonstrated success in actually moving individuals to integrated settings in accordance with the plan." [Emphasis added]

The Statement also addressed choice and put more emphasis on public entities positively promoting integrated services and proactively addressing the concerns or hesitations of individuals with disabilities and their guardians in order to ensure the use of integrated services, saying:

"Individuals must be provided the opportunity to make an informed decision. Individuals who have been…segregated have often been repeatedly told that they are not capable of [receiving services in the community] and have been given very little information, if any, about how they could successfully [receive services] in integrated settings. As a result, individuals' and their families' initial response when offered integrated options may be reluctance or hesitancy. Public entities must take affirmative steps…**to ensure that individuals have an opportunity to make an "informed choice".** Such steps include providing information about the benefits of integrated settings; facilitating visits or other experiences in such settings; and offering opportunities to meet with other individuals with disabilities who are living, working and receiving services in integrated settings, with their families, and with community providers. Public entities also must make reasonable efforts to identify and addresses any concerns or objections raised by the individual or another relevant decision-maker."

The Statement also clarified the range of ways a public entity could be out of compliance with the ADA's integration mandate, saying:

"A public entity may violate the ADA's integration mandate when it: (1) directly or indirectly operates facilities and or/programs that segregate individuals with disabilities; (2) finances the segregation of individuals with disabilities in private facilities; and/or (3) through its planning, service system design, funding choices, or service implementation practices, promotes or relies upon the segregation of individuals with disabilities in private facilities or programs."

As of late 2012, in an effort to continue enforcement of the ADA and Olmstead, the Department of Justice (DOJ) had been involved in more than 40 Olmstead matters in 25 states. Recent examples include settlement agreements, litigation, and letters of findings in states such as Virginia, Oregon and Rhode Island.

Settlement Agreement between U.S. Department of Justice (DOJ) and Virginia – 2012

In January 2012, the Commonwealth of Virginia and the DOJ negotiated a settlement agreement regarding claims that Virginia failed to serve individuals with intellectual/ developmental disabilities (I/DD) in the most integrated settings appropriate, in violation of the Americans with Disabilities Act (ADA) and the Supreme Court's Olmstead decision. The agreement confirms that the priority service option should be individual supported employment in integrated work settings. The Agreement

requires the Commonwealth to develop and implement an "Employment First" policy to prioritize and expand meaningful work opportunities for individuals with developmental disabilities.[3]

Oregon Lawsuit (Lane v. Kitzhaber) and US Department of Justice Involvement

On January 25, 2012 the Oregon designated protection and advocacy agency for people with disabilities (Disability Rights Oregon) filed a lawsuit in federal court on behalf of eight self-advocates seeking integrated employment and asserting that individuals with disabilities are unnecessarily segregated in sheltered workshops and do not have the opportunity to work and receive employment services in integrated settings.[4] The case has since been certified as a class action.

Oregon state attorneys petitioned to have the case dismissed, saying the integration mandate does not apply to employment services. In May 2012, the federal court hearing the case ruled against the state of Oregon, asserting that the Olmstead integration mandate applies to employment, as well as housing. In March 2013, the US Department of Justice joined as a plaintiff in the lawsuit. The DOJ conducted its own investigation and concluded that Oregon has unnecessarily segregated people with intellectual and developmental disabilities in "sheltered workshops."[5]

In April 2013, the Governor of Oregon issued an Executive Order[6] addressing the state's plan for transforming employment services for individuals with intellectual and developmental disabilities, "including a significant reduction over time in state support of sheltered work and an increased investment in supported employment services." The order sets a presumption that all individuals served by the Office of Developmental Disability Services (ODDS) and the Office of Vocational Rehabilitation Services (OVRS) are capable of working in integrated settings. The order establishes a policy of no new entrants to facility-based prevocational services as of July 1, 2015. By July 1, 2022, ODDS and OVRS are expected to provide community-based employment services to at least 2,000 people. Targets have been set to move individuals into community employment—50 in 2014, increasing to an additional 275 per year by 2017.

The lawsuit has not yet been settled.

Department of Justice's Rhode Island Investigation and Settlement - 2014

On January 6, 2014, the US DOJ issued a Letter of Findings on its investigation of the state of Rhode Island's system of providing employment, vocational, and day services to individuals with intellectual and developmental disabilities. DOJ found that Rhode Island did not comply with the Americans with Disabilities Act (ADA) and the Olmstead ruling requirements that services be provided in the most integrated setting appropriate to the needs of people with disabilities. Specifically, Rhode Island failed to provide opportunities and supports to individuals in sheltered workshops and facility-based day programs to receive services in integrated settings and to work in integrated, community employment.

[3] http://www.ada.gov/olmstead/documents/virginia_settlement.pdf
[4] http://www.droregon.org/results/results-documents/Lane%20v.%20Kitzhaber-Fact%20Sheet.pdf/view
[5] http://www.ada.gov/olmstead/documents/oregon_findings_letter.doc
[6] http://www.oregon.gov/gov/docs/executive_orders/eo_13-04.pdf

The US DOJ's findings included[7]:

- Rhode Island's sheltered workshops and facility-based day programs are segregated settings. They function like most institutional settings, for reasons including isolation from non-disabled peers, the nature of the settings, and lengthy placements.
- Few individuals in Rhode Island with I/DD can access services that would enable them to work or participate in activities in the community. Most are served in sheltered workshops and facility-based day programs. This constitutes an over-reliance on segregated settings, and a violation of civil rights.
- Many people in Rhode Island's sheltered workshops and facility-based day programs could be served in integrated work and day settings. DOJ's expert found "that very few, if any, of the individuals that she observed in sheltered workshops and day programs could not work in competitive employment."
- The state lacks the capacity to provide services in community settings for all people who are interested in them. Service recipients are not receiving information about their options, and there is a lack of resources, including job coaches, job developers, behavioral supports, and transportation. Individuals with the most severe disabilities have been screened out of supported employment and directed to day services, even if they want to work.
- Students with I/DD transitioning out of school are not being presented with community-based alternatives, and are receiving very limited transition services—this puts them at risk of placement in segregated settings.
- DOJ found that Rhode Island could redirect the funds that support facility-based day and employment programs to provide transition, employment, and day services in integrated settings.

In early April 2014, a settlement was reached and a Consent Decree between the state of Rhode Island and the U.S. Department of Justice (DOJ) was released.[8] This court-approved agreement between the state and the US DOJ applies to individuals in facility-based sheltered workshops and day programs, as well as transition-aged youth. Although the Consent Decree is not legally binding on other states, it is an indication of what the US DOJ believes all states must do to address over-reliance on sheltered workshops and facility-based day services and to ensure the provision of publicly funded employment and day services in the most integrated setting.

Important Features of the Consent Decree:

- The central issue is increasing integration, with the goal of making sure that individuals with disabilities have the same access to activities (employment, leisure, and daily life) as their non-disabled peers.
- Over the next ten years, many people served in facility-based programs (both prevocational and day services) in Rhode Island are expected to move into community-based services, mainly supported employment and integrated day services.
- The state intends to fund this increase in community-based services by reallocating resources currently expended on sheltered workshop programs and segregated day programs, as individuals with disabilities transition out of these service models.

[7] http://www.ada.gov/olmstead/documents/ri_lof.pdf
[8] http://www.ada.gov/olmstead/documents/ri-olmstead-statewide-agreement.pdf

- The Consent Decree establishes that, in Rhode Island, people in supported employment are also entitled to community-based integrated day services as a complement or "wrap-around" to that employment.
- The Consent Decree also establishes a 40-hour week as the norm. In Rhode Island, it appears that individuals are entitled to integrated services for up to 40 hours per week. The goal is to achieve an average of 20 hours per week of supported employment across all individuals served.
- Individuals can seek a variance to stay in facility-based services but only if they try integrated employment services first, including a community-based supported employment assessment, work incentives benefits counseling and a trial work experience in the community.

Center for Medicare and Medicaid Services (CMS)

The Centers for Medicare and Medicaid Services (CMS) administer the federal-state Medicaid program and addresses sections of Medicaid law under which states can use federal matching funds to pay for home and community-based services (HCBS) either through a variety of waivers or State Plan services. These services include day habilitation, pre-vocational services, and supported employment among other services

Guidance on Employment for Individuals in Medicaid Home and Community-Based Waiver Programs – September 2011

In September 2011, CMS released new guidance regarding employment services in HCBS waiver programs.[9] The guidance "highlights the opportunities available to use waiver supports to increase employment opportunities for individuals with disabilities within current policy" and "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." CMS updated its core service definitions and added a new service – Career Planning – that states could choose to include in their waivers. The most notable changes were made to the core service definition for prevocational services. In the cover memo, CMS emphasized 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." Since September 2011, states renewing or creating HCBS waivers have been required to follow this guidance if their waivers include prevocational services.

Final Rule on Home and Community-Based Services – January 2014

In January 2014, CMS released the Final Rule on Home and Community-Based Services (HCBS), effective 3/17/14. This came after a five year rule-making process that included two public comment periods through which CMS received over 2,000 comments on the proposed rules. The intent is to ensure that individuals receiving HCBS under Medicaid "have full access to the benefits of community living and the opportunity to receive services in the most integrated setting appropriate."[10] The central principle is that people with disabilities should have the same access to the community as

[9] http://downloads.cms.gov/cmsgov/archived-downloads/CMCSBulletins/downloads/CIB-9-16-11.pdf
[10] http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Long-Term-Services-and-Supports/Home-and-Community-Based-Services/Home-and-Community-Based-Services.html

individuals without disabilities. The use of Medicaid HCBS funds for services in settings not considered "integrated" are prohibited under the new rule. The rule also establishes new requirements for person-centered planning, documentation of informed choice and the provision of independent, conflict of interest free case management (with potential exceptions for very small communities).

In this rule, settings are home and community-based if they allow individuals independence, control of daily routines, privacy, and community integration.[11] Specifically, the CMS Final Rule calls out five required qualities of HCBS settings that states will have to meet in order to quality for HCBS funding:

1) "The setting is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS;
2) The setting is selected by the individual from among setting options including non-disability specific settings and an option for a private unit in a residential setting. The setting options are identified and documented in the person-centered service plan and are based on the individual's needs, preferences, and, for residential settings, resources available for room and board;
3) Ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint;
4) Optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact; and
5) Facilitates individual choice regarding services and supports and who provides them."

Settings that are presumed not to be home and community-based will be subject to additional scrutiny. They are: settings in facilities providing inpatient treatment, settings on grounds of or next to a public institution, and "settings with the effect of isolating individuals from the broader community of individuals not receiving Medicaid HCBS."[12] In a supplementary guidance document[13], CMS explains that "settings that isolate people receiving HCBS from the broader community may have any of the following characteristics:

• The setting is designed to provide people with disabilities multiple types of services and activities on-site.

• People in the setting have limited, if any, interaction with the broader community.

• Settings that use/authorize interventions/restrictions that are used in institutional settings or are deemed unacceptable in Medicaid institutional settings (e.g. seclusion).

[11] http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Long-Term-Services-and-Supports/Home-and-Community-Based-Services/Downloads/Final-Rule-Slides-01292014.pdf
[12] Ibid.
[13] http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Long-Term-Services-and-Supports/Home-and-Community-Based-Services/Downloads/Settings-that-isolate.pdf

Further clarification about how states should apply the rule to non-residential settings is expected from CMS in the near future in the form of sub-regulatory guidance. States have the option to eliminate settings they conclude do not meet the standards in the new rule or they can propose a plan to bring these settings into compliance with the new rule. States may take up to five years to transition.

CMS imposes Special Terms and Conditions on New York State's Waiver Renewal:

In April of 2013, after months of negotiations between the State of New York and CMS regarding the lack of integrated employment services and the huge costs of its 1915 (c) HCBS waiver for individuals with developmental disabilities, CMS and New York agreed to a set of special terms and conditions for the continued receipt of federal matching funds. The document states that "the receipt of expenditure authority for transformation for 4/1/13 – 3/31/14 is contingent on the state's compliance and CMS' receipt of the following;

- Provide the number of people receiving supported employment services and in competitive employment for the period of May 1, 2012 – April 30, 2013;
- Increase that number by 700 people with no exceptions for attrition, and
- Increase that number by 250 persons by October 1, 2013
- End new admissions to sheltered workshops as of July 1, 2013.and reporting quarterly enrollment in sheltered workshops;
- Submitting a final plan by January 1, 2014, to CMS that includes a timeline for closing sheltered workshops and transformation to competitive employment;
- Develop a detailed work plan for the number of students exiting the education system moving directly into competitive employment; and,
- The plan must include a timeline for closing sheltered workshops, and a description of the collaborative work with the New York educational system for training/education to key stakeholders on the availability and importance of competitive employment.

U.S. Department of Education

Individuals with Disabilities Education Act (IDEA) Transition Amendments:

The purpose of the IDEA is "to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living." (20 U.S.C. 1400(d)(1)(A).

In 2004, the U.S. Congress amended IDEA and its transition sections as follows:

"The term 'transition services' means a coordinated set of activity for a child with a disability that:

- Is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to post-school activities, including…postsecondary education,

vocational education, integrated employment (including supported employment) continuing and adult education, adult services, independent living, or community participation;

- Is based on the individual child's needs, taking into account the child's strengths, preferences and interests; and,
- Includes instruction, related services, community experiences, the development of employment and other post-school adult living objectives, and, if appropriate, acquisition of daily living and functional vocational evaluation."

In January 2012, in response to a letter of inquiry from Wisconsin's Protection & Advocacy agency (Disability Rights Wisconsin) regarding the application of the "least restrictive environment" (LRE) to transition IEPs, Melody Musgrove, Ed.D, Director of the Office of Special Education Programs, responded that work placement can be an appropriate transition service and, if determined appropriate by the team, such placements must be included in the IEP. Her letter continued by stating that all placements, including those related to transition services (including work or employment training placements) must be in the least restrictive environment as determined by the IEP team.

Rehabilitation Act (Federal law governing provision of vocational rehabilitation services):

The 1992 Congressional amendments to the Rehabilitation Act of 1973 laid the groundwork for changed expectations for individuals with significant disabilities by eliminating a historical requirement that an individual applying for state V.R. services had to be determined "feasible" to engage in substantial gainful activity (SGA) after the provision of rehabilitation services. This criterion was replaced with a statutory "presumption of employability" in integrated settings for all individuals with disabilities, including individuals with the most severe disabilities.

The law and subsequent regulations required that V.R. agencies presume every applicant can benefit from V.R. services and successfully achieve employment. An applicant now can only be denied services by the state V.R. agency if the agency can demonstrate "clear and convincing" evidence that an individual is incapable of benefiting from VR services due to the severity of the individual's disability. The regulations require the use of multiple work trials over a sufficient period of time and with appropriate supports so that an individual's ability to benefit has maximum chance to be recognized.

In 2001, RSA issued a regulation clarifying that successful employment outcomes are those in the integrated labor market, including supported and self-employment, and consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests and informed choice [34CFR361.5(b)1]. Within this regulation, RSA stated that placements in sheltered workshops or other segregated settings would no longer be counted as a successful placement by state V.R. agencies.

Further emphasis on the presumption of employment was recently provided by the Rehabilitation Services Administration (RSA) in Technical Assistance Circular (TAC) 14-03 on May 6, 2014. This Circular addresses transition-age youth with disabilities including those with the most significant disabilities. The TAC states: " 'Clear and convincing evidence' is defined, in part, as the highest

standard in our civil system of law whereby V.R. agencies must have a high degree of certainty before concluding that an individuals is incapable of benefiting from services and successfully achieving integrated employment. The term 'clear' means unequivocal."

State Actions to Avoid US Department of Justice Involvement or Problems with Continued CMS Approval to Operate Medicaid Home and Community-Based Services

Massachusetts Blueprint – November 2013

The November 2013 "Blueprint for Success: Employing Individuals with Intellectual Disabilities in Massachusetts" (Massachusetts Blueprint) was the result of a collaborative process initiated by Commissioner of the Massachusetts Department of Developmental Services with the Association of Developmental Disabilities Providers, and the Arc of Massachusetts. The Plan phases out the use of prevocational services in sheltered workshops and replaces these services with supported employment and integrated day services provided in community settings. It is described as a plan to re-design day and employment services to better respond to the needs of individuals with I/DD and their families, as well as to expand the principles of the Olmstead decision to day and employment settings.[14]

As part of the plan, new referrals to workshops were stopped as of 1/1/14. Everyone currently in workshops will be transitioned "into individual supported employment, group supported employment, and/or Community-Based Day Services (CBDS) programs. The plan makes a commitment to no reduction in service hours to individuals and their families. The plan includes extensive technical assistance for service providers.[15]

In July of 2013, Massachusetts implemented new rates to incentivize integrated employment services and outcomes. The Blueprint identifies the need for an additional $26.7 million over fiscal years 2015-2018, to successfully complete the transition the 2,600 individuals out of the workshops and into community-based employment and day services. With federal match funding, the net cost to the state of Massachusetts would be $13 million over the four years. The recently adopted Massachusetts budget for FY 2015 includes $ 3 million of new state funding to begin the first year of the Blueprint.

Maryland State Use Program Ceases Contracts with Sheltered Workshops – July 2014

In light of the changing nature of what constitutes appropriate and acceptable employment services for people with disabilities, Maryland Works is phasing out assignment of Employment Works Program (State Use) contracts for completion in sheltered workshops. Any new contract which will be completed in a sheltered workshop will have an end-date of June 30, 2015; and all current EWP contracts tied to sheltered workshops will be discontinued on June 30, 2015.

[14] Massachusetts Blueprint, November 2013, p. 3. http://www.mass.gov/eohhs/docs/dmr/blueprint-for-success.pdf
[15] Massachusetts Blueprint, November 2013.

The Maryland agency said that events of the past few years have given them greater clarity as to what is and is not acceptable in services provided for people with disabilities. According to their executive director, "It is abundantly clear that, when it comes to employment related services, sheltered workshop services are no longer acceptable as anything other than a last resort; and, even that use of sheltered workshop services is highly questionable and out of favor." The Maryland Works' board of directors has set a deadline of June 30, 2015 for discontinuation of EWP contracts being assigned for completion in sheltered workshops. That said, there are a wide range of options available to EWP provider vendors for transition out of sheltered workshop services and into other models of service which meet the current and emerging standards for employment services for people with disabilities. A couple of examples include conversion of a sheltered workshop to a free standing employee-owned company, or forming a partnership with an individual-with-disability-owned business. Maryland Works will schedule work sessions to provide technical assistance to EWP provider-vendors on the options available to them in phasing out their sheltered workshops.

Actions by President Obama and Congress

President Obama's Executive Order – February 2014

In February 2014, President Obama issued an Executive Order raising the minimum wage to $10.10 for federal service and concession contract workers. This applies to new contracts and replacements for expiring contracts as of January 1, 2015. The White House has made it clear that workers with disabilities working under service or concessions contracts with the federal government will be covered by the same $10.10 per hour minimum wage protections regardless of their time-studied productivity.[16]

The Workforce Innovation and Opportunity Act – July, 2014

This bipartisan-bicameral negotiated bill passed Congress and is on the President's desk awaiting his signature.[17] The bill reauthorizes the national workforce investment system and the vocational rehabilitation program. Within the bill are significant changes for students with disabilities transitioning to adulthood. Section 511 is specifically intended to reduce the number of transition-age youth entering sheltered workshops and working for sub-minimum wage. The emphasis is on moving young people with significant disabilities into integrated community employment.

The bill prohibits individuals with disabilities age 24 and younger from working in jobs paying less than the federal minimum of $7.25 per hour unless they first try vocational rehabilitation services, among other requirements. There are exceptions but only for those already working for subminimum wage and in cases where individuals may be deemed ineligible for vocational rehabilitation services. Beyond limiting who can work for less than minimum wage, the legislation also mandates that state vocational rehabilitation agencies work with schools to provide "pre-employment transition services" to all students with disabilities. The bill also requires state vocational rehabilitation agencies to dedicate at least 15 percent of their federal funding to help those with disabilities transition from school to work under the measure.

[16] White House press release, "Fact Sheet – Opportunity for All: Rewarding Hard Work," 2/12/14.

[17] http://www.ed.gov/edblogs/ovae/2014/07/14/workforce-innovation-and-opportunity-act-wioa-goes-to-president-for-signature/

U.S. Senator Tom Harkin, D-Iowa, stated "It will help prepare a new generation of young people with disabilities to prepare for, to obtain and succeed in competitive, integrated employment, not substandard, subminimum wage, dead-end jobs, but jobs in which people with disabilities can learn and grow to their maximum potential. Basically, we're going to give persons with disabilities the same supports and experiences that everyone else expects and receives which they haven't had in the past."

U.S. Congressman Pete Sessions, R-Texas, also heralded the legislation. "As the father of a young man with Down syndrome, I understand the importance of providing individuals with disabilities opportunities in the workplace. The Workforce Innovation and Opportunity Act will advance employment options for these individuals and give them the opportunity to receive the training necessary to succeed in today's economy. I proudly joined my colleagues in the House in supporting this job-creating legislation and will continue to support the development and advancement of individuals with disabilities."

The bill passed Congress with overwhelming support and President Obama has signaled his strong support and intent to sign the bill into law in the very near future.

TRENDS

Concerns about sheltered workshops, facility-based prevocational services and the use of sub-minimum wage are increasing.[18] The emphasis on "Employment First"—that is, integrated employment as the first and preferred option for all people with disabilities – is gaining significant momentum nationally. The U.S. Department of Labor – Office of Disability Employment Policy has established a mentoring program to support Employment First systems change in states across the country.

- Thirty-two states have an official Employment First policy, either in the form of legislation, policy directive, or Executive Order.[19]

- Twelve states have Employment First efforts and initiatives underway, but no official Employment First policies yet. [20]

Prevocational services have been re-defined in the federal and state language as short-term, with an end goal of employment in the community at or above minimum wage.

Some of the proposals to reallocate funding to support integrated community employment suggest diverting funding from other non-work programs.

[18] The National Council on Disabilities' report "Subminimum Wage and Supported Employment" (Aug. 2012) and the National Disability Rights Network's "Beyond Segregated and Exploited" (April 2012) both advocated for the elimination of 14(c) and increased integrated community employment.
[19] http://www.apse.org/employment-first/map/
[20] Ibid.

LINKS TO KEY PRIMARY SOURCES

Text of the April 2014 Consent Decree between Rhode Island and the Department of Justice:
http://www.ada.gov/olmstead/documents/ri-olmstead-statewide-agreement.pdf

Information on Department of Justice Olmstead enforcement actions:
www.ada.gov/olmstead

Centers for Medicare and Medicaid Services resources on the new Home and Community Based Settings Rule (includes links to the final regulation, fact sheets, and the tool kit for residential settings):
http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Long-Term-Services-and-Supports/Home-and-Community-Based-Services/Home-and-Community-Based-Services.html