

December 2014



Stalled on the Road to Olmstead Compliance:

Despite the best efforts of some providers and Employment-First organizations, Iowa is not moving at a reasonable pace towards supporting integrated community-based employment for individuals with disabilities.

Disability Rights IOWA

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Disability Rights Iowa (DRI) is the Congressionally-mandated protection and advocacy system for Iowans with disabilities, including individuals with mental illness. DRI's mission is to protect the human and legal rights of Iowans with disabilities and/or mental illness. DRI, as well as the other 56 protection and advocacy systems throughout the country, have the authority under federal law to investigate incidents of abuse and neglect of individuals with disabilities and to pursue legal, administrative, and other approaches to ensure the protection of individuals with disabilities. Protection and advocacy agencies are authorized to engage in a wide variety of activities to protect individuals with disabilities and/or mental illness, including monitoring facilities, conducting investigations, issuing public reports, engaging in litigation, administrative hearings and other dispute resolution activities, and educating policymakers. DRI's work to prepare, write, and distribute this report is funded by the Social Security Administration under the Protection and Advocacy for Beneficiaries of Social Security (PABSS) grant.

Letter from Executive Director of Disability Rights Iowa:

December 13, 2014

For better or for worse, we are defined by our work. How many conversations often begin with “What do you do for a living?” It is a simple question that reveals a centerpiece of personal identity. Employment and the dignity of earning a wage is a natural and important life experience. To work is to be a full and undeniable participant in American life and to create a personal investment of time and money towards lasting personal security and collective success. For these reasons, the employment of people with disabilities has been, and will remain a central issue of disability rights, and a complex, occasionally contentious area of disability policy.

When I became the director of Disability Rights Iowa in 2012, I realized that DRI needed a better understanding of the employment landscape for Iowans with disabilities so I created an Employment Team of attorneys and advocates to survey the scope of work and day habilitation services for Iowans with disabilities. This comprehensive year-long effort included:

- identifying the 67 providers who were certified by the U.S. Department of Labor to provide work services at subminimum wage levels;
- developing a representative sample of 30 of these providers to visit;
- collecting extensive information about these providers and the individuals they serve through public records requests;
- researching relevant law;
- conducting on site visits to these providers, which included interviews of administrators, staff and service recipients,
- collaborating with organizations and providers who are working on the development of best practices for transforming Iowa’s work and day habilitation services; and,
- conducting follow-up surveys with the providers that we visited to get additional data.

We discovered that many of the individual service recipients we interviewed had realistic job expectations and preferred doing work where they had contacts with individuals without disabilities in the community. We also learned that several of the providers interviewed are already transforming their operations from segregated facility-based models to models that supported integrated competitive employment in the community. We also gained a better understanding of the work of several Iowa organizations, mostly federally funded, who are developing best practices for implementing Supported Employment models.

Despite these good efforts, we realized that the State of Iowa has a long way to go in administering and funding a work and day service system that supports individuals with disabilities who can and want to work in integrated competitive employment settings if they are provided with appropriate services and supports. The Iowa Department of Human Services commonly uses the term “Work Services” to refer, as a whole, to vocational services, including Work Activity/Sheltered Workshop, Prevocational Services, Supported Employment, and Group Employment. Based on DHS’s own figures, 79% of the expenditures for Work Services by the State and counties in 2013 were spent on services provided in settings that were segregated. Overall, 88% of the expenditures by the State and the counties for Work Services and Day Habilitation Services combined are spent on services provided in settings that are primarily segregated from the community. (See chart in Appendix). There is no evidence that the State or the counties are taking significant steps to rebalance these services and promote integrated community-based competitive employment. Therefore, Iowa has violated the Americans with Disabilities Act, the U.S. Supreme Court’s Olmstead decision and other federal laws.

Before issuing our final report, we gave various stakeholders the opportunity to comment on a draft of the report to ensure the accuracy of our information. We are issuing the report today to provide Iowans with an overall picture of the current employment landscape for Iowans with disabilities and to jump-start a discussion of where Iowa needs to go in the next 10 years to promote community inclusion and come into compliance with federal law. We hope that this report will lead to raising the expectations of persons with disabilities, as well as their families, and empowering providers to seek integrated, community-based solutions because many providers share the vision for integrated employment, while ensuring that funding reflects these values.

Our fervent hope is that, within the next ten years, Iowans with disabilities will be able to explain that they are supporting themselves in real jobs at fair wages and doing work driven by their passions and choices when asked “What do you do for a living?” Just as we hope and expect providers, state leaders, and all members of our community to commit themselves to supporting integration and opportunity for all Iowans.

EXECUTIVE SUMMARY

The employment landscape for individuals with disabilities is drastically changing. Over the past several years, the federal government has enacted laws, issued court decisions, and made rules that require States to administer and fund work and day habilitation services in an integrated manner, which promotes the employment of individuals with disabilities in regular business environments alongside workers who do not have disabilities.

To better understand how far the State of Iowa has traveled on the road to integrated employment, the Employment Team at Disability Rights Iowa surveyed various work and day habilitation services for Iowans with disabilities. They visited 30 of the 67¹ Community Rehabilitation Provider facilities that were authorized by the U.S. Department of Labor to pay less than the minimum wage of \$7.25/hour.

As a roadmap, DRI compared the progress in Iowa to the findings by the U.S. Department of Justice in their investigation of the State of Rhode Island's employment, work and day service system. Based on the Rhode Island findings, they considered the following questions as they visited providers in Iowa:

- **Are workers with disabilities physically and socially isolated from peers without disabilities? Are the workshop settings institutional in nature?**
- **Are placements in a workshop long and protracted?**
- **Are there negative consequences suffered as a result of working in these settings?**
- **Is there a systemic failure of state policies and actions resulting in the majority of employment services being delivered in facility-based settings?**

DRI observed that several providers are actively engaged in transitioning their employment services from segregated employment models to integrated Supported Employment to assist individuals in realizing their employment aspirations. However, other providers are still largely dependent on segregated employment services, and hesitant to fully commit to embracing new, community-based standards of service. Specifically, DRI found that:

A. Iowans with disabilities who work in segregated facility-based employment settings are physically and socially isolated, and often work in settings that overtly resemble institutional facilities.

A key element highlighted within the Department of Justice's (DOJ) findings in Rhode Island was that many employment systems felt largely similar to institutions, limiting choice and perpetuating further isolation on an already isolated population. Such observations exist within Iowa as well, with many providers creating restrictive environments which perpetuate an institutional feel. Cut off from non-disabled peers, kept often to the periphery of the community, and offered little diversity in daily tasks, consumers encounter Iowa employment facilities which greatly resemble the overly restrictive environments specifically challenged by the Olmstead decision.

B. Iowans with disabilities work in segregated facility-based settings for durations far in excess of recommendations by the Centers for Medicaid and Medicare.

Prevocational Services are an employment training service offered to people with disabilities, designed to cultivate basic job skills, and then quickly move individuals into community based employment. In Iowa, much like in Rhode Island, Prevocational and Work Activity Services are treated as a destination as opposed to a tool to work towards an employment goal, thus stranding generations of people with disabilities in facility-based, subminimum wage positions. Despite CMS recommendations that Prevocational Services should be time limited, Iowans with disabilities have been involved in Work Activity and Prevocational Services for years on end, an arrangement that cultivates dependence, isolation, and a perpetual state of poverty. Such systemic failings must be addressed if Iowa stakeholders wish to come into alignment with federal expectations.

C. Iowans with disabilities are ultimately harmed by facility-based work settings, while providers are not sufficiently empowered to develop community-based alternatives.

As advocates for people with disabilities, DRI staff entered into this process to gain a clear understanding of employment services in Iowa, and subsequently compare these services in relation to DOJ standards. They found that segregated employment settings at subminimum

wages entrap individuals with disabilities in a system detrimental to their future employment. Almost universally in our consumer discussions, the most attractive elements found within sheltered work were more abundantly found in the community. Per DRI's observations, facilities did little to actively build skills, move individuals forward, or shake the illusion of security such institutions create. Far from respecting choice, such segregated settings violate federal law, impede the natural, community-based development of work skills through trial and error, and instill an unjustified fear of the community and the workplace.

D. The State of Iowa's current service delivery system does not promote providers transitioning from segregated employment services to integrated employment services.

Overall, 88% of Iowa's current expenditures for Work and Day services are spent on services provided in a setting that is primarily segregated from the community.

Overall, 88% of Iowa's current expenditures for Day and Work Services are spent on services provided in a setting that is primarily segregated from the community.² This calculation is based off the percentages of Iowa funds spent in fiscal year 2013 on services provided in facilities: Work Activity/Sheltered Workshop and Prevocational Services (accounting for \$17,817,172 or 46.2%), and Day Habilitation, which is a service typically provided in a facility (accounting for \$15,980,448 or 41.4%). Prevocational Services, Work Activity/Sheltered Workshop, and Day Habilitation (facility-based services) cost \$33,797,620, or 88% of the total \$38,577,364 in expenditures.

In contrast, the state spent \$4,779,744 or 12% of its Day and Work Service expenditures on Group Employment (Enclaves) and Supported Employment, which are considered community-based services.

As we ask providers to more actively engage in the transformation process and develop viable alternatives, we must also empower providers to engage in such a process without risking their financial stability. Creating the expectation for change without providing the tools necessary for

such change would jeopardize the services of thousands of Iowans with disabilities, and impede the very purpose of such an effort.

Therefore, DRI makes the following recommendations:

1. The Iowa Department of Human Services (DHS)/ Iowa Medicaid Enterprises (IME) should:

- a. Develop a multi-year effective Olmstead Plan (10 years), which is intended to move the State of Iowa at a reasonable pace towards administering its Work and Day Service system in an integrated manner. The plan should include a methodology for identifying individuals in segregated facility-based employment settings who can and want to work and receive services in more integrated settings appropriate to their needs. In addition, the Plan should include protocols for i) conducting individualized work assessments of these individuals, ii) identifying their vocational goals, iii) conducting service planning, iv) implementing strategies for achieving goals, iv) keeping data on progress and v) grievance procedures.
- b. Address systemic barriers to transformation faced by providers by improving the rate-setting basis and methodology, means by how services are reimbursed, and other details including increasing the rates for providing Supported Employment Services, as recommended by the Mental Health and Disability Services Employment Redesign Workgroup.
- c. Create and enforce time limitations on Prevocational Services.
- d. Identify, locate and develop wrap-around integrated Day Habilitation Services in the community, rather than facility-based settings.
- e. Collect data on outcomes of services.

2. Iowa Vocational Rehabilitation Services (IVRS) should:

- a. Conduct outreach and training to individuals in segregated facility-based settings about vocational rehabilitation services.
- b. Identify individuals in segregated facility-based settings who can and want to work and, with their consent, refer them to vocational rehabilitation services.

- c. Give priority to individuals who wish to transition from segregated facility-based employment settings to more integrated settings.
- d. Collect data about inquiries, referrals and outcomes for individuals who are working with IVRS to transition from segregated facility-based employment settings.
- e. Create a long-term plan to accommodate the probable influx of individuals who are expected to seek vocational services when the time limits for Prevocational Services have expired.

3. Providers should:

- a. Begin acting now to transition into Supported Employment.
- b. Create a strategic plan for transformation and follow it.
- c. Ensure subminimum wage piece rate and hourly productivity measures and pay are fair and accurate.

4. Schools should:

- a. Begin providing transition services in accordance with the rules in the Workforce Innovations and Opportunities Act (WOIA) as though they were effective today.
- b. Ensure that off-site trainings and experiences are in integrated employment settings, rather than in segregated employment settings.

5. Individuals with Disabilities and their Families should:

- a. Know their rights under the law and take advantage of available services.
- b. Create a culture of expectation to be shared by all members of your support circle.
- c. Reject the notion that segregated facility-based services are an acceptable long-term solution to employment.
- d. Demand a place at the table.

In sum, DRI urges the provider community, DHS/IME, IVRS, and people with disabilities, as well as their families to work together to change the systems of the past, and empower all involved to meet the standards set forth in the Olmstead decision and the Rhode Island findings.

Despite the barriers, the fears, and the very real challenges that come with such a journey, Iowa must move on the road to transformation to not only comply with the law, but also to give

individuals the opportunity to engage in meaningful integrated work. The time is past for allowing the fears of the past to dictate what is possible for thousands of Iowans with disabilities, especially young Iowans who were born after the ADA was passed. We must travel together towards a future for all Iowans in which individuals with and without disabilities have the opportunity to work together.

Mapping the Route: Investigation Methodology

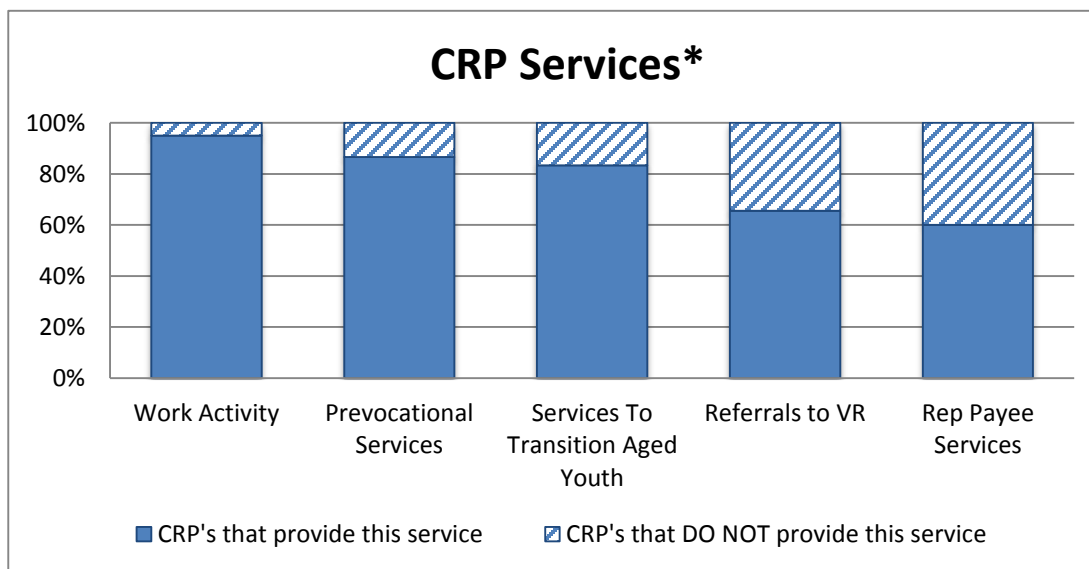
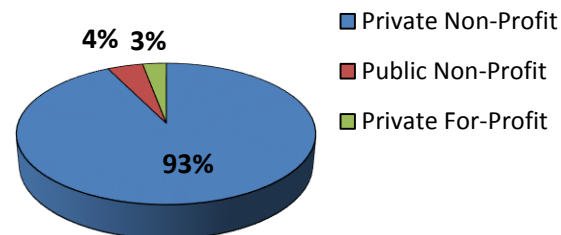
This project was organized in order to provide a representative sample of employment services throughout Iowa. To that purpose, DRI selected thirty 14(c)-certified Community Rehabilitation Providers (CRP's) to visit and interview administrators, staff, and employees with disabilities. The chosen CRP's were located within every region of the state, and varied in size and scope of services. This variety ensured the accuracy of our conclusions, relative to the CRP's in the state, and gave us a panoramic view of employment supports in our state. This report is the result of those provider visits, along with consumer interviews, records and data received from state and federal agencies, and collaborative discussions with multiple professionals in all areas of the disability field.

While beginning our selection process, we made a conscious effort to create a truly representative sample of the various CRP's across Iowa. We compiled 30 providers from across the state that met this expectation of diversity, by focusing on the following 12 factors:

-
1. Geographic location
 2. Number of individuals served by the provider
 3. Average wage of an individual served
 4. Availability of Rep-Payee services
 5. Area population and percentage with a disability
 6. Average household income
 7. Unemployment percentage for the county
 8. Average education levels for the county
 9. Type of businesses and jobs held in the area
 10. Statistical outliers in wages or persons served
 11. Existence and number of branch locations
 12. Organizational status (Public or Private, and Non-Profit or For-Profit)
-

Our site visits were designed to allow for a comprehensive view of each provider's employment services. Our visits balanced both consumer input and experience, with a larger discussion with providers on the various systemic challenges. Both perspectives were essential to fully gauge the nature of work services. We appreciate the time that all individuals interviewed spent speaking with DRI staff. However the visits alone did not make up the entirety of our discovery process. Understanding that employment services are a complex system, we looked to representatives of IVRS and DHS, as well as organizations promoting Supported Employment in Iowa, to give their own perspectives, and discuss ways we all can work better to collaborate during this transitional period. Our findings consolidate this important wealth of information.

Status of CRP's in Iowa

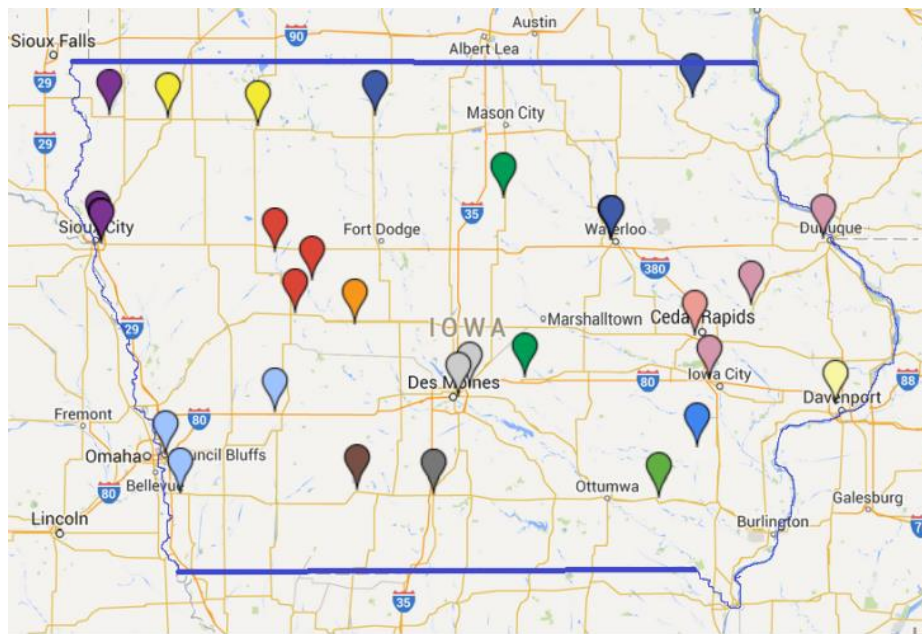


*Data from CRP site interviews and follow up survey responses (2014)

After the completion of the site visits, we followed up with each provider by providing a short supplemental survey. The main purpose of the supplemental survey was to clarify the scope of their Prevocational Services and Work Activity, and enable us to better differentiate the two populations.

It was important to the overall accuracy of this report and to DRI as an organization, that we approached this period of discovery with an open mind and a willingness to fully explore all perspectives of this fundamentally complex and often contentious issue. We believe we have been successful in achieving that approach, and hope this report fully reflects the multifaceted and overlapping factors contributing to areas of concern within the current system.

Map of CRP's Visited:



3

***Various Colors denote different MHDS Redesign Regions**

Rules of the Road: The Law

In order to have a way to measure Iowa's progress on the road to Olmstead compliance in the area of work and day habilitation services, DRI decided to compare Iowa's progress to that of the State of Rhode Island, as assessed by the U.S. DOJ, Civil Rights Division.



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By way of background, the DOJ investigated the State of Rhode Island's system for providing employment, vocational, and day habilitation services to individuals with intellectual and developmental disabilities. The DOJ focused on Rhode Island's provision of such services in segregated day activity service programs, including sheltered workshops and facility-based programs.

The DOJ assessed the State of Rhode Island's compliance with Title II of the ADA, as interpreted by the U.S. Supreme Court in *Olmstead v. L.C.*, which requires that services, programs, and activities provided by public entities, including States, be delivered in the most integrated setting appropriate to the needs of persons with disabilities.

Below are direct quotations from the DOJ's findings letter, dated January 6, 2014, which fully describes the law related to Olmstead compliance in the areas of the State's provision of work and related services:

EXCERPT:

UNITED STATES' TITLE II ADA INVESTIGATION OF EMPLOYMENT, VOCATIONAL, AND DAY SERVICES FOR PERSONS WITH INTELLECTUAL AND DEVELOPMENTAL DISABILITIES IN RHODE ISLAND

Under Title II of the ADA, 42 U.S.C. § 12131 *et seq.*, a public entity must "administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities." 28 C.F.R. § 35.130(d). The "most integrated setting" is one that "enables individuals with disabilities to interact with nondisabled persons to the fullest extent possible[.]" 28 C.F.R. pt. 35, app. B at 673.

....

Title II of the ADA states as follows: "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." *Id.* § 12132. As Congress found, "[i]ntegration is fundamental to the purposes of the ADA. Provision of segregated accommodations and services relegate persons with disabilities to second-class citizen status."

....

In *Olmstead*, the Supreme Court held that **public entities are required to provide community-based services to persons with disabilities when (1) such services are appropriate; (2) the affected persons do not oppose community-based treatment; and (3) community services can be reasonably**

accommodated, taking into account the resources available to the entity and the needs of other persons with disabilities.

Olmstead v. L.C., 527 U.S. 581, 587 (1999). In so holding, the Court explained that "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." *Id.*

at 600. The Court also recognized the harm caused by unnecessary segregation: "confinement in an institution severely diminishes the everyday life activities of individuals, including family relations,⁵ social contacts, work options, economic independence, educational advancement, and cultural enrichment." *Id.* at 601.



Photo: Lois Curtis, surviving plaintiff in the *Olmstead* Decision

The *Olmstead* principles apply to day activity programs, such as segregated sheltered workshops and day programs. In *Lane v. Kitzhaber*, 841 F. Supp. 2d 1199 (D. Or. 2012), persons with I/DD who are in, or who have been referred to, Oregon sheltered workshops sued under Title II of the ADA and *Olmstead*. The *Lane* plaintiffs alleged that the State had failed to provide them with employment and vocational services in the most integrated setting appropriate to their needs—namely, supported employment. *Id.* at 1206.

The Court found that the "broad language and remedial purposes of the ADA" support the conclusion that the integration mandate applies to employment services. *Id.* at 1205. The court declined to find that the application of the Supreme Court's holding in *Olmstead* was limited to residential settings, and instead concluded **"that the risk of institutionalization addressed in [*Olmstead*] includes segregation in the employment setting."** *Id.*

In holding that *Olmstead* applies to employment settings, the court in *Lane* specifically stated that, "[a]lthough the means and settings differ [from the residential context], the end goal is the same, namely to prevent the unjustified institutional isolation of persons with disabilities." *Id.* (internal quotation omitted).

The Supreme Court in Lane found that the Olmstead Principle applies to the employment setting, including vocational services.

The Department of Justice has made clear that **Olmstead principles apply to all the services, programs, and activities of state and local governments, including employment and day services.** The Department has provided guidance stating: "Integrated settings are those that provide individuals with disabilities opportunities to live, work, and receive services in the greater community, like individuals without disabilities.... Segregated settings include, but are not limited to ... settings that provide for daytime activities primarily with other individuals with disabilities."

Other federal agencies have also applied Olmstead principles to employment services. The Centers for Medicare and Medicaid Services (CMS), which oversees Medicaid, has recognized Olmstead's application to non-residential employment and vocational services provided under Medicaid. CMS has announced that States "have obligations pursuant to ... the Supreme Court's Olmstead decision" requiring that **"an individual's plan of care regarding employment services should be constructed in a manner that ... ensures provision of services in the most integrated setting appropriate."** CMS has specifically addressed the applicability of Olmstead to integrated employment and day services provided through the 1115 Waiver Demonstration Program, stating in recent guidance:

All [Managed Long Term Services and Supports ("MLTSS")] programs must be implemented consistent with the Americans with Disabilities Act (ADA) and the Supreme Court's Olmstead v. L.C. decision. Under the law, MLTSS must be delivered in the most integrated fashion, in the most integrated setting, and in a way that offers the greatest opportunities for active community and workforce participation.

Facility-based day activity programs, including sheltered workshops and facility-based day programs, do not provide persons with disabilities the opportunity to interact with non-disabled persons to "the fullest extent possible."

In addition, since January 22, 2001, the Rehabilitation Services Administration has prohibited federal vocational rehabilitation funds from being used for long-term placement of persons with disabilities in "extended employment," meaning sheltered workshops and other segregated settings.

....

Facility-based day activity programs, including sheltered workshops and facility-based day programs, do not provide persons with disabilities the opportunity to interact with non-disabled persons to "the fullest extent possible."

....

Service recipients in facility-based day activity programs are isolated from interactions with non-disabled peers, often by the very location and placement of the sheltered workshop and day program facilities, many of which are located in self-contained industrial parks or isolated residential neighborhoods, apart from other businesses, restaurants, or public spaces.

....

Day activity service programs are structured and function like other institutions in that the service recipients' days are inflexible and highly regimented. In Rhode Island's sheltered workshop settings, individuals routinely engage in rote manual tasks, including assembling, sorting, packaging, and labeling, while typically sitting at cafeteria-style tables. ... The tasks are frequently not matched by the provider to individuals' abilities and strengths. **Service recipients typically work in crowded, shared spaces, occupied only by other individuals with disabilities, except for paid staff.** Most staff members

serve as supervisors, monitoring production and supervising the behavior of adult service recipients. Individuals usually perform tasks on a fixed schedule, wherein all service recipients work the same shifts, take designated breaks on the premises, arrive and depart from the facility mostly in provider-owned vehicles, and eat lunch all at approximately the same times. See Disability Advocates, Inc. v. Paterson, 653 F.Supp. 2d 184, at 199-201 (E.D.N.Y. 2009) vacated on other grounds sub nom. ⁶

In sum, the DOJ focused on the factors listed to the left to determine if the State of Rhode Island was complying with the ADA and Olmstead with respect to its provision of work and day habilitation services.

Finally, the CMS recently issued final rules which establish the requirements for the qualities of settings that are eligible for reimbursement for the Medicaid home and community-based services (HCBS) provided under sections 1915(c), 1915(i) and 1915(k) of the Medicaid statutes. CMS has clarified that the rule applies to all settings where HCBS services are delivered, not just to residential settings. CMS will be providing additional information about how states should apply the standards to non-residential settings, such as day program and Prevocational training settings.

DOJ FACTORS TO EVALUATE
OLMSTEAD COMPLIANCE IN
VOCATIONAL SETTINGS

- ARE WORKERS WITH DISABILITIES PHYSICALLY AND SOCIALLY ISOLATED FROM PEERS WITHOUT DISABILITIES?
- ARE THE SETTINGS INSTITUTIONAL IN NATURE?
- ARE PLACEMENTS IN A WORKSHOP LONG AND PROTRACTED?
- ARE THERE NEGATIVE CONSEQUENCES SUFFERED AS A RESULT OF WORKING IN A SEGREGATED FACILITY-BASED SETTING?
- IS THERE A SYSTEMIC FAILURE OF STATE POLICIES AND ACTIONS RESULTING IN THE MAJORITY OF EMPLOYMENT SERVICES BEING DELIVERED IN FACILITY-BASED SETTINGS?

Building Bridges: Iowa's Current Efforts Toward Compliance with Olmstead

In the years following the Olmstead decision states have begun to reassess the nature of the services they offer. Such discussions have sometimes been difficult, but they have undoubtedly spurred positive changes and innovative solutions to complex problems facing people with disabilities. Iowa has consistently been home to such a discussion. Below is a short description of many of Iowa's organizations, programs, and efforts, effecting positive movement towards compliance with Olmstead in the state.

Iowa's Employment First State Leadership Mentoring Program (EFSLMP) In 2012 Iowa was selected as one of three states serving as a protégé for the Office of Disability Employment and Policy's (ODEP) Employment First State Leadership Mentoring Program. Iowa has continued to be selected yearly for ongoing participation in the EFSLMP project and has recently been approved for participation in 2015. Led by IVRS, this program has a state core leadership team comprised of representatives from IVRS, Iowa Workforce Development, Iowa DHS (Iowa Medicaid Enterprise, Mental Health and Disability Services, Money Follows the Person), Iowa Developmental Disabilities Council, Iowa Association of Community Providers, Community Rehabilitation Provider partners, Iowa Department of Education, and Iowa Coalition for Integrated Employment partners. Iowa has received extensive support and technical assistance from subject matter experts from across the country. Under this program, over 300 hours of training and technical assistance provided by subject matter experts were provided to CRP staff. This went beyond the initial on-site training which occurred with the original six pilot projects and through Community of Practice calls, efforts were made to bring additional interested parties to the table. Additionally, technical assistance hours were provided to the provider funding methodology group.

During the last year, 14 providers participated in regular meetings with subject matter experts to assist them with voluntary transformation of services. As a result, 427 consumers have been placed in integrated employment from these providers. The average wage of these individuals is \$7.81 per hour. Provider transformation is the primary focus for the upcoming year's activities. An additional 16 providers will be invited to join the current 14 engaged in transforming their business model.⁷

Iowa APSE: The Iowa chapter of the Association of People Supporting Employment First (APSE) has continually worked to promote integrated employment solutions to people with disabilities. Iowa APSE supports the idea that employment in the general workforce is the first and preferred outcome in the provision of publicly funded services for all working age Iowans with

disabilities, regardless of level of disability. Iowa APSE collaborated with other agencies to host Employment First summits for the past 6 years, and Iowa APSE also hosts Community Employment Trainings that are approved by Association of Community Rehabilitation Educators.

ICIE: The Iowa Coalition for Integrated Employment was established through a five year grant (2011-2016) from the Administration on Intellectual and Developmental Disabilities. The Coalition is made up of diverse stakeholders from across the state working together to improve systems so that Iowans with disabilities have fully integrated, competitive work. System change strategies include cross-stakeholder collaboration, model demonstrations (METS & CRP pilots), capacity building, funding realignment, and policy changes. The desired outcome is that Iowans with disabilities and other stakeholders have a common expectation and understanding of integrated, competitive employment as the preferred outcome, and know how to achieve it.

ICIE partners with other initiatives to maximize and leverage resources. For example, ICIE partnered with EFSLMP to double the number of CRP pilot projects. ICIE hosts quarterly meetings with stakeholders to discuss progress and current issues, and has also been instrumental in bringing subject matter experts and technical assistance to providers that are voluntarily transforming their services.⁸

Model Employment Transition Sites- METS METS, which originated out of the ICIE project, represents pilot sites that are focusing on developing a successful and outcome driven framework for transition services provided by schools. Currently there are 5 different Iowa schools participating in developing practices that increase successful placement of students with disabilities in competitive, integrated employment. The project will develop a comprehensive “flow of services” guide, as well as other tools, for other schools to use in strengthening their transition services. METS is now receiving support from the Iowa Department of Education for ongoing development and replication.

Iowa Vocational Rehabilitation Services (IVRS): IVRS has increased its spending on Supported Employment Services purchased from CRP’s by 44% in the last five years.⁹ IVRS is also the lead state agency on the Iowa EFSLMP, and the lead agency with the Walgreens Retail Employees with Disabilities Initiative (REDI) project. Additionally, last year IVRS created two new service options “Discovery” and “Customized Employment” to expand services, and also almost doubled the number of occupational skills training programs purchased from partners, including reimbursement for Project Search. IVRS also combined efforts with the Iowa Association of Community Providers to provide free job coaching and employer development training.

As a result of new leadership and changes in vision, IVRS discontinued its practice of issuing “denial” letters to case managers for potential referrals of clients who were currently working

in facility-based employment. These “denial” letters were really letters explaining that IVRS was unable to fund services for an individual who was already receiving certain services funded by DHS or IME, however these letters were routinely used by case managers to initiate or continue authorizing services provided in a segregated setting. Because IVRS is committed to serving every individual with a qualifying disability who requests services, with the support of DHS/IME this practice was suspended in 2014. IVRS is also in the process of providing guidance and training to all field counselors that confirms that the agency should be able to serve every referred individual who is eligible for their services. In FY2013 CRP’s referred approximately 182 individuals to IVRS; 56 of these individuals were placed successfully into integrated employment.¹⁰ In FY2014 75 individuals referred to IVRS from CRP’s were successfully placed into integrated employment.

Olmstead Consumer Task Force: This group works to promote implementation of the Olmstead decision in public policies and programs at the state and local level. In 2013 the Task Force Issued a position paper arguing for increased reimbursement rates for community employment options, and technical assistance for providers.¹¹ On October 15, 2014 the Task Force contacted the Iowa DHS and requested action, including follow up on the employment recommendations put forward by the DHS Employment Services Redesign Workgroup. The Task Force made several important recommendations to DHS in an effort to prompt movement concerning improving the system of employment services for individuals with disabilities. DHS responded to those requests with information about current efforts and a promise to reconvene the Workgroup. The response indicated that DHS is continuing to work on proposed reimbursement model, but there are still procedural and technical actions that must take place, including the need for changes to administrative rules, which take at least six-months.

Project SEARCH: The Project SEARCH High School Transition Program is a unique, business led, one year school-to-work program that takes place entirely at the workplace. Total workplace immersion facilitates a seamless combination of classroom instruction, career exploration, and hands-on training through worksite rotations.¹²

My Choice Employment: Hope Haven, Inc., Rock Valley: Although Hope Haven, Inc. has provided Supported Employment services for over 25 years, the agency has recently begun to engage in the transformation of its employment programs to align with modern Employment First principles. As part of these efforts, Hope Haven has established “My Choice Employment” a new program designed “[t]o align with Employment 1st principles and increase the number of people with disabilities who obtain and maintain integrated, competitive employment.”¹³ As part of this innovative program implementation, all new referrals for Hope Haven Employment Services will first be directed to the “My Choice” program. This program is separate and distinct from the workshop and is staffed with employment specialists and job coaches, who assist clients in obtaining and maintaining a job in the community successfully.¹⁴

MFP: Money Follows the Person (MFP) Partnership for Community Integration Project provides opportunities for individuals in Iowa to move out of Intermediate Care Facilities for Persons with Intellectual Disabilities and into the community. Each eligible and interested participant is connected with the appropriate agencies and programs by an Employment Specialist. Iowa was the first state in the nation to have a staff position focusing solely on assisting the program participants to secure integrated employment.¹⁵

JobLink: NIVC Services: JobLink is the service division of NIVC Services, Inc. that provides comprehensive services for employers as well as job seekers. With an 85% successful placement record, JobLink Placement Services is recognized for its conscientious, enthusiastic and dependable workers. Last year, NIVC Services helped over 450 north Iowans with disabilities earn more than \$1.5 Million dollars in wages from area businesses.¹⁶

State Employment Leadership Network: Iowa is a member of the State Employment Leadership Network (SELN). "In 2010 the SELN provided a Findings and Observation report for Iowa, based on extensive analysis, survey data, and stakeholder input, with detailed information on areas on which Iowa could focus in order to impact employment services and outcomes. These included Leadership, Strategic Goals and Operating Policies, Financing and Contracting, Training and Technical Assistance, Interagency Collaboration, Services and Service Innovation, and Performance Measurement."¹⁷

DHS Community Forums: The Iowa Department of Human Services released a Stakeholder Brief regarding Iowa's integrated funding system and held 5 community forums to discuss the Stakeholder Brief, the Employment First Initiative and other state efforts to increase the percentage of consumer sin competitive employment.¹⁸

Road Blocks and Hazards: Investigation

Findings

1. Iowans with Disabilities who work in Sheltered Workshops are Physically and Socially Isolated

During our visits to thirty community providers throughout Iowa, we viewed a variety of programs and services. Although diverse in goals and attitudes, the vast majority of these programs had one thing in common: segregation and isolation. There are over 6,600¹⁹ Iowans with disabilities receiving employment services from CRP's in Iowa, and at least 74% of the total funding for Work Services, pays for services provided in segregated environments.²⁰

According to the ADA, a "public entity must administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities, i.e., in a setting that enables individuals with disabilities to interact with nondisabled persons to the fullest extent possible."²¹ Thus, providers of MHDS Region-funded Work Activity, and Medicaid funded Prevocational Services and Day Habilitation are required to provide those services in the most integrated setting possible for each of the individuals they serve. For a variety of reasons, Iowa's current service delivery for these programs is not in compliance with the law.

Of the hundreds of individuals we witnessed who were working at these facilities, typically only a very small percentage were people without disabilities, and those individuals were paid supervisors or other staff members of the facility.²² The majority of individuals we encountered were people with intellectual and developmental disabilities, mental illness, and traumatic brain injury. These individuals spend the majority of their day in these facilities, only coming into contact with other workers with disabilities or a few non-disabled staff members who are paid to supervise them. Rarely, we would encounter a program that was designed such that members of the community came to the facility to interact with the individuals.²³

Issue Snapshot: Isolation
*Jim, a young man with a developmental disability works at a workshop in a rural area. He wishes that he got to work the pick-up route on the "can truck" more because it allows him to leave the facility where he sorts cans, and interact with the businesses and community.**

* All names and details of individuals highlighted in this report have been changed to protect the privacy of the individual.

When we interviewed individuals working in these workshops, we were repeatedly told that the preferred jobs were those that allowed contact with the outside community such as pick-up

Issue Snapshot: Isolation
Ethel, Steve, and Brandon
work for a provider that
also provides residential
services. Their workshop is
in a facility located in a
residential district. They
eat lunch at the facility in a
common area. They all live
in the provider residential
center, and are transported
to and from work each day
in provider busses.
Although they occasionally
are taken on shopping or
field trips by residential
staff on the weekends, they
have no other interactions
with non-disabled
community members that
are not paid staff.

or delivery routes, because those jobs allowed the individuals to get out of the facility and interact with community members. The physical location of workshops in Iowa also isolates the disabled employees from the community. Routinely, workshops are located on the outskirts of town, in commercial or industrial parks, or in residential neighborhoods.

These locations are isolating in that there are no community places, restaurants, or amenities that are accessible to individuals with disabilities during their breaks. As such, workers with disabilities typically spend breaks and lunch in a common area of the facility, with the other workers with disabilities. In some cases, the non-disabled supervisors do not take breaks with the workers, because they have a separate break room. These locations also often require that the individual receive assistance with transportation to and from the location, which is usually arranged through the provider.

2. The Setting of Workshops in Iowa are Institutional in Nature

When gauging the appropriateness of a service setting under the context of Olmstead, it is important to look for hallmarks of a traditional institutionalized setting. These hallmarks triggered concerns for the DOJ as they investigated the nature of Rhode Island's employment services, and similar triggers would widely be found in Iowa if such an examination was to take place in the state of Iowa. Iowa mirrors many of the negative traits common to traditional sheltered work facilities, i.e. facilities largely not in compliance with the ADA.

Employment, beyond its obvious benefits of independence and income, provides an avenue for community involvement. People with disabilities thrive when given the opportunity to create community supports and relationships, and the dignity afforded by independence can have a transformative effect. Unfortunately, institutional employment programs deny people with disabilities access to these benefits, creating an environment that operates in contradiction to the fundamental needs central to personal dignity. As was found in Rhode Island, Iowa's facility based employment programs often are clearly established as segregated, restrictive, repetitive work environments that are damaging to individuals, and limits the opportunity for upward mobility. Two primary findings of the DOJ create a rubric for measuring the institutional nature of work programs: limited freedom of choice and physical traits.

A. Limited Freedom of Choice

In Iowa workshops, consumers were often found to be engaged in monotonous tasks, which rarely changed from day to day in any meaningful way. As we discussed with various consumers, though the contracts themselves may fluctuate, or the nature of the product being made may change over time, the environment, as well as the basic nature of the job often remains consistent for years without variation. These repetitive tasks fail to utilize individual talents and passions, or serve the purpose of Prevocational training.

B. Physical traits of an institution

The physical layout and design of many CRP's reinforce the institutional, segregated nature of such services. These physical traits are not insignificant, as they reinforce the disparity between sheltered environments and the privileges and independence of community-based options.

As discussed above, a hallmark we repeatedly discovered during our many visits was the almost uniform way in which these facilities were isolated from the community. Often located on the outskirts of the town, even in small, rural communities, the workshops operated in a way that removed the possibility of consistent, communal interaction. The obligations of the ADA, and reinforcement by the Olmstead decision, make it clear that such settings must be a clearly justifiable necessity, and anything less falls outside of the state's legal obligation.

Another clear example of the damaging nature of this isolating, facility based model can be found in the differing ways providers treat staff and consumers. As the very premise requires, Work Activity and Prevocational Services ought to mirror the experience of working in a community setting. After all, such community outcomes are designed to be the ultimate goal for consumers engaged in these services. Unfortunately, providers often undervalue the consumer experience by creating a clear difference between the privileges offered to provider staff, and consumers engaged in program work. Identified in the DOJ findings, and equally observed throughout the state of Iowa, separate provider break rooms, amenities, and eating areas are often in different locations, creating a clear distinction between disabled and non-disabled employees. In some CRPs paid staff had access to separate break rooms with coffee and other amenities available that were not accessible to consumers.

Consumer Profile:

Kathy

Kathy is a middle-aged woman currently receiving Prevocational Services. She is intelligent and articulate but expressed a clear frustration at the sameness inherent in her employment services. She sorts clothing for hours on end, with little variation in a noisy and sometimes intrusive environment not suited to her wants or needs. Such uniformity cannot possibly address her unique employment goals or job skills.

In other CRPs, only paid staff administrative areas were climate controlled, or had been renovated. In some instances, these newer and more comfortable areas were physically locked away from consumer access. Such disparities further the institutional feel, and create

Consumer Profile:

Tim

Tim is a consumer currently receiving services from a medium sized provider. He has had employment in the past repairing cars, working at grocery stores, and presented himself as a personable, well-spoken young man. Yet, despite these skills he has spent many years of his young life assembling toys for a fraction of what he could make in a minimum wage, community based job. This utilization of sheltered work undermines Tim's future.

restrictions which prevent natural, workplace relationships to form between staff and consumers.

3. Placement in Sheltered Work in Iowa is Lengthy and Protracted

Prevocational Services, as defined by CMS, are designed to be time limited services. This service exists to build soft employment skills, and quickly move consumers towards community employment. Placement in Prevocational Services for a long duration then is falling far short of the program's intent, as do overly long periods spent in Work Activity. As was the case in Rhode Island, Iowa's overreliance on sheltered work has led to extended placement in these programs for many consumers. **We interviewed several individuals who had been in these segregated environments for decades.** These durations lead to Prevocational and Work Activity Services becoming a kind of employment for the consumer, adopted as a destination instead of a stepping stone to new and more appropriate community employment.

Additionally, several of the consumers we interviewed had been in these restrictive settings since high school, and have continued to participate in sheltered work for years after graduation. This railroading of students into segregated services is damaging and unacceptable. Failure and professional exploration play a large role in finding an ideal employment opportunity. By divorcing young

people from that process, Iowa cultivates a dependency on a finite and time limited resource. If these time limitations are ignored, young people can become accustomed to the limited horizons, and lingering poverty offered by these sheltered environments.

4. Individuals Suffer Negative Consequences as a Result of Working in Sheltered Workshops

As a result of often protracted time spent unnecessarily segregated working in sheltered workshops, Iowans with disabilities who have worked in those programs are often left in poverty, dependent on government benefits for their basic necessities.

Two Iowans with disabilities who work in Sheltered Workshops make an average of 0¢ an hour, and six make just 1¢ per hour.

According to recent data, over 6,600 Iowans with disabilities are employed by CRP's and participate in facility-based, subminimum wage

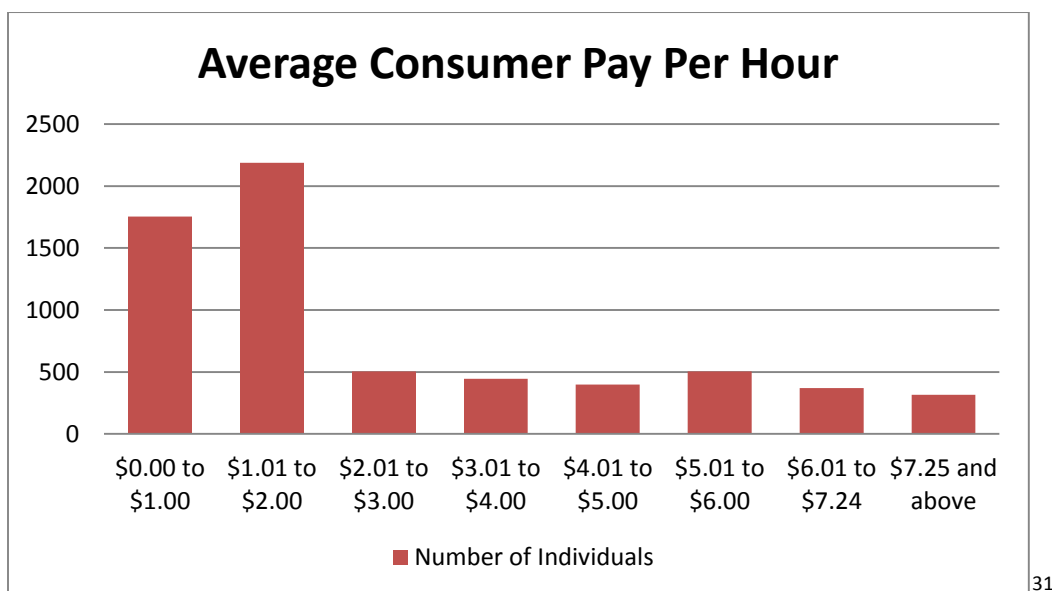
employment.²⁴ Some of these individuals make as little as nothing, or 1 cent per hour on average.²⁵ Overall, the average hourly wage for a person with a disability working in facility-based employment in Iowa is \$2.56.²⁶ Almost half of the individuals working in these workshops make less than \$2.00 per hour on average, when only about 12% make more than \$5.00 per hour on average.²⁷ Over 25% of these individuals make less than \$1.00 per hour.²⁸

The average wage for a person with a disability working in facility-based employment in Iowa is \$2.56 per hour.

The minimum wage in Iowa is \$7.25 per hour, and workers earning minimum wage make approximately \$15,080 per year if they work full time and take no time off. It follows that based

Some individuals only make one cent per hour. If they work full time, without any time off, their yearly earnings would only amount to \$20.80.

on the average wage earned in a sheltered workshop, individuals with disabilities working in these facilities earn an average of \$5,324 per year, assuming that they work full time and take no time off.²⁹ The Federal Poverty level for 2014 for a single individual is \$11,670 per year.³⁰ Individuals with disabilities earning well below the poverty level are left to depend on government benefits for their daily necessities, and are thus unable to save for expenses like retirement.



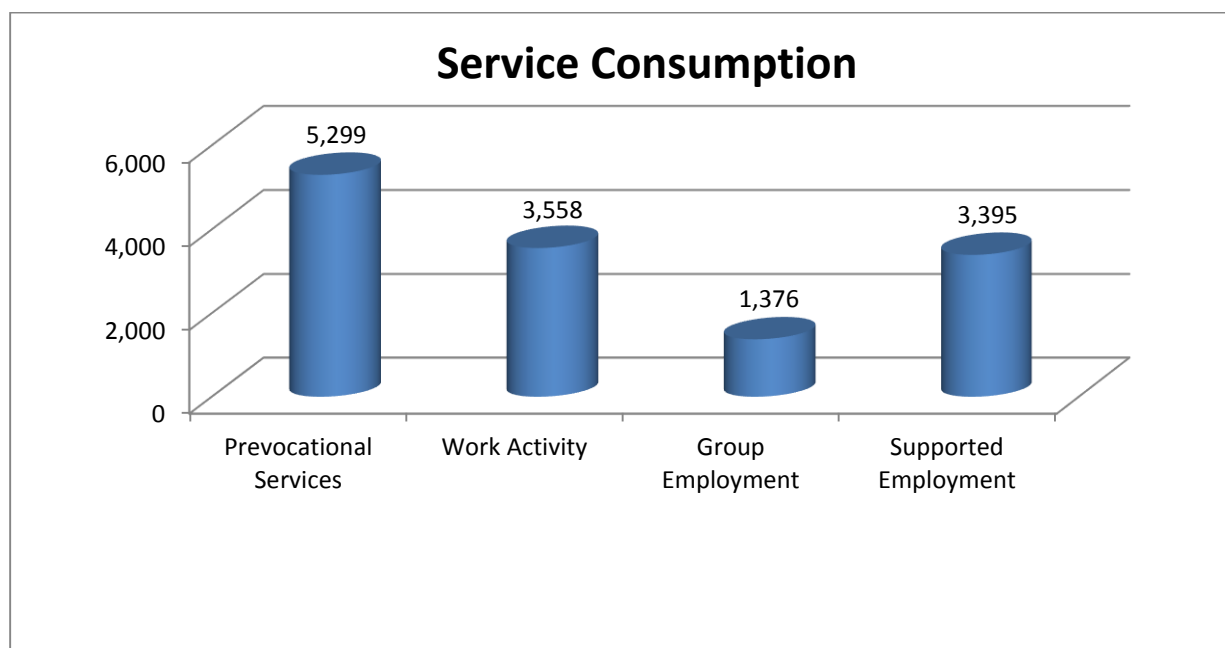
Another negative consequence suffered by individuals who work in facility based employment is the lack of opportunities to improve their situation. There is very little upward mobility in sheltered workshops, and only a fraction of individuals who enter these work situations, transition to community employment. In fact, in fiscal year 2014 only 75 individuals referred to IVRS from CRP's for services were successfully placed into community jobs.³² Numerous providers indicated that in the past referring individuals to IVRS was difficult and some IVRS

counselors did not accept certain referrals, instead inaccurately indicating that IVRS required a certain percentage of productivity to be reached before they would accept a referral.³³ DRI has met with the Director of IVRS, who has already begun addressing this issue by educating each field office about IVRS's policy of not denying services to any eligible individual.

There are no raises or bonuses to be earned in sheltered workshops, and there are no promotions or other goals to seek for workers, aside from increasing productivity. This lack of opportunity, coupled with the long durations of time typical to these placements result in a lack of opportunity to participate in a meaningful career.

5. Facility-Based Employment Services are Overused in the State of Iowa

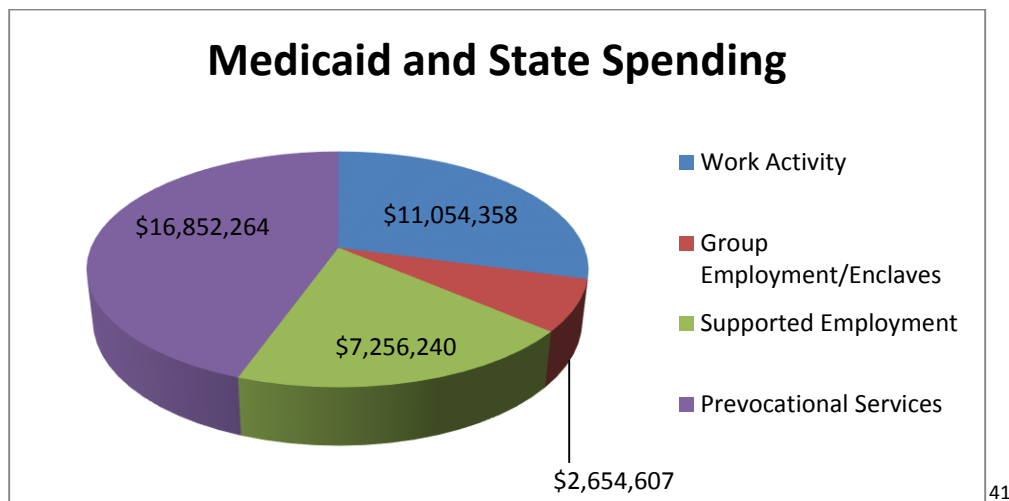
In the 2013 State Fiscal Year (SFY), 3,395 individuals with disabilities received Supported Employment services in community settings³⁴, and at least 6,600 received employment services in segregated workshops.³⁵ Additionally, 9,900 individuals received Day Habilitation services, and 1,376 received Group Employment services.³⁶ These numbers are duplicative, and some individuals receive both community-based services and facility-based services. **Overall, 88% of Iowa's expenditures for Work and Day Habilitation Services are spent on services provided in a setting that is primarily segregated from the community.**³⁷



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Of the total \$37,817,469 spent by Iowa and Federal Medicaid for Work Services in the state of Iowa in SFY2013, only 26% of those funds were spent on "Community" Based Work Services, while the remaining 74% were spent on Facility-Based Work Services.³⁹ In reality, the percentage of funds spent on services performed in an integrated community setting is smaller than 26% because that number includes Group Employment services, or "enclaves" that often

are not performed in an integrated environment.⁴⁰ The State of Iowa's "state share" of the federal Medicaid participation for SFY13 was 40.13%.



Entering into this project, it was clear that Prevocational Services and Work Activity services played a large role in state employment services. What was unclear was to what extent this was the case. After completing the first regional visits to CRP's, the sheer extent of the dependence on this outdated and unsustainable service model became more fully apparent. Far too often the scope in which a service is utilized is based on its cost effectiveness and convenience, not in response to consumer need. The consequences of this funneling system into sheltered employment are long lasting, and fundamentally discriminatory.

6. Prevocational Services are being Misused as a Replacement for Work Activity

Traditionally, individual counties in Iowa paid for Sheltered Workshop or Work Activity services. This service was heavily relied upon by state CRP's. However in recent years, counties suggested to providers that they should provide "Prevocational Services" paid for by Medicaid, as a replacement for Work Activity or Sheltered Workshop. Providers were told that the services were essentially the same, but that Prevocational Training was preferred because it was funded by Medicaid and not the county. Subsequently, CRP's began providing the same services to individuals that they had been providing traditionally, but billing Medicaid.

On July 1, 2014 as a result of the Mental Health and Disability Services Redesign, counties were grouped together to form regions and those regions are now responsible for providing specifically listed "Core" services. After funding Core services, regions may provide services outside of the Core services if they "show that the service is effective and consistent with the U.S. Supreme Court's decision in *Olmstead*."⁴² After much debate during the formation of the Mental Health and Disability Services Redesign, Work Activity and Sheltered Workshop were removed from the list of "Core" services that regions must provide. This has caused an increase in the number of providers relying on Prevocational Services, because many regions have cut or

entirely abolished funding for traditional sheltered work as a result. However, some regions are still electing to provide funding for this service. Approximately 63% of CRP's still receive funding for, and provide traditional Work Activity.⁴³

Medicaid pays for Prevocational Services, which are designed to create a path to community based employment and are for the ultimate purpose of helping an individual obtain employment. These services can include training on general work skills such as the ability to communicate, general workplace conduct and dress, the ability to follow directions, the ability to attend to tasks, workplace problem solving skills and strategies, general workplace safety and mobility training.⁴⁴

Recently, the Center for Medicaid and Medicare Services issued guidance indicating that Medicaid financed Prevocational Services provided in sheltered workshops are intended to be time limited, and transitional in nature.⁴⁵ Additionally, CMS indicated that the outcome of these services should be community based integrated employment.⁴⁶ Iowa has yet to place a formal time limit on Prevocational Services, but impending change is well known to providers and stakeholders, and potential time limitations of 12–24 months have been discussed by providers and organizations.⁴⁷ Other states have placed time limitations of 2–5 years on Prevocational programs.⁴⁸

Used as a catchall, Prevocational Services are often used without directly taking time to gauge the long term needs of consumers. Although CMS has indicated that Prevocational Services are to be goal oriented towards an individual obtaining a job in the community, the reality in Iowa is very different. Many individuals currently participating in Prevocational training in Iowa have no actual goal of community employment, and are not in reality working on skills or training for eventual community employment. These individuals are performing the same jobs, tasks, and routines that they had been when they were funded through traditional Work Activity. In fact, Prevocational Services were described to DRI in an interview as being different from traditional sheltered work “only in mindset.” Almost no change can be seen in programs that have changed from being funded for Work Activity to Prevocational Services.⁴⁹ Thus, in reality, Prevocational Services is a program that is being misused to maintain the traditional outdated sheltered workshop.

7. Subminimum Wage Calculations are Inherently Susceptible to Inaccuracy

Section 14(c) of the Fair Labor Standards Act of 1938 allows employers to pay people with disabilities at a rate that is less than the minimum wage if they have obtained a certificate from the U.S. Department of Labor.⁵⁰ This 76 year-old provision is effectively an exemption from the congressionally set minimum standard of pay for employees.

From 2008 to 2013 the Department of Labor cited 10 CRP's in Iowa for a total of 604 individual violations.⁵¹ These violations included: Failure to pay commensurate wages, failure to pay

overtime, failure to have a 14(c) certificate, and failure to keep accurate records. Violations can result in the payment of back wages or overtime to the employees.

A key element of concern observed through our visits was the way in which subminimum wages were calculated, and the many opportunities for miscalculation that exist in the current process. Despite the extensive DOL regulations regarding the process for determining productivity, there exist two fundamental gaps which inexorably will lead to inaccurate wage calculations: the independent nature of many of the tasks being observed, and the dependence on staff to complete work. In order to accurately gauge an individual's productivity, it is essential that the consumer is given all the requisite materials, and the ability to produce at a level reflecting their ability. An accurate reflection of productivity is not possible when the consumer's productivity is linked to the productivity of a peer, and the rate which supportive staff supply materials needed for the task. Such interdependencies undercut the consumer's possible wage, and misrepresent the feasibility of eventual community placement. At one CRP, we observed a row of consumers working at assembling bags of trinkets for a toy company. Staff would go from consumer to consumer with an open bag, waiting for them to throw in their specific toy. Such a setup was concerning, as it fundamentally compromised the ability of the provider to gauge individual productivity. By interconnecting these tasks, the group can only move as fast as the slowest consumer. This, combined with the dependency on staff to support individual productivity makes an accurate time study nearly impossible. The lack of foresight is concerning, and it leads to consumers labor and time being undervalued by the provider. Unfortunately, the example described above is only one of many such instances where the process for gauging productivity was undercut by the realities of the provider setup.

8. Transition-Aged Youth are Funneled to Segregated Environments

The Individuals with Disabilities Education Act (IDEA) is a law that governs special education and related services provided to children with disabilities.⁵² One of the goals of special education, provided under the IDEA, is to prepare children with disabilities for transition to post-school engagement in employment and independent living.⁵³ The regulations implementing the IDEA indicate that special education services are to be provided to students in the least restrictive environment— meaning that services are to be administered in settings with nondisabled children in the general education classroom to the furthest extent appropriate for each student.⁵⁴ In Iowa, a student's Post-Secondary expectation in relation to working is: working for a minimum of 35 hours weekly, making at least minimum wage, in an integrated setting, in a job with potential career growth.⁵⁵

The newly enacted Workforce Innovation and Opportunity Act (WIOA) is intended to increase opportunities for employment, especially for individuals with disabilities who face barriers to employment. Additionally, it focuses on making a connection to integrated employment for transition-aged youth.⁵⁶ WIOA places the emphasis on real-world work experiences, and

requires Vocational Rehabilitation agencies to make “Pre-employment transition services” available to students. It allows Vocational Rehabilitation agencies to prioritize serving students with disabilities, and also dedicates funding to provide youth with the most significant disabilities with supports to obtain competitive integrated employment. Most importantly, WIOA requires that transitioning students first experience competitive, integrated employment, before being allowed to enter a segregated, subminimum wage environment.⁵⁷

It is not unusual for students with disabilities in Iowa to enter sheltered work as early as their sophomore year in high school. High schools contract with local CRP’s to provide training and services to students, who may receive school credit for their training. The school will pay for transportation of the student to the sheltered workshop and back, and will pay a fee to the CRP for their services. This system is informally known as the School to Sheltered Work Pipeline, because it funnels students with disabilities into sheltered workshops, where they often remain even after graduation and decades thereafter. Sheltered work is sometimes even listed in a student’s Individualized Education Plan (IEP) as a postsecondary plan, without any examination of alternatives or transition services. In Iowa, approximately 83% of CRP’s currently provide services to transition-aged students.⁵⁸

This current practice will come to an end in the near future with the enforcement of WIOA. Perhaps most importantly, WIOA requires that only after an eligible individual has had an opportunity to work in an integrated setting, with any needed supports, may a young adult with a disability be placed in a segregated setting and be paid a subminimum wage. This provision erects a barrier between students and sheltered work, and mandates that they will be afforded the services they are entitled to in accordance with the ADA and the decision in Olmstead. This WIOA provision becomes effective by July 2016.

9. Employment Service Providers in Iowa face Systemic Barriers that Prevent them from Transforming Services into Community-Based Services that Conform with the Law

Though DRI is focused on the perspective of people with disabilities, it would have been impossible to complete this project without the essential and continual support of the provider community, particularly when working to gain an understanding of the hurdles that providers encounter when looking to transition to community-based employment work. While this survey did identify many habits and trends which would be problematic through the lens of the Olmstead decision, we were pleased at the obvious enthusiasm and consideration providers brought to their work. Many of the challenges providers face are not the product of antiquated attitudes or resistance to change, but rather a lacking of the fundamental elements necessary to fully embrace this national shift. In what has become an unofficial, unfunded mandate, providers have encountered an array of new expectations, without being given the resources needed to meet them. Perhaps the greatest example that can be found of this inconsistency is in the reimbursement rates provided for Supported Employment.

Continually, the reimbursement rates for Supported Employment were cited as the chief barrier preventing the move away from segregated work. Even organizations that focus exclusively on Supported Employment struggle to make the approach financially viable in the long term. Numerous providers explained that they continually operate at a loss when providing Supported Employment, making a full investment of time and attention highly risky to the financial viability of the organization. Many providers currently have invested considerable assets in their facilities, and thus financially struggle to provide Supported Employment out of pocket, while still maintaining existing programs during their transition.

In what has become an unofficial, unfunded mandate, providers have encountered an array of new expectations, without being given the resources needed to meet them.

There is also no technical assistance from the State available to providers wishing to have more direct information and assistance concerning transforming their programs, resulting in providers referring only to other providers for guidance.⁵⁹ Although there is technical assistance available through the Disability Employment Initiative, EFSLMP and ICIE, these programs have limited capacity and would not be able to provide technical assistance to all CRP's in the state.

Another notable barrier expressed by providers located in rural areas of Iowa is the lack of options for transportation for clients who could work in the community during the evenings or weekends. Many rural areas of Iowa lack in basic affordable public transportation, a problem exacerbated further by the need for accessible transportation, available outside of mid-day business hours, and the need for such a system in the harsh winter weather of the Midwest.

In summary, CRP's are struggling to align their programs to be in compliance with Olmstead, and those that are moving forward are doing so without state systems being in place and operating simultaneously to support them.

Conclusion

Ultimately, this project revealed a complex intersection of State services, and a community of committed providers looking to transform the way employment services are delivered. These discoveries were encouraging, but the metric we must use to determine the health of employment services throughout Iowa is found by drawing a contrast between Iowa and the DOJ's findings in Rhode Island. Submitting our state to this national standard, we discovered consistent and troubling parallels. These similarities run the ultimate risk of federal involvement, should they not be expediently corrected. Through our discussions with providers, we were reassured to see a general awareness of the DOJ's activities, as well as an active concern over what federal involvement in employment services could mean for our state.

Yet despite this constant awareness of the national direction, providers often seem content to dwell continually on collaboration and education, as opposed to the rapid transformation of service delivery. Though providers do face considerable barriers when attempting to shift to comply with Olmstead standards, these barriers do not excuse the ultimate responsibility providers have to provide as inclusive and integrated services as possible. Our findings establish this obligation is not yet being met. While it is necessary to recognize the challenges of transformation, it does not excuse the current areas of inaction that exist throughout the State. Transition is a long road. For decades, sheltered work was considered a viable and highly beneficial approach to disability employment services. Providers worked for years to build their organizations around this service, investing in the physical locations, the staff, and the contracts needed to make it a reality. These efforts were clearly done with a desire to serve the needs of their consumers, and in response to requests for services, and such dedication is valued by all members of the disability community.

But like any service, the expectations of society change. Time invariably leads us to question the moral validity of isolation, or institutionalization. The ADA, a signpost of disability civil rights, will continue to prompt change in what we expect from people with disabilities, and expect of the people who serve them. Moving away from the brick and mortar facilities, the segregation, and economic dependency of the past is a great journey, yet far too many providers have hardly even begun. Change requires momentum, and we have yet to show the signs of true forward progress. Just as consumers languish in facility-based employment, so do providers find shelter in the comfortable, the complacent, and the noncommittal. It is unacceptable.

Our state is on a road begun decades ago, when people with disabilities and their families demanded an inclusive and all important presence in the communities they called home. Our rate of travel is limited only by our willingness to embrace new challenges, and our dedication to fundamental elements of personal dignity. It is our collective journey. We urge compliance with the law, a renewed dedication to transformation, and a rejection of the isolating policies of the past. Such commitment would allow us all to move forward together.

Recommendations

Based on its findings in this report, Disability Rights Iowa makes the following recommendations to bring the State of Iowa into compliance with the ADA, the U.S. Supreme Court's Olmstead decision, the DOJ's findings in Rhode Island, and the home and community based regulations of the Centers for Medicaid and Medicare Services.

Recommendations to the Iowa Department of Human Services and Iowa Medicaid Enterprises:

1. **Develop a multi-year effective Olmstead Plan (10 years), which is intended to move the State of Iowa at a reasonable pace towards administering its Work and Day Service system in an integrated manner, as required by the law. The State Plan should include:**
 - a. **Identification.** A methodology for identifying individuals in segregated facility-based employment settings who can and want to work and receive services in the most integrated settings appropriate to their needs ("the Identified Individuals"). Because there are approximately 6,600 Iowans currently receiving Work Services and 9,900 Iowans receiving day habilitation services in segregated facility-based settings, we recommend that the initial phase of the Plan focus on identifying ADA-generation youth (age 25 and under);
 - b. **Assessment.** A plan for assessing the individualized needs, strengths, preferences and work goals of the individuals identified and implementing their goals;
 - c. **Referrals to Iowa Vocational Rehabilitation Services.** A process for referring to Iowa Vocational Rehabilitation Services individuals in segregated facility-based employment setting who can and want to work;
 - d. **Individualized Plan for Integrated Employment.** A requirement that providers develop an individualized plan for integrated employment for the Identified Individuals. The plan should be developed jointly by the individual, his/her guardian, if any, the provider(s) of work or day habilitation services, case managers, vocational rehabilitation counselors and any other appropriate stakeholder. The Plan should include a statement of the individual's employment goals, a description of what needs to occur for the achievement of those goals, a determination of which services are appropriate for the individual based on the goals, milestone goals or events which would trigger a change in their services, and a statement of assurances of compliance with Olmstead for the individual based on the planned services and needs;
 - e. **Provider Transition Strategies.** Strategies for providers to transition their operations from segregated Work and Day Habilitation Services to Supported Employment Services and integrated Day Habilitation Services for the individuals

identified. (These strategies should avoid adopting a restriction that prevents Day Habilitation Services from being a program option for individuals who are also receiving Supported Employment or Prevocational Services.);⁶⁰

- f. **Technical Assistance.** A requirement that the State or one of its contractors provide technical assistance to providers who are transitioning their operations from segregated day and work services to Supported Employment Services.
 - i. The state should establish a sheltered workshop conversion institute to assist qualified providers of sheltered workshop services to convert their employment programs to Supported Employment services.
 - g. **Grievance System.** A grievance system for individuals who want to challenge the appropriateness of their assessments, development of Individualized Plans for Integrated Employment or implementation of such Plans; and
 - h. **Oversight and Quality Assurance System.** A system for providing State oversight to ensure that individuals are being identified and assessed appropriately and that steps towards their goals are being implemented.
- 2. **Conduct a cost analysis to determine appropriate rates for each individual Work Day Habilitation Services, considering: provider costs, benefit to the individual served, and whether each services is performed in an integrated setting. Reallocate or Redistribute funding to services provided in an integrated setting.** Currently, 88% of Iowa's expenditures for Work and Day Habilitation Services pay for services that occur in primarily segregated environments. Reimbursement rates for Work and Day Habilitation Services should reflect compliance with the Olmstead decision, the value of each service to a consumer, and should compensate a provider for the actual cost of supplying that service.
 - a. The state should establish a sheltered workshop conversion trust fund of \$2,000,000 to assist with up front start-up costs to providers that have agreed to convert their services from primarily sheltered employment to primarily Supported Employment services.
 - b. The state will ensure that its reimbursement model for work and day habilitation services is sufficiently flexible to allow reimbursement for costs such as transportation, employer negotiation and counseling clients by phone. This will enable providers to support and provide services to individuals in Supported Employment placement even when provider staff is not face to face with the client.
 - c. The state should collect data and report on a variety of data points regarding its progress.
- 3. **When Prevocational Services become time limited, the amount of money the state spends on this service will ultimately decrease. This savings should be allocated to supporting employment services in integrated settings.** If supported by the findings of the cost analysis, the State should increase the rates for providing Supported Employment services, as recommended by the Mental Health and Disability Services Employment Redesign Workgroup and the Olmstead Task Force.
- 4. **Create and enforce definitions and limitations on Prevocational Services**

- A. **Definitions.** Adopt the existing CMS definitions of Prevocational Services in the form of regulations, as recommended by the Task Force;
 - B. **Time Limit.** Limit Prevocational Services to two (2) years;
 - C. **Individualized Plan for Integrated Employment.** Require any providers of Prevocational Services to (i) include in the Individualized Plan for Integrated Employment how such Prevocational Services will assist the individual in obtaining integrated employment and (ii) maintain data on improvement and achievement of goals for individuals receiving Prevocational Services; and
 - D. **Quality Assurance and Oversight.** Develop a quality assurance protocol and oversight system to ensure that Prevocational Services are being implemented in compliance with individualized Prevocational Service Plans.
5. **Identify, locate and develop wrap-around integrated Day Habilitation Services in the community, rather than in segregated facilities.**
- A. **Identification of Integrated Activities and Volunteer Services.** Require providers of segregated facility-based Day Habilitation Services to identify and locate community-based activities and volunteer services within their communities;
 - B. **Outreach and Education.** Require providers to provide education and training about community activities and volunteer opportunities to recipients of segregated facility-based Day Habilitation Services; and
 - C. **Rebalancing.** Require providers to provide at least half of their day habilitation services in community-based settings **within** 5 years of the development of the State's Plan.

Recommendations to Iowa Vocational Rehabilitation Services:

- 1. **Outreach and training.** Conduct outreach and training to individuals in segregated facility-based employment settings on vocational rehabilitation services;
- 2. **Identification.** Identify individuals in segregated facility-based employment settings who can and want to work and, with their consent, refer them to vocational rehabilitation counselors;
- 3. **Priorities.** Give priority to individuals who wish to transition from segregated facility-based employment settings to more integrated employment settings.
- 4. **Data.** Collect data on inquiries, referrals, and outcomes for individuals who contact IVRS who are currently working in segregated environments; and
- 5. **Planning.** Create a long term plan to accommodate the influx of individuals who are expected to seek vocational rehabilitation services when time limits for Prevocational Services have expired.

Recommendations to Providers:

1. Begin Acting Now.

- A. Collect data on outcomes and progress with respect to each individual receiving Prevocational Services from your organization.
- B. Identify individuals currently working in facility-based employment who qualify for Supported Employment.
- C. Refer the identified individuals to Iowa Vocational Rehabilitation Services.
- D. Stop accepting referrals of transition-aged youth (ages 14 –21) into facility-based employment or internships.

2. Create a Strategic Plan for Transformation and follow it.

3. Ensure subminimum wage piece rate and hourly productivity measures and pay are fair and accurate.

Recommendations to Schools:

1. Begin providing transition services in accordance with the rules in WIOA, as though they were effective today.

2. Off-Site Training and Experiences. Ensure that off-site training and experiences are in integrated employment settings, rather than in segregated facility-based employment settings; and that such training and experiences comply with the IDEA and Iowa transition standards.

Recommendations to Individuals with Disabilities and their Families:

1. Know your rights and take advantage of available services.

2. Create a culture of expectation to be shared by all members of your support circle.

3. Reject facility-based services as an acceptable long-term solution to employment.

4. Demand a place at the table.

Glossary of Terms:

14(c): Refers to the section of the “Fair Labor Standards Act [which] authorizes employers, after receiving a certificate from the Wage and Hour Division, to pay special minimum wages - wages less than the Federal minimum wage - to workers who have disabilities for the work being performed.”

http://www.dol.gov/whd/specialemployment/workers_with_disabilities.htm

ADA: Americans with Disabilities Act

APSE: Association of People Supporting Employment First

CMS: The Centers for Medicare and Medicaid Services

CRP: Community Rehabilitation Provider

Day Habilitation: “services that assist or support the member in developing or maintaining life skills and community integration. Services must enable or enhance the member’s intellectual functioning, physical and emotional health and development, language and communication development, cognitive functioning, socialization and community integration, functional skill development, behavior management, responsibility and self-direction, daily living activities, self-advocacy skills, or mobility.”

IAC 441-78.41(14) a.

DOJ: Department of Justice

DOL: Department of Labor

Employment First: “a concept to facilitate the full inclusion of people with the most significant disabilities in the workplace and community. Under the Employment First approach, community-based, integrated employment is the first option for employment services for youth and adults with significant disabilities.”

<http://www.dol.gov/odep/topics/EmploymentFirst.htm>

Enclave: Employment service where people with disabilities are brought off site to various locations in small groups to perform a work task and build soft skills. Often includes after hours janitorial work or light assembly.

Facility-Based Service: A service which operates in an institution, by definition preventing integration or a more normative consumer experience.

HCBS: Home and Community-Based Services

ICIE: Iowa Coalition for Integrated Employment

IDEA: Individuals with Disabilities Education Act

IME: Iowa Medicaid Enterprise

Integrated Setting: An integrated setting is one that "enables individuals with disabilities to interact with nondisabled persons to the fullest extent possible."

http://www.ada.gov/olmstead/q&a_olmstead.htm

IVRS: Iowa Vocational Rehabilitation Services

Money Follows the Person: Medicaid program started to "increase the use of home and community-based services (HCBS) and reduce the use of institutionally-based services."

<http://www.medicaid.gov/medicaid-chip-program-information/by-topics/long-term-services-and-supports/balancing/money-follows-the-person.html>

Olmstead: Refers to U.S. Supreme Court decisions in *Olmstead v. L.C.*, which requires that services, programs, and activities provided by public entities, including States, be delivered in the most integrated setting appropriate to the needs of persons with disabilities.

Prevocational Services: "services that are aimed at preparing a member for paid or unpaid employment, but that are not job-task oriented." These services often are facility-based, and focus on soft job skills such as attention to tasks, and appropriate behaviors.

IAC 441-78.41(13).

Supported Employment Services: “[I]ndividualized services associated with obtaining and maintaining competitive paid employment in the least restrictive environment possible, provided to individuals for whom competitive employment at or above minimum wage is unlikely and who, because of their disability, need intense and ongoing support to perform in a work setting. Individual placements are the preferred service model. “

IAC 441-78.41(7)

Transformation: The process of systems moving away from facility-based services to community-based, integrated options.

WIOA: Workforce and Innovation Opportunity Act of 2014

Work Activity: County Funded Employment service for people with disabilities that falls outside of HCBS. Largely used on a limited basis as an alternative to Prevocational Services.

Work Services: Term commonly used by the Department of Human Services to refer as a whole to vocational services, including Work Activity/Sheltered Workshop, Prevocational Services, Supported Employment, and Group Employment.

Wrap-Around Services: Services which act to bridge gaps and provide services in areas that may be unserved. In the employment services context, Day Habilitation can serve as a “wrap-around service” to consumers engaging in limited community-based employment, or are utilizing Supported Employment to a limited extent.

Appendix

The data below is from SFY2013 Medicaid claims paid as of September 3, 2013, and FY2013 County/Regions data. The "state share" of federal Medicaid participation for SFY2013 was 40.13%.

Community Based Work Services	Persons	State Medicaid \$	Federal Medicaid \$	County \$	Total Dollars
Group Employment including Enclave	1,376	\$975,158	\$1,454,840	\$224,609	\$2,654,607
Supported Employment including Job Development, Job Placement, Job Coaching	3,395	\$2,464,146	\$3,676,263	\$1,115,831	\$7,256,240
Community total					\$9,910,847

Facility Based Work Services	Persons	State Medicaid \$	Federal Medicaid \$	County \$	Total Dollars
Work Activity & Sheltered Work (Medicaid does not fund these)	3,558	\$0	\$0	\$11,054,358	\$11,054,358
Prevocational	5,299	\$6,762,814	\$10,089,450	\$0	\$16,852,264
Facility total					\$27,906,622

Day Services (may occur in community or facility)	Persons	State Medicaid \$	Federal Medicaid \$	County \$	Total Dollars
Day Habilitation	9,900	\$15,980,448	\$23,841,252	\$0	\$39,821,700

Person counts are not unduplicated, because persons may receive more than one service simultaneously.

Citations:

¹ Branch locations of CRP's were not included in this number.

² SFY13 Data received by the Iowa Department of Human Services (Nov. 2014)(on file with Disability Rights Iowa). This calculation is based on the funds expended for services from Iowa (State Medicaid funding, and County funding) in the 2013 State Fiscal Year. Federal Medicaid funding expenditures were not used in this calculation.

³ Provider Locations visited: Access Inc., Area Residential Care, Center For The Advancement Of Self Sufficiency, Systems Unlimited, Inc., Exceptional Opportunities, Inc., Exceptional Persons, Inc. (did not have a workshop and recently discontinued paying subminimum wages), Five Star Quality Care, Genesis Development, Goodwill Industries of Central Iowa, Goodwill Industries of Northeast Iowa, Goodwill Industries of the Heartland, Handicapped Development Center, Hope Haven, Inc., Howard Center, Inc., Innovative Industries, Inc., Mid-Step Services, Inc., Mosaic, New Hope Village, New Perspectives, Opportunities Unlimited, Opportunity Living, Options of Linn County, Progress Industries, Spectrum Industries, Sunshine Services, Inc., Tenco Industries, Inc., The Homestead, Village Northwest Unlimited, Vocational Development Center, Inc., WDCD, Inc.

⁴ © Jarek Tuszynski Wikimedia Commons CC-BY-SA-3.0 & GDFL

⁵ "CDCAN." Disability Rights California, n.d. Web. <<http://www.disabilityrightscalifornia.org/newsarchive/CDCAN-2009-04-21.htm>>.

⁶ JOCELYN SAMUELS, U.S. DEP'T OF JUSTICE, UNITED STATES' TITLE II ADA INVESTIGATION OF EMPLOYMENT, VOCATIONAL, AND DAY SERVICES FOR PERSONS WITH INTELLECTUAL AND DEVELOPMENTAL DISABILITIES IN RHODE ISLAND 10–17 (2014)(emphasis added) (Internal footnotes omitted).

⁷ ODEP/ECONSYS EMPLOYMENT FIRST STATE LEADERSHIP MENTORING PROGRAM (EFSLMP)FY 2015 CORE STATE APPLICATION (Oct. 30, 2014)(on file with Disability Rights Iowa) *See also* <http://www.dol.gov/odep/media/newsroom/employmentfirststates.htm>; <http://dhs.iowa.gov/mhds/disability-services/employment>.

⁸ Iowa Coalition for Integrated Employment, *see* <http://dhs.iowa.gov/mhds/disability-services/employment>.

⁹ FFY2013 Data Received from Iowa Vocational Rehabilitation Services (Nov. 2014)(on file with Disability Rights Iowa). In SFY 2009, Iowa Vocational Rehabilitation Services spent \$959,657 on services purchased from CRP's, and in SFY 2013 spent \$1,383,059.

¹⁰ *Id.*

¹¹ Iowa Olmstead Consumer Taskforce: Statement on the Application of Olmstead Principles to Employment Services (2013), *available at* <http://olmsteadrealchoicesia.org/wp-content/uploads/2013/02/Position-Statement-on-Employment.pdf>.

¹² Agencies such as Candeo, Arc of East Central Iowa, Easter Seals Iowa, NIVC Services, Mosaic, and Goodwill of Central Iowa partner with schools, IVRS, and businesses to provide these services. *See* <http://www.projectsearch.us/OurPROGRAM.aspx>.

¹³ MY CHOICE EMPLOYMENT.....A NEW SERVICE AT HOPE HAVEN INC., <http://www.idaction.org/media/alerts/102-scott-witte-hope-haven-inc/> (2014).

¹⁴ *Id.*

¹⁵ The Money Follows the Person Program is provided through a \$51 million grant from the Centers for Medicare and Medicaid Services, *see* <http://dhs.iowa.gov/ime/members/medicaid-a-to-z/mfp> (2014).

¹⁶ NIVC Services Inc. Job Link, *see* <http://www.nivcservices.org/job-link>.

¹⁷ Iowa's University Center for Excellence in Developmental Disabilities (UCEDD), Current Iowa Employment Systems Improvement Efforts, *available at* http://www.uihealthcare.org/uploadedFiles/UIHealthcare/Content/Services/Center_for_Disabilities_and_Development/UCEDD/Employment/Current%20Iowa%20Employment%20Systems%20Improvement%20Efforts.pdf.
¹⁸ <https://dhs.iowa.gov/sites/default/files/Forums-Summary-v3-by-Dale-Verstegen.pdf>.

¹⁹ Data calculated by information contained in 14(c) Subminimum-Wage Certificate Applications submitted to the Department of Labor by each current Community Rehabilitation Providers in Iowa (on file with Disability rights Iowa). In total, based on all current available Certificate's Authorizing Special Minimum Wage Rates Under Section 14(c) of the Fair Labor Standards Act for CRP's in Iowa, CRP's reported to the Department of Labor that 6638 individuals were employed at subminimum wages during their past fiscal year.

²⁰ SFY13 Data received by the Iowa Department of Human Services, *supra* note 2. This percentage reflects the amount of funds expended by both Federal Medicaid and Iowa Medicaid/County funding on Work Services provided to individuals with disabilities in segregated settings in SFY13.

²¹ 28 C.F.R. pt. 35 app. B, at 673 (1991).

²² With the exception of one large CRP that employs both disabled and non-disabled individuals in the workshop, all facility-based employment settings viewed as part of this project were segregated.

²³ The programs that had community members interacting with people with disabilities were those that operated can redemption centers or retail stores attached to the workshop. In these programs, only a small percentage of workers would have the jobs that involved interaction with community members as a function of the job. The rest of the workers remain in other areas of the workshop, segregated. Some programs have retail operations that are not attached to larger workshops, where individuals work alongside non-disabled employees. However, we noticed that even in these situations, there were individuals with disabilities working in the back of these locations, not interacting with customers.

²⁴ Data from Certificate's Authorizing Special Minimum Wage Rates Under Section 14(c) of the Fair Labor Standards Act for CRP's in Iowa, *supra* note 19.

²⁵ *Id.*

²⁶ *Id.* The average wage of \$2.56 per hour was calculated by identifying each hourly wage reported for every individual employee listed within all 67 14(c) Subminimum-Wage Certificate Application submitted to the Department of Labor by each current Community Rehabilitation Providers in Iowa, and averaging those wages.

²⁷ *Id.*

²⁸ *Id.*

²⁹ Many individuals working in sheltered workshops do not work 40 hours a week.

³⁰ OFFICE OF THE FEDERAL REGISTER, 2014 POVERTY GUIDELINES FOR THE 48 CONTIGUOUS STATES AND THE DISTRICT OF COLUMBIA (2014), *available at* <https://www.federalregister.gov/articles/2014/01/22/2014-01303/annual-update-of-the-hhs-poverty-guidelines#t-1>.

³¹ Data from Certificate's Authorizing Special Minimum Wage Rates Under Section 14(c) of the Fair Labor Standards Act for CRP's in Iowa, *supra* note 19.

³² Data Received from Iowa Vocational Rehabilitation Services, *supra* note 9.

³³ This is not in compliance with IVRS's regulations and policies. Although many providers indicated they are having a better relationship with IVRS, and for many CRP's this is no longer a problem, many providers still have misconceptions concerning these erroneous policies as a result of this practice.

³⁴ Data received by the Iowa Department of Human Services, *supra* note 2. The number of individuals receiving "Community" based services may be inaccurate, as this category included Group Employment services, which are often not performed in the community. "Community Settings" included Supported Employment, and Group Employment such as enclaves. Facility Settings included Work Activity and Sheltered Work, as well as Prevocational Services. *Id.*

³⁵ Data from Certificate's Authorizing Special Minimum Wage Rates Under Section 14(c) of the Fair Labor Standards Act for CRP's in Iowa, *supra* note 19.

³⁶ Data received by the Iowa Department of Human Services, *supra* note 2.

³⁷ This calculation is based off the percentages of services provided in facilities, (Work Activity, Sheltered Workshop and Prevocational Services (accounting for 46.2%), and Day Habilitation, which is a service typically provided in a facility (accounting for 41.4%)). *Id.*

³⁸ These numbers are duplicative. Many individuals receive more than one service simultaneously.

³⁹ Data received by the Iowa Department of Human Services, *supra* note 2.

⁴⁰ One example of this is janitorial service enclaves, which often are performed after business hours when the site is closed and empty, and thus may look more like a mobile workshop than actual community employment. This is not always the case, however this distinction is relevant to the data reference.

⁴¹ Data received by the Iowa Department of Human Services, *supra* note 2.

⁴² IOWANS WITH DISABILITIES IN ACTION, UPDATED ADVOCATE'S GUIDE TO MENTAL HEALTH & DISABILITY SERVICES REDESIGN 3 (2014) *available at* http://www.infonetiowa.org/documents/cms/docs/2013guide/2014_MHDS_Advocate_Guide_Update.pdf. See also IOWA CODE §331.397 (2014).

⁴³ Data from CRP site interviews and follow up survey responses received (2014)(on file with Disability Rights Iowa).

⁴⁴ CINDY MANN, CMCS INFORMATIONAL BULLETIN: UPDATES TO THE 1915 (C) WAIVER INSTRUCTIONS AND TECHNICAL GUIDE REGARDING EMPLOYMENT AND EMPLOYMENT RELATED SERVICES, 7 (Sep. 16 2011).

⁴⁵ Prevocational Services are “not an end point, but a time limited service for the purpose of helping someone obtain competitive employment.” *Id.* at 2.

⁴⁶ *Id.* at 7.

⁴⁷ IOWA DEPARTMENT OF HUMAN SERVICES, IOWA’S DISABILITY EMPLOYMENT SERVICES COMMUNITY FEEDBACK WEBINAR (July 31, 2013) *available at* http://dhs.iowa.gov/sites/default/files/July-31-2013-Feedback-webinar-PPT_0.pdf.

⁴⁸ IOWA DEPARTMENT OF HUMAN SERVICES, QUESTIONS FROM IOWA’S DISABILITY EMPLOYMENT SERVICES COMMUNITY FEEDBACK WEBINAR JULY 31, 2013 (2013), *available at* <https://dhs.iowa.gov/sites/default/files/July31-13-Q&A-Iowa-Disability-Employment-Community-Feedback-Webinar-2.pdf>.

⁴⁹ The same contracts are fulfilled and the same job tasks are conducted as previously done under Work Activity funding. No change is visible to consumers. The only identified differences have been additional documentation that is required of providers, and instances when an individual is removed from the workshop as a result of Medicaid denying funding for Prevocational Services for that person.

⁵⁰ *See generally* 29 U.S.C. § 14(c) (1994). *See also* 29 C.F.R. Part 525.

⁵¹ Records of Compliance Action Reports prepared by the Department of Labor (Received 2014)(on file with Disability Rights Iowa).

⁵² *See generally* 29 U.S.C. § 14(c) (1994). Note that eligibility for services is limited to “child[ren]... with an intellectual disability, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance..., orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities; AND, who... [because of the condition] needs special education and related services.” 20 U.S.C. § 1401(3)(A).

⁵³ *See* 34 C.F.R. § 300.320(b).

⁵⁴ *See* 20 U.S.C. §1412(a)(5)(A).

⁵⁵ IOWA DEPARTMENT OF EDUCATION, DECISIONS FOR HIGH SCHOOL PREPARATION AND EXIT TO POSTSECONDARY WORKING (2010).

⁵⁶ U.S. Department of Education The Workforce Innovation and Opportunity Act Overview of Title IV: Amendments to the Rehabilitation Act of 1973, (Jul. 24 2014) *available at* <http://www2.ed.gov/about/offices/list/osers/rsa/publications/wioa-changes-to-rehab-act.pdf>.

⁵⁷ Workforce Innovation and Opportunity Act, Pub. L. No. 113-128, §458, 128 Stat. 1425, 1676-1679 (2014). Data from CRP site interviews and follow up survey responses, *supra* note 43.

⁵⁹ Some providers received Technical Assistance as part of a pilot project, but the majority of providers do not have access to these services and in interviews CRP staff told DRI that the only resources they could access for information about transformation and Supported Employment Services were other CRP’s.

⁶⁰ Restrictions that force individuals to choose between employment programming and day programming have unintended, and negative consequences. *See* Disability Rights Washington, Hours That Count: Making Employment Supports for Washingtonians with Developmental Disabilities, *available at* <http://www.disabilityrightswa.org/sites/default/files/uploads/Hours%20that%20Count%20Report.pdf>.