



***Beyond* Segregated and Exploited**

Update on the Employment of People with Disabilities

April 2012

www.ndrn.org

Cover image courtesy APSE: Three employees at Best Buy posing for a photo in the store.

Tracy (left), Tracey (middle) and Jai (right).

Jai spent his days going from store to store looking for work. He would often stop at Best Buy to recharge his power chair. When Tracey, the assistant manager at Best Buy, noticed Jai using his knowledge of electronics to assist other customers, he offered him a job.

Tracy formerly worked in a sheltered workshop but left for competitive employment at Best Buy.

**A Letter from the Executive Director**

One year ago we made a call to action in our report **Segregated and Exploited: The Failure of the Disability Service System to Provide Quality Work.** In that report we examined the ability of sheltered workshops and other segregated employment settings to meet the needs of workers with disabilities.

What we found was a system that does not provide truly meaningful employment opportunities for people with disabilities and in many instances exploits their disability for the financial gain of employers. We found a system that traps these workers in endless “training” programs that prepare them for nothing and often leaves them impoverished. Worse, federal laws and programs as well as many provider organizations within the disability service system help facilitate this travesty.

Our findings galvanized us to take action.

Over the last year the National Disability Rights Network and the Protection and Advocacy System that we represent in Washington, DC, have taken action to end segregated work, the sub-minimum wage, and the further exploitation of workers with disabilities.

At the national level, NDRN has worked with lawmakers on Capitol Hill and the Obama Administration on legislation to expand employment options, specifically employment in integrated settings at competitive wages, and to phase out the antiquated and obsolete public policies that lead to sheltered employment and sub-minimum wages.

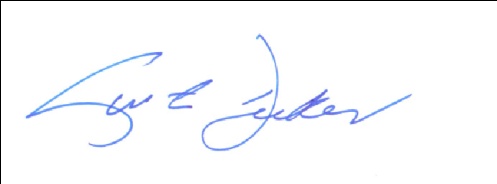
Around the nation, P&As are working at the state and local level assisting workers with disabilities who desire real jobs and helping those trapped in sheltered workshops get out and find integrated employment. P&As are also working systemically to improve and expand employment options at the state and local level so that segregation is no longer the only choice.

I am grateful to all those who have joined us in our call to action. They include Self Advocates Becoming Empowered, the New York Association on Independent Living, Community Employment Alliance, Washington State Rehabilitation Council, the Washington State Division of Vocational Rehabilitation, and others.

The following update to our report details the work started over the past year and examines further how federal policies are contributing to the segregation and exploitation of workers with disabilities.

We are proud of the work that has been accomplished this past year but there is much still to do. Indeed we are only just beginning. Only 20% of people with disabilities are in the workforce with over 400,000 of them stuck in sheltered workshops earning on average only $175 per month. Few receive health care or the other benefits typical of the average American worker. And because of the nature of segregated work – in which workers with disabilities are isolated and hidden away – there continues to be instances of exploitation, abuse and neglect. This must end. Now.

We can do better and we will. We renew our call to action and pledge to continue challenging a system that is failing to provide quality work to people with disabilities.

Curt Decker

Executive Director

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**Summary of Activities by the Protection and Advocacy Network on Segregated and Sub-minimum Wage Employment**

In January of 2011, the National Disability Rights Network (NDRN) issued *Segregated and Exploited: The Failure of the Disability Service System to Provide Quality Work* in an effort to bring attention and ignite discussion about the ongoing problem of placing people with disabilities into segregated employment settings (also called sheltered workshops) and those performing jobs that pay less than the minimum wage.

Since the release of that report, the nationwide network of Protection and Advocacy (P&A) affiliates have been engaged in a wide variety of activities at the state and local level to educate providers and public officials and advocate for people with disabilities to work in competitive, integrated settings. P&As have engaged in the following activities:

1. *Monitoring sub-minimum wage employers*. Some states, such as Florida, Utah and Alaska, are investigating their network of sub-minimum wage employers to ensure that they are properly implementing the protections that exist for people with disabilities in section 14(c), and also to ensure that vocational rehabilitation (VR) providers are attempting to place clients in competitive settings before placing them in sheltered workshops. Some states, such as New York and Missouri, have been monitoring sheltered workshops through the Representative Payee project, a grant from the Social Security Administration to monitor representative payees.
2. *Outreach and education*. Many P&A agencies, such as the P&A’s in Washington, DC, Louisiana, Maine, Ohio and West Virginia, have been conducting outreach and education to inform people with disabilities what their rights are and what the options are for employment.
3. *Employment First statutes and policies*. The Disability Rights Center of Kansas successfully advocated for the nation’s most aggressive and thorough “Employment First” statute, which requires that state agencies develop a policy to place people with disabilities in competitive and integrated settings, and for the state to develop goals to turn this policy into reality. Other states, such as California and North Dakota, have been working with their State DD Councils or with their state agencies to develop Employment First policies.
4. *Other legislation*. Some P&A’s have been working to eliminate state policies that encourage support of sheltered workshops. The North Dakota P&A, for example, has been advocating for a bill that would prevent state contracts from going to sheltered workshops without competitive bidding, which is currently the case.
5. *Support for transition-age youth.* The Georgia Advocacy Office is collaborating with the state vocational rehabilitation agency to help ensure appropriate vocational assessments for youth transitioning from school. Other P&As, such as Indiana, Kentucky, South Carolina and Tennessee are developing transition booklets and holding transition fairs to provide information to transition-age youth on how to obtain future schooling or employment.
6. *Collaboration with state agencies.* Some state P&As, such as Oregon, Rhode Island and Wisconsin, have been sitting on supported employment advisory groups or working with state agencies to encourage supported employment and reduce support of sheltered workshops. Others, such as Mississippi and Maine, are forming coalitions to bring other organizations on board and develop recommendations for state-wide policies that promote integrated employment.
7. *Litigation.* On January 25, 2012, Disability Rights Oregon (DRO) filed a lawsuit against the State of Oregon alleging that it failed to provide supported employment services in the most integrated setting as required under *Olmstead*. In its complaint, DRO asserts that the State of Oregon has failed to provide supported employment services to more than 2,300 state residents who are segregated in sheltered workshops and paid below the state’s minimum wage. DRO is requesting that the State provide supported employment services to enable people with disabilities to participate in competitive employment in integrated settings.
8. *Case work.* Many P&As have been engaged in direct representation of individuals wanting to leave sheltered employment. In Utah, for example, the Disability Law Center (DLC), is investigating a local sheltered workshop based on allegations of financial exploitation of clients. The DLC is looking at whether the sheltered workshop is providing appropriate training to maximize employee skills and properly evaluating consumers for wage increases.

**Summary of Public Policy Advancements**

On the national level, the National Disability Rights Network has led a number of efforts to limit the growth of segregated workshops and develop policies to ensure that people with disabilities have a better chance to find employment in an integrated setting. The staff of NDRN has met with people from the various federal agencies that engage in development of policy related to employment of people with disabilities, and also with Congressional staff to pursue legislative advances. These efforts have resulted in legislative and administrative advances to address the problem of segregated employment in the Obama administration and in Congress.

In June 2010, Senator Tom Harkin, chair of the Senate Health, Education, Labor and Pensions (HELP) Committee, distributed a draft bill to jointly reauthorize the Workforce Investment Act (WIA) and Rehabilitation Act. These bills include a variety of employment programs for people with disabilities and for the general population, including vocational rehabilitation, funding for various supported employment programs for people with disabilities, and the Client Assistance Program and Protection and Advocacy for Individual Rights program, both of which advocate for people with disabilities in the employment setting. These bills have both been overdue for reauthorization for a number of years.

The draft WIA/Rehabilitation Act bill included provisions designed to help ensure pursuit of alternative employment placements besides sheltered workshops and sub-minimum wage employers for young people with disabilities transitioning from education to employment. NDRN supported this draft bill as a beginning toward chipping away at the federal policies that encourage placement in sheltered workshops, and submitted comments to attempt to strengthen the draft as it moved through the legislative process. NDRN’s comments were based on the policy recommendations originally set forth in the Segregated and Exploited report. Unfortunately, the bill was sidelined due to issues unrelated to employment of people with disabilities.

In October 2011, Representatives Stearns and Bishop introduced the Fair Wage for Workers with Disabilities Act. This bill would phase out section 14(c) of the Fair Labor Standards Act and thereby eliminate sub-minimum wage for people with disabilities. NDRN supports this legislation and hopes this new attention on the problems of sheltered and sub-minimum wage employment will help the legislation advance through Congress.

While legislative advances in Congress have been slow, NDRN has been able to make some progress with the Obama Administration, by educating and working with the various Federal agencies on different ways to limit placement of people with disabilities in sheltered workshops. NDRN has met with the following agencies to discuss policy changes and efforts that might assist in our goals:

* The Office of Disability Employment Programs – to discuss how NDRN, the P&As and CAPs can work together with the Department of Labor to encourage support for competitive employment opportunities;
* The Rehabilitation Services Administration – to discuss how the vocational rehabilitation programs could provide better support to people with disabilities who are approaching transition age and help ensure that they have an opportunity to work in a competitive integrated setting;
* The Equal Employment Opportunity Commission – to explore how Title I of the Americans with Disabilities Act could be used to help ensure equal pay for equal work for people with disabilities and limited use of sub-minimum wage;
* The Wage & Hour Division of the Department of Labor – to advocate for better enforcement of the safeguards that exist in section 14(c) and limit the number of people with disabilities who receive sub-minimum wage;
* The Office of Personnel Management – to encourage the federal government to become a model employer of people with disabilities in competitive, integrated settings, and how NDRN can assist training Service Placement Program Coordinators to recruit people with disabilities;
* The Center for Medicare and Medicaid Services – to explore ways to reduce or eliminate Medicaid and Medicare funds from going to sheltered workshops; and
* The Department of Justice – to explore legal action against states based on the *Olmstead* decision and the Americans with Disabilities Act for failing to ensure that people with disabilities work in the most integrated setting.

NDRN will continue to meet with Congressional staff people and officials in the Obama administration to explore ways to further limit the use of sheltered workshops and payment of sub-minimum wage to people with disabilities.

**State and Federal Dollars Keep Sheltered Workshops Open Against National Policy**

As work has progressed over the past year, one issue has emerged as a leading factor perpetuating sheltered work and sub-minimum wage jobs.

That issue is money.

This section expands on our original report by providing further insight into the complex and confusing system that pumps millions of dollars into sheltered work despite good national public policy meant to encourage integration and competitive employment.

Who continues to fund sheltered settings and why is the funding so well hidden?

Two major sources of federal funding for employment services for people with disabilities are the Centers for Medicare and Medicaid Services (CMS) and the Rehabilitation Services Administration (RSA). Both agencies have clearly and admirably vocalized the importance of integrated employment for people with disabilities. Most recently, in September of 2011, CMS issued a Bulletin providing more technical assistance on employment options for people with disabilities and the home and community waiver program.[[1]](#footnote-1)

CMS explained that:

“Work is a fundamental part of adult life for people with and without disabilities. It provides a sense of purpose, shaping who we are and how we fit into our community. Meaningful work has also been associated with positive physical and mental health benefits and is a part of building a healthy lifestyle as a contributing member of society. Because it is so essential to people’s economic self-sufficiency, as well as self-esteem and well-being, people with disabilities and older adults with chronic conditions who want to work should be provided the opportunity and support to work competitively within the general workforce in their pursuit of health, wealth and happiness. **All individuals, regardless of disability and age, can work** – and work optimally with opportunity, training, and support that build on each person’s strengths and interests. Individually tailored and preference-based job development, training, and support should recognize each person’s employability and potential contributions to the labor market.” [[2]](#footnote-2)

The preference for integrated employment outcomes was confirmed by CMS in their bulletin in which states are reminded that:

“[states] have obligations pursuant to the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, and the Supreme Court’s *Olmstead* decision interpreting the integration regulations of those statutes. Consistent with the *Olmstead* decision and with person centered planning principles, an individual’s plan of care regarding employment services should be constructed in a manner that reflects individual choice and goals relating to employment and **ensures provision of services in the most integrated setting appropriate. [[3]](#footnote-3)”**

Similarly, RSA has stated a policy of integrated employment. In January of 2001, RSA limited the meaning of a successful employment outcome to integrated outcomes only.[[4]](#footnote-4) They stated in a February 2002 Technical Assistance Circular[[5]](#footnote-5) that this was done in order to, “ensure that individuals with significant disabilities are not routinely placed in [sheltered workshops] based on the view that they are only capable of sheltered work as opposed to integrated employment in the community.[[6]](#footnote-6)”

However, despite CMS’ recognition of the importance and value of the ADA and *Olmstead* integration principles and RSA’s definition of successful employment being limited to integrated settings, states are still able to access money to facilitate the continuation of sheltered settings for individuals with disabilities.

The funding for segregated employment options continues partially because § 1915(c)(5)(b) of the Social Security Act provides that states may request funding for prevocational services and supported employment. However, there is absolutely nothing in the federal rules and regulations that require prevocational services or supported employment be provided in community-based or integrated settings. In fact, the sole limit is that such services cannot otherwise be available to the person seeking services under a different statutory scheme like the Rehabilitation Act of 1973, as amended or the Individuals with Disabilities Education Act (IDEA).[[7]](#footnote-7)

Even when prevocational services are not delivered by a facility that is specifically classified as a “sheltered workshop” with a 14(c) certificate, they can still result in the segregation and exploitation of people with disabilities. Notice how comparable prevocational services and sheltered workshops are described:

**Prevocational Services**: Non-task specific training or volunteer work performed in a segregated setting for which a person is compensated below minimum wage, if at all. It is not a prerequisite for community supported employment.[[8]](#footnote-8)

**Sheltered Work**: Menial tasks performed in a segregated setting for which a person is compensated below minimum wage. It is not a prerequisite for community supported employment.[[9]](#footnote-9)

Beyond that striking similarity, prevocational services may actually be directly tied to sheltered workshop services. For example, in the state of Ohio, requests for participation in vocational habilitation (e.g. day programs) through Ohio’s Individual Options Waiver Program[[10]](#footnote-10) are linked to sheltered workshops.

This choice falls under prevocational services because the program involves “services designed to teach and reinforce habilitation concepts related to work including responsibility, attendance, task completion, problem solving, social interaction, motor skill development, and safety.” The program is clearly tied to the workshop because only people with disabilities working in a program that qualifies for a special minimum wage certificate can participate in it.

Ideally, prevocational services are designed and intended to help individuals with disabilities develop the work skills needed to succeed in competitive, integrated employment. The ability to follow directions, complete tasks in a timely manner, problem-solve and develop the social skills needed to thrive in a work environment are examples of things that might be addressed. However, rather than serving as a stepping stone on the way toward the ultimate goal of community employment, individuals may, instead participate in prevocational services for years and years. After all, prevocational services have absolutely no time limit.

CMS has suggested prevocational services be time limited, but do not require this of states.[[11]](#footnote-11) Therefore, if a person is placed in a prevocational training program, they may literally be placed on a dead-end path with no end goal of integrated, competitive employment in sight.

RSA Regulations Provide Disincentives to Integrated Work

RSA may be able to claim that much of the funding for segregation comes from other sources,[[12]](#footnote-12) but they still provide a valuable resource – the workers.

As we showed in our original report one year ago, this is as much by default as by design. RSA’s failure to provide the services or support needed for people with disabilities to obtain competitive employment means many are funneled directly upon graduation from school to the segregated work setting without referral to or assessment by vocational rehabilitation.

RSA still allows sheltered workshops as a way to prepare for integrated work in the community while receiving VR services.[[13]](#footnote-13) However, just like their counterparts without disabilities, VR clients would likely be better served by honing their skills in an integrated, “real world” environment. Research demonstrates that no more than 5% of individuals in sheltered workshops ever transition into integrated employment.[[14]](#footnote-14)

Moreover, the time limit imposed upon the duration of VR services makes it more likely that the more difficult cases are placed in sheltered workshop settings. Under the Rehabilitation Act of 1973, as amended, VR can fund supported employment services for a total of 18 months. Although there is a possibility of an extension for continued supported employment services, this option is rarely implemented. People who require continued support on the job beyond the 18-month time frame are often unable to continue working in the community.

Despite CMS’ and RSA’s expressed preference for integrated employment, the heavy flow of Medicaid dollars spent on prevocational services and RSA’s policy allowing workers to get those services in sheltered settings does not support the call for community-based employment.

Ohio: A Case Study

In order to illustrate how this develops in real terms, we examined the flow of money to sheltered workshops in Ohio. We chose Ohio because the state makes detailed data on funding of segregated settings and other budgetary matters easily available to the public. Ohio is just one of many states that continue to fund work for people with disabilities in segregated, sub-minimum wage settings.

Sheltered workshops within the state of Ohio are run by the individual County Boards of Developmental Disabilities. Ohio does not directly mandate that these boards utilize sheltered work in the development of their employment plans. [[15]](#footnote-15) However, most of the county boards have decided to rely upon segregated settings as the main way of employing people with disabilities.

In August 2011, *The Columbus Dispatch* studied federal wage documents for 69 out of Ohio’s 88 counties and found that 70 percent of the 21,000 Ohioans with disabilities who are employed and receive services from the county boards are stuck in sheltered workshops. As many as 1,000 workers were receiving less than a single quarter per hour in compensation. Eighty percent were receiving less than $3.70 per hour.[[16]](#footnote-16)

“In an effort to open employment doors for disabled individuals and to safeguard the Ohio minimum wage laws, the director of the Ohio Department of Commerce (ODOC) may permit individuals whose earning capacity is impaired by physical or mental deficiencies or injuries to work for lower than the applicable minimum wages.”

In Ohio, in order to draw down (use) the federal funds allotted to a state, the state and county must spend a certain ratio of money – called an FMAP. The amount of money spent at the state or county level is referred to as the “match.” As a result, a state’s actual use of federal Home and Community-Based Services (HCBS) funds may lead to more money being spent towards a program like segregated employment than is approved at the federal level.

The chart here and the following table illustrate how governments are spending more on segregated employment despite explicitly stated policies favoring integrated employment.

The first line of Table 1 is the amount of HCBS funds approved by CMS.[[17]](#footnote-17) HCBS means services furnished under the provisions that permit individuals to live in a home setting rather than a nursing facility or hospital.

The remaining numbers included are estimates arrived at by using a simple formula. Ohio has a line item budget that explains how much overall money was spent from or appropriated for federal funds, state funds, and county funds. One of the line items includes the HCBS Waiver program. In order to arrive at these estimates, we multiplied the overall amount of money spent by the ratio of funds allotted at the federal level toward a particular program. This is an estimate because it assumes that each dollar spent on the program at the county or state level drew down funds according to the proportion set in the overall state plan.

Table 1:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| w/ Day | 2011 | | 2012 | | 2013 | |
|  | Integration | Segregation | Integration | Segregation | Integration | Segregation |
| HCBS $ Approved | 5,541,810 | 194,295,117 | 5,628,952 | 200,713,687 | 5,681,241 | 205,405,010 |
| Federal $ Spent | 3,788,413 | 132,821,277 | 4,407,168 | 157,148,079 | 4,973,424 | 179,813,900 |
| State $ Matched | 574,838 | 20,153,757 | 61,029 | 2,176,149 | 60,555 | 2,189,368 |
| County $ matched | 651,018 | 22,824,633 | 1,195,159 | 42,616,255 | 1,463,415 | 52,909,729 |
| **Total Spent\*** | **5,014,271** | **175,799,667** | **5,663,357** | **201,940,484** | **6,497,395** | **234,912,998** |

\*Does not include HCBS $ approved line.

Table 1 shows actual expenditures for 2011 and approved appropriations for 2012 and 2013.[[18]](#footnote-18) It also includes adult day services. Adult day services in Ohio are defined as “non-residential community-based service designed to meet the needs of functionally and/or cognitively impaired adults through an individualized care plan that encourages optimal capacity for self-care and/or maximizes functional abilities.”[[19]](#footnote-19)

Day services are included in Table 1 because adult day services, supported employment enclave, and prevocational services are all services that are offered in four-hour or more segments as part of an overall plan for a person’s entire day. So, since adult day services are an integral piece of the entire puzzle, a true representation of the cost of segregation must also include adult day services.

The estimates in the table above clearly show that significantly more money is being spent on segregated employment rather than integrated employment. The bottom line is that although progress has been made since the release of our initial report one year ago, there is still much work to be done to end segregated employment for people with disabilities.

**Conclusion**

The National Disability Rights Network is committed to finding solutions that improve employment outcomes for people with disabilities. Some have criticized this work as idealism run amuck. They say that we are moving too fast, that there are not enough jobs for anyone right now let alone jobs for workers with disabilities in the community that pay real wages. They say there are not enough employers who understand people with disabilities can work if given the chance and the services and supports they need to succeed. Sadly, there are still some who say that people with disabilities will never be able to work real jobs earning real wages. They say sheltered workshops are the best we can do.

**NDRN’s Policy Recommendations**

*Detailed recommendations can be found on page 46 of the original report –* ***Segregated and Exploited****.*

*End Segregated Employment and Sub-minimum Wage for People with Disabilities*

* Restrict all federal and state money that is spent on employers who segregate employees with disabilities from the general workforce.
* End the ability of employers to pay employees with disabilities a sub-minimum wage.
* End all programs that emphasize moving young adults from the classroom to a segregated or sub-minimum wage employment environment.

*Promote and Facilitate Integrated and Comparable Wage Employment Alternatives*

* Strengthen existing and create new federal and state tax incentives for employers to place employees with disabilities in integrated environments at comparable wages.
* Assist employees with disabilities to find employment in the general workforce in jobs that they choose.

*Increase Labor Protections and Enforcement*

* Fully investigate violations and abuses perpetrated by employers that pay less than the minimum wage or segregate workers with disabilities.
* Increase penalties for violators.
* Formalize standards for employee evaluations and productivity measurements.

We say that lack of vision is upholding the status quo.

As we showed in our call to action one year ago, the training sheltered workshops claim to provide does not lead to meaningful jobs and can be damaging to the individuals trapped there. At worst the sheltered and segregated nature of the work environment contributes to abuse, neglect and financial exploitation.

As we have continued to explore this issue over the past year, we are even more convinced that segregating workplaces based on disability is just another form of institutionalization. It is commonly accepted now, both in attitude and reflected in laws like the ADA, that people with disabilities should not be forced to live in institutions to receive services and supports. That same principle applies to the workplace. People should not be forced to work in sheltered workshops or receive employment training in segregated settings just because they have a disability.

This update to our call to action is an affirmation of our pledge to fight as doggedly for real jobs and real wages for people with disabilities as we have and continue to do for other areas of community integration like housing and education. In our minds employment integration is community integration.

**Appendix A**

A Review of P&A Activity

**Alabama:** Alabama Disabilities Advocacy Program (ADAP)

In January the Alabama Department of Mental Health, Division of Developmental Disabilities made a policy decision that beginning October 1, 2012 sheltered work will be phased out as a waiver service in Alabama. By October 1, 2015, sheltered work may not be billed as a waiver service under any code. ADAP staff furnished the state agency copies of the NDRN report, as well as other material supporting integrated work. ADAP, together with other groups including the state agency, is providing training and technical assistance to local agencies in developing integrated employment and paying fair wages.

**Alaska:** Disability Law Center of Alaska (DLC)

DLC requested and received all applications for sub-minimum wage certificates in Alaska to identify which employers are paying sub-minimum wages to individuals with disabilities. DLC will use this information to begin advocating for an increase in wages for employees with disabilities. Also, DLC is working with the state on improving the selective hiring process for state employees.

**Arizona**: Arizona Center for Disability Law (ADLC)

ADLC is working with the State Council on Developmental Disabilities to develop recommendations for the state legislature on Employment First policy.

**California**: Disability Rights California (DRC)

DRC is working on a committee with the State Council on Developmental Disabilities to develop a policy on Employment First which will direct money to be used on employment services and supports for individuals with disabilities receiving state services.

**Colorado**: The Legal Center for People with Disabilities and Older People

Legal Center staff participated in a workgroup convened to determine the steps needed to end Non-Integrated Work Sites with the least impact on persons receiving this service. A report is near completion with several recommendations that include: (1) amending current waivers to include funding for pre-vocational services; (2) flexibility in service definitions and related rules when establishing when someone can receive pre-vocational services; (3) Enhance a programs ability to provide other employment and community based options; (4) recognize a need for a standardized comprehensive assessment that focuses on finding someone a job in which they are interested and well suited; (5) rates review; (6) consider pay-for-performance supported employment models; (7) ensure choice of services; (8) provide guidance to the Division on transition from segregated to integrated/supportive employment practices.

**Delaware**: Community Legal Aid Society, Inc. (CLASI)

CLASI is investigating the state’s over-reliance/steering of people with disabilities into sheltered workshops. There are several sheltered workshops in the state and CLASI is reaching out to clients and advocacy organizations (the Arc for instance) to try to find clients who might prefer a more integrated work setting.

**District of Columbia**: University Legal Services (ULS)

ULS is conducting outreach and training regarding employment opportunities for people with disabilities and advocating for quality supportive employment opportunities for individuals with developmental disabilities. There are also plans to review how day programs are training and moving individuals to the workforce.

**Florida**: Disability Rights Florida (DRF)

The Employment Team/Client Assistance Program will be starting to investigate the segregated/sheltered workshops in Florida. The emphasis so far has focused on promoting integrated employment mostly through administrative strategies such as agency rule-making and private employer outreach in addition to related investigative efforts through the representative payee project.

**Georgia**: Georgia Advocacy Office (GAO)

GAO created and continued collaboration on a pilot project with DD Network, VR, and Department of Education for students transitioning from school to obtain appropriate vocational assessment and customized employment where VR was closing students’ cases based upon VR’s finding that the “disability is too severe” for student to benefit from employment services. GAO staff testified before the Equal Employment Opportunities Commission and the United States Congress regarding the benefits of integrated employment for people with disabilities at minimum wage or better. GAO created and continued facilitation of a group of stakeholders in rural, South Georgia to develop an employment collaborative to facilitate increased integrated employment for individuals with disabilities. GAO worked with the parties in the implementation of *United States v. Georgia* to carry out the provision of evidence-based supported employment for people with psychiatric disabilities statewide

**Hawaii**: Hawaii Disability Rights Center (HDRC)

HDRC has made transition a priority and has been diligently working with the Hawaii Department of Education (DOE) to eliminate “sheltered workshops” from transition plans in a student’s Individualized Education Plan. HDRC’s Client Assistance Program meets quarterly with the Hawaii Division of Vocational Rehabilitation (DVR) to discuss employment outcomes and will continue to do outreach to the DOE and other government agencies, including for profit and non-profit agencies to advocate in favor of paid employment at a livable wage.

**Illinois**: – Equip for Equality (EFE)

Equip for Equality is engaging in significant employment discrimination litigation (especially using PABSS and AT funds). They have also done extensive training on ADA employment issues, receiving a contract to do six national webinars annually on emerging ADA employment issues, as well as employment trainings as the fiscal agent of the Illinois ADA Project. Last year, Equip for Equality hosted an ADA conference featuring the EEOC on the new ADAAA regulations. They also manages an ADA employment database for the public (go to [www.adacaselaw.org](http://www.adacaselaw.org)).

**Indiana:** Indiana Protection and Advocacy Services (IPAS)

IPAS is completing sheltered workshop outreach across the state and is focusing on transitions services for youth. They printed 5000 copies of the NDRN report which was distributed with an IPAS cover letter at all the transition events in the state! Transition brochures were completed for three school corporations identified in 2009 and 7,000 copies distributed to parents and students. These brochures will provide students aged fourteen years and older with much needed transition information to guide them in making decisions regarding their future schooling or employment.

**Iowa**: Disability Rights Iowa (DRI)

DRI is supporting individuals living with disabilities in employment related issues and established a new priority goal to focus on furthering integrated employment and eliminate sub-minimum wage. They are creating a formal relationship with Iowa Vocational Rehabilitation Services to move individuals out of sheltered workshops and into competitive employment.

**Kentucky**: Kentucky Protection and Advocacy (KYP&A)

KYP&A conducted youth transition fairs last year with the goal of integrated competitive employment. The P&A also hired a time-limited employee to assist with a new priority focusing on Kentucky’s sub-minimum wage/sheltered employment providers. The Client Assistance Program worked with the KY Protection and Advocacy agency to plan visits to various workshops in the Commonwealth. CAP also continues to work with VR staff on employment reviews and ways to get more information out to clients on integrated employment.

**Louisiana**: Advocacy Center (AC)

The Advocacy Center created the Louisiana’s Work Pays coalition, comprised of 35 individual organizations active in employment issues for people with disabilities. One activity of the coalition was to advocate for Louisiana becoming an “Employment First” state which Louisiana’s Office for Citizens with Developmental disabilities approved in the fall. Now the coalition will work toward changes in policy that will support the transition from sheltered workshops to supported and competitive employment. Advocacy Center also completed a series of workshops for consumers and family members on the benefits of competitive and supported employment. They will issue a report in spring 2012 calling for policy changes that will support competitive employment for people with disabilities.

**Maine**: Disability Rights Center(DRC)

DRC recruited and trained 20 advocates with disabilities to work on state councils and committees to promote Employment First, and protest sub-minimum wage. These advocates have joined the Governor’s Commission on Disability and Employment, State Rehabilitation Council, APSE Maine and other forums to report on activities and strategize next steps. DRC also convened 110 people for an event on customized employment, supported employment, and systems issues and prepared a 25 page summary of the NDRN Call to Action in simpler language along with a consumer questionnaire to assist people with disabilities ask relevant questions when shopping among agencies for employment supports. A delegation from Maine went to the November Alliance for Full Participation summit in Baltimore, and the May regional self-advocacy summit in Rhode Island. Follow up meetings have capitalized on the Employment First energy coming out of these events, and the group is currently assessing Employment First initiatives from other states and developing an action plan.

**Maryland:** Maryland Disability Law Center (MDLC)

Maryland is a “work first” state and the state Developmental Disabilities Administration (DDA) and the state Department of Disabilities has made employment a priority issue by exploring market-wage work for every client they serve. The P&A is monitoring state efforts and visiting day programs to collect data about contract work that is below market wage. Through its PABSS and Assistive Technology grants, the P&A continues to represent individuals who need services, access to benefits, or technology devices in order to be ready for work or to pursue work outside of a segregated setting.

**Massachusetts**: Disability Law Center (DLC)

The Disability Law Center produced a user friendly transition guide and is working with the state DDS, Vocational Rehabilitation, and state Health and Human Services to promote better integrated employment outcomes in Massachusetts. DLC was successful in a lawsuit against a school district that failed to provide a Free Appropriate Public Education to a student who required functional living skills to be prepared for employment and independent living. DLC convened a Stakeholder Group in support of a bill, “Bridges to Success,” which is stalled in the state legislature that promotes more seamless planning from school to work. DLC provided input into both the original bill and subsequent amendments as well as provided written and oral testimony on the bill.

**Minnesota** – Minnesota Disability Law Center (MDLC)

The Minnesota Disability Law Center is conducting monitoring visits of all the sub-minimum wage programs in the state and analyzing the data; holding information/discussion meetings with providers and other advocates; and establishing a relationship with pro bono counsel for possible litigation. MDLC is using its position on Minnesota’s new Olmstead Plan Advisory Committee to insist that employment be included in the state’s Olmstead plan.

**Mississippi** – Disability Rights Mississippi (DRMS)

DRMS devoted and published an entire newsletter on employment. DRM also helped develop a successful application for one of six ADD grants to improve competitive employment outcomes for youth and young adults with DD/ID. As a managing partner for the project titled *Mississippi Partnerships for Employment*, DRMS has a sub-contract with primary responsibility to do legal and policy analyses and to facilitate an Employment Work Group to make recommendations for systems change for the consortium. DRMS also sent a staff member to the Alliance for Participation's Summit which focused entirely on employment.

**New Jersey:** Disability Rights New Jersey (DRNJ)

DRNJ is addressing employment and sub-minimum wage issues through both CAP and PABSS programs and participates in NJ's Alliance for Full Participation effort. This effort is focused on increasing the full employment of people of with disabilities.

**New York:** Commission on the Quality of Care (CQC)

CQC is using PABSS and the Rep Payee Program to pursue employment issues identified through case representation and monitoring of employer representative payees.

**North Carolina:** Disability Rights North Carolina (DRNC)

DRNC convened a diverse group of Mental Health officials, Vocational Rehabilitation officials, disability advocacy group representatives, individuals with disabilities, and providers to respond to NDRN’s call to action on sheltered workshops, segregated employment, and subminimum wages. This resulted in the development of an Employment First work group and a position paper initiated by North Carolina Alliance on Full Participation. In October, DRNC moved into Phase 2 of its community monitoring project, which it has titled the “Dignity in Work” Project. Attorneys and advocates are visiting 14(c) certificate holder facilities, continuing to monitor and assess the state of subminimum wage employment in North Carolina. Requests were made to state and federal agencies for each 14(c) certificate holder in North Carolina and joint meetings were held to discuss employment services and how to best connect individuals receiving Adult Developmental Vocational Program services to Vocational Rehabilitation services, and North Carolina’s Employment First initiative. Staff were invited by the state to meet with consultants from the State Employment Leadership Network (SELN) and a small group of state leadership staff to discuss some of the initial findings of the “Dignity in Work” project. Staff attended the Vermont Sheltered Workshop Conversion Institute.

**North Dakota:** Protection and Advocacy Project (P&A)

P&A presented NDRN recommendations at the ND Association of Community Providers conference and is working on developing an Employment First initiative. DRND is also interviewing people with disabilities earning sub-minimum wage and working in sheltered workshops and providing case assistance for them to access services to leave sheltered employment. On the public policy front, DRND challenged a bill that would allow state contracts to go to work centers without competitive bidding. Staff testified to try to get amendments that required minimum wage. Unfortunately, the bill passed.

**Ohio:** Ohio Legal Rights Service (OLRS)

Ohio Legal Rights Service (OLRS) conducted extensive outreach to sheltered workshops to provide training on voting rights, this also allowed OLRS to share general information about rights and how to contact the P&A for advocacy assistance including employment. OLRS also conducted a comprehensive review of employment supports and opportunities provided by the state of Ohio with public funding, including evaluating data on funding sources, types of employment services, and outcomes. As a result of the review, OLRS prepared a report summarizing the information and recommending further action be pursued in collaboration with other disability advocates and organizations to shift the funding from segregated to integrated opportunities. OLRS began working with self advocacy organizations on employment issues. This culminated in regional employment forums hosted by People First for which Ohio Legal Rights Service provided legal expertise. OLRS will collaborate with People First and others on statewide recommendations to develop a plan to create more job opportunities, better wages, and benefits for people with disabilities. On March 19, Ohio Governor John Kasich signed an Employment First executive order making integrated jobs a priority for the state.

**Oregon:** Disability Rights Oregon (DRO)

DRO is participating in a supported employment advisory group of providers, agencies, and interested parties which has advised the state on initiating an Employment First policy and strategy. DRO is investigating the states system of sheltered workshops in terms of the high level of segregated services and low level of employment outcomes.

**Pennsylvania:** Disability Rights Network of Pennsylvania (DRNP)

DRNP is researching data on segregated employment in Pennsylvania for advocacy efforts. Staff who sit on the State Rehab Council have requested a meeting to present the NDRN report on Segregated and Exploited to educate the council so that they can better plan to address the unmet needs of this segregated population.

**Rhode Island:** Rhode Island Disability Law Center (RIDLC)

RIDLC is participating in a consortium with other disability agencies and self advocates. The consortium is working together to improve competitive and integrated employment outcomes for young adults with developmental disabilities, especially for those with intellectual disabilities by engaging best practice models for integrated employment using braided funding. The goal is to develop a self-directed multi-year, multi-internship process for vocational evaluation, career exploration and career development.

**South Carolina:** Protection and Advocacy for People with Disabilities, Inc.

P&A established a new priority on School to work Transition and is following up on APSE Students with plans to educate transitioning youth with disabilities on the available options for appropriate employment outcomes.

**Tennessee:** Disability Law & Advocacy Center of Tennessee (DLAC)

DLAC is a member of the statewide Alliance for Participation, which recently established employment goals for Tennessee that focus on methods of increasing the number of Tennesseans with disabilities who achieve competitive and integrated employment. DLAC actively participated in a consortium of 25 agencies and organizations led by the Vanderbilt Kennedy Center for Excellence in Developmental Disabilities in an effort to obtain an ADD systems change grant. The working relationships has led to the establishment of the Tennessee Collaborative on Meaningful Work a group formed to formulate and support initiatives resulting from a grant by the U.S. Department of Labor intended to implement exemplary employment services for individuals with disabilities in the public workforce system. One of DLAC’s 2012 priorities is to advocate and assist individuals with disabilities so that they can transition to life after high school either through post-secondary education or competitive and integrated employment. A taskforce is in place to support this goal and has established objectives of educating school systems and the state vocational rehabilitation agency about their responsibilities for transition. DLAC staff are also participating in the Nashville Community Conversation on Meaningful Employment for People with Disabilities.

**Texas:** Disability Rights Texas (DRTX)

DRTX is helping individuals move from institutions into community jobs through supported employment. DRTX has developed a pilot project identifying a liaison from the VR agency to go into the state schools (in west TX) to take referrals for VR services. The Client Assistance Program has conducted in-service training to the Community Integration team on basic VR procedures to facilitate referrals to VR for individuals leaving institutions. They have addressed procedural issues within the state schools that remove barriers to employment – specifically assisting residents get ID for employment. In addition, DRTX is working with youths in Texas Youth Commission (TYC) facilities to ensure that they are referred to VR six months before discharge so that they can get assistance with education, training, and employment. DRTX is also conducting outreach to sheltered workshops to inform staff and consumers about the availability of VR services.

**Utah:** Disability Law Center (DLC)

The DLC is helping develop the program for the Employment First legislation that has passed in Utah by sitting on an advisory council to ensure the plan encourages employment for people with intellectual disabilities. The Employment Team conducts outreach to employment agencies, employers, and consumer groups (i.e. People First) about employment discrimination, requesting a reasonable accommodation, employee rights, etc. DLC is currently working on an investigation into a local sheltered workshop regarding calculation of wages to investigate the allegation of financial exploitation of clients at the Work Activity Center (WAC) to determine: Whether method of wage calculation is in violation of the Fair Labor Standards Act; Whether WAC significantly changed their method of wage calculation for consumer employees; Whether WAC is properly evaluating consumer employees for appropriate wage increases; Whether WAC is providing needed training to consumer employees to maximize skills needed for less restrictive employment options; Whether WAC record keeping re consumer employee wages is accurate; Whether WAC consumer employees need advocacy assistance from DLC.

**Vermont:** Disability Rights Vermont (DRVT)

Vermont has successfully closed all sheltered workshops. DRVT participates in the bi-annual Vermont Sheltered Workshop Conversion Institute which attracts advocates and policy makers from across the country understand the process and the model that was used.

**Washington:** Disability Rights Washington (DRW)

DRW is monitoring a class action settlement relating to HCBS services including an emphasis on employment and continuing to monitor the Washington Adult Working Initiative that requires employment services be the first priority to people receiving DD services in the state.

**West Virginia:** West Virginia Advocates (WVA)

WVA is planning to educate self advocates on employment rights for people with disabilities. WVA is also conducting outreach at People First groups and State psychiatric hospitals and conducting outreach with social work staff at facilities regarding employment issues and options available to persons with disabilities.

**Wisconsin:** Disability Rights Wisconsin (DRWI)

DRWI is participating in a state committee working on promoting integrated competitive employment. DRWI is also working with our state People First group to create a Wisconsin-focused paper to accompany the nationally-focused NDRN paper.

**Wyoming:** Wyoming Protection and Advocacy System

Wyoming Protection and Advocacy System is examining how to address segregated employment and related issues through their programs and developed employment goals and objectives in their upcoming FY 2012 Priorities. Although Wyoming does not have extensive segregated employment these priorities include work in segregated employment and wage disparity areas.

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1. See CMCS Bulletin “Updates to the §1915 (c) Waiver Instructions and Technical Guide regarding employment and employment related services” (2011) <https://www.cms.gov/CMCSBulletins/downloads/CIB-9-16-11.pdf>. [↑](#footnote-ref-1)
2. *Id. at* 3 [↑](#footnote-ref-2)
3. CMCS Bulletin at 5 [↑](#footnote-ref-3)
4. Employment Outcome 34 CFR 361.5(b)(16) [↑](#footnote-ref-4)
5. See ASSESSMENTS OF INDIVIDUALS WITH SIGNIFICANT DISABILITIES UNDER THE STATE VOCATIONAL REHABILITATION SERVICES PROGRAM (2002) <http://www2.ed.gov/policy/speced/guid/rsa/tac-02-01.pdf> [↑](#footnote-ref-5)
6. *Id. At 2* [↑](#footnote-ref-6)
7. *Id.* [↑](#footnote-ref-7)
8. This author’s summary of the CMCS Definition of Prevocational Services as defined in the CMCS Bulletin. [↑](#footnote-ref-8)
9. *Id.* [↑](#footnote-ref-9)
10. https://www.cms.gov/MedicaidStWaivProgDemoPGI/MWDL/itemdetail.asp?filterType=dual,data&filterValue= Ohio&filterByDID=2&sortByDID=2&sortOrder=ascending&itemID=CMS1223059&intNumPerPage=10 [↑](#footnote-ref-10)
11. CMCS Bulletin at. 7 [↑](#footnote-ref-11)
12. State Vocational Rehabilitation Services Program, 34 C.F.R. 361 APPENDIX A (Jan 2001) available at (stating that “Sheltered workshops are primarily supported by other State, local, and private resources and rely very little on VR program funds.” ) [↑](#footnote-ref-12)
13. State Vocational Rehabilitation Services Program, 34 C.F.R. 361 APPENDIX A (Jan 2001) [↑](#footnote-ref-13)
14. *See* Statement of Senator Michael Enzi, *Opportunities Too Few? Oversight of Federal Employment Programs for Persons with Disabilities, Hearing Before S. Comm. On Health, Education, Labor, and Pensions*, 109th Cong. 3 (2005) (noting that fewer than 5% of participants in the federal Javits-Wagner-O’Day program move into supported or competitive employment in a given year); Michael Gill, *The Myth of Transition, Contractualizing Disability in the Sheltered Workshop*, 20:6 Disability & Society 613–623 (Oct.2005) (citing a 2003 study which found that only 3.5% of sheltered workshop employees in the United States transitioned into community-based settings per year). [↑](#footnote-ref-14)
15. Ohio Revised Code Section 5126.051 [↑](#footnote-ref-15)
16. Jill Riepenhoff, *Far Below Minimum Wage,* The Columbus Dispatch, August 1, 2011. [↑](#footnote-ref-16)
17. Level One: https://www.cms.gov/MedicaidStWaivProgDemoPGI/MWDL/itemdetail.asp?filterType=dual, data&filterValue=Ohio&filterByDID=2&sortByDID=2&sortOrder=ascending&itemID=CMS1252347&intNumPerPage=10 Individual Options: https://www.cms.gov/MedicaidStWaivProgDemoPGI/MWDL/itemdetail.asp?filterType=dual,data&filterValue=Ohio&filterByDID=2&sortByDID=2&sortOrder=ascending&itemID=CMS1223059&intNumPerPage=10 [↑](#footnote-ref-17)
18. <http://www.lsc.state.oh.us/fiscal/bid129/budgetindetail-hb153-en-fy11actexp.pdf> [↑](#footnote-ref-18)
19. Ohio Adult Day Services Standards <http://aspe.hhs.gov/daltcp/reports/adultdayOH.pdf> [↑](#footnote-ref-19)