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Trends in Employment Policies - Update from Washington DC

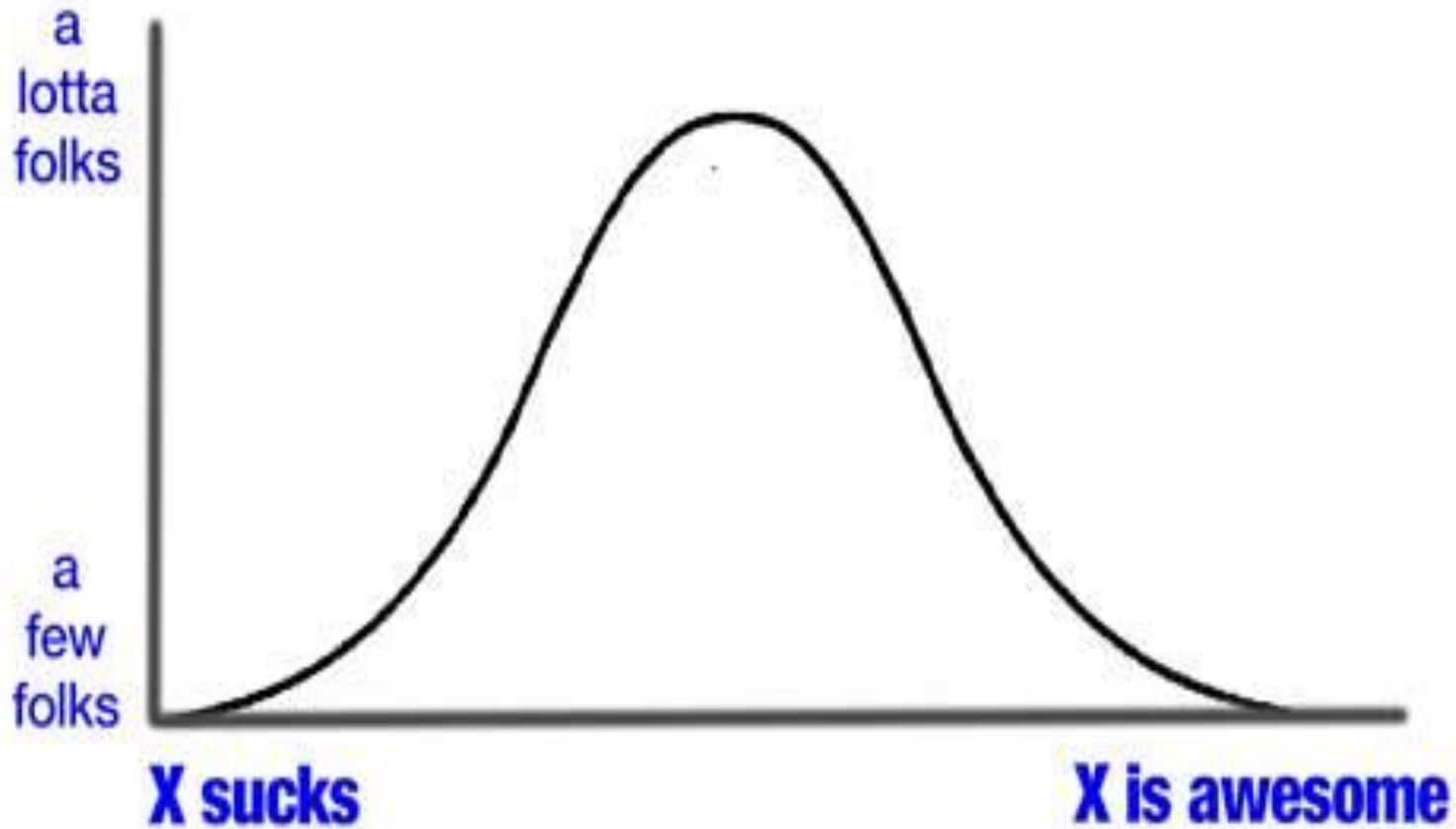
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How Far We've Come

- A safe place for people to go during the day.
- A place for people to go to learn daily living skills.
- A place for people to go to prepare for work.
- A place for people to go to work with others who have disabilities.
- Support for people to work in the community.
- Support for people with disabilities to choose and prosper in community jobs.

Typical Reactions to Change





The Arc

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BEGIN WITH

THE **END**

IN **MIND**

Stephen Covey

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Employment First

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Employment First

- **45+ states have some type of “Employment First” movement**
- About **2/3** of efforts are directed by state policy units or are legislatively based
- About **1/3** of efforts are grassroots based –i.e., outsiders working to influence state policy and practice
- At least **35** states have official Employment First legislation and/or policies

Employment First

Employment in the community is the first/primary service option for individuals with disabilities

- Where the assigned work tasks offer at least minimum or prevailing wages and benefits,
- Where typical opportunities exist for integration and interactions with co-workers without disabilities, with customers, and/or the general public,
- And being the first and preferred outcome for working-age youth and adults with disabilities, including those with complex and significant disabilities, for who working in the past has been limited, or has not traditionally occurred.



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Employment First and Systems Change

- Supporting people with disabilities to work in integrated employment in the community is critical to:
 - Access the greater community;
 - Facilitating relationships with non-disabled peers;
 - Building new skills and self-esteem;
 - Helping bring people with disabilities out of poverty;
 - Reduced utilization of other Medicaid services; and
 - Providing meaningful ways for people to spend their days
- Employment should be the centerpiece of systems change.



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WIOA

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The Workforce Innovation and Opportunity Act (WIOA)

WIOA

- **The Workforce Innovation and Opportunity Act (WIOA) of 2014 ([P.L. 113-128](#))** reauthorizes and updates existing federal workforce development programs including the Rehabilitation Act, which provides for vocational rehabilitation (VR) services for people with disabilities. WIOA focuses VR outcomes on competitive, integrated employment as well as promotes greater emphasis on transition services for youth with disabilities through: emphasis on coordination between VR and other agencies; extending the initial time period for VR supported employment services (from 18 to 24 months); and modification of eligibility determination to promote access to VR by people with the most significant disabilities.

State Plans

- Interagency coordination
- MOUs



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Workforce Innovation and Opportunity Act

- Goal is to increase employment of people with disabilities in integrated employment settings; attempts to significantly limit the use of 14(c), particularly for transition-age youth:
 - Defines and prioritizes integrated employment as work at or above minimum wage, with wages and benefits comparable to people without disabilities and fully integrated with co-workers without disabilities
 - Limits entry into sheltered workshops: Anyone under 24 must try integrated employment before being placed in a sub-minimum wage setting; schools cannot contract with sub-minimum wage providers

WIOA

- Additional relevant provisions to increase access to integrated employment for people with disabilities:
 - Requirement for formal cross-agency cooperative agreement between voc. rehab., state IDD agency, and Medicaid agency
 - Requirement that at least 15% of voc. rehab. funds be used for pre-employment transition services
 - Definition of supported employment clarified to make clear that it is integrated, competitive employment
 - Post-employment support services extended from 18 to 24 months
 - Requirement that at least half of supported employment state grant funds used for youth (up to age 24) with most significant disabilities

WIOA

- Created Advisory Committee on Increasing Competitive Integrated Employment for Individuals with Disabilities
 - Representatives include federal agencies, providers, national experts, reps from national disability advocacy groups, and self-advocates

Other Considerations

AbilityOne Declaration

- **The AbilityOne Commission Issued a Declaration in Support of Minimum Wage for All People Who Are Blind or Have Significant Disabilities:**
http://www.abilityone.gov/media_room/documents/US%20AbilityOne%20Commission%20Declaration%2018March2016%20Final.pdf
- “The U.S. AbilityOne Commission®, which oversees the AbilityOne® Program, recognizes there are strongly held positions about paying special minimum wages to people with disabilities under Sec.14(c) of the Fair Labor Standards Act. ... Our call to action is for all qualified nonprofit agencies participating in the AbilityOne Program to commit to, and begin (if not maintain), paying at least the Federal minimum wage, or state minimum wage if higher, to all employees who are blind or have significant disabilities working on AbilityOne contracts.”



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Transition to Independence Act

This bill would create a five-year Medicaid demonstration program in fifteen states. The program would give bonuses to the states for helping individuals with disabilities obtain integrated employment and for reducing reliance on segregated employment and day services.



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Transition to Competitive Integrated Employment Act

- First time that eliminating 14(c) and funding for transformation has been combined
- Grant programs for states and providers



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Other Legislation and Regulatory Activities

- CMS is working on additional guidance around HCBS and non-residential settings
- WIOA Regulations may be reopened, guidance may be removed
- The Workplace Choice and Flexibility for Individuals with Disabilities Act- Rep Grothman

State Efforts-Maryland

Individuals With Disabilities – Minimum Wage and Community Integration Act-
Also known as the Ken Capone Act

- Passed the House and Senate
- The Arc of Maryland was a strong partner and advocate
- State associations came together in under a year on this legislation
- Phases out subminimum wage
- Allows for changes to timeline if data doesn't support the progress

Illinois and Kentucky now starting the efforts.



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HCBS Rule

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Goal and Scope of the Rule

- To “ensure that individuals receiving services through HCBS programs have full access to the benefits of community living”
- To “further expand the opportunities for meaningful community integration in support of the goals of the ADA and the Supreme Court decision in *Olmstead*”
- Applies to all HCBS authorities (1915(c), 1915(i), 1915(k)) as well as 1115 demo’s and 1915(b)(3) managed care



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- Supports compliance with ADA, Section 504, and *Olmstead*
- Supports access to the community
- Defines the qualities of HCBS settings
- Provides one definition of HCBS Setting across HCBS authorities

REMEMBER! Intent of the regulations is to improve HCBS participants' community integration and experiences

The goal is not to shut down settings, but to ensure that HCBS funds are used in settings that are truly community-based

Most states plan on technical assistance for providers to help them move towards compliance

Focus is supposed to be on the HCBS participant's experience!!

Non Residential Settings

- HCBS settings, including residential, day or other, must be delivered in settings that meet HCBS setting requirements
 - CMS issued [guidance](#) on non-residential settings and included information on non-residential settings in the Q&As and other documents
- A person must live in a setting that meets the HCBS requirements if they receive HCBS services, including day services

Where things Stand?

- 42 other states have received initial approval
- All states that got a letter describing the additional steps it must take to get final approval
- This is an important document for stakeholders to use for comment and input
- •13 states have also received final approval:
- AK, AR, DE, DC, ID, KY, MN, ND, OK, OR, **TN**, WA, & WY

* As of April 2019

2017 Guidance

- Released this Tuesday, May 9, 2017
- Extends timeline for bringing settings into compliance to March 2022
- Timeline for transition plans remains 2019
- Note on Heightened Scrutiny

New FAQ

Released Friday, March 22, 2019

CMS removed specific examples of settings that would automatically be identified as institutional due to isolation, and will now take the following factors into account when determining whether a setting isolates HCBS beneficiaries from the broader community:

- Due to the design or model of service provision in the setting, individuals have limited, if any, opportunities for interaction in and with the broader community, including with individuals not receiving Medicaid-funded HCBS;
- The setting restricts beneficiary choice to receive services or to engage in activities outside of the setting; or
- The setting is physically located separate and apart from the broader community and does not facilitate beneficiary opportunity to access the broader community and participate in community services, consistent with a beneficiary's person-centered service plan.

States are free to identify additional factors other than those provided by CMS.

Heightened Scrutiny

- The new guidance also clarifies this process for “heightened scrutiny” allowing a state provides evidence to CMS to demonstrate that a facility or setting meets the HCBS criteria and allow them to continue receiving Medicaid funding.
- Note on Heightened Scrutiny- State Process



ADA, Olmstead and Employment

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Integrated Setting

- Integrated settings provide people with disabilities the opportunity to live, work and receive services in the greater community
 - Located in mainstream society
 - Offer access to community activities when and with whom the person chooses
 - Choice in daily life activities
 - Ability to interact with people without disabilities to the fullest extent possible
- Examples: Scattered site supportive housing, supported employment in a mainstream job

***Note the ADA definition similar to the HCBS settings requirements

Segregated Setting?

- Have institutional qualities, including:
 - Congregate settings with primarily or exclusively people with disabilities
 - Regimentation in daily activities, lack of privacy/autonomy, limits on ability to freely engage in community activities
 - Settings that provide for daytime activities primarily with other people with disabilities
- Examples: ICFs, nursing homes, adult care homes, sheltered workshops, segregated day programs

***Note that the language is similar to the HCBS regulations about “settings that isolate”



Department of Justice

Olmstead Activity

Lane v. Kitzhaber/U.S. v. Oregon:

- Court decision on motion to dismiss found that ADA and *Olmstead* applies to all government services, programs and activities, including employment. Rejected argument that only applies to residential services and programs.
- Consent decree focuses on youth, state of Oregon is using HCBS Transition Plan to assist in goals.
- Closed the front door to workshops.

U.S. v. Rhode Island:

- State of Rhode Island violated the ADA and *Olmstead* by failing to serve individuals with I/DD in the most integrated day activity service setting appropriate for their needs, and by placing transition-age youth at serious risk of segregation.
- Relief for 3,250 individuals with intellectual and developmental disabilities.
- Opportunities for real employment in the community at competitive wages, and integrated day activities for non-work hours.
- Investigation found that the state has over-relied on segregated service settings to the exclusion of integrated alternatives.



Questions:

Contact Me:

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Resources: HCBS Settings Rule resources:

www.hcbsadvocacy.org (sponsored by national advocates)

- Updated information on state processes
- Factsheets & Q&As
- Alerts on comment periods