



STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES
P. O. Box 339
Honolulu, Hawaii 96809-0339

LATE
Testimony

February 10, 2011

MEMORANDUM

TO: The Honorable, John M. Mizuno, Chair
Committee on Human Services

FROM: Patricia McManaman, Interim Director

SUBJECT: **H.B. 759 - RELATING TO PERSONS WITH INTELLECTUAL AND
DEVELOPMENTAL DISABILITIES**

Hearing: Thursday, February 10, 2011; 9:00 a.m.
Conference Room 329, State Capitol

PURPOSE: The purpose of H.B 759 is to enact an employment training and placement program to develop more effective employment systems for persons with intellectual and developmental disabilities, and to require the Department of Human Services to see a Medicaid waiver for funding of the program.

DEPARTMENT'S POSITION: The Department of Human Services (DHS) currently has a Medicaid waiver with the Centers for Medicare & Medicaid Services (CMS) for persons with intellectual and developmental disabilities. One of the services in the current Medicaid waiver is Supported Employment. The Department of Health (DOH), in partnership with DHS, is in the process of renewing the current Medicaid waiver. The Supported Employment benefit will continue in the Medicaid waiver renewal. DHS defers details regarding the Supported Employment benefit to DOH.

Thank you for the opportunity to provide comments on this bill.

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



LORETTA J. FUDDY, ACSW, MPH
ACTING DIRECTOR OF HEALTH

STATE OF HAWAII
DEPARTMENT OF HEALTH
P.O. Box 3378
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In reply, please refer to:
File:

Committee on Human Services

**HB 759, RELATING TO PERSONS WITH INTELLECTUAL AND
DEVELOPMENTAL DISABILITIES**

**Testimony of Loretta J. Fuddy, ACSW, MPH
Acting Director of Health**

February 10, 2011

1 **Department's Position:** The Department of Health opposes this bill.

2 **Fiscal Implications:** None.

3 **Purpose and Justification:** The Department of Health (DOH) does appreciate the intent of S.B. 125
4 that will create an employment training and placement program for persons with intellectual and
5 developmental disabilities to develop more effective employment systems. The bill also requires the
6 Department of Human Services to seek a Medicaid waiver for funding of the program.

7 Competitive employment in integrated work settings for persons with developmental disabilities
8 is an administrative emphasis for the Department's Developmental Disabilities Division (DDD). The
9 DOH administers the Home and Community Based Services Medicaid Waiver program (HCBS) for
10 persons with intellectual and developmental disabilities which does provide supported employment
11 services. This HCBS Medicaid waiver program operates under a five-year approval cycle from the
12 Centers for Medicare and Medicaid Services (CMS). The Department of Human Services and the
13 Department of Health are currently working on renewing the Home & Community-Based waiver for an
14 additional five-year period (July 1, 2011 – June 30, 2016). In the renewal, (submitted to CMS through
15 the Department of Human Services), supported employment to assist individuals in finding and

1 maintaining gainful employment remains an integral and important service. This new waiver
2 application to CMS will include revised service definitions that are an enhancement of the employment
3 opportunities that currently exist. Additional revisions to the existing HCBS waiver program are always
4 possible through an amendment.

5 The barriers to employment are numerous for persons with developmental disabilities. Some
6 persons with developmental disabilities are thought not capable or employable. This bill correctly
7 recognizes the ability of all persons to benefit from employment. However, the need exists to work with
8 potential employers and to develop job opportunities. That is an ongoing support that focuses on job
9 development with potential employers. Typically, Medicaid programs focus on the person's skill
10 development and not the employer. Many people are able to become self sufficient with a sustainable
11 job that leads to less dependence upon governmental support. Employment is a very desirable goal for
12 most persons that receive services from the DDD and we strongly support the concept of integrated
13 competitive job outcomes.

14 The DOH's budgetary priorities are to maintain the current HCBS waiver program and not create
15 an additional competing new waiver program focused solely on employment. We are opposed to any
16 new program that might adversely impact the existing HCBS Medicaid waiver program budget at the
17 DOH. The DOH is requesting significant funding to maintain the current HCBS waiver program due to
18 the reduction of the Federal Medicaid Assistance Program rate with the loss of the enhanced stimulus
19 funds with the expiration of the American Recovery and Reinvestment Act. The DOH defers to DHS on
20 their budget priorities since this bill appropriates funding to the DHS budget.

21 Thank you for the opportunity to testify.



HAWAII DISABILITY RIGHTS CENTER

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**THE HOUSE OF REPRESENTATIVES
THE TWENTY-SIXTH LEGISLATURE
REGULAR SESSION OF 2011**

**Committee on Human Services
Testimony in Support of H.B.759
Relating to Persons With Intellectual and Developmental Disabilities**

**Thursday, February 10, 2011, 9:00 A.M.
Conference Room 329**

Chair Mizuno and Members of the Committee:

I am Louis Erteschik, Staff Attorney at the Hawaii Disability Rights Center, and am testifying in support of this bill.

The purpose of this bill is to establish an employment and training program within DHS for individuals with intellectual disabilities and to mandate the Department to establish a waiver to provide funding for the services.

We support this bill because we believe that greater employment of individuals with disabilities represents the next step of their greater integration into the life of the community. In the wake of the Olmstead decision of the US Supreme Court, some progress has been made in terms of building capacity in the community to provide residential placement. However, very little has occurred in terms of developing employment opportunities.

This represents an area of untapped potential. While day programs and things of that nature have filled a void in the lives of many such individuals, we believe that if they were more gainfully employed at reasonable rates of pay it would maximize their sense of self satisfaction as well as their potential to lead a more fulfilled life and

reduce the demand for public services that would otherwise be required. Additionally, we note that transitional services from youth to adulthood have been very scarce and our hope is that this program would increase opportunities for individuals in that age group. There is no reason for an individual with an intellectual disability to be limited to a sheltered workshop or a menial job or a day program. Their untapped potential needs to be realized for the benefit of the individual and society as a whole, and this bill will help to accomplish that.

Thank you for the opportunity to testify in support of this measure.

Feb. 10, 2011

SUPPORT FOR HB 759: "EMPLOYMENT FIRST"

MEDICAID WAIVER FOR INDIVIDUALS WITH Developmental Disabilities

Honorable Representatives committee members:

I urge the committee to look closely at the creation of an "Employment First" Medicaid waiver. Looking closely at the current DD/MR waiver reveals that the structure of the waiver is flawed and is a disincentive for providers of waiver services to promoting employment.

Despite a service titled Habilitation Supported Employment, The lion share of the services provided is the most expensive service titled "adult day health."

The users of those ADH services spend their time participating in community activities and weekly outings.

The State of Hawaii spends close to \$100 million on around 3,000 people who receive services in the DD/MR Medicaid Waiver Services. Roughly \$40,000 per person per year.

The State system cannot accurately track how many individuals with developmental disabilities are actually working.

The State is renewing its DD/MR waiver this year, and yet it's unknown what changes are planned in that document to be filed with CMS around June 2011.

Too many individuals with disabilities are being kept from working because the system, including case managers and other state workers managing and supervising these services.

The National trend is toward employment as the first option for people with developmental disabilities. The state of Hawaii needs a more transparent waiver that has outcome goals and accountability.

The current system in DHS and managed by DOH, isn't working and to fix it, needs is riddled with further delays.

I urge the committee to add an "Employment First" waiver and share the funds that currently exist with the focus being on a more integrated inclusive process that allows people full access to community living.

Susan B. Miller

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, February 09, 2011 3:25 PM
To: HUS testimony
Cc: mihalkewm@gmail.com
Subject: Testimony for HB759 on 2/10/2011 9:00:00 AM
Attachments: Segregated-and-Exploited 2011.pdf

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Testimony for HUS 2/10/2011 9:00:00 AM HB759

Conference room: 329
Testifier position: support
Testifier will be present: Yes
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Submitted on: 2/9/2011

Comments:

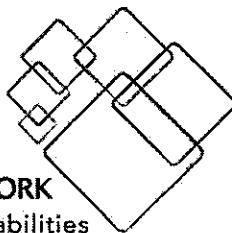
Segregated & Exploited

A Call to Action!



The Failure of the Disability Service System to Provide Quality Work

NATIONAL
DISABILITY RIGHTS
NETWORK
Protection & Advocacy for Individuals with Disabilities



January, 2011

National Disability Rights Network: Protection, Advocacy & Assistance

The National Disability Rights Network (NDRN), is the nonprofit membership organization for the Protection and Advocacy (P&A) system and Client Assistance Program (CAP). The P&A/CAP network was established by the United States Congress to protect the rights of people with disabilities and their families through legal support, advocacy, referral, and education. The P&A/CAP network is the largest provider of legally based advocacy services to people with disabilities in the country.

NDRN strives to create a society in which people with disabilities are afforded equal opportunity and are able to fully participate by exercising choice and self determination. It promotes the integrity and capacity of the P&A/CAP national network by providing training, technical assistance, legislative advocacy, and legal support. NDRN advocates for the enactment and vigorous enforcement of laws protecting the civil and human rights of people with disabilities. Reports, like this one, are an integral part of the services NDRN provides to the P&A/CAP network and the disability rights movement in general.

Please visit www.NDRN.org for more information.

Cover photo by WQAD in the Quad Cities, IA (www.wqad.com). Image of the unheated and boarded up bunkhouse where Henry's Turkey Service housed its workers with disabilities.

A Letter from the Executive Director



Dear Friends,

Today, across the United States of America, hundreds of thousands of people with disabilities are being isolated and financially exploited by their employers. Many are segregated away from traditional work and kept out of sight. Most are paid only a fraction of the minimum wage while many company owners make six -figure salaries. Many people profit off of their labor. All, except the worker. For many people with disabilities, their dream of leaving their "job training program" will never come true. They labor away making only a tiny portion of what they should because there is a system in place that provides no true alternatives.

For the past several decades, activists and advocates for disability rights were complacent in our silence. The National Disability Rights Network, included. We fought for and continue to fight for community integration and an end to the abuse and neglect of people with disabilities while neglecting the evidence that segregated settings, sheltered work and sub-minimum wage contradicts this effort. Sheltered workshops are not what they promise to be, and sometimes serve as an unsettling example of how good intentions can lead to terrible outcomes.

The truth is that people with disabilities can—and do—work in all areas of the American workforce. They thrive when they fully participate in their communities, and in turn, the nation thrives.

Unfortunately, sheltered workshops and the sub-minimum wage still exist today because of self-interested employers and systematic neglect by federal agencies, buttressed by outdated stereotypes of people with disabilities and the low expectations held by the general public, lawmakers, and, sadly, even some families and the disability rights community. Simply put, sheltered workshops are just another institution segregating people with disabilities away because of our unwillingness to accept that our perceived notions about their ability to work may be wrong.

This call to action is long over-due. It is time to end segregated work, sheltered employment and sub-minimum wage. Now.

Sincerely,



Curtis L. Decker, Esq.

Segregated & Exploited

The Failure of the Disability Service System to Provide Quality Work

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Commonly Used Phrases

Employment: an activity performed by an individual where there is an expectation of wage for services rendered and the services are primarily for the benefit of the employer.

Work: an activity done on a personal basis to enable personal growth and skills development, improve social interactions, and development of self by contributing to society through volunteerism or increased community interaction and participation in civic events. While there is a valued relationship in this activity, it is not necessarily recognized through financial remuneration.

Competitive Employment: work in the labor market that is performed on a full-time or part-time basis in an integrated setting for which the individual is compensated at or above minimum wage, but not less than the customary and usual wage paid by an employer for the same or similar work performed by individuals who are not disabled.

Supported Employment: competitive work performed in an integrated work setting where individuals are matched to jobs consistent with the strengths, resources, abilities, capabilities, interests, and informed choice and are provided individualized supports to learn and keep the job.

Sheltered Work Settings: separate environments known as sheltered workshops, affirmative industries, training facilities, and rehabilitation centers which congregate large numbers of people with disabilities and claim to be providing rehabilitation geared toward transition into the general labor market by providing activities that typically involve repetitive tasks; the workshop was designed by parents to give their sons or daughters dignity, self worth, socialization, and most of all respite because parents had peace of mind that their son or daughter was safe, secure, and protected against the risks and demands of the competitive world.

Financial Exploitation: the wrongful taking, withholding, appropriation, or use of the money, real property, or personal property of an individual with a disability.

Sub-minimum Wage: section 14(c) of the Fair Labor Standards Act allows employers to pay individuals less than the minimum wage if they have a physical or mental disability that impairs their earning or productive capacity.

Executive Summary

The National Disability Rights Network (NDRN) has been studying segregated work, sheltered environments, and the sub-minimum wage to determine whether they meet the needs of people with disabilities and whether they comply with federal law. Unfortunately, what we found was disappointing to say the least.

NDRN's Policy Recommendations

Detailed recommendations can be found on page 46.

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.

The product of this study is our call to action, **"Segregated & Exploited: The Failure of the Disability Service System to Provide Quality Work."**

Through this report, NDRN casts a spotlight on the problems of segregated work, sheltered environments, and sub-minimum wages. This report identifies the barriers to employment that people with disabilities face and dispels myths about their capability to be fully employed, equally compensated, and an integral member of American workplaces and communities. It illustrates a systemic failure to provide hope and opportunity to young people with disabilities who want to transition into traditional work but instead wind up trapped in a sheltered workshop with little chance for something different.

In the best of situations, sheltered environments, segregated work, and the sub-minimum wage does not truly provide a meaningful experience for workers with disabilities. Workshop tasks are often menial and repetitive, the environment can be isolating, and the pay is often well below the federal minimum wage. In the worst situations, the segregated and sheltered nature of the lives of workers with disabilities leaves them vulnerable to severe abuse and neglect.

The Problem of Segregated Work, Sheltered Environments & Sub-minimum Wage

The central arguments against segregated and sheltered work, and the sub-minimum wage can be summarized as the following:

- **Segregated Work, Sheltered Environments, & Sub-minimum Wage Directly Contradict National Policy.** The passage of the Americans with Disabilities Act (ADA) in 1990 was a major step in correcting past wrongs faced by people with disabilities. It provides broad protection in employment, transportation, public accommodations, telecommunications, and public services for people with disabilities. In the following two decades, more laws, legal decisions, and state and federal regulations came to be, all making a very clear statement: people with disabilities should live and work independently in their communities. Segregated and sheltered work—by definition—goes against this very principle. But more than that, it keeps people with disabilities marginalized and hidden in the shadows and these environments create opportunities for abuse and neglect to occur. While good national disability policy exists that could remedy this, there is an incomprehensible lack of oversight and enforcement of these good policies.
- **Work Segregation of People with Disabilities is Damaging.** Segregated work facilitates feelings of isolation for many people and impinges on the natural desire to connect with others. Sheltered workshops have replaced institutions in many states as the new warehousing system and are the new favored locations where people with disabilities are sent to occupy their days. People with disabilities deserve the right to live and work independently in their chosen communities. These work settings violate statutes passed to encourage just that.
- **Sub-minimum Wage Reinforces a Life of Poverty for People with Disabilities.** Labor law exemptions for employers of people with disabilities have created jobs that pay as little as 10% of the minimum wage with most workers earning only 50%. Reports on sheltered workshops often show that workers take home about \$175 each month, while those working in traditional jobs take home about \$456 each week. Few workers receive health or other employment benefits typical for the average American worker, and since workers do not have a voice, there is little opportunity to improve their conditions. Yet their employers are reaping the benefits of their labors.
- **Sheltered Workshops Lead Nowhere.** Sheltered workshops are predominantly set up as a type of “job training program” that teaches valuable skills and prepares people to compete for traditional jobs. Unfortunately, the reality is vastly different. They are often taught skills that are

not relevant or transferable to traditional work environments. Even with the dramatic improvements in competitive employment, there remains three individuals in segregated day programs for every one person working in competitive employment.

- **Sheltered Workshops Profit Greatly from the Status Quo.** While many sheltered workshops argue that the cost to provide work for people with disabilities is higher than similar worksites with a labor force consisting largely of people without disabilities, the facts do not support it. Not only are their profit margins protected by statutes allowing them to pay workers far below the minimum wage, they also receive sizeable subsidies from the local, state and federal governments equaling as much as 46% of their annual revenue. Since sheltered workshops don't have to compete in the open market to earn income, they also don't have to do the things other businesses must do like innovate, adapt, and evolve. Sheltered workshops today are not very different than they were when they were started more than 170 years ago—and that is the problem.

Sheltered workshops are often celebrated for providing an altruistic service to their communities while neglecting the fact that in reality they provide workers with disabilities with dead-end jobs, meager wages, and the glimpse of a future containing little else.

Considering these stark realities, it is clear that segregated and sheltered work no longer provides workers with disabilities an opportunity for “life, liberty, and the pursuit of happiness.” They may no longer be warehoused in institutions without meaningful daily interactions, but the change may merely be logistical. Segregation—whether it be in an institution or at work—is still segregation.

Separate is still not equal.



Americans with Disabilities Act

Statement of Findings

"Historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem, ... individuals with disabilities are a discrete and insular minority who have been faced with restrictions and limitations, subjected to a history of purposeful unequal treatment, and relegated to a position of political powerlessness in our society...."

Segregated & Exploited

Often, good intentions go wrong. Segregated and sheltered work and paying less than the minimum wage are perfect examples of that axiom. They are programs that were designed to help people with disabilities learn meaningful skills and obtain gainful employment, while protecting them from public judgment, ridicule, and shame.

Today, we live in an era of evolving thinking about people with disabilities. Attitudes have changed. So have many laws. But most importantly, what has changed is the quality and quantity of information available illustrating that segregating and sheltering workers with disabilities and paying them less than minimum wage is no longer the best course of action. It is time we value the unique skills and talents of people with disabilities and move toward full workplace integration.

A Brief History of Segregated Work, Sheltered Environments, & the Sub-minimum Wage

Sheltered workshops have existed since as early as 1840 with the Perkins Institute for the Blind, an institution in Massachusetts. Jobs for people who were blind were protected, or sheltered, from competition in order to create permanent job opportunities for them. This concept was cutting-edge 170 years ago. Today, it is a quaint notion at best that should be left behind.

The origin of sub-minimum wages for people with disabilities stems from the National Industrial Recovery Act, one of the early pieces of President Franklin Roosevelt's New Deal. On February 17, 1934, President Roosevelt issued an Executive Order which stated that it was permissible to pay individuals with disabilities "below the minimum established by a Code."¹

In 1938, the Fair Labor Standards Act (FLSA) was passed. It specified standards for basic minimum wage rates and overtime pay. It also created a special exemption authorizing employers to pay wages that were significantly lower than the minimum wage to workers with disabilities.² These wage provisions were originally created to encourage the employment of veterans with disabilities in a manufacturing-centered economy.³

¹ William, Whittaker, *Treatment of Workers with Disabilities Under Section 14(c) of the Fair Labor Standards Act*, Federal Publications, Paper 209 http://digitalcommons.ilr.cornell.edu/key_workplace/209 (2005).

² 29 U.S.C. 201, *et seq.*

³ Whittaker, *supra* note 1

Sheltered workshops increased in popularity in the 1950's and 1960's. In 1963, the Developmental Disabilities Assistance and Bill of Rights Act (DD Act) was passed. Beginning the shift in national policy, the DD Act focused on the need to provide support and opportunities that promote independence, productivity, integration, and inclusion of people with disabilities in the community with an emphasis on employment.⁴

Case Study:

Henry's Turkey Service

Atalissa, Iowa

The story of the workers at Henry's Turkey Service, a meat processing plant in Iowa, is an appalling example of the abuse that can happen when workers with disabilities are segregated and sheltered away from others. At Henry's, as many as 60 men from Texas with intellectual disabilities once lived together, ate together, traveled together, and worked together. All day. Every day.



The Bunkhouse

Henry's wasn't only these men's employer. They also acted as landlord, "caregiver," and was the representative payee for their Social Security payments. The housing they provided—a 106-year-old cockroach infested, unheated abandoned school turned bunkhouse—had boarded up windows and a cracked foundation. Records show that Henry's paid \$600 each month in rent for use of the tax-free bunkhouse. For the privilege of living in the bunkhouse, the company deducted approximately \$10,000 a week from their paychecks.

These 60 men worked alongside men without disabilities. They did the same job and worked the same long hours. Unfortunately they were not treated the same. They were verbally and physically abused, taunted, and humiliated because of their disabilities. Their movements and contacts were restricted, and they were not allowed appropriate access to medical care.

They were not paid the same either. The men's net pay averaged \$.41 an hour although they performed the same work as their co-workers without disabilities who earned between \$9 and \$12 an hour. At the end of the month, and after the various levies Henry's assessed, the men got to keep approximately \$65 each month.

Source: *Clark Kaufmann, State closes bunkhouse that housed mentally retarded workers, Des Moines Register, February 8, 2009; Henry's turkey Service once praised, now condemned, Des Moines Reporter, May 25, 2009; Clark Kaufmann, Turkey service faces fines of \$900,000 from Iowa, Des Moines Register, May 29, 2009; Clark Kaufmann, Henry's Turkey Service told to answer state's questions, Des Moines Register, April 13, 2010 Clark Kauffman, Ruling: Henry's cheated workers at Atalissa turkey plant, Des Moines Register, May 7, 2010.*

⁴ 42 U.S.C. §§ 15041-15045

Despite the positive philosophy promoted by the DD Act, the 1966 amendment⁵ created an even broader definition of disability under the FLSA, increasing the number of workers that can be paid less than the federal minimum wage while also increasing the prevalence of sheltered workshops.⁶ In contrast, the Rehabilitation Act (Rehab Act) of 1973 provided a clear emphasis on the importance of competitive wages, even for those individuals with the most significant disabilities.⁷ However, in 1986, a step backward occurred when the FLSA was amended again. This amendment removed any specific minimum wage floor for workers with disabilities, making it even more profitable for employers to exploit their employees with disabilities.⁸

The ability to pay individuals with disabilities sub-minimum wages for their work is still alive and well today. The Department of Labor (DOL) Wage and Hour Division is given the authority to issue certificates to employers allowing them to pay less than the prevailing wage if a disability interferes with the productive or earning capacity of a worker on the job.⁹

In such cases, the individual with a disability is not given a competitive wage, but is, instead, paid a commensurate wage that compares the individual productivity of the worker with a disability to objective data reflecting the prevailing wages of at least three employees without disabilities who are engaged in comparable work within the community.¹⁰

For example, if the prevailing wage for a particular job is \$8 an hour and the productivity of the individual with a disability is determined to be 50% of the experienced employees without disabilities, the commensurate wage would be \$4 an hour.

This narrow sub-minimum wage law, developed more than 70 years ago and designed to help veterans within a largely industrial economy, is not acceptable today. The types of jobs available to individuals with disabilities are no longer limited solely to low-skilled or manufacturing-type tasks. Additionally, many kinds of assistive technology—from power wheelchairs to high-tech communication devices—open the door for people with significant disabilities to pursue employment opportunities that were previously thought to be unrealistic or even impossible.

⁵ PL 89-601

⁶ Whittaker, *supra* note 1

⁷ P.L. 93-112

⁸ Whittaker, *supra* note 1

⁹ *FLSA Section 14(c), the Payment of Special Minimum Wages to Workers with Disabilities for the Work Being Performed*, <http://www.dol.gov/elaws/esa/flsa/14c/>

¹⁰ *Id.*

Despite the good intentions to provide job opportunities for workers with disabilities, the results have been a disaster. The Vocational Rehabilitation (VR) Longitudinal Study reviewed 8,500 recipients of VR services from 1994 to 2000, and confirmed that people placed in sheltered work earned far below the minimum wage and failed to make gains in earnings over time.¹¹

According to the study, of the 7,765 people placed in sheltered work in 1998, 89.3% earned less than the minimum wage of \$5.15 an hour. The average hourly earnings for people placed in sheltered work was \$3.03. One year later, average hourly wages dropped to \$2.64 an hour. Two years later, average hourly wages rose slightly to \$2.84.¹² The problem of low wages is compounded by limited work hours and limited access to health insurance.¹³ People placed in sheltered work averaged 27.6 hours per week. One year later, the average work week was 28.1 hours and the following year 29.1 hours per week.¹⁴

Lastly, according to the study, for people placed in sheltered work, only 16% had health insurance. One year later, the number dropped to 12%. For people with disabilities in integrated employment, the wages started at \$7.56 an hour, and rose to 13.48 an hour, with 58.8% of individuals having access to health insurance three years after receiving VR funded services.¹⁵

The history of segregated work, sheltered environments, and sub-minimum wage highlights the contrasting national policies toward people with disabilities and work. It is time to acknowledge that policies developed more than a half century ago that supported sheltered work and sub-minimum wage are out of step with national disability policy today.

¹¹ B.J. Hayward & H.S. Davis, Research Triangle Institute, *Longitudinal Study of the Vocational Rehabilitation Services Program*, 3rd Final Report: The Content of VR Services (2005), <http://www2.ed.gov/rschstat/eval/rehab/vr-final-report-3.pdf>.

¹² Fredrick K. Schroeder, "Address to the 1th Annual National Federation of the Blind Convention" (July 7, 2000) available at <http://nfb.org/legacy/bm/bm00/bm0008/bm000805.htm>.

¹³ Institute for Community Inclusion, *StateData: The National Report on Employment Services and Outcomes* (2009), available at <http://statedata.info/datanotes/pdf/Statedata2009.pdf> citing H. Boeltzig, J.C. Timmons, J. Marrone, (2008).

"Maximizing potential: innovative collaborative strategies between One-stops and mental health systems of care." in *Work: A Journal of Prevention, Assessment, and Rehabilitation*, 31(2), 181-193

¹⁴ Fredrick K. Schroeder, "Address to the 1th Annual National Federation of the Blind Convention" (July 7, 2000) available at <http://nfb.org/legacy/bm/bm00/bm0008/bm000805.htm>.

¹⁵ *Id.*

Segregated Work, Sheltered Environments, & Sub-minimum Wage Directly Contradict National Policy

Activists and advocates for disability rights have worked for decades for community integration of people with disabilities. Building on that work, Congress and the Supreme Court have established a strong national policy promoting the integration of people with disabilities into all facets of life, including employment. Some laws, however, still conflict with this policy.

The History of the Development of National Community Integration Policy

Congress first promoted the idea of community integration when it enacted the (Rehab Act) in 1973, which identified one of its purposes as “promot[ing] and expand[ing] employment opportunities in the public and private sectors for handicapped individuals and to place such individuals in employment.”

In 1984, Congress amended the DD Act so that the “overall purpose was to assist States to assure that people with developmental disabilities receive the care, treatment, and other services necessary to enable them to achieve their maximum potential through increased independence, productivity, and integration into the community. In 1990, Congress enacted the Americans with Disabilities Act (ADA), declaring that “the Nation’s proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for such individuals.” Congress found that “the continuing existence of unfair and unnecessary discrimination and prejudice denies people with disabilities the opportunity to compete on an equal basis and to pursue those opportunities for which our free society is justifiably famous, and costs the United States billions of dollars in unnecessary expenses resulting from dependency and non-productivity.”¹⁶

In 1991, the Department of Justice issued regulations implementing the ADA which required public entities to “administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.”¹⁷

As part of the Rehab Act amendments of 1998,¹⁸ Congress found that “disability is a natural part of the human experience and in no way diminishes the right of individuals to ... pursue meaningful careers ... and enjoy full inclusion and integration in the economic, political, social, cultural, and

¹⁶ 42 U.S.C. § 12101(a)(8)

¹⁷ 28 C.F.R. § 35.130(d)

¹⁸ P.L. 105-220

educational mainstream of American society."¹⁹ Congress stated that the purpose of the Rehab Act is to "empower individuals with disabilities to maximize employment, economic self-sufficiency, independence, and inclusion and integration into society."²⁰ In 2001, the Rehabilitative Services Administration (RSA) limited employment outcomes in Title I of the VR system to integrated employment. RSA decided that segregated and sheltered work could only be funded with Title I funds under temporary training circumstances leading to integrated employment. It reflects the intent of Congress for rehabilitation to prepare people with disabilities to be equal and productive members of America's workforce.

The Ticket to Work and Work Incentives Improvement Act of 1999,²¹ further recognized that work should be in an integrated setting. The purpose of the Act is "to establish a ... program that will allow individuals with disabilities to seek the services necessary to obtain and retain employment and reduce their dependency on cash benefit programs."²²

In 2000, Congress reinforced the national policy promoting community integration when it amended the DD Act in 2000.²³ Congress stated that the purpose of the DD Act is to assure, among other things, that individuals with developmental disabilities and their families "... have access to needed community services, individualized support and other forms of assistance that promote ... self-determination, productivity, and integration and inclusion in all facets of community life."²⁴

When Congress enacted the Individuals with Disabilities Education Improvement Act (IDEA) of

¹⁹ 29 U.S.C. § 701(a)(3).

²⁰ 29 U.S.C. § 701(b)(1).

²¹ P.L. 106-170.

²² P.L. 106-170 § 2(b)(4)

²³ P.L. 106-402, 42 U.S.C. §§ 15001 *et seq.*

²⁴ 42 U.S.C. § 15001(b)

Eleanor's Story

Eleanor is a 22-year-old woman who enjoys spending time hanging out with her friends, chatting and laughing. She graduated from high school in 2008 and like many people her age had to choose the next step in her life. Eleanor decided she wanted to work and that she did not want to go to a sheltered workshop or other segregated training program.

"Sheltered workshops are a waste of time, and they don't pay minimum wage," Eleanor said during an interview. "If you're in a sheltered workshop you can't interact with people who don't have a disability."

Eleanor, who has Down Syndrome, loves people. She wanted a job where she could talk to people and use her customer service skills. She tried getting experience through a program that offered specialized training but they wouldn't listen to her requests to work with people and made her do tasks they thought were a better fit.

So, being a strong self-advocate, she fired her job developer and hired a new one who found her a job as a courtesy clerk at a new store where she could put to use her best skills. Eleanor represents the next generation of young people with disabilities who won't settle for an outmoded employment system that offers nothing but segregation and financial exploitation.

2004,²⁵ it declared that, "Improving educational results for children with disabilities is an essential element of our national policy of ensuring equality of opportunity, full participation, independent living, and economic self-sufficiency for individuals with disabilities."²⁶

In its 1999 landmark decision, *Olmstead v. L.C.*, the Supreme Court held that individuals with disabilities had to be provided services in the most integrated setting appropriate to the needs of qualified individuals with disabilities.²⁷

The New Freedom Initiative, announced by President Bush in 2001, was a nationwide effort to remove barriers to community living for people of all ages with disabilities and long-term illnesses. It represented an important step in working to ensure that all Americans have the opportunity to learn and develop skills, engage in productive work, choose where to live and participate in community life. One of its goals is to "integrate Americans with disabilities into the workforce."²⁸

President Obama summed up the national policy of promoting community integration of individuals with disabilities when he introduced the "Year of Community Living," stating:

"I am proud to launch this initiative to reaffirm my Administration's commitment to vigorous enforcement of civil rights for Americans with disabilities and to ensuring the fullest inclusion of all people in the life of our nation."²⁹

Laws Conflicting with National Community Integration Policy

Although the legislative, judicial and executive branches have promoted integration in all facets of community life for individuals with disabilities, some laws are still in conflict with this policy. One example of such a law is the Javits-Wagner-O'Day Act of 1971,³⁰ now commonly referred to as the AbilityOne Program. AbilityOne, enacted more than 70 years ago, is a federal law that requires all federal agencies to purchase specific supplies and services from non-profit agencies which employ individuals who are blind or have severe disabilities.³¹ While the law does provide for employment

²⁵ P.L. 108-446

²⁶ 20 U.S.C. § 1400(c)(1).

²⁷ 527 U.S.C. § 581 (1999)

²⁸ <http://www.hhs.gov/newfreedom/init.html>.

²⁹ White House Press Release (6/22/09) http://www.whitehouse.gov/the_press_office/President-Obama-Commemorates-Anniversary-of-Olmstead-and-Announces-New-Initiatives-to-Assist-Americans-with-Disabilities/

³⁰ 41 U.S.C. § 46 – 48c

³¹ 41 U.S.C. § 48

opportunities for people with disabilities, it does so at a steep price. The non-profit agencies that fulfill the federal contracts are allowed to pay their employees based upon pay rates that are less than the prevailing wage. These contracts encourage people with disabilities to work in segregated environments, allowing for little, if any, interaction with co-workers without disabilities. In order to obtain an AbilityOne contract, the agency must ensure segregation because at least 75% of the direct labor hours required to produce the commodity must be provided by people with disabilities.³² The AbilityOne program is lagging behind the national policy of full integration and community inclusion and needs to be updated.

Another law of concern is the FLSA Section 14(c) described in the previous section which allows employers to pay employees with disabilities less than the minimum wage.³³ NDRN believes this provision to be out of date and that all individuals who can perform the essential functions of their jobs, with reasonable accommodations, should be paid minimum wage, regardless of whether they have a disability.

The continued government sanctioning and support of segregated and sheltered work through AbilityOne and the FLSA sends a message that people with disabilities are not truly equal.

This must change.

Enforcement Problems with Federal Laws Regarding Segregated Settings and Sub-minimum Wage

VR Agencies Bungle Compliance and Quality Reviews

State VR agencies cannot use federal funds to help an individual find permanent employment in segregated settings,³⁴ and are required to conduct an annual review and re-evaluation of people with disabilities who are referred to or who choose to work in them.³⁵ State VR agencies must also conduct an annual review when an individual achieves employment following participation in a VR program but is paid sub-minimum wage under a 14(c) certificate. These annual reviews must occur for the first two years after the VR case is closed, and then annually if a review is requested.³⁶ These

³² 41 U.S.C. 48b(4)(c)

³³ 29 U.S.C. § 214(c)

³⁴ 34 C.F.R. § 361.37.

³⁵ 34 C.F.R. § 361.55.

³⁶ 34 C.F.R. § 361.55.

reviews are intended to assure that maximum efforts are made to assist the individual in engaging in competitive employment through the identification and provision of VR services, reasonable accommodations, and other necessary support services.

Although clearly laid out in the regulations, RSA does not track compliance of this requirement when collecting annual data from the state VR agencies thus, there is no record of annual reviews taking place or of the quality of reviews and re-evaluations. Without compliance information, people referred to segregated settings may become stuck in a sheltered workshop because the VR did not follow-up. Workers paid less than minimum wage may have improved and be able to earn more, but it would be missed because an annual review was not conducted. Without proper oversight and data by RSA regarding compliance with these federal requirements, VR agencies may be failing to ensure individuals do not become trapped in segregated settings or earning below the minimum wage.

Oversight and Enforcement of FLSA 14(c) Certificates

In 2001, the Government Accountability Office (GAO), DOL, and the Office of Inspector General issued reports critical of the oversight of the sub-minimum wage program.³⁷ The GAO stated that "Labor has not effectively managed the special [sub] minimum wage program to ensure that 14(c) workers receive the correct wages because ... the agency placed a low priority on the program..." noting problems like failure to act on expired certificates, and no data nor system to verify worker productivity.³⁸

Though DOL's Wage and Hour Division worked to address the GAO's concerns,³⁹ and focused on low wage and vulnerable workers,⁴⁰ oversight and enforcement problems remain. As of 2009 only three Division staff and a supervisor were assigned to review the 2,500 annual renewal applications as well as first time applications for 14(c) certificates. Since each staff member processes 800 applications in a year, it is questionable the level of depth and analysis possible to ensure that the employer is conducting valid productivity measures and wage assessments. This is further compounded by the fact that between 2004 and 2009, DOL conducted on average 135 on-site reviews of 14(c) certificate

³⁷ GAO, *Special Minimum Wage Program: Centered Offer Employment and Support Services to Workers with Disabilities, But Labor Should Improve Oversight*, GAO-01-886 at 4 (September 2001).

³⁸ DOL, Office of the Inspector General, *The Wage and Hour Division's Administration of Special Minimum Wages for Workers with Disabilities* (March 2001).

³⁹ *Preventing Worker Exploitation: Protecting Individuals with Disabilities and Other Vulnerable Populations Hearing Before the S. Comm. on Health, Education, Labor and Pensions*, 111th Cong. 13 (2009) (Statement of John L. McKeon, Deputy Administrator for Enforcement, Wage and Hour Division, DOL.)

⁴⁰ DOL, US Labor Secretary sends message to America's under-paid and under-protected: 'We Can Help!' <http://www.dol.gov/opa/media/press/whd/WHD20100411.htm> (April 01, 2010).

holders, representing about 4% of the certificates held by employers in 2010. In addition, it is unlikely given the structure of the 14(c) statute that Wage and Hour Division staff consider whether an employer is providing reasonable accommodations as required under Title I of the ADA to allow individuals to properly perform jobs when reviewing employers paying sub-minimum wages.⁴¹

More critical is the inability of DOL to properly follow-up on employers who fail to renew their 14(c) certificate and inform DOL of the reason. Each year, of those employers required to renew 14(c) certificates, approximately 250 fail to respond to renewal notices. After follow-up by the Wage and Hour Division, 45 indicate the certificate is no longer needed and 45 never respond. Thus with no apparent additional follow-up by DOL relating to expired certificates, employers may purposefully or by mistake continue to pay sub-minimum wages in violation of the FLSA.

Henry's Turkey, Service mentioned earlier in this report failed to renew a 14(c) certificate while continuing to pay sub-minimum wages. Protection and Advocacy agencies have further uncovered employers who allowed their certificates to expire while continuing to pay a sub-minimum wage.

DOL reported in 2009 that it receives very few complaints about the sub-minimum wage program.⁴² Given the vulnerability of individuals with disabilities paid sub-minimum wage, most of whom have intellectual, cognitive, or mental disabilities, it is not surprising few complain.⁴³ Therefore, more proactive oversight is necessary to assure the protection of the rights of workers with disabilities in sheltered workshops being paid sub-minimum wages.

No Implementation of IDEA Transition

Transition services are defined in the IDEA as a coordinated set of activities for a student, designed within a results-oriented process that facilitates movement from school to post-school activities. The areas of adult living to be considered include preparation for postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, and community participation.⁴⁴ Services are to be based on the individual student's needs, taking into account the *student's* preferences and interests.⁴⁵

⁴¹ DOL, US Labor Secretary sends message to America's under-paid and under-protected: 'We Can Help!' <http://www.dol.gov/opa/media/press/whd/WHD20100411.htm> (April 01, 2010).

⁴² *Id.* at 15

⁴³ GAO, 19, 29 (Statement of James B. Leonard, Former Attorney, U.S. Department of Labor).

⁴⁴ 20 U.S.C. § 1401(34); 34 C.F.R. § 300.43(a).

⁴⁵ *Id.* (emphasis added).

Additionally, any other agencies that may be responsible for providing or paying for transition services must be invited to the IEP meeting.⁴⁶ Schools are expected to become familiar with the services available to students with disabilities in their communities and “make use of this information in the transition planning for individual students.”⁴⁷ The result:

[S]chools can facilitate linkage with agencies when needed by students, can ascertain requirements for access to, and participation in, the opportunities offered by these agencies, and thus can effectively communicate this information to students and their families, and identify ways in which they can prepare students with disabilities to take advantage of these opportunities.⁴⁸

All too often, however, neither the requirement to base the transition services on the individual needs of the student, the requirement to base the program on the students interests, nor the requirement to establish linkages to other services while a student is still in school are met. VR linkages are easily forgotten or overlooked because VR's role in the transition planning process is simply advisory until the student completes an application for services and is found eligible for VR services. Therefore a comprehensive needs assessment is not conducted and the individual never actually becomes a VR client, accepting instead, alternatives put forth by the school system.

In Montana, schools do not provide sufficient resources for transition services while the student is still in school; therefore sheltered employment becomes the default placement. Very, very few students receive any sort of employment exposure or job opportunity awareness outside of a resource room setting. The training of professionals on the resources available and how to develop a transition plan are not a priority and almost non-existent. Teacher training seems to always focus on academics. There are extensive waiting lists for services funded through Medicaid waiver for such things are job coaching, job placement assistance and residential services. Parents are often times overwhelmed with the concept of transition planning and service waiting lists. They become willing to accept anything that becomes available because at least it is something. Also, parents may have limited resources and are not able to self-fund services.⁴⁹

⁴⁶ 34 C.F.R. § 300.321(b)(3).

⁴⁷ H.R. Rep. No. 101-544 at 12, U.S. Code Cong. & Admin. News 1990, p. 1733.

⁴⁸ *Id.*

⁴⁹ January 13, 2011 email from Lori Idland, Disability Rights Montana.

VR Agencies Fail to Meet Their Transition Obligations

The VR system also has a role to play in preparing students for the world of work while they are still in school. In fact, VR agencies must be actively involved, in collaboration with school officials, to plan for and provide services to students with disabilities during their transition years.

The law requires state VR agencies to “increase their participation in transition planning and related activities.”⁵⁰ Accordingly, there must be coordination between the VR agency and education officials to facilitate the transition from the special education system to the VR system. VR agencies are to be actively involved in the transition planning process with the school districts,⁵¹ not just when the student is nearing graduation.⁵²

All too many state VR agencies, however, are still unwilling or unable to get involved until very late in a student’s transition to post-school activities.

From Mike Montgomery

Former Director, Singing River Industries—A Sheltered Workshop

We found that people could work in the community, if someone was willing to work with employers to accommodate individual disabilities. Our ideas sometimes scared families. They had been told by doctors and service systems that their kids needed to be in a sheltered and safe environment. Although some of the parents of children in the workshop began to realize that their son or daughter could do good work, it was the switching of environments that was troubling. One of our parents, who at the time was very concerned that his son stay in the safe environment of the workshop, recently told me that his son was working in a restaurant where he was very happy. He could now see the benefits of working in the community. His son enjoyed being viewed as a regular employee, but for fewer than forty hours. Families need assurance that their children will have a meaningful job and not spend part of their time at home alone.

In the late 70s folks believed, and I think that many still do, that people need to be sheltered. They just don't believe that people can grow with the right training and support, that they can have a good life. I believed that we owed it to each individual and family to try new ideas and work diligently for each person regardless of disability. If we fail to put our heart and soul into the challenge for everyone, we would never see their potential. Everyone that I have ever worked with truly wants a life with work, a place to live, friends, and social outings. A job provides the money to secure everything else.

⁵⁰ 66 Fed. Reg. 4424 (emphasis added).

⁵¹ 34 C.F.R. § 361.22(b).

⁵² 66 Fed. Reg. 4424.

Oregon P&A Finds Neglect at Sheltered Workshop

In a large cavernous room, 30 individuals with disabilities were sitting at tables. Some were doing puzzles and art work, others were staring blankly at the wall. When advocates from

Disability Rights Oregon who were inspecting the facility asked why all of these individuals were in the room, they were told that there was no work available and the law stated "they had to go somewhere." When further questioned about the lack of staff supervision and the absence of structured activities, they received the response "It's a mellow group, they don't need much."

In a far corner of the room sat Barry, segregated away from his peers. On the table in front of him were two boxes, one with rocks and the other without. Advocates were told that Barry's task each day was to count the rocks as he placed them from one box to the other. Barry went to the workshop to build skills that would help him get a job, but was given a box of rocks. Alvin, Barry's housemate, sat three tables away, his hands raw and red. Staff said that though they've tried measures like hot sauce and restraint, they had been unable to prevent him from chewing on his hands. They stopped trying to intervene. Another worker, Mary, asked to speak to the advocates. Staff said she was one of their happiest residents and would share the positive work that the workshop and the provider were doing. When alone in the room, Mary said that she was bored and wanted to do office work. She had tried to express this to the staff but they told her that there were no other options for her and that she should make the best of it.

Disability Rights Oregon filed a licensing complaint relating to the health and safety status of the room and for the lack of structured activities and staff supervision of individuals. The provider received both state and federal funds to provide both pre-employment and on-the-job vocational skills but workers received no assessment or vocational training. Advocates filed two abuse complaints based on the neglect of Barry and Alvin. Due to the work by the P&A, the Board of Directors of the provider agency made significant changes in personnel decisions and policies.

Mary received representation from a P&A attorney and is now making plans to move into her own home and is starting to do part time office work in the community.

Work Segregation of People with Disabilities is Damaging

All individuals, even those with the most significant disabilities, have a right to live and work in the community alongside their peers without disabilities. However, rather than wholeheartedly embracing this inclusive philosophy, people with disabilities are often placed in segregated environments which allow for little contact with those working in the community. Such work settings violate statutes and court decisions, discussed in other sections of this report, which were passed to encourage individuals with disabilities to thrive within community settings.

What is the theory underlying the segregated employment perspective? Put simply, the support for segregated employment environments is predicated on misguided public attitudes and beliefs that it is perfectly acceptable to marginalize and isolate people with disabilities.⁵³ This philosophy seems to echo the idea behind the so-called “ugly laws,” in existence until the early 1970s, which made it illegal for those with “disgusting or unsightly” disabilities to appear in public.⁵⁴ These startling laws were eventually repealed, yet surprisingly, segregating people with disabilities still remain.

The detrimental effects of placing individuals with disabilities into segregated work environments are numerous. First, it denies an adult with a disability the opportunity to make meaningful job choices. Almost all of the options within a sheltered workshop are unskilled, low-wage jobs with few, if any, benefits.⁵⁵ The limited array of employment choices directly impacts an individual’s capacity to live a full, rich life as an active, tax-paying member of the community.

When discussing the concept of choice as it applies to people with disabilities, the central conclusion should be that all people, even those with the most significant disabilities, have the right to enjoy the same choices and options as other people in society.⁵⁶ Assuming that a person with a disability is incapable of making choices is often used as a justification for placing that individual into a segregated or sub-minimum wage work environment. You rarely, if ever, will hear a person say, “I want to attend a sheltered workshop!” Rather, a person likely ends up working in a sheltered or segregated environment simply because it was presented as the only available opportunity.

⁵³ Jacobus TenBroek, *The Character and Function of Sheltered Workshops*, (1960), <http://www.blind.net/resources/employment/the-character-and-function-of-sheltered-workshops.html>.

TenBroek founded the National Federation for the Blind, which copyrighted this article in 1995. TenBroek’s classic observations from this article still hold true more than 40 years later.

⁵⁴ David Boles, Urban Semiotic, *Enforcing the Ugly Laws*, 2007 <http://urbansemiotic.com/2007/05/01/enforcing-the-ugly-laws/>

⁵⁵ TenBroek, *supra* note 33.

⁵⁶ Steven Taylor, *On Choice*, http://thechp.syr.edu/on_choice.htm

Myth:

There are no other options for students with disabilities exiting school.

Fact:

Segregated or sheltered work is not the only option for children with disabilities exiting school. IDEA entitles people with disabilities to a "Free and Appropriate Public Education" in the least restrictive environment. However, transition from school to eligibility-based services is a confusing paradigm for most parents and children. They are not always informed of the availability of VR and the vast array of services provided to increase an individual's potential employment. They trust the educators who may falsely believe that sheltered workshop placement is in their child's best option. Children, young adults with disabilities, and their family members or guardians need to learn about other options for employment besides segregated employment. They need to understand the benefits of early attachment to the workforce and understand that person-centered planning and a thorough assessment of skills, interests, and abilities will contribute to a plan of employment that can be meaningful and rewarding. In addition to direct competitive employment, options such as supported employment and customized employment are available through VR and other centers. These services coupled with work incentives can significantly contribute to the financial security of a real job for real wages.

Success Story:

William is 21-years old and works at McDonald's. He loves his job and has even been awarded "employee of the month." William has an intellectual disability and receives supported employment services through a county-run program. This program provides him with a job coach who helps with transportation, instruction, and safety precautions. When the county informed him they were cutting his job coach from 3 hours per day to 3 hours per week, William knew he could not perform his duties at McDonald's. Fearing that his only option was a sheltered workshop he asked the **Minnesota P&A** to appeal the cuts. The Judge agreed with William and found no legitimate rationale for the county's decision. William continues to work at McDonald's with the supports he needs.

Many states are now focusing on consumer choice as a key value in the growth and reform of their community-based long-term support systems. With this focus however, has come an awareness that low participation in integrated employment, and community life in general, is evidence of a lack of choice for people with disabilities that needs to be addressed.⁵⁷

On a related note, the importance of considering the job preferences of the individuals with disabilities cannot be underestimated. A 1998 study looked at the relationship between self-determined behavior (control over one's life choices) and positive adult outcomes. It found that 80% of the people who were rated as "highly self-determined were working for pay," compared to 43% of the people who were rated as having low levels of self-determination.⁵⁸ The individuals with disabilities who had more input into their job selections were more likely to be employed within the community.

⁵⁷ Lisa Mills, *Revitalizing Integrated Employment: A Study of Nationwide Best Practice for Increasing Integrated Employment Outcomes Among People With Developmental Disabilities*, (December 2006).

⁵⁸ Michael Wehmeyer & Michelle Schwartz, *The Relationship Between Self-Determination and Quality of Life for Adults with Mental Retardation*, 33 *Education and Training in Mental Retardation and Developmental Disabilities*, 3, 12 (1998).

The consistent isolation of people with disabilities from people without disabilities can significantly hinder the proper development of socialization skills and self-esteem. Several important studies have confirmed this key conclusion. For example, a study of the results of the 1994 closing of North Princeton Developmental Center in New Jersey, published by the American Association on Mental Retardation, compared people who moved from institutional settings to similarly situated people who, instead, remained in institutions.⁵⁹

The study produced convincing evidence that the multi-cognitive scores of people who remained in institutional settings significantly decreased over a seven-year period.⁶⁰ Based upon this data, it seems possible to draw an analogy between the diminished opportunities for interactions with others resulting from institutional segregation and the diminished social interaction opportunities presented by a segregated employment setting.

This study also concluded that those who moved to community settings demonstrated significant increases in self-care skills over time. The authors concluded, "If we had focused solely on the 'movers'... we would have missed one of the most salient findings of this evaluation, namely, the significant loss by 'stayers' of their multi-cognitive competencies, particularly in the area of social skills...."⁶¹

The effects of this segregated isolation may be even more direct and concrete within the employment context. A lack of social skills and/or poor self-esteem issues can be easily misinterpreted by employers as a non-compliant response to a particular work assignment.⁶² More specifically, a study that considered self-esteem issues for people with disabilities revealed that when placed in a

Everyone Deserves a Job They Love

A young woman, in her 20's, who happened to have a cognitive disability, worked for 5 years at a cafeteria on a college campus. She loved her job and eagerly looked forward to work each day. This young lady particularly loved the variety in her job – she stocked shelves, greeted customers and cleaned tables. Her mother reported that the consistent interaction with others in the community improved her social skills.

When her job at the cafeteria was eliminated by the college, she was placed in a sheltered workshop. She reported being very unhappy due to the boredom and repetitive nature of the work. Her work behaviors are reportedly not nearly as strong as they were when she was working in the community and she no longer looks forward to her job at all.

⁵⁹ P Lerman, D. Apgar et al. *Longitudinal Changes in Adaptive Behavior of Movers and Stayers*. Mental Retardation Journal, American Association on Mental Retardation. 25, 41 (2005).

⁶⁰ *Id.* at 41

⁶¹ *Id.*

⁶² TenBroek, *supra*, note 33

sheltered workshop environment, individuals with mental illness were more likely to exhibit problem behaviors and demonstrate a poorer attendance record.⁶³

Segregated work environments commonly exist in industrial workshops that are situated in remote locations far from major cities or towns. These locales serve to further intensify the sting of the separation because of their limited access to transportation options, community activities as well as infrequent interactions with their family members and friends without disabilities.⁶⁴

The benefits available to people with disabilities working within integrated, traditional jobs are plentiful. According to the DD Act, integration means “exercising the equal right of individuals with developmental disabilities to access and use the same community resources as are used by and available to other individuals.”⁶⁵ For instance, a Wisconsin survey of guardians of people with significant disabilities who moved from institutions to integrated community settings led researchers to conclude that the vast majority of guardians felt that the transition to the community led to equal or enhanced satisfaction with their loved one’s living arrangements and overall happiness.⁶⁶

A literature review, related to the previously mentioned Wisconsin survey, concluded: “The studies reviewed here demonstrate strongly and consistently that people who move from institutions to community settings have experiences that help them to improve their adaptive behavior skills. The studies suggest that community experiences increasingly provide people with environments and interventions that reduce challenging behavior.”⁶⁷

When an adult with a disability has access to effective training and support as well as the opportunity to find a traditional job in the community while becoming an essential part of the community, it is good public policy. When this goal is achieved and implemented appropriately, the lives of people with disabilities will no longer have to center around concerns about dependency and poverty.

⁶³ J. Ciardiello, *Job Placement Success of Schizophrenic Clients in Sheltered Workshop Programs*, Vocational Evaluation and Work Adjustment Bulletin, 125, 140 (1981).

⁶⁴ *Id.*

⁶⁵ 42 USC § 15002(17)

⁶⁶ *Northern Wisconsin Center Relocation Survey – prepared by APS Healthcare, Inc. for The Wisconsin Department of Health and Family Services, Division of Disability and Elder Services, (2006).*

⁶⁷ *Id.*

Sub-minimum Wage Reinforces a Life of Poverty for People with Disabilities

The lack of a true minimum wage for many workers with disabilities keeps them in a life of perpetual poverty. It leaves them dependent on family or government programs just to meet their basic needs of food, shelter, and medical care. It denies them the opportunity to take advantage of the pleasures—continuing education, vacations, restaurants, and hobbies—that many people take for granted. It prevents them from achieving true independence.

Worse, once in this system, it's almost impossible for workers with disabilities to get out. They become trapped in a vicious cycle. Due to an exception in labor laws discussed earlier, workshops can pay less than minimum wage to people with disabilities.⁶⁸ This forces them to continue to rely on federal benefits such as SSI and Medicaid which themselves require recipients to be poor.

This circular system is responsible for creating a class of citizens permanently dependent on public benefits and subsidies because their employers pay less than the minimum wage and provide no benefits. Earning at least the minimum wage, if not a living wage, would allow workers with disabilities to support themselves and reduce the amount of aid they receive from government sources.

⁶⁸ 29 U.S.C. § 214(c).

Skills Ignored

Andy has been working in a sheltered workshop for more than 15 years. He shreds paper. The warehouse where he works is a large and cold cavern where the walls echo with the rumbles of the industrial-sized shredders that are on full power the whole day. The air is filled with dust.

Andy has autism. Outside of the workshop, he completes daily life activities such as shopping, cleaning and even paying bills almost completely independently. His favorite hobby is to buy old computer parts and build new computers. He has taught himself five languages and has a photographic memory which he exercises by telling people what clothes they had on the last time he saw them. He frequents the local library scanning dozens of books on whatever topic is of interest to him at the moment.

His employer, who is also the provider of his housing and other Medicaid funded services, has expanded rapidly over the last five years and Andy's current work environment bears little resemblance to the quiet and warm office he used to work in.

Because of his disability, Andy has a low threshold for social interactions and a sensory sensitivity that causes him to avoid loud and cold areas. The only time Andy will work now is when he is sequestered to a corner of the room. He must wear a winter parka, face mask and ear plugs while working. Getting him to work requires constant coaxing by his supervisor. Yet, Andy's employer and service providers have not looked at other employment possibilities in the community because, they say, he is too shy and there are no other options for him other than shredding paper.

So Andy is only able to fulfill his potential in his free time by putting computers together while reading a manual in Chinese.

The majority of workers in sheltered workshops that are paid less than the minimum wage receive incredibly low pay. According to a 2008 study of 291 individuals with disabilities from 40 sheltered workshops, the average hourly earnings were \$2.30 and average monthly earnings were \$175.69.⁶⁹ A recent University of Indiana study indicated that, in May 2009, people in sheltered workshops in Indiana earned an average of \$1.59 per hour.⁷⁰ Additionally, employees who receive housing, food or transportation from their employers often find fees for these services deducted from their weekly wages—leaving them even less money for necessities. And even worse, at some sheltered workshops, employers serve as the Representative Payee of their employees' Social Security benefits, giving them even more control over the finances of their employees.

Conversely, people with disabilities in competitive employment earn much more. The 2008 study followed the 291 individuals as they moved from sheltered employment into supported employment, and found that their average hourly earnings increased to \$5.75, with average monthly earnings of \$456—more than twice what they earned in the sheltered workshops.⁷¹ Another report titled, "Sheltered vs. Supported Employment," found workers with disabilities in traditional jobs paired with support services earn two to three times more than their counterparts in sheltered work. A worker making just the minimum wage would earn \$270 each week compared to the \$100 that a sheltered worker would make working full time at \$2.50 an hour.⁷²

Hypothetically, if a sheltered workshop did pay the minimum wage, you would expect a worker with a disability to earn a decent living in this situation.

This is not the case.

Yet another characteristic of sheltered work prevents workers from ever escaping a life of poverty. Sheltered workshops survive on contract and piece work. They, however, do not secure the number of necessary contracts needed to run the workshop at full capacity resulting in substantial down-time and periods of inactivity. Some of these hours are supposed to be spent improving skills, the reality of life in a sheltered workshop consists of sitting around idle waiting for the next

⁶⁹ Alberto Milgiore et al., "Why do adults with intellectual disabilities work in sheltered workshops?" 28 *Journal of Vocational Rehabilitation* 29-40 (2008) at 29.

⁷⁰ T. Grossi et al., *Indiana Day and Employment Services Outcomes System Report* (May 2009), at 2, available at http://www.iidc.indiana.edu/styles/iidc/defiles/CCLC/desos_5_09report.pdf.

⁷¹ Milgiore, 28 *Journal of Vocational Rehabilitation* at 29.

⁷² John Kregel and David H. Dean, *Sheltered vs. Supported Employment: A Direct Comparison of Long-Term Earnings Outcomes for Individuals with Cognitive Disabilities*, in *Achievements and Challenges in Employment Services for People with Disabilities: The Longitudinal Impact of Workplace Supports Monograph* (Kregel, et al., editors), at 75, available at <http://www.worksupport.com/main/downloads/dean/shelteredchap3.pdf>

contract or order to come in. Most workers in sheltered workshops work less than part-time. Some work just a few hours a week. The GAO found that 86% of workers being paid less than the minimum wage were also working part-time.⁷³ Further, with no opportunity to work full time for people who want to, nor any opportunities to advance internally through regular raises or promotion, workers with disabilities are left with nothing but the fear, stress, depression and despair that comes with poverty.

One alternative is customized employment. Customized employment means individualizing the relationship between employees and employers in ways that meet the needs of both. It is based on a determination of the strengths and interests of the person with a disability, and the needs of the employer.

It may include employment developed through job carving, self-employment, or entrepreneurial initiatives, or other job development or restructuring strategies that result in job responsibilities being customized and individually negotiated to fit the needs of individuals with a disability. Customized employment assumes the provision of reasonable accommodations and supports necessary for the individual to perform the functions of a job that is individually negotiated and developed.

I heard a woman speak about how she would like to work in a "regular job at regular pay." The woman had lived in an institution for many years, then a group home, and eventually an apartment. At that time she had been working in a sheltered workshop for 16 years. The woman wanted to know how long she had to be in training before she could graduate and get a job.

— Vickay Gross
Disability Rights North Dakota

Customized employment works because it is person-centered, and driven by the interests, strengths and conditions for success of each individual. It is real work for real pay in integrated settings. It is not based solely on job development techniques to secure existing work through a competitive employment process. A customized job is a set of tasks that differ from the employer's standard job descriptions but are based on actual tasks that are found in the workplace and meet the unmet needs of the employer. Practitioners and innovators in customized employment accomplish customized job descriptions through job carving, negotiated job descriptions, and job descriptions specifically created to meet the employer's unmet needs.

⁷³ GAO, *Special Minimum Wage Programs: Centers offer Employment and Support Services to Workers With Disabilities, But Labor Should Improve Oversight*, GAO-01-886 (Sept. 2001), at 4, GAO-01-886, available at <http://www.gao.gov/new.items/d01886.pdf>

Unlike traditional day and employment programs for people with disabilities, that often encourage an employment path of stereotypic work options, customized employment begins with the assumption that the job seeker is ready for work, and has a valuable contribution to make that is based on their unique skills, interests and preferences. Customized employment does not occur in segregated settings.

Laura's Story

Customized Employment Success with Georgia Employment First

(based at the Office of Georgia Advocacy—the GA P&A)

Two to three days a week she wakes early and travels to the bakery shop. Laura, who is a person with mental illness loves baking and has mastered pastries and cookies.

The shop where she works is small and under-capitalized. Both the owner and Laura recognized that the business could benefit from serving coffee, but the state-of-the-art machine was expensive and required major electrical and plumbing work. Through her customized employment program, Laura was able to purchase the espresso maker for the business. This purchase by Laura resulted in a resource partnership and significant expansion of services for the small pastry shop which is now also a coffee shop. Laura maintains ownership of the espresso maker which she can take with her should she choose to change employment. Laura's customized employment and resultant partnership has created improved customer service and profitability for the company and the resource ownership has provided Laura a position of importance which she values. Now, in addition to baking pastries and making coffee, Laura sells chocolates, treats, small games, and trinkets from her own business within a corner of the shop. The owner helps her price the items in her shop, keeps track of her inventory and assists her in calculating costs and profit. This is a win-win situation for the both the coffee shop owner and Laura her employee and resource partner.

Sheltered Workshops Lead Nowhere

Segregated employment was initially conceived to provide people with disabilities opportunities for activity and productivity during the day. As social attitudes that required isolation for people with disabilities started to change, segregated employment's purpose shifted to one that could prepare individuals to be employed in a traditional job in the community. However, purpose and practice part ways as the reality for most individuals working in a sheltered workshop is not a transition point but

rather a dead end. While sheltered workshops purport to offer pre-employment and pre-vocational skills, these programs most often only prepare people with disabilities for long term sheltered employment.

It is a common practice for most new employees in traditional jobs to enter a probation period during which they receive on the job training. The probation period then ends. The same options should be encouraged for people with disabilities. Getting ready to go to work is not a lifetime activity and individuals should not have to train for ten or twenty years to get a job, especially when the work for which they are training has nothing to do with their interests, skills, or a potential job match.

The Bigotry of Low Expectations

A Sad Statement defending sheltered workshops from the Mentally Retarded Citizens of Missouri:

"Persons with mental retardation are not normal and they never will be. Quit trying to make them something they are not!"

<http://www.rcomo.org/whatisasw.htm#Defense>
(1/13/11)

Since sheltered workshops are seriously limited by adequate quantities and types of paid work, there are frequent periods of inactivity during which individuals are denied interactions with their peers who do not have disabilities. They spend their time in day wasting activities, often practicing assembly skills which will be taken apart by the line supervisor or their peers in order to keep everyone busy. Low challenge work such as sorting, collating, labeling, folding, mailing, sewing, subassembly, heat sealing, hand packaging or other similarly light assembly work comprise the bulk of services done for businesses on a contract basis.⁷⁴ Typically these skills are sometimes not even transferable to traditional work because most sheltered workshops do not have modern tools or machinery. So, in the end, they fail to prepare workers for traditional work—even traditional factory work—at all.

⁷⁴ Alberto Migliore, et al. "Why do adults with intellectual disabilities work in sheltered workshops?" 28 Journal of Vocational Rehabilitation 29, 6, 29-40.

People with disabilities are often fast tracked into segregated employment and do not have the benefit of individualized work assessments. Even though most individuals with disabilities in sheltered workshops favor employment outside of workshops,⁷⁵ questions about where an individual would like to work, or what skills they can strengthen or develop are irrelevant. Choice is largely irrelevant. While individuals may experience the normal task requirements of work such as using a time clocks, working a fixed schedule, and being supervised, most provide bench work and do not promote self direction, self determination or skill development. Many times the very environments they are required to work in do not take into account their disabilities. Loud and dusty industrial settings are often the only option for people with sensory sensitivities or crowded and busy rooms are the settings for people with autism. An argument that service providers make to prove that an individual would not be successful in competitive employment is that their productivity is low in the sheltered workshop. Ironically, a person with a disability would receive more individualized accommodations in a competitive work environment because of the protections set forth in the ADA.

Though it would be less resource intensive and more personally advantageous for people with disabilities to provide employment support in the community, funding for segregated employment continues to flow.

Even with the dramatic improvements in competitive employment, we continue to see that for every one person working in competitive employment, three people remain in segregated settings. Medicaid spending increased from nothing in 1997 to \$108 million in 2002 for competitive employment while only slightly dropping from \$514 million to \$488 million for segregated day programs.⁷⁶

Consequently, \$1 was spent on supported employment compared to the \$4 utilized for segregated day programs.⁷⁷

Staff members' opinions about employment and the employability of people with disabilities strongly influences the future of segregated employees. For example, when a state VR agency conducts a required annual review of an individual who works in a sheltered workshop, the staff will often indicate that the individual needs to remain in the workshop as they are not yet "job ready."⁷⁸ This bias is not surprising, given that, in order to continue to operate, workshops need to promote their existence.

⁷⁵ Alberto Migliore, et al. "Why do adults with intellectual disabilities work in sheltered workshops?" 28 *Journal of Vocational Rehabilitation* 29, 12.

⁷⁶ *Id* at 29.

⁷⁷ *Id* at 37.

⁷⁸ 34 C.F.R. § 361.55

Sheltered workshops, whether not-for-profit or for-profit, are still businesses that need the income generated from contracts and government sources. And like any other business there is an incentive to keep the best employees on the payroll. This practice perpetuates the stereotype that workers with disabilities cannot work in traditional settings because the best workers, the ones who would most likely succeed in competitive employment, rarely graduate from the workshop's "training program."

Myth:

People with Disabilities Cannot Fit into Traditional Work.

Fact:

Workers with disabilities can be employed and be paid equally with the appropriate job development, training, work support, and assistive technology. However, the low expectations of service providers and families contribute to workers with disabilities being unaware of opportunities for employment in the general workforce. Supported employment (and customized employment) opportunities help place workers in a job that is a match for their skills and interests and better meets the needs of employers and workers.

Success Story:

Nancy Ward is an Oklahoma resident who staffs the Medicaid Reference Desk funded by the Administration of Developmental Disabilities. She is an individual with a cognitive disability. Nancy previously worked in a sheltered workshop. After three years of employment, her supervisor at the workshop resigned but before leaving suggested to Nancy that she apply for the supervisory position. Despite performing the job functions on a daily basis, Nancy did not believe she was qualified to be supervisor because no one else at the workshop had ever indicated she could be considered for advancement. She was extremely reluctant to place the application, but finally, after much convincing by her peers and the plant manager, Nancy went to the main office to apply. However, the office personnel at the agency would not allow her to apply because she was "a sheltered employee." Imagine Nancy's surprise several weeks later when she was instructed to train her new supervisor. Angry, Nancy quit the sheltered workshop and found a job at a local nursing home where she was fully integrated into the workforce.

Hear Nancy's story in her own words:

www.youtube.com/watch?v=w8uKVH8WxCs

Sheltered Workshops Profit Greatly from the Status Quo

The national policy toward integration of people with disabilities into every aspect of American life is thwarted by the actions of government agencies that provide funding which perpetuates segregated and sheltered work. According to a study by the GAO, sheltered workshops are largely funded as follows:⁷⁹

- 46% from State and County Agencies
- 35% from Production Contracts
- 9% from Retail Sales
- 2% from Donations
- 1% from Investment Income
- 7% from Other Sources

The sheer quantity of government funds subsidizing sheltered workshops illustrates the point that they are not self-sustaining.⁸⁰ An eye-opening, 99% of sheltered workshops augment their meager contract income by providing ancillary services funded by government sources. Some government funding supports sheltered workshops directly, however, there are likely not enough sources to total the estimated 46% of workshop income. The ancillary services provided by workshops, such as daily living skills training, case management, housing, transportation, and job-related services, are all linked to funding.⁸¹ This bundling of habilitative services with workshop-based job-training supports the status quo service delivery model of segregated and sheltered employment.

This patchwork of funding is used by sheltered workshop managers to cover the operational costs of the facility. Some of the funding includes:

- **Medicaid.** Medicaid has the most funding for the types of services provided by sheltered workshops. Funding is distributed through several vehicles that can often be used simultaneously, including:

⁷⁹ GAO, *Special Minimum Wage Programs: Centers offer Employment and Support Services to Workers With Disabilities, But Labor Should Improve Oversight*, GAO-01-886 (Sept. 2001), at 4, GAO-01-886, available at <http://www.gao.gov/new.items/d01886.pdf>

⁸⁰ <http://www.tacinc.org/downloads/Pubs/Medicaid-Final-July10.pdf>

⁸¹ GAO, *Special Minimum Wage Programs: Centers offer Employment and Support Services to Workers With Disabilities, But Labor Should Improve Oversight*, GAO-01-886 (Sept. 2001), at 4, GAO-01-886, available at <http://www.gao.gov/new.items/d01886.pdf>

- Home and Community-Based Services Waivers (HCBS): HCBS waivers fund community services which are defined by each state, therefore, its funding for employment services through Medicaid varies from state to state.⁸²
- Medicaid Rehabilitation Option: This funds “employment-related rehabilitation services to Medicaid eligible individuals in programs that provide both day habilitation and sheltered work.”⁸³
- Targeted Case Management: Typical activities reimbursed with these funds are loosely defined to include services like identifying service needs, creating a service plan, referrals to service providers, support, and monitoring.⁸⁴
- Deficit Reduction Act (DRA): This established a new provision in the Social Security Act to fund home and community-based services to people with disabilities that do not have a HCBS waiver.⁸⁵
- **Vocational Rehabilitation**. This funding is from the RSA. It is largely from Title I of the Rehab Act. Money is provided to states for VR services. The services provided relate to eligible people with disabilities and must help them meet their employment goals.
- **Social Services Block Grants**. These Social Security formula funds are also known as Title XX Grants. Block Grants are given to states to provide community-based services for people with disabilities. Employment services are commonly paid for using these funds.
- **Local Taxes**. Many states also provide funding from their own coffers to support employment services for people with disabilities.

This patchwork of funding works together in the following manner: Under Medicaid, employment related services such as helping to build the skills needed to become or stay employed, are reimbursed through HCBS waivers or through the DRA, as long as these services differ from those funded under the Rehab Act.⁸⁶ Most Medicaid funds must also be matched. Depending on the situation, Social Services Block Grants or local set-aside dollars can fulfill the matching requirement.

Even without the patchwork, the federal Medicaid program heavily funds sheltered work. Ironically, funding largely comes from a program where Congressional intent was to enable individuals with disabilities to access services in community based instead of segregated settings. Known as the HCBS waiver, it permits funding for habilitation services defined as: services designed to assist individuals in

⁸² PL 109-171. Section 6086, 1915c

⁸³ 42 CFR §440.130

⁸⁴ PL 109-171. Section 6086, 1915g

⁸⁵ PL 109-171. Section 6086, 1915i

⁸⁶ *Leveraging Medicaid: A Guide to Using Medicaid Financing in Supportive Housing*.

<http://www.tacinc.org/downloads/Pubs/Medicaid-Final-July10.pdf>

acquiring, retaining, and improving the self-help, socialization, and adaptive skills necessary to reside successfully in home and community based settings.⁸⁷ Included in the category of habilitative service are pre-vocational services, educational and supported employment services.⁸⁸

CMS regulates the spending of Medicaid dollars. CMS has made strides in the past decade to adjust Medicaid long term care programs from traditionally institution-based programs to one that facilitates services in community based settings. For example, CMS published guidance stating that Medicaid should "not [make funding] available for the provision of vocational services (e.g., sheltered work performed in a facility) where individuals are supervised producing in goods or performing services under contract to third parties."⁸⁹

While this sounds like progress, CMS recognizes a major loophole remains that keeps Medicaid money flowing into these segregated settings. Sheltered workshops skirt this prohibition by billing, not for vocational services but for *pre*-vocational services like skills-building activities aimed at preparing an individual for paid or unpaid employment, for example, building attention spans, and improving fine motor control.⁹⁰ The hypocrisy is that these pre-vocational services can be provided for decades on end without CMS ever questioning why they have not lead to vocation.

In other areas funded by Medicaid, CMS often requires the provider to develop an individual plan of services that will lead to a measurable outcome.⁹¹ The plans are intended to be reviewed to see if the services need to be changed or adjusted to better achieve the goal.⁹² Unfortunately, CMS requires no such oversight for pre-vocational services provided in sheltered workshops.

Maine P&A Finds Better Option

Ten years ago, there were numerous sheltered workshops in every county in Maine and they were largely the only choice of employment for individuals with intellectual and cognitive disabilities. The P&A formed an alliance with Maine's statewide self-advocacy network, Speaking Up for Us (SUFU) and began discussions aimed toward forming a consensus opinion. Though many self-advocates were concerned about losing their jobs, SUFU ultimately, after two years of internal discussions, made a decision that making \$2 for a week's work or worse, owing money for the pizza party at the end of the week, was far worse than losing a few jobs. SUFU and the P&A together publicly denounced sheltered work. SUFU, the P&A, the DD Council and other partners successfully advocated for the State to implement innovative employment programs.

⁸⁷ § 1915(c)(5)(A)

⁸⁸ §1915(c)(5)(B)

⁸⁹ CMS *Instructions, Technical Guide and Review Criteria* (January 2008) page 132

⁹⁰ 42 CFR 440.180(c) (2)

⁹¹ See e.g., The Medicaid pre-admission screening and resident review program regulations in 42 C.F.R. § 483.440 (c)(1); and the Medicaid Intermediate Care Facilities for Individuals with Mental Retardation program - individual plan requirements at 42 CFR 440.150.

⁹² Id. at §483.440(f)(2)

In addition to CMS, RSA funds sheltered settings through two avenues. Although extended employment, a euphemism for sheltered workshops, has been eliminated as a final employment outcome, services provided by sheltered workshops continue to be a VR service as an interim step toward achieving integrated employment. For those choosing extended employment as a long term option, it remains available, but outside the VR program.⁹³

Funding Breakdown for One Workshop

The Impact Federal Funding has on Sheltered Workshops

On August 19, 2010, the Evansville Courier & Press ran a story about how rules adopted by CMS in 2008 to implement changes in the Rehab Act were going to be enforced in Indiana, forcing a change in the amount of funding going to sheltered workshops. According to the article, these rules—reducing payments from \$4 per person per hour to \$3.69—would have devastating consequences for the Evansville ARC. Not only would the funding be decreased, but the number of staff covered to supervise the activities would be reduced as well. The total devastation: \$50,000.

Devastating, that is, until you notice that their annual income is more than \$11 million. According to their 2009 Annual Report, they received \$6 million from business contracts, \$3.8 million from government funds, \$565,000 from child care fees, \$279,000 from county taxes, and \$800,000 from community support. Most interestingly, they lost \$66,000 in value from their investments—though that was not mentioned in the article seeking community sympathy and support.

Sheltered workshops, like the one run by the Evansville ARC, clearly depend on federal, state and local dollars to maintain their outdated service system.

www.courierpress.com/news/2010/aug/19/new-rules-rock-arc/

RSA also supports comprehensive rehabilitation centers which serve as a focal point for VR funding within some communities for the development and delivery of services for persons with disabilities and others.⁹⁴ Authorized under the Rehab Act, these facilities are large segregated compounds that provide a broad range of vocational rehabilitation, health, educational, social, and recreational services to persons with disabilities. Clearly the continuance of these facilities has not kept pace with community integration concepts.

Michigan, Pennsylvania, Maryland, West Virginia, Virginia, Georgia, Tennessee, Arkansas, and Kentucky operate comprehensive rehabilitation centers funded with Title I VR dollars. In addition, South Carolina operates public community rehabilitation programs which are not multidisciplinary. In 2007, West Virginia closed its comprehensive rehabilitation center, allowing them to triple the amount of money spent on other services.⁹⁵

⁹³ 66 Fed. Reg. 7254

⁹⁴ 46 FR 5425, Jan. 19, 1981, as amended at 53 FR 17144, May 13, 1988

⁹⁵ West Virginia Division of Rehabilitation Services, *2009 Annual Report*.
http://www.wvdrs.org/press/WVDRS_Annual_Report_2009.pdf

Local funds can also be a significant source of income for sheltered workshops. In Missouri, for example, there is a special property tax that is assessed and collected specifically for services for people with developmental disabilities—including sheltered workshops—which correlates to an investment of \$1.50 per hour per worker.⁹⁶ The current rate for the property tax is 8.5¢ for each \$100 of assessed property value which generated approximately \$16 million in fiscal year 2010.⁹⁷ In 2009, the Missouri Department of Elementary and Secondary Education—the agency that provides technical assistance, guidance, and support to sheltered workshops—estimated that there are approximately 7,500 workers with disabilities in sheltered workshops.⁹⁸ This tax provides Missouri sheltered workshops with a significant and reliable revenue stream.

According to Indiana’s HCBS⁹⁹ and Social Services¹⁰⁰ Waiver applications, the State will spend \$17.9 million on “Facility Based Habilitation” in 2011—another euphemism for sheltered workshops. The portion of that funding dedicated to the Evansville ARC, or any other individual provider, was undeterminable from the information posted. There are 58 sheltered workshops paying below the minimum wage in that state. A recent University of Indiana study indicated that, in May 2009, people in sheltered workshops in Indiana earned an average of \$1.59 per hour.¹⁰¹

Additionally, the FLSA maintains sheltered workshops. Most sheltered workshops take an advantage that few of their for-profit counterparts take—the subminimum wage allowance of the FLSA. In fact, according to the GAO, there are more than 4,700 non-profit workshops paying an average of 86 workers each below the minimum wage while only 500 for-profit businesses pay an average of 3 employees each below the minimum wage.

Through the FLSA, sheltered workshops may pay an hourly wage below the federal minimum. These commensurate wages are set based on productivity standards determined by workshop staff.¹⁰² The ability to pay workers below the minimum wage from the outset is based on an outdated reliance on “an absolute connection between pay and productivity” that carries through to today.¹⁰³

⁹⁶ <http://moworkshops.org/offer.html>

⁹⁷ <http://www.plboard.com/infobase/default.asp>

⁹⁸ <http://dese.mo.gov/divspeced/shelteredworkshops/>

⁹⁹ <http://www.in.gov/fssa/files/DDW20100930.pdf>

¹⁰⁰ <http://www.in.gov/fssa/files/SSW20100930.pdf>

¹⁰¹ T. Grossi et al., *Indiana Day and Employment Services Outcomes System Report (May 2009)*, at 2, available at http://www.iidc.indiana.edu/styles/iidc/defiles/CCLC/desos_5_09report.pdf.

¹⁰² <http://www.dol.gov/whd/FOH/ch64/64btoc.htm>

¹⁰³ Michael Callahan, *Employment for All TASH Connections* Spring 2010 vol. 36, #2, page 1.

In His Own Words:

“Pay Me Minimum Wage or I’m Leaving!” – John Anton’s Story

When I got out of high school, I started working at local markets and then in food service. I realized that it wasn’t for me. I wasn’t challenged. I decided that I wanted to work with people with disabilities.

I started working at Career Resources which ran a sheltered workshop in Haverhill, Massachusetts, hoping to get training for a job helping people with disabilities. There was hardly any work in the sheltered workshop. Most people sat around playing cards all day. When there was work to do, it was boring. They paid me \$1.25 an hour to do piece work and then to be a janitor. Even though I wasn’t doing piece work as a janitor, my pay stayed the same. When I told them I wanted to do more with my life and make more money, they let me work in the office, but still at the same pay. I wasn’t doing what I really wanted to do though, to help other people with disabilities.

After being in the sheltered workshop for many years, I was tired of earning diddly-squat. I showed my paycheck to the head of the workshop and said, “Is this how little money you can afford to pay me?” He responded that they didn’t have enough money to pay more. I was never told that I was being paid so little because the law lets them, or showed how they even came up with my hourly rate.

So I got mad. I said, “Pay me minimum wage, or I’m leaving!” He said no. So, I walked out the door. He even chased after me trying to convince me to change my mind!

After that, I worked with my service coordinator at DDS to find a job doing what I loved—helping people with disabilities reach their potential. Now, I work at the State House as an intern and volunteer for Representative Tom Sannicandro. I research bills and advocate for people with disabilities. I got the name of the Department of Mental Retardation changed to the Department of Developmental Services and the “R” word taken out of state laws.

My next plan is to help close the sheltered workshops and get people jobs out in the community.

John is an advocate and activist for disability rights in his home state of Massachusetts, and on Capitol Hill. He currently serves as a member of the Board of Directors of the Disability Law Center, and is the former head of Mass Advocates Standing Strong.

There is another way. Rather than making the absolute link to productivity, customized employment offers an alternative framework normally namely contribution. As discussed earlier in this report, customized and supported employment can work to help met the unmet needs of businesses.¹⁰⁴

Medicaid does provide an option for supported employment which falls under the same HSBC waiver as pre-vocational services. Increasing funding for this program, which must be offered in integrated settings, would be much more in line with national policy.

CMS did, through Section 203 of the Ticket to Work and Work Incentives Improvement Act of 1999, make it easier for states to fund supported employment allocates, by offering Medicaid Infrastructure Grants. As of 2008, at least 41 states had received these federal grants.

Unfortunately, as government agencies face tight budgets, supported employment has been a target for cuts because an individual's supported employment budget is clearly delineated. On the other hand, it is not so easy for an official to determine the cost savings from reducing an individual's pre-vocational services as these services are bundled as pre-vocational income in a complicated formula with other workshop income.

Market Solutions Sheltered Workshops Should Adopt

While the disability rights community tends to think of itself as experts, it could learn a lot from some traditional businesses. Business leaders would also have a lot to teach executives and staff of segregated and sheltered workshops.

Walgreens has a lot to teach disability service providers, in fact.

More from Mike Montgomery

In the 1970's, the sheltered workshops in Mississippi were run by annually renewable grants. In the 1990's, the funding was converted to a purchase of service arrangement for X dollars per unit of service. People who ran the programs were not motivated to change. They liked the way that the billing flowed and the families were happy to have their children in a safe place and were not pushing for change. There are more than 1,800 people on our waiver waiting list in MS alone. Many could come off the waiting list if we switched the way we use our resources.

¹⁰⁴ Michael Callahan, Employment for All TASH Connections Spring 2010 vol. 36, #2, page 2

Central to Walgreens' diversity initiative is a policy of integration. All of Walgreens' employees with disabilities—from the factory to management—work side by side with their colleagues without disabilities. And, they do it for the same pay.¹⁰⁵

Walgreens has not had to compromise quality or efficiency either. According to their Senior Vice President of Distribution and Logistics, Randy Lewis, Walgreens gained efficiency by having a workforce that is comprised of 40% people with disabilities. In fact, all workers with the same jobs have the same productivity standards. What's more, the adaptations they have made to the factory to make it more assessable, have benefitted all their workers, not just the workers with disabilities.¹⁰⁶

This information is right in line with recent survey of employers about worker accommodations. The survey results indicated that 71% of accommodations cost \$500 or less with 20% costing nothing.¹⁰⁷ Considering the small investment, there is a great potential for wide-ranging benefits that can be reaped by making workplaces more accessible.

Even though advances in technology—and thinking—have created new opportunities for people with disabilities to find meaningful work in the communities where they live, many are still shuttled into sheltered workshops, where they languish for years. The sheltered workshops of today do not look like the sleek and state-of-the-art facilities run by their counterparts—like Walgreens—in the business world. Their equipment is often old and out of date, and the facilities themselves show that few, if any, capital expenditures for improvement were made. A study of workshops in Missouri found that collectively, rather than mimicking traditional factories, they mimic each other both in form and function—they teach the same skills in the same settings.¹⁰⁸

When questioned, workshop executives often state that the type of work done and the workshop setting itself reflected the preferences expressed by workers and their families. This level of attention to the needs and desires of the workers with disabilities they employ does not appear to translate to individualized planning and training.¹⁰⁹ For the workers, sheltered workshops offer little training and even less diversity. They simply do “the same work, day after day, rather than the variety of work and the experience of learning that comes from being trained in and doing a changing array of jobs.”¹¹⁰

¹⁰⁵ “Walgreens program puts the ‘able’ in disabled” <http://www.msnbc.msn.com/id/19417759/from/ET/>

¹⁰⁶ “Walgreens program puts the ‘able’ in disabled” <http://www.msnbc.msn.com/id/19417759/from/ET/>

¹⁰⁷ <http://askjan.org/media/LowCostHighImpact.doc>

¹⁰⁸ <http://www.iarstl.org/papers/ShelteredWorkshops.pdf>

¹⁰⁹ <http://www.iarstl.org/papers/ShelteredWorkshops.pdf>

¹¹⁰ <http://www.iarstl.org/papers/ShelteredWorkshops.pdf>

The same study found that workshop executives themselves do not have the marketing skills, or business plans in place to run an effective workshop. With of a lack of planning and marketing, workshops do not have enough contract work to keep their doors open and employees working at or near full-time levels.¹¹¹ Rather than competition and the drive to achieve motivating work flow, income generated by federal and state service systems place disincentives on the workshop to obtain contract work, unlike their for-profit business counterparts.

The current reality of a seemingly endless supply of state and federal funds going to segregated and sheltered work only supports the status quo for people with disabilities. Changing this system will require a stronger hand by the federal and state authorities to fulfill the mandates of our national policy of integration.

Case Study:

Walgreens: Breaking the Cycle

At least one major employer realizes the potential of hiring people with disabilities in integrated competitive employment with the expectation that these employees adhere to company performance standards. Walgreens actively hires people with disabilities at two distribution centers located in South Carolina and Connecticut. In June 2007, the company opened a new state of the art distribution center in Anderson, SC. The facility was designed to be accessible to people with a wide range of disabilities in competitive employment.

Walgreens pays employees the same wages regardless of their disability and expects all employees to adhere to the same performance standards. To achieve this goal, Walgreens designed adjustable workstations, clear icon-driven touch screen computers and created signs with pictures to allow people with physical, cognitive, intellectual and mental disabilities to perform various jobs. Training programs consider the disabilities of employees. For example, management and supervisory techniques were developed specifically considering employees with autism, Asperger syndrome, and other cognitive disabilities. Employment at the distribution center was the first real job for many of the Walgreens employees with disabilities.

Walgreens has also made a commitment to helping other companies build on its successes. Walgreen's demonstrates its programs and processes to other retailers in an effort to help others move in a similar direction. Walgreens will offer tours of its facilities along with mentoring, training and guidance. Walgreens also offers students an opportunity to spend one week learning from employees with disabilities about what makes their job work for them in the hopes that the students take this information with them when they graduate.

For more information go to http://www.walgreens.com/topic/sr/disability_inclusion_home.jsp

¹¹¹ <http://www.iarstl.org/papers/ShelteredWorkshops.pdf>

A Way Forward

It is clear that segregated and sheltered work, as well as sub-minimum wages for people with disabilities must end. And in order for that to happen, systemic—and systematic—change must occur. Fortunately, a movement toward change is under way in states across the country. One effort, Employment First, seeks to have individual states adopt policies that focus on integrated, community-based employment at or above minimum wage as the first spending option for state and federal dollars.

Other efforts include the promotion of supported employment and customized employment programs that focus on creating or locating jobs in the community that match the personal employment goals of the person with a disability. These approaches have a high incidence of success because they are personalized, integrated, and pay a prevailing wage.

There are also efforts undertaken by states themselves to increase employment opportunities for people with disabilities. Here are just a few examples:

- **Washington:** In 1997, the Washington state legislature created a supported employment program targeting people with developmental or significant disabilities who are eligible for vocational rehabilitation services and need training and support to perform successfully. These positions do not count against their allotted full-time employee positions for the entire time the individual is employed by the agency. [1] In 2007, the Division of Developmental Services issued a policy establishing supported employment as the primary use of employment or day program funds resulting in a 58% employment rate for people with developmental disabilities.
- **Oregon:** The Youth Transition Program is a year-round comprehensive transition program for youth with disabilities that prepares them for employment or career related post secondary education or training. It is operated collaboratively by the office of Oregon Office of Vocational Rehabilitation Services, the Oregon Department of Education, the University of Oregon, and local school districts. It operates in approximately 120 high schools and is funded through a combination of state and local funds from participating education and rehabilitation agencies.
- **Kentucky:** The Community Based Work Transition Program serves students with disabilities during their last two years of high school explore potential careers, get work experience, stay employed, and advance at work. The CBWTP is a cooperative effort between participating local school districts, the Kentucky Department of Education, Office of Vocational Rehabilitation, the Kentucky Department for the Blind, and the Human Development Institute at the University of Kentucky.
- **Georgia:** Georgia has created a cross-disability network of "employment stewards"—both individuals and organizations—working across the state to develop demonstrations of high quality customized employment and to assist individuals with disabilities to start their own businesses and microenterprises.

While these examples indicate progress has been made, there is still quite a long way to go until our national policy of integration is realized. Currently there are only 12 states that have made the Employment First commitment. Supported and customized employment programs, while enormously successful, do not receive the level of funding or attention that segregated and sheltered work does. It is the hope of NDRN, and thousands of advocates and activists, that this soon will change.

Policy Recommendations

In 1990, the ADA was passed to end the segregation and other types of discrimination, including in employment, against individuals with disabilities that was a serious and pervasive social problem. The ADA integration mandate as expressed in the Olmstead decision and other federal laws have also recognized the importance of integration over segregation. Yet, there are still far too many situations in which our nation's goal of integration for people with disabilities has not been realized. In addition to being segregated in their employment environment, many people with disabilities also face employment discrimination in the wages they can earn—an act of outright discrimination that is sanctioned by the current law—leading to situations where some people with disabilities are earning pennies an hour for their labor while their colleagues without disabilities earn a prevailing wage doing the same job.

In 2011, it should not be permissible to pay what can be considered exploitive wages based on a person's status of having a disability. It should also not be permissible to segregate people with disabilities at work—or home. NDRN believes that the sub-minimum wage and segregated employment environments violate the spirit of the ADA, the Olmstead decision, and the national policy of inclusion—and they must come to an end.

As society progresses, archaic policies must be abandoned, and replaced with forward thinking ones. We, as a nation, must move forward and realize the promise of the laws already passed that recognize and protect the civil rights of people with disabilities. We must work together to end segregated and sheltered employment. We must end sub-minimum wage.

However, just seeking to end those practices addresses only part of the problem. At the same time we seek to end these archaic policies, we need to focus our efforts on ensuring the availability of integrated employment options that include support, services, and equal pay. To achieve these goals, NDRN makes the following broad public policy recommendations.

End Segregated Employment & Sub-minimum Wage for People with Disabilities

Congress

- Restrict all federal money, including Medicaid and Vocational Rehabilitation (VR) funds, from being spent in a segregated or sub-minimum wage employment environment.
- Stop issuing 14(c) certificates that pay sub-minimum wage to individuals with disabilities.
- Forbid in all relevant federal statutes or regulations moving youth or young adults from the classroom to a segregated or sub-minimum wage employment environment.
- Modify federal contract preferences so that they cannot be used by employers who utilize segregated employment environments or where an employee is paid a sub-minimum wage.

States

- Forbid the use of any state funding from being expended in a segregated or sub-minimum wage work environment.
- Modify state contract preferences so that they cannot be used by employers who utilize segregated employment environments or where an employee is paid a sub-minimum wage.

Promote & Facilitate Integrated and Comparable Wage Employment Alternatives

Congress

- Strengthen existing, and create new, incentives through the federal tax code to employ individuals with disabilities in integrated employment environments paying comparable wages.
- Improve and enhance workforce programs such as apprenticeships and on the job training to require greater participation by individuals with disabilities.
- Increase federal funding for person-centered planning for employment and employment supports for supported employment, customized employment, and self-employment.
- Mandate under the IDEA that transition plans include social skills training components and work preparation, such as placements outside of school in apprenticeship or internship programs.
- Create as part of the reauthorization of the Rehabilitation Act or IDEA a transition coordinator position that will have overall responsibility to coordinate across the education, employment, and disability systems and programs that provide transition services. The number of transition coordinators located at each high school shall be based on the number of students needing transition services at that high school.

- Require state vocational rehabilitation agencies to visit employers employing individuals with disabilities under a sub-minimum wage certificate or which maintain segregated employment environments at least once a year to inform individuals with disabilities of competitive employment opportunities and to assess the vocational rehabilitation needs of those individuals.
- Mandate that supported employment services be funded under the Rehabilitation Act for at least 36 months.
- Require Medicaid to fund services (employment supports, assistive technology, etc.) that will allow individuals with disabilities in segregated or sub-minimum wage employment environments to move to integrated and comparable wage employment.
- Amend Title I of the Rehabilitation Act to require state vocational rehabilitation agencies to review and assess at least once a year the capabilities of individuals referred to train or work in sheltered employment (“extended employment”) by the vocational rehabilitation agency.

Department of Education

- Establish new performance indicators by which the performance of state vocational rehabilitation services agencies will be evaluated. The new performance indicators need to include consideration of 1) the number of individuals with disabilities whom the vocational rehabilitation agency assisted to move from non-competitive and/or segregated employment or training environments to competitive and/or integrated employment environments, 2) the number of Individual Education Plan (IEP) transition meetings staff from the vocational rehabilitation agency attended to discuss the transition of a student with a disability from secondary education to the vocational rehabilitation agency or to competitive employment, and 3) the number of students with disabilities (eligible for IDEA or covered by Section 504) the vocational rehabilitation agency began to serve before the individual exited the secondary education system.
- Ensure that both RSA and OSEP utilize their monitoring authority under the Rehabilitation Act and IDEA and issue joint policy memoranda to ensure compliance with requirements for coordination and collaboration between the VR and special education systems for transition age youth and young adults in each State.
- Ensure that there are appropriate vocational preparation programs available to prepare students with disabilities for competitive employment. This includes ensuring that vocational preparation programs for general education students comply with the IDEA and Section 504 and with student IEPs and 504 plans in admitting students with disabilities and appropriately meeting their needs. Modified vocational preparation programs that will prepare students with disabilities for competitive employment must also be made available for students who

cannot benefit from the general vocational preparation program even with appropriate supplemental aids and services.

- Fund longitudinal studies that contain outcome data collected at several intervals after students with disabilities exit high school. The data needs to include at a minimum such variables as employment environment (segregated v. integrated), whether the student's employer holds a sub-minimum wage certificate, the number of hours employed, pay rate, and occupation.
- Provide funding to the Protection and Advocacy (P&A) Systems and the Client Assistance Programs (CAP) focused on transition and employment to provide advocacy for individuals with disabilities to work in integrated employment environments at comparable wages.

Department of Health and Human Services

- Issue guidance that, for those individual's receiving Medicaid funded pre-vocational services in a segregated employment environment, an annual two level assessment shall be conducted. Level one shall determine if the individual's current menu of pre-vocational supports could otherwise be provided in a more integrated setting; and level two, if pre-vocational services can only continue in a sheltered setting, what adjustments need to be made to their current services, to better reach the goal of "habilitation services" which is to "Obtain the adaptive skills necessary to reside successfully in home and community based settings."

Department of Labor

- Create and disseminate information to assist providers and businesses in developing best practices for competitive employment consistent with the person's interests and skills.
- Work with the Office of Personnel Management to encourage the employment of individuals with disabilities in integrated employment environments at comparable wages in the federal government, including by allowing the agency to not count the employee against the agency's allotted full-time employees.

States

- Increase state funding for person-centered planning for employment, and employment supports for supported employment, customized employment, and self-employment.
- Enact and implement state policies to encourage the employment of individuals with disabilities in integrated employment environments at comparable wages in state government positions.
- Strengthen existing and create new incentives through the state tax code to employ individuals with disabilities in integrated employment environments at comparable wages.

- Use Medicaid funds for Employment First initiatives to help individuals with disabilities find work in integrated employment environments at comparable wages.
- Fund short-term workforce programs, such as apprenticeships and internships, for individuals with disabilities.

Increase Labor Protections & Enforcement

Congress

- Increase funding, and ensure access, for Protection and Advocacy Systems and the Client Assistance Programs to monitor and investigate violations and abuses in segregated and sub-minimum wage employment environments.
- Increase funding for the Wage and Hour Division to boost enforcement and oversight of wage and hour laws, including the Section 14(c) program.
- Increase penalties for violations of the Section 14(c) program to ensure that employers take their responsibilities seriously.

Department of Labor

- Provide funding to the Protection and Advocacy Systems and the Client Assistance Programs focused on monitoring and investigating violations and abuses of sub-minimum wage and integrated employment environment requirements.
- Issue guidance on how to formalize and standardize employee evaluations under a sub-minimum wage certificate, including how to calculate productivity and other factors to determine an individual's wages.
- Require segregated, sheltered, and sub-minimum wage paying employers to report to the Department of Labor yearly the wages, progress, attempts to move to integrated employment environments, and reasons why the individual hasn't moved to integrated employment for each employee.
- Require sub-minimum wage certificate employee evaluations be performed by an independent third party evaluator.
- Place critical information about the sub-minimum wage (14(c)) certificate program on the Department of Labor's website, and ensure it is presented with clarity. Data should be prominently displayed, easily accessible, and include the percentage of employees operating under the certificate, the productivity level of these individuals, salaries of all chief executive officers and management personnel, and the dates for which certificate renewal is required.

- Increase enforcement of federal employment laws and requirements of federal contract work by tasking the Office of Disability Employment Policy (ODEP), the Wage and Hour Division and the Office of Federal Contract Compliance to collaborate and work together.

Department of Justice

- Enforce the integration requirements of Title II of the Americans with Disabilities Act against states that fund segregated and sheltered employment more than integrated employment.

Equal Employment Opportunity Commission

- Enforce the non-discrimination requirements of the Americans with Disabilities Act against segregated and sheltered employers by forbidding unnecessary segregation.

Conclusion

Many people working in support of segregated and sheltered work don't think there is another way. In fact, there is. Thirty years ago no one believed there was another option for people with disabilities but to live in large, state-run institutions. The belief was they could never care for themselves; they were too vulnerable or made people too uncomfortable to live among people without disabilities. But soon we saw these human warehouses for what they were and in state after state institutions closed, and now millions of people with disabilities are living, successfully, in their communities. They evolved and adapted and showed us they are more than we believed, as did the rest of the country who recognized the value of having friends and neighbors with disabilities. We witnessed lives changing.

The same can happen in the workplace. Sheltered workshops are just another institution segregating our neighbors away because of our unwillingness to accept that our own preconceived ideas about the workplace might be wrong. It's time to do things differently.

Appendix A**Michael Montgomery**

Former Director, Singing River Industries

In March of 1973, I took the job as director of a work activity center which was a part of the services offered through the local mental health center in Pascagoula, Mississippi. At that time, most Mental Health Centers provided services for people with mental health concerns and people with developmental disabilities. Nearly all had sheltered workshops which were innovative at that time. I, like many directors at the time, had a background in education. I didn't feel comfortable running a workshop as I did not have the proper educational background or experience. Training provided through the Developmental Disabilities Training Institute in Durham, North Carolina, helped me and others get the training that we needed through a series of five day workshops. It also connected people from various states and offered an opportunity for collaboration.

Our agency was called the Jackson County Training Center. We often received calls from people who wanted to know what kind of training we did. When I arrived, some people with disabilities were doing arts and crafts, but most people were sitting around in a big semi-circle watching the staff do the work. My initial focus was to change from watching staff doing work to getting the people in the workshop to do the work themselves. Over a period of time, I became successful at acquiring contracts for the workshop. We made surveyor stakes for the state highway department and sandblasted rust and old paint from boat trailers, yard furniture, and other metal objects which were prone to rust in our gulf coast climate. Several of our clients (the term widely used at that time) also learned how to apply primer to those surfaces with a spray gun.

In 1976, I was introduced to the work of Dr. Marc Gold. Marc helped me understand that we could teach really sophisticated skills by using systematic instruction. I began to see that we should not be only providing segregated activities. Rather than keeping people in the workshops, we needed to get people out of sheltered workshops into jobs in the community. I was open to what Marc had to say because I could see, even in 1974 and 1975, that there would be an endless line of people coming to us from voc rehab and the schools. It was my impression at the time, that VR referred about 90% of the people with disabilities that came to them to sheltered workshops. VR would verify them as unemployable, refer them to workshops for work activity, and we would be the end of the line for them. VR's traditional testing and evaluation procedures did not support the notion that those

individuals could perform real work. I was also open because I could see that we could train people to do what others were doing in the community, but they would never get the opportunity without some assistance.

After meeting and working with Marc, we secured funding through United Way to hire someone to slowly move people from the workshop into community jobs. We found that people could work, if someone was willing to negotiate on behalf of people with disabilities and work with the employers to accommodate individual disabilities. If we trained correctly, and not tested, we could find the right match for people's abilities. We were very successful in getting people out of the workshop and into employment in the community.

We had a subcontract with Macmillan Bloedel to make cedar boards for privacy fencing. The plant manager was Joel Donovan. Rather than building the fences in our workshop and paying for materials to be moved back and forth, our crew went to his location. Our people liked working with the other workers, liked being seen and respected. On days when there was no work, the individuals on that subcontract would come back to shop until their services were needed again. On those days, some of them would stay home or come under pressure from their families. They clearly didn't want to come back. They had graduated from the workshop. I understood and respected their position.

We got people jobs in hospitals, restaurants, and other businesses around the community. One of the people that we trained in the late 1970s worked in a local hospital until his recent retirement. TS came to us straight from an institution, where he had lived from early childhood until his 20's. Like so many people at that time, he never should have been at the institution. TS ran our sandblaster, drove our forklift; it was clear that he could do more. His job started in the hospital laundry, but he moved all around the hospital. He was a good worker. We made ourselves available to the hospital administration; if they had a problem with TS's skills, they could call us, and we would provide additional training. Over the years, the hospital did call us a few times, and we were able to provide the training that was needed. TS was absorbed into the fabric of the community. After he got the job, TS got his own apartment and started dating a woman that he met in the workshop. He didn't have a driver license, but he used his bicycle to get around.

Our ideas sometimes scared families. They had been told by doctors and service systems that their kids needed to be in a sheltered and safe environment. Although some of the parents of children in the workshop began to realize that their son or daughter could do good work, it was the switching of environments that was troubling. One of our parents who at the time was very concerned that his son stay in the safe environment of the workshop, recently told me that his son was working in a

restaurant where he was very happy. He could now see the benefits of working in the community. His son enjoyed being viewed as a regular employee, but for fewer than 40 hours. Families need assurance that their children will have a meaningful job and not spend part of their time at home alone. The Community Calendar developed by Marc Gold and Associates is a tool that we used to develop a life in the community around work and non-work time.

In the 1970's, the sheltered workshops in Mississippi were run by annually renewable grants. In the 1990's, the funding was converted to a purchase of service arrangement for X dollars per unit of service. People who ran the programs were not motivated to change. They liked the way that the billing flowed and the families were happy to have their children in a safe place and were not pushing for change. Folks believed then, and I think that many still do, that people need to be sheltered. They just don't believe that people can grow with the right training and support, that they can have a good life. I believed that we owed it to each individual and family to try new ideas and work diligently for each person regardless of disability. If we failed to put our heart and soul into the challenge for everyone, we would never see their potential. Everyone that I have ever worked with truly wants a life with work, a place to live, friends, and social outings. A job provides the money to secure everything else.

There are more than 1,800 people on our waiver waiting list in Mississippi alone. Many could come off the waiting list if we switched the way we use our resources. It saddens me that it is taking so long for this switch to occur, but I do now our state leaders move toward the change through a re-balancing initiative.

Michael Montgomery is the former Director of Singing River Industries, a sheltered workshop in Mississippi. He is currently a member of the Board of Directors of Disability Rights Mississippi.

Appendix B

Certified Agencies Paying Sub-minimum Wages	
Private, Not for Profit	2,414
Public (State or Local Government)	595
Private, For Profit	413
Other	16
Total Certified:	3,438
Data by Congressional Research Service from Wage and Hour Division of the U.S. Department of Labor. <i>As of January 5, 2010</i>	

Appendix C**Section 14(c) Certificates¹¹² and Sheltered Workshops¹¹³ by State**

State	Total Served	% Integrated Employment	% Community-Based Non work	% Combined Facility-Based Settings	Total Section 14(c) Certificates
AK	1,394	24%	54.5%		8
AL	5,269	5%	0%	95%	56
AR					65
AZ					41
CA	78,250	11%	74%	15%	238
CO	5,731	27%	59%	62%	42
CT	8,433	56%	44%	9%	70
DC	1,449	7%	10%	78%	1
DE	1,546	26%	1%	68%	6
FL	18,692	23%	27%	58%	102
GA					98
HI	2,865	4%	98%	56%	8
IA					82
ID	6,980	5%	30%	58%	14
IL	25,500	10%	0%	94%	180
IN	12,491	25%	12.5%	62%	63
KS	5,991	19%	54%	80%	60
KY	7,975	17%	29%	54%	55
LA	4,139	34%	2%	64%	95
MA	14,038	22%	12%	65%	88
MD	9,768	38%	0%	62%	48
ME	4,133	19%	77%	0%	21
MI					81
MN					149
MO	4,030	9%	2%	94%	120

¹¹² Data retrieved by Congressional Research Service from Wage and Hour Division of the U.S. Department of Labor, Current as of January 5, 2010

¹¹³ Institute for Community Inclusion, StateData: *The National Report on Employment Services and Outcomes* (2008).

State	Total Served	% Integrated Employment	% Community-Based Non work	% Combined Facility-Based Settings	Total Section 14(c) Certificates
MS	5,904	7%	70.5%	40%	28
MT					32
NC					100
ND	1,782				22
NE	3,668	33%	0%	77%	39
NH	2,159	45%	49%	5%	10
NJ	9,081	15%	5%	80%	74
NM	3,056	32%	31%	65%	8
NV	1,919	20%	2.5%	77%	15
NY	55,420	15%	67%	32%	153
OH	32,133	23%	4%	66%	163
OK	4,168	61%	30.5%	53%	78
OR	3,834	5%	10.5%	67%	68
PA					139
RI					12
SC	7,549	30%	0%	83%	80
SD	2,307	24%	24%	100%	34
TN	7,770	22%			79
TX	40,038	9%	28%	46.5%	165
UT	2,670	33%	72%	0%	42
VA	11,259	21%	2.5%	79%	67
VT	2,252	39%	61%	0%	2
WA	7,183	57%	4%	11%	58
WI	10,338	33%			143
WV					21
WY	1,216	20%	15%	65%	12
	430,247	24%	27%	58%	3,435

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