



## National Council on Disability

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An independent federal agency making recommendations to the President and Congress to enhance the quality of life for all Americans with disabilities and their families.

This report, ***From the New Deal to the Real Deal: Joining the Industries of the Future***, has been made available on NCD's website prior to completion of final editing and formatting because NCD felt the subject matter and message of the report required immediate release. The fully edited and formatted report will be available on our website and in print as soon as the final editing process has been completed.

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*National Disability Employment Policy,*

***From the New Deal  
to the Real Deal:***

*Joining the Industries of the Future*

National Council on Disability (NCD)  
1331 F Street NW, Suite 850  
Washington, DC 20004

***National Disability Employment Policy, From the New Deal to the Real Deal:  
Joining the Industries of the Future***

National Council on Disability, October 11, 2018

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## Letter of Transmittal

October 11, 2018  
President Donald J. Trump  
The White House  
1600 Pennsylvania Ave., NW  
Washington, DC 20500  
Dear Mr. President,

The National Council on Disability (NCD) is pleased to present the 2018 Report *National Disability Employment Policy, From the New Deal to the Real Deal: Joining the Industries of the Future*.

In this report, NCD revisits the 2012 NCD report *Subminimum Wage and Supported Employment*, to assess the progress made nationally in modernizing employment service systems for individuals with significant disabilities and who are blind, including settings that pay subminimum wages under Section 14(c) of the Fair Labor Standards Act. In the 2012 report, NCD called for the phase out of Section 14(c) employment nationally and the phase up of supported employment services offered in competitive integrated employment. Six years later, NCD renews its recommendation for the phase out of Section 14(c) and phase up of supported employment services; evaluates the progress that the country has made toward that end; highlights the structural barriers that remain; and clearly identifies the risks should service systems not modernize.

In addition, this report highlights with particularity successful examples of transformation from six states where providers have transitioned services from sheltered workshops that paid 14(c) subminimum wages to rival models of individualized supported and customized employment services that allow people with disabilities to work and thrive in competitive integrated employment.

NCD submits this report at a crucial moment. Rising societal expectations, recent changes in law and policy, innovations in the field of supported employment, and new technologies have significantly advanced the employment prospects of people with disabilities in the United States. Yet, the 80-year-old Section 14(c) exemption to the federal minimum wage has remained in place without significant change for decades. Continued disruptions to the economy by automation, advanced manufacturing, and emerging technologies have meant that the very nature of work has and will continue to change for all Americans. As a consequence, 14(c) employment is even more evidently outdated and ineffective than it was six years ago. This report chronicles that a new national consensus has emerged that the time is now to modernize employment service systems to move from New Deal subminimum wages to “real deal” jobs in the mainstream of the economy. For people with disabilities to experience full participation in the 21st century economy, they must be supported to be the entrepreneurs, inventors, and business people of the future.

NCD looks forward to working with the Administration to ensure that Americans with disabilities are supported and encouraged to take their rightful place in the 21st century economy.

Respectfully,

Neil Romano  
Chairman

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## Acknowledgements

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## Executive Summary

For the past half century, the United States has been on the leading edge of the advancement of people with disabilities in the world. Through its federal laws, the country has championed the rights of people with disabilities to fully participate in all aspects of American life, including where they live, learn, work, and interact with peers in the community. These seminal statutes, including Title XIX of the Social Security Act of 1965 (“Medicaid Act”), the Rehabilitation Act of 1973 (“Rehab Act”), the Education for All Handicapped Children Act of 1975 (EHCA) (the predecessor statute to the Individuals with Disabilities Education Act (IDEA) of 1997), the Developmental Disabilities Act of 1984, and the Americans with Disabilities Act of 1990 (“ADA”), precipitated many important changes to the very structure of American society, including a movement toward de-institutionalization and full community inclusion.

For example, since 1968, there has been a marked decline in the institutionalized population of individuals with intellectual and developmental disabilities living in state run institutions in the United States.<sup>i</sup> During the same period, students with disabilities have experienced the right to a free and appropriate public education,<sup>ii</sup> including an education in the least restrictive environment alongside their non-disabled peers.<sup>iii</sup> And millions of adults with disabilities access healthcare through the Medicaid program in their homes and communities and not in institutions.

As a result, today, many young people with disabilities have come of age in an America where they live at home and in their communities, go to school with non-disabled peers, navigate their cities and towns free from the physical and architectural barriers that formerly existed, and hold increasingly higher expectations of themselves and others for a self-determined life in the community.

Despite these significant advancements, however, the country and its public institutions are still grappling with the reality that full inclusion is more than mere physical proximity in the community, *it is also economic*. While thousands of Americans with intellectual

and developmental disabilities, blindness, and other disabilities have moved out of segregated residential institutions and now live and attend school in community settings, many such persons, nevertheless, still lack access to typical jobs in the mainstream of the economy, or competitive integrated employment, and in turn, the resources and supports that they need to be fully engaged in civic and recreational activities during the hours that they are not working. Many of these same persons can and want to work and contribute as taxpayers and consumers but are restricted from doing so by considerable structural barriers to employment.

Importantly, as will be explored in depth in this report, even despite NCD's 2012 policy recommendation to phase out the practice, there remain approximately 321,131<sup>iv</sup> Americans with disabilities that, even while living in the community, still earn sub-minimum wages in segregated sheltered workshops under Section 14(c) of the Fair Labor Standards Act, an 80-year-old policy relic from President Franklin Roosevelt's administration. Correspondingly, in 2017, the unemployment rate for persons with a disability (those who did not have a job, were available for work, and were actively looking for a job in the 4 weeks preceding the survey) was 9.2 percent, more than twice that of those with no disability.<sup>v</sup> Put differently, data demonstrate that the labor force participation rate of people with disabilities, those who are working or seeking work, is just 32.6 percent compared to 75.8 percent of the general population.<sup>vi</sup> This gap has remained persistently wide over the past decade, and signals that a disproportionate number of working-age adults with disabilities are not engaged in any kind of work or seeking work each year. For people with intellectual and developmental disabilities (I/DD), the disparity in employment participation is even more profound. Data suggest that in 2014–2015, only 16% of working-age adults supported by state I/DD agencies were employed in a paid job in the community.<sup>vii</sup>

Thus, without economic security, millions of Americans with disabilities that now live in the community are shut out of the full range of opportunities derived from being there, quite simply because without a job, they cannot afford, access, or even aspire to such benefits. In turn, employers, local economies, and communities are deprived of such persons' economic, civic, and social contributions. As more fully discussed below, NCD

recognizes that the economic disenfranchisement of 14(c) workers in particular is not *solely* a policy issue created and enlivened by government programs and, therefore, capable of resolution through government interventions alone.

Indeed, the prevalence of 14(c) subminimum wage programs and the concomitant absence in the labor force of people with disabilities has consequences, in real terms, for the overall economy. Solutions lie as much in coordination with, increased accountability for, and identification of the needs of the private sector businesses as in reform of federal, state, and local government systems. As this report explores, the private sector's footprint has been firmly planted for decades in sheltered workshops that employ people with disabilities at subminimum wages to supply goods or services to companies, while, dissonantly, many of the same companies have adopted forward-leaning corporate disability diversity, inclusion, recruitment, and hiring practices). The time has come for such companies to create the kind of transparency and accountability that extends the length of the supply chain, and to capitalize upon a talent pipeline created by qualified people with disabilities who have access to federal and state funded supported employment services.

In NCD's view, the issue of 14(c) employment and labor force participation of people with disabilities remains of great significance to the overall health of our nation's economy and society. According to the United Nations, countries worldwide forego up to 7% of Gross Domestic Product due to the exclusion of people with disabilities.<sup>viii</sup> More to the point, one of the primary purposes of enacting the ADA was for people with disabilities to be "a new source[] of workers" for American business, and for federal law to remove barriers to work, including discrimination and segregation, to assist such persons to "move proudly into the economic mainstream of American life."<sup>ix</sup> Yet, the achievement of equal opportunity in employment for people with disabilities remains an important, however unrealized, goal nearly 30 years after the signing of the ADA, as people with disabilities remain disproportionately poor, unemployed and under employed, and face significant barriers to joining and remaining in the American middle class. Perhaps no segment of the disability population experiences these negative

effects and barriers to financial self-sufficiency more than individuals who continue to earn sub-minimum wages in exchange for their labor.

Since the National Council on Disability's report *Subminimum Wage and Supported Employment* ("2012 Report"),<sup>x</sup> the landscape of law and policy has been considerably expanded to improve the access of those in or at risk of 14(c) sheltered employment and those with the most severe disabilities to competitive integrated employment. These changes include new requirements under the Rehabilitation Act of 1973 as reauthorized and revised by the Workforce Innovation and Opportunity Act (WIOA), the Center for Medicare and Medicaid Services' (CMS) Home and Community Based Services Rule, Executive Order 13658, Section 501 and Section 503 of the Rehabilitation Act, and increased enforcement of the ADA and *Olmstead v. L.C.*. Nevertheless, the eighty-year-old FLSA 14(c) exemption, and the related Javits Wagner O'Day Act (JWOD), have remained in place, without significant revision for decades.

Consequently, federal and state funded employment service providers across the country still grapple with providing employment services within fossilized systems in a dynamically changing legal and policy environment. As they straddle the requirements of new and old laws, providers confront significant barriers, as the intended outcomes of many employment funding sources, programs, and services, still conform to models that were conceived of more than fifty years before the ADA, when legal protections were based in a manufacturing-based economy, and at a time when people with disabilities were largely absent from the labor market altogether and, as a result, employment was conflated with charity.

This report comes at a time when the very meaning of work is being re-examined and re-defined once again by and for workers with and without disabilities alike. The nation's economy is increasingly digital, mechanized, and informational, and the physical world is steadily being reimagined and realigned to keep pace with new technologies. Yet, many people with disabilities in 14(c) employment, including those with intellectual and developmental disabilities or who are blind, remain, in large part, locked out of these changes, and confined to physical brick and mortar sheltered workshops where they

perform manual tasks that are often mismatched with their particular strengths and also with their preferences and interests as employees. Such persons continue to perform the jobs of a bygone era, often using outdated equipment, and relying on physical strength and coordination, even though new technologies, services, and supports exist that would allow them to succeed in competitive integrated employment. Moreover, the economy has sent strong signals that demand for such piecework jobs is withering; avoiding modernization is likely not an option even in the relatively short term.

Nevertheless, there remain structural blockades, powerful financial incentives, and the need for enhanced dialogue with self-advocates, parents, and families. The formative focus of leaders and policymakers is called for to break through barriers to transformation and modernization of the 14(c) program. Moreover, employment providers that want to innovate, reinvent, and modernize their services to be responsive to the preferences of people with disabilities, their families, and employers, and the changing laws and, importantly, the new demands of the market, need technical assistance and financial support to do so. And the time to begin this effort is now, as the early innings of the new century of employment are being played, and the structures of the last century continue to bench talented players in the dugout.

This report has evaluated the nation's progress in shifting away from sub-minimum wage and segregated labor models for people with disabilities, while examining the barriers that remain to doing so. The National Council on Disability renews its 2012 recommendation to the President and Congress for the phase out of Section 14(c), expands upon that recommendation, and issues new recommendations for supporting the rebalancing of existing 14(c) programs to phase-in 21st century jobs and incubate new employment service models to advance the future employment of people with disabilities in competitive integrated employment in the United States.

Among NCD's recommendations in this 2018 Report are to:

- impose a moratorium on the issuance of any new 14(c) certificates;
- strengthen overall enforcement of the 14(c) program;

- significantly expand and build increased capacity for sustained funding for integrated supported and customized employment;
- enhance the availability of intensive technical assistance resources, qualified and trained staff, peer-to-peer networks and family supports, and improve the availability of benefits counseling resources;
- implement business engagement strategies; and
- introduce and develop new resources and innovations, while leveraging existing resources, to allow people with disabilities to access 21st century jobs and the industries of the future.

## Introduction

This report, *National Disability Employment Policy, From the New Deal to the Real Deal: Joining the Industries of the Future* evaluates the progress made since the National Council on Disability (NCD) issued findings and recommendations in its 2012 report *Subminimum Wage and Supported Employment (“2012 Report”)*. The basic purpose of the 2012 report was to examine the issue of 14(c) nationwide within the framework of the ADA’s requirements and principles of equality and opportunity for all, and to make recommendations about its use. In 2012, after visiting 14(c) programs in seven states, and speaking to relevant stakeholders, the Committee then recommended the phase-out of 14(c) employment.

This report, six years later, evaluates the progress that the country has made in transitioning away from 14(c) certificates, highlights persistent, deeply ingrained, structural barriers to change, and examines the risks imposed should service systems not modernize to catch up with significant disruptive changes already underway in the economy and to the very framework of law and policy. In addition, it explores the presence and availability of resources to support the transition of providers and, in turn, individuals with disabilities to move from segregated service models to competitive integrated employment, including 21st Century jobs. While the 2012 Report explored the systems changes necessary to phase out the use of 14(c) sheltered workshops, this report explores the particular financial influences and restraints that continue to pose barriers to that happening or, in the alternative, perhaps have slowed the pace of transformation for 14(c) certificate holders. In addition, this Report highlights successful examples across six states of transformation from segregated sheltered workshops that paid 14(c) subminimum wages to models of individualized supported and customized employment services that allow people with disabilities to work in competitive integrated employment.

Specifically, this Report identifies and critically examines five main areas: (1) the characteristics of for-profit and non-profit businesses that utilize 14(c) certificates; (2) data reflecting multi-year trends of Section 14(c) certificates by for-profit businesses and

the methods used by those businesses to employ people with disabilities; (3) the regulatory definitions in 34 C.F.R. part 361 implementing the Rehabilitation Act, as amended, by the Workforce Innovation and Opportunity Act (“WIOA”), including, specifically, the definition of Competitive Integrated Employment; (4) how businesses employ non-profit workshops to fulfill their supply-chains and the methods used by those businesses to employ people with disabilities; and (5) stories from across the nation of 14(c) certificate employers who have transitioned away from using 14(c) certificates and have embraced integrated supported and customized employment models.

NCD is congressionally mandated to advise the President, Congress, and other policymakers on disability policies and practices that enhance equal opportunity for people with disabilities to achieve economic self-sufficiency, independent living, and inclusion and integration into all aspects of society. This report is designed to provide practical, strategic, and evidence-based support for how federal, state, and local service systems can gradually phase out of the 14(c) program, as NCD recommended over six years ago, and concomitantly transform and modernize employment service systems to support people with disabilities in the competitive jobs of the 21st Century.

This report is intended to serve as a resource for policymakers, and for people with disabilities and their advocates, employers, service providers, covered entities, enforcement agencies, and other stakeholders on how federal, state, and local government policies impacting employment service systems, together with employer and corporate practices, can advance people with disabilities’ rightful place in new and emerging economies and the many other aspects of American life that come within reach through economic empowerment and advancement. The Report is also intended to help agencies, advocates, and covered entities make the connection between the content of the report and how they can implement modernization and transformation strategies and practices in their States.



## Chapter One: Findings and Recommendations from 2012 14(c) Report and Aftermath

NCD's 2012 Report stated that “the Section 14(c) program should be phased out gradually to provide adequate time for transition to new alternatives . . . [and that] what is needed is a conversion or transformation strategy and phase-out of a relic in policy left over from the 1930s.”<sup>xi</sup> At the time of NCD's 2012 recommendation, no state or local government had eliminated the payment of sub-minimum wages through legislation, and only a few states, including Vermont, Maine, and Washington, had taken concrete steps either to stop funding new entrants to its sheltered workshop system or to dramatically reduce its reliance on such settings.

Now, six years later, Maryland, Alaska, New Hampshire, and the city of Seattle have passed legislation banning the payment of subminimum wages. And as a result of court-ordered ADA and *Olmstead* settlement agreements brought by the U.S. Department of Justice (DOJ) or by DOJ and private plaintiffs, Rhode Island and Oregon have ended funding for all new entrants to sheltered workshops. Those two states have shifted resources to integrated transition, supported employment, and customized employment services provided in competitive integrated employment. Moreover, under E.O. 13658, federal contractors are now required to pay a minimum wage floor of \$10.10 per hour (as of January 1, 2018, it increased to \$10.35 per hour) on all federal service contracts, including through 14(c) entities that participate in the AbilityOne program.

In addition, the majority of states have now adopted Employment First policies, making work in integrated settings the first and priority service option for the employment of individuals with disabilities. States across the country have also begun exploring changes to their rate structures, and new plans for the expansion of supported employment services and concomitant reduction of their reliance on sheltered workshops.

The 2012 Report, among other things, laid a framework for states to take a “systems change approach,” as NCD recommended:

- Gradual Phase out of 14(c) Certificates: the gradual phase out of the 14(c) program nationally to allow time for transition to new alternatives, and an increase in supported employment services in integrated settings;
- Rates Changes and Infrastructure: that states set reimbursement rates to reflect a preference for integrated employment settings over segregated settings; explore the incorporation of performance-based payment systems for employment services; and promote infrastructure grants and interagency collaboration (between developmental disability, vocational rehabilitation, and school agencies) in establishing seamless funding systems;
- Benefits Planning: that federal technical assistance resources be expanded and made specifically available to people transitioning out of subminimum wage settings to offset the often complex and bureaucratic nature of current information governing the impact of earned income on public benefits;
- Peer-to-Peer Support: that federal and state support for peer-to-peer mentoring programs be expanded to ensure that people with disabilities who are in 14(c) employment and contemplating entering competitive integrated employment have access to peer and family supports to assist them to make meaningful and informed choices about employment;
- Informed Choices, Information, and Referral: as the “need for knowledge is great” for those who have had very few opportunities to learn about the possibility for competitive integrated employment, after having been in subminimum wage or sheltered employment (often for decades at a time), that 14(c) sheltered workshops provide information and notice about the availability of integrated supported employment services and, where appropriate, referral to them for interested services recipients.
- Education Systems Change(s): that education systems take concrete steps to align educational curriculum and transition planning with post-secondary

outcomes in integrated settings including in competitive integrated employment and by providing opportunities for paid work in integrated settings before students leave school and access to a rigorous school completion document (high school diploma).

The past several years has given credence to NCD's initial 2012 policy recommendations,, as the country witnessed congressional support for expanding access to individual supported employment and customized employment strategies through systems change and limiting the use of 14(c) certificates. Enactment of WIOA put concrete limits on the payment of subminimum wages and required 14(c) employers to take affirmative steps to afford both youth and adults with information that would allow them to make meaningful and informed choices about working in competitive integrated employment.

Moreover, in September 2016, after a series of public hearings and intensive study of the issue, the WIOA Advisory Committee on Increasing Competitive Integrated Employment for Individuals with Disabilities, a federally appointed panel of subject matter experts and other key stakeholders, recommended that the 14(c) program be phased out over multiple years while various systems change strategies are phased in and up nationwide.<sup>xii</sup> In addition, in recent years, large stakeholder organizations have called for 14(c)'s phase out, including the National Federation of the Blind (NFB), the Council of State Administrators of Vocational Rehabilitation (CSAVR), and the Association for People Supporting Employment First (APSE).<sup>xiii</sup> The U.S. AbilityOne Program, among the largest sources of employment of people with disabilities in the United States, whose affiliates substantially participate as 14(c) certificate holders (as is explored later in this report), issued a policy statement in 2016 stating:

the Commission recognizes that Federal policies have changed since the Javits-Wagner-O'Day Act was passed into law in 1971. Today, the Commission and our society have higher expectations that, through increased emphasis on technology, rehabilitation engineering and other supports, people with disabilities will be able to participate as

fully capable and productive workers. To remain viable, the AbilityOne Program must be recognized as effectively offering quality employment and equitable wages, including competitive integrated employment opportunities.<sup>xiv</sup> (emphasis added).

In addition, AbilityOne's Central Non-profit, the National Industries for the Blind (NIB), has encouraged its affiliates to pay workers at least minimum wage. The NFB, TASH, the National Down Syndrome Society (NDSS) and other groups, support the Transitioning to Integrated and Meaningful Employment Act ("TIME") ACT, pending congressional legislation introduced in 2015 and, again in 2017, which proposes to phase out Section 14(c) over multiple years.<sup>xv</sup>

# Chapter Two: Longitudinal Data Trends for 14(c) and Integrated Employment

Longitudinal data reveals that while the payment of subminimum wages across the past few decades has experienced a downward trend, participation in segregated employment and day settings has increased overall. Consequently, the elimination of sub-minimum wages, alone, likely will not improve the disability employment rate, or precipitate on-boarding into competitive integrated employment, for those previously in segregated employment. Such data contextualizes the importance of a holistic systems change approach to phasing out 14(c) while phasing in necessary infrastructure and support for integrated employment strategies.

Data from the Wage and Hour Division (WHD) at the Department of Labor confirms that the use of 14(c) certificates has been nearly cut in half over the past decade. According to WHD, the total number of certificate applications has declined from 2,540 certificate applications in FY 2008 to just 1,089 certificate applications in FY 2017.

**Table 1: Number of 14(c) Certificate Applications Per Year; Renewal Applications Per Year; and 14(c) Certificates Per Year**

<b>Fiscal Year</b>	<b>Certificate Applications</b>	<b>Renewal Applications</b>	<b>Certificates Issued</b>
<b>2008</b>	2,540	2,354	2,534
<b>2009</b>	2,506	2,299	2,496
<b>2010</b>	2,295	2,164	2,281
<b>2011</b>	2,221	2,074	2,214
<b>2012</b>	2,235	2,076	2,196
<b>2013</b>	2,190	1,918	2,154
<b>2014</b>	1,919	1,700	1,867
<b>2015</b>	1,529	1,453	1,493
<b>2016</b>	1,360	1,285	1,303
<b>2017</b>	1,089	1,051	866

Data Source: WHD 2018.

WHD maintains four spreadsheets which list current 14(c) certificate holders, classified based on the type of 14(c) certificate issued.<sup>xvi</sup> In 2001, the Government Accountability Office reported the number of 14(c) certificate workers in each setting.

**Table 2: Number and Percentage of 14(c) Workers by Type of Employer in 2001**

<b>Type of Employer</b>	<b>Number of 14(c) Workers</b>	<b>Percentage</b>
Work Centers	400,440	94.5
Businesses	1,549	0.4
Hospital or Other Residential Care Facility	19,307	4.6
Schools	2,290	0.5
<b>Total</b>	<b>423,586</b>	<b>100</b>

Data Source: 2001 GAO Report<sup>xvii</sup>

For the past several years, WHD has reported on its spreadsheets the total number of employees self-reported by employers, as reflected in their 14(c) certificate applications. See Table 3, below. This number consists of the number of workers who were paid subminimum wages by the certificate holder during the most recently completed fiscal quarter, as reported by the employer on the certificate application. According to WHD, the total number of employees, therefore, is not an exact count and is only representative of the employer's information based on specific and different points in time for each employer.<sup>xviii</sup> Moreover, if 14(c) certificate applications are in "pending" status with WHD, the total number of people reported on those certificates is not included in the sum. For instance, Table 3 below omits the total number of people employed by three hundred and sixty-three (363) 14(c) employers whose applications are currently pending, and WHD declined to provide how many 14(c) employees those employers serve, as such information was deemed not publicly available.

Thus, the total number of 14(c) workers reflected in WHD data is not a census number, rather it is a point-in-time employer-reported survey. NCD finds WHD's current data for the total number of 14(c) workers inadequate to accurately represent the precise size of the population currently employed by 14(c) certificate-holders or those earning subminimum wages. WHD has reported plans to transition from a paper to an electronic database system for its 14(c) applications, but it has yet to do so.

Based on the available estimated number, however, WHD currently reports a total of 141,081 individuals paid under 14(c) certificates in 2018, approximately only a third of the number of 14(c) workers reported by the GAO seventeen years ago. However, in the same month that it supplied NCD with this data, it provided a wildly different estimate to Congress of approximately 321,131 workers employed by 14(c) certificate-holders, closer to GAO's original estimate.<sup>xix</sup> WHD has clarified that the 141,081 estimate represents only those workers employed at the certificate holder's main establishment, whereas 321,131 represents the estimated total of workers employed at all establishments associated with the certificate holder. Nevertheless, according to the data supplied to NCD for this report, the number of people covered by 14(c) certificates

has correspondingly declined as reported in each type of work setting since the time of the GAO report:

**Table 3: Number and Percentage of 14(c) Workers by Type of Employer in 2018**

Type of Employer	Number of 14(c) Workers	Percentage
Work Centers	299,941	93.4
Businesses	526	0.2
Hospital or Other Residential Care Facility	10,864	3.4
Schools	9800	3.1
<b>Total</b>	<b>321,131</b>	<b>100</b>

Data Source: WHD Website<sup>xx</sup>

Unfortunately, however, the country has not experienced a corresponding increase in 14(c) workers entering competitive integrated employment. In fact, despite a highwater mark in several states, the overall tide for supported employment has been receding over the course of the last two decades. It has been widely documented that the integrated employment rate expanded rapidly during the 1980’s and 1990’s because of key federal investments in supported employment and the expansion in awareness of technical guidance and expertise in it.

For example, systems change grants provided by the Rehabilitation Services Administration throughout the 1980’s to states like Vermont and Oregon provided core support for shifting away from segregated employment to integrated employment as the preferred service outcome, including through important changes to rate structures and access to high quality technical assistance. Yet, this additional infrastructure was not consistently funded over time, and efforts at transformation, therefore, waned.



At its apex, the integrated employment rate for people receiving services from a state ID/DD agency was 25% in 2001.<sup>xxi</sup> It then declined to 20.3% in 2009. According to a survey by Daria Domin and John Butterworth of the Institute for Community Inclusion at the University of Massachusetts Boston, of 190 U.S. community rehabilitation providers, only 17.5% of 33,874 adults with I/DD served in FY2014–2015 worked for pay in individual jobs with either time-limited or ongoing supports.<sup>xxii</sup> At the same time, participation in facility-based and non-work services had grown.<sup>xxiii</sup>

The decline in sub-minimum wage certificate-holders and the corresponding reliance on segregated non-work settings nationally requires careful consideration of where workers with disabilities might be going, or remaining, if such persons are not proceeding to competitive integrated employment.

Many community rehabilitation providers have historically participated in the 14(c) program, while also participating in other programs like the AbilityOne program, state set-aside contracts, and contract work for private customers. Mostly, 14(c) entities are non-profit organizations established to provide services and supports to people with disabilities. To provide such support, they receive funding through federal, state, local, and grant funds, and charitable contributions, in addition to the contract revenue that they receive. In this regard, by their very nature, sheltered workshops often harbor a split personality as both an employer and service provider.

As the data make clear, over the past two decades, many sheltered workshops as employers may have reduced their reliance on 14(c) or eliminated it; yet, on average, they have not correspondingly reduced the number of people they employ, or alternatively, that they serve in settings reserved almost exclusively for people with disabilities, except paid support staff.

In other instances, AbilityOne contractors can often pay above minimum wage, but less than prevailing wage, while maintaining segregated production facilities, including where 75% of all direct labor hours are legally required to be provided by workers with severe disabilities or who are blind. NIB production facilities across the country include thousands of blind workers who perform manual tasks, like assembling Skilcraft pens,

sewing military apparel, and packaging products for the federal government. Many such facilities previously utilized 14(c) certificates but now pay at or above minimum wage, while their workers, for the most part, never transitioned from the jobs that they were previously performing in such segregated facilities. Instead they simply received a pay increase. These workers are no longer reflected in the overall number of 14(c) employees, yet they do add to the total number of workers that remain in segregated settings. Other AbilityOne workers, including those with severe disabilities, may work for 14(c) certificate-holders, but not receive sub-minimum wages, even though workers performing on other private contracts in the same facility do. They, too, are not reflected in any census number tracked by WHD.

In fact, the WHD does not keep track of either the total number of AbilityOne workers in the 14(c) program or the total number of AbilityOne employers that are also 14(c) certificate-holders. We researched and obtained this information for purposes of this report from publicly available information, as discussed in Chapter 4. However, if WHD regularly compiled and updated the information it would assist policymakers to discern whether the structure, and legal requirements, of the AbilityOne program have long-term impacts on transformation efforts with regard to employment service models.

Other providers may stop paying workers wages altogether, as they move them to other segregated settings like day programs, group employment or enclaves, respite or other settings under the same provider's service umbrella; and these workers would not be reflected in the overall number of 14(c) employees.

Limitations on the data collected by WHD prevent a meaningful understanding of what percentage of workers with disabilities in 14(c) settings remain in those settings while making at or above minimum wage, or, in the alternative, remain with the same provider in group employment, day, respite, or other segregated settings after they no longer receive a special minimum wage, as others in the same facility might do.

Moreover, as WHD staff do not follow up with employers who fail to renew a 14(c) certificate, the DOL and the public lack an understanding as to why certificates are altogether not renewed. This does not come without some substantial risk to those

employers. In March 2018, a WHD investigation and litigation resulted in a federal jury verdict against the Randolph County Sheltered Workshop, Inc., in West Virginia. The court ordered the workshop to pay back wages to 34 employees for operating, and paying subminimum wages, without a 14(c) certificate and failing to post required information about the rights of people paid subminimum wages.

Given the outcome of this recent WHD investigation, NCD remains concerned that employers may continue to pay subminimum wages without a certificate because oversight is severely lacking. Seventeen years ago, the GAO noted that the WHD “did little to ensure that employers whose 14(c) certificates have expired do not continue to pay workers special minimum wages.”<sup>xxiv</sup> As it has in a related report *Has the Promise Been Kept? : Federal Enforcement of Disability Rights Laws*, NCD recommends that the WHD collect and systematically track how many 14(c) certificates have expired, and the reasons for the expiration and the non-renewal of the certificate.

It is also likely that macroeconomic trends have influenced the estimated decline in the number of 14(c) certificates nationwide. Many of the more than 160 people in 26 states contacted or interviewed for this report noted that private piecework contracts that were historically relied upon as an important source of 14(c) employment are “drying up” as companies that are customers of workshops are increasingly automating the kind of rote manual tasks performed in them (like sorting, sealing, and assembling) and other service-based tasks (like grounds maintenance, janitorial/cleaning, food service). For example, in Rhode Island, the jewelry industry once dominated the private contract work performed in sheltered workshops, as people with disabilities routinely affixed the backs on earrings, assembled bracelets, and other tasks on contracts with prominent jewelry companies. Disability employment providers recalled that before Rhode Island’s new policy ending funding for all new entrants and phasing out sheltered workshops, the amount of jewelry piecework given to sheltered workshops had already started to precipitously decline, both because of the 2008 financial crisis and the inherent cost efficiencies to companies in having machines instead of people with disabilities perform those same tasks. In fact, the Trudeau Center in Warwick, Rhode Island recounted that as it undertook steps to place people into competitive integrated employment and close

its sheltered workshop, it contacted the Tiffany’s Jewelry Company, a longtime customer of the sheltered workshop for decades. Trudeau Center staff learned that Tiffany’s (including its point of contact in Human Resources) was unaware that individuals performing work for the company at the Center were earning sub-minimum wages on their contracts. As a result of Trudeau’s outreach, however, Tiffany’s agreed to interview and eventually on-boarded eight of Trudeau’s workers with disabilities at wages starting between \$13.00 and \$14.00 per hour and trained them on-the-job to manufacture jewelry using more advanced technology and machinery. Trudeau Center staff commented that the equipment in the workshop was decades old discarded equipment often donated to the workshop, without regard for its efficiencies. Whereas, workers who were on-boarded to Tiffany’s began to receive training on state of the art manufacturing practices.

Bureau of Labor Statistics (BLS) data confirms that the labor typically performed in sheltered workshops in exchange for subminimum wages is some of the most vulnerable to automation in the future. In 2017, workers with a disability were more concentrated than those with no disability in service occupations (20.2 percent, compared with 17.3 percent) and in production, transportation, and material moving occupations (14.1 percent versus 11.6 percent).<sup>xxv</sup> Moreover, persons with a disability were less likely to work in management, professional, and related occupations than those without a disability (34.1 percent, compared with 39.9 percent). The World Economic Forum has recognized many of these same industries to be some of the most adversely affected by worker displacement from new technologies including automation.<sup>xxvi</sup>

**Table 4 – Main Job Families (Susceptibility to Automation or Disruption)**

Job Families	Expected Change, 2015-2020	Skills Stability	Current Share of female Workforce	Ease of recruitment, current	Ease of recruitment, 2020
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<b>Manufacturing and Production</b> <ul style="list-style-type: none"> <li>• Assembly and Factory Workers</li> <li>• Chemical Processing Plant Operators</li> </ul>	decline -1.84%	62%	9%	hard	harder
<b>Architecture and Engineering</b> <ul style="list-style-type: none"> <li>• Chemical Engineers</li> <li>• Civil Engineers</li> </ul>	stable 0.73%	59%	11%	hard	harder
<b>Construction and Extraction</b> <ul style="list-style-type: none"> <li>• Mining and Petroleum extraction workers</li> <li>• Construction Laborers</li> </ul>	decline -2.18%	72%	9%	hard	harder
<b>Management</b> <ul style="list-style-type: none"> <li>• Business services and Administration Managers</li> <li>• Manufacturing, Mining, and Construction Managers</li> </ul>	stable 0.14%	44%	11%	hard	harder

Data Source: World Economic Forum<sup>xxvii</sup>

WHD was unable to provide data on 14(c) employment by industry classification or type. Currently, there is no data kept on the type of industry jobs or classification that workers formerly in 14(c) employment are transitioning to as they are on-boarded into competitive integrated employment. In this regard, unless provider data is combined at the state level, we have no way of knowing with particularity how such employees are being absorbed into the mainstream labor market. With such information, it would become easier to identify in-demand labor sectors for people with disabilities and analyze and assess the long-term gains to the community and the economy resulting from systems change efforts. Moreover, the public workforce system would be able to highlight with greater accuracy whether service systems are effective in launching people with disabilities into the industries of the future.

Recent changes in law and policy, coupled with continued disruptions in the economy by technology, are destined to further impact the overall population of 14(c) employees nationally. Some current certificate holders have signaled resistance to these changes,

including to the goal of competitive integrated employment as defined by WIOA. First, we review the background of the subminimum wage program and then discuss the legal and policy implications of recent changes to that framework. Then, we will explore the disability community's views on these changes including the definitions under WIOA.

## Chapter Three: Recent Changes in Law and Policy Impacting the 14(c) Program

Since the time of the 2012 Report, the landscape of law and policy on employment, vocational rehabilitation, and transition services for people with disabilities has changed in several significant, if not transformative, ways; yet with no statutory or regulatory changes made to Section 14(c) or JWOD, parts of it have stubbornly stayed the same. The conflict between new and old laws have appeared, in some instances, to slow efforts to modernize employment service systems.

### **Background: New Deal Era Disability Employment Program**

#### **1. Section 14(c) of FLSA**

Since 1938, Section 14(c) has given rise to the subminimum wage program, permitting the Wage and Hour Division of the U.S. Department of Labor to issue certificates “to the extent necessary to prevent the curtailment of opportunities for employment,” and permitting employers to pay a subminimum wage to a person with a disability “whose earning or productive capacity is impaired by a physical or mental disability, including those relating to age or injury, for the work to be performed.”<sup>xxviii</sup> Under Section 14(c), workers are paid based on their productivity as compared to a non-disabled worker performing the same or similar work.<sup>xxix</sup> Thus, for a job that is compensated at \$10.00 per hour, a worker with a disability who has been determined to be half as productive as a non-disabled worker would earn \$5.00 per hour. The employer must measure the productivity of workers with disabilities every six months through time studies.<sup>xxx</sup>

The 14(c) program is premised on the theory that wages should be downwardly adjusted for employees whose disabilities make them unable to work in typical work

settings because they are not as productive as their non-disabled peers. This notion is vastly different from the post-ADA understanding that accommodations serve to remove barriers that may otherwise stymie qualified workers with disabilities, so they can compete in typical work settings and remain productive. In one formulation, under 14(c), there exists a presumption that disability creates insurmountable barriers to productivity in the mainstream marketplace and therefore people with disabilities need to work in a setting designed exclusively for people with disabilities. In the other, under the ADA, the mainstream work environment imposes barriers that may be removed, so long as it is reasonable to do so, and not an undue burden to the employer, so that the person with a disability has an equal opportunity to work as a qualified employee in a job that matches his or her individual preferences and talents and the needs of the employer.

The past two decades of research pertaining to supported employment reveals that it is easier and more effective to place a person in a job that matches his or her interests and then train them with appropriate services and supports, than it is to train someone in a segregated setting where they learn skills that are not transferable or even desirable in competitive integrated employment.<sup>xxxix</sup> As the GAO noted in 2001, in the latter scenario, just 5% of individuals with disabilities ever leave sheltered workshops for competitive integrated employment.<sup>xxxix</sup> As such, the strong consensus of decades of research and study is that employment services are most successful through individualization, strong job matches, and the appropriate intensity of flexible services and supports provided in typical work settings. The private market employers and business representatives that we interviewed for this report, including Disability:In<sup>xxxix</sup>, Microsoft, Marriott, the Oregon Manufacturing Extension Partnership, and others, confirmed this and agreed that on the job training is the strong preference of employers. They even affirmed that this is the case regardless of whether an employee has a disability, as it is one of the most effective on-boarding and retention strategies.

Some workers may well need more services and supports than what is reasonable to expect from an employer, and in those instances access to federal and state funded employment service systems and integrated and flexible supported employment, customized employment and other strategies is of significant importance. As was noted

in the 2012 report, the supported employment service model in the long run is more cost effective than segregated employment.<sup>xxxiv</sup> As discussed more fully later in this report, the providers that we visited with provided detailed accounts of the prevalence of individual workers' supports fading over time as they became accustomed to their jobs, built natural supports, and began to expand and broaden their social networks, skills, and civic involvement. Such increased participation in the community is a stimulus to the economy.

## 2. JWOD

During the same year that Section 14(c) of FLSA was enacted, in 1938, the Wagner-O'Day Act was passed to provide employment opportunities for people who are blind by authorizing them to manufacture mops and brooms to sell to the federal government.<sup>xxxv</sup> In 1971, Congress amended the Act to include people with severe disabilities;<sup>xxxvi</sup> the revised statute, known as the Javits Wagner O'Day Act (JWOD), governs the U.S. AbilityOne program.

Like the Section 14(c) program, JWOD/AbilityOne reflects a time when disability was deemed to be a characteristic that prevented people from competing in the open market. Many JWOD providers actively participate in the 14(c) program. Under JWOD/AbilityOne, at least 75% of the direct labor hours worked to fulfill an AbilityOne contract must be performed by individuals who have a significant disability or who are blind.<sup>xxxvii</sup>

The 75% direct labor ratio requirement is in tension with recent evolutions of disability law and policy including: (1) the ADA and *Olmstead* which require public entities, including employment service systems, to avoid the unnecessary segregation of individuals with disabilities, and to make services available in the most integrated setting appropriate; and (2) WIOA, which preferences work in competitive integrated employment as the desired outcome of vocational rehabilitation services. For an individual to even qualify for the JWOD program, however, one must establish that they are *not* capable of "normal competitive employment."<sup>xxxviii</sup> Yet, competitive integrated



employment has been found to be the most integrated setting appropriate under the ADA and *Olmstead*, as discussed more fully below.

## **Changes in the Legal Landscape**

### **1. Title II of the ADA and *Olmstead v. L.C.***

In recent years, federal court cases have clarified and explained the application of the ADA to employment-related services for youth and adults with disabilities. The federal court in a 2012 class action that preceded a settlement with the state of Oregon, *Lane v. Kitzhaber* (also *Lane v. Brown/ United States v. Oregon*), specifically addressed the application of the ADA and the Supreme Court's *Olmstead v. L.C.* decision to public entities' obligation to prevent unnecessary segregation for people with disabilities.<sup>xxxix</sup> The court explicitly held that the ADA's integration mandate extends to employment services and prohibits the unnecessary segregation, and serious risk of unnecessary segregation, of persons with disabilities, including adults and youth with disabilities.<sup>xl</sup>

Following this ruling, there were three landmark ADA settlement agreements entered within the span of three years that were brought by the Department of Justice or by the DOJ and private plaintiffs: *United States v. Rhode Island and the City of Providence* (2013); *United States v. Rhode Island* (2014); and *Lane v. Brown* (2015). Each of these court-ordered settlement agreements provided a roadmap for how state and local governments can rebalance their systems to ensure that their employment services are provided in the most integrated setting appropriate, and that people with disabilities are not unnecessarily segregated when they can and want to work in competitive integrated employment or placed at serious risk of such segregation. In the process, Oregon and Rhode Island agreed to take concrete steps to move away from excessive reliance on segregated employment settings, including those that paid 14(c) subminimum wages, towards competitive integrated employment.

Under these settlement agreements, both states agreed to no longer purchase, or fund sheltered workshop placements for transition-age youth and other new entrants, thus closing the front door to sheltered workshops and ending the school-to-sheltered workshop pipeline. They also increased infrastructure, enhanced technical assistance

resources, strengthened career development planning processes, and committed to overhauling youth transition programs. In both states, employment services are now required to be individually planned and based on person-centered planning principles and evidence-based practices. Combined, Oregon and Rhode Island have committed to providing approximately 11,565 people with the services and supports that they need to leave segregated employment and transition to competitive integrated employment within 10 years (8115 in Oregon over 7 years, and 3450 in Rhode Island over 10 years).

## **2. WIOA**

In 2014, Congress enacted WIOA, the first reauthorization of the Vocational Rehabilitation (“VR”) and workforce development systems in almost twenty years. WIOA embodies Congress’ intention that the VR and public workforce systems be designed and funded to assist youth and adults with even the most significant disabilities to obtain competitive integrated employment and to move away from segregated subminimum wage employment.

WIOA expanded both the scope and nature of employment-related transition services and adult employment services, further defined the population of people who are eligible to receive them and imposed important new limitations on the payment of sub-minimum wages. In many ways, WIOA was designed to limit the negative effects of other outdated federal laws, including Section 14(c) of FLSA. In addition, WIOA requires information, referral, and peer-to-peer mentoring and support to enable people with disabilities to transition to competitive integrated employment.

While these developments have been the impetus for significant changes to publicly financed employment service systems across the country, the impact of such new requirements and the legal, regulatory, and policy shift toward integration— including toward “competitive integrated employment,” as defined by WIOA— has yet to be fully realized. Nevertheless, how employment outcomes are defined lies with singularity at the heart of efforts to modernize employment systems and has significant ramifications for the future of disability employment.

Still, it appears that before these significant changes to the legal landscape have been fully implemented, including WIOA and its new definition of competitive integrated employment, some have already called for its rescission. The U.S. Department of Education has signaled an intent to issue a Notice of Proposed Rulemaking in September 2018 pertaining to the definitions in WIOA, including the definition of “competitive integrated employment.” Given that it is of significant public importance to understand what might be animating the views of disability stakeholders across the United States, we interviewed a broad range of people across states and moderated stakeholder discussions, to analyze this issue and to collect and report such feedback.

## **2.1 WIOA: Definition of Competitive Integrated Employment**

WIOA’s revisions to the Rehabilitation Act of 1973 have quite simply clarified the definition of “competitive integrated employment.” For more than 15 years prior to WIOA, since January 22, 2001, the Rehabilitation Services Administration, has defined “employment outcome” to exclude work in sheltered workshops and other segregated settings. For a long time, VR services have been required to lead to “competitive employment . . . in the integrated labor market, supported employment, or any other type of employment in an integrated setting, including self-employment, telecommuting, or business ownership, that is consistent with an individual’s strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.”<sup>xli</sup>

WIOA introduces a new definition, “competitive integrated employment,” that merely consolidates and revises the Rehabilitation Act’s previous use of the terms “gainful employment,” “competitive employment,” and “integrated setting.” The new definition of competitive integrated employment also adds “opportunities for advancement” as a required criterion, one relevant to whether a job is typical of the jobs afforded to non-disabled individuals in the marketplace.

Under WIOA, competitive integrated employment includes employment:

- (1) at minimum wage (and not less than the customary rate paid to employees without disabilities performing similar work) and eligibility for the same benefits as non-disabled employees;
- (2) in integrated settings where individuals interact with individuals without disabilities to the same extent as others in comparable positions; and
- (3) that provides opportunities for advancement similar to non-disabled individuals in similar positions.<sup>xiii</sup>

Importantly, group supported employment or enclave employment cannot meet the definition of competitive integrated employment for the purpose of the VR program.

The WIOA definition of competitive integrated employment is consistent with what has been recognized under the Americans with Disabilities Act and the Supreme Court's *Olmstead v. L.C.* decision to be "the most integrated setting appropriate" for people with disabilities to receive employment services and interact to the fullest extent possible with non-disabled co-workers, customers, and peers. In fact, such a definition is the very measure by which Oregon and Rhode Island will count success over the next decade under the two statewide ADA and *Olmstead* Consent Decrees. Moreover, it is the benchmark by which the vocational rehabilitation systems have counted success for almost twenty years. In addition, providers in Vermont, Maine, and Washington— states that were early adopters of supported employment and moved away from significant investments in sheltered workshops— confirmed that competitive integrated employment was the benchmark by which systems change in those states took place, and was measured, years ago. Such providers questioned whether transformation could take place effectively without fidelity to this common metric, including the features of what is "typical" of jobs in the mainstream economy. However, what counts as typical has, indeed, been the subject of considerable discussion.

## **2.2 WIOA: Statutory and Regulatory Language**

Under WIOA, competitive integrated employment is work in an "integrated setting."<sup>xiii</sup> For a VR placement to be counted as an employment outcome in competitive integrated

employment, it must be made in an integrated setting or a place: (1) typically found in the community; (2) where the employee with a disability interacts with other employees within the particular work unit, the entire work site, and, as appropriate to the work being performed, other non-disabled persons (like customers, vendors, etc.) to the same extent as non-disabled employees in comparable positions would interact with such persons.<sup>xiv</sup> Moreover, to be integrated, interactions with supervisory personnel or direct service providers cannot substitute for required interaction with non-disabled peers, coworkers, and customers.<sup>xiv</sup>

Since ED's 2005 Rehabilitation Services Administration ("RSA") Technical Assistance Circular 06-01, VR counselors have been encouraged to look at "factors" as to whether a placement is in an integrated setting and, therefore, counts as an employment outcome. RSA has long considered several factors that "**generally** would result in a business being considered not typically found in the community," including:

- (1) whether the positions are funded through Javits-Wagner-O'Day (JWOD) Act contracts or State purchase programs;
- (2) whether the positions pay subminimum wages under the Fair Labor Standards Act; and
- (3) whether the workplace imposes a mandated direct labor-hour ratio of persons with disabilities.<sup>xvi</sup>

Since 2005, it has been the responsibility of VR counselors to take these factors into account when determining if a position in a particular work location is an "integrated setting" within the meaning of the statute.<sup>xvii</sup> This means that whether something is deemed integrated is principally a determination made by a VR counselor as applied to the particular facts and in light of these factors. Moreover, VR counselors may take JWOD funding into account – but only as one of many factors that generally would result in a business being considered not typically found in the community.

### **3. Current Policy Discussion**

Even though the standards by which the VR system identifies what is “integrated” and “segregated” have been in place for the better part of twenty years, some have commented that the regulations implementing WIOA represent a change in position for RSA, one perceived to have adverse consequences for 14(c) and/or AbilityOne providers. Such entities fear losing VR funding for clients that were formerly placed in programs that exist for the primary purpose of employing people with disabilities.

In particular, these providers view both the preamble to Part IV of the WIOA regulations pertaining to State Vocational Rehabilitation Services, and an RSA FAQ explaining the regulations,<sup>xlviii</sup> to contain language that erroneously casts a bright line to disqualify jobs intended for people with disabilities. WIOA’s Preamble states:

The criterion does not exclude from competitive integrated employment any innovative or unique business models that otherwise satisfy the definitions criteria. Instead, the Secretary interprets the criterion to be more narrowly focused on the purpose for which the business is formed. . . . [B]usinesses established by community rehabilitation programs or any other entity for the primary purpose of employing individuals with disabilities do not satisfy this criterion, and, therefore, are not considered integrated settings, because these settings are not within the competitive labor market. . . . The factors that generally would result in a business being considered “not typically found in the community” include (1) the funding of positions through Javits-Wagner-O’Day Act (JWOD) contracts; (2) allowances under the FLSA for compensatory subminimum wages; and (3) compliance with a mandated direct labor-hour ratio of persons with disabilities. It is the responsibility of the DSU [Designated State Unit] to take these factors into account when determining if a position in a particular work location is an integrated setting.<sup>xlix</sup>

It seems that those that have voiced concerns with the WIOA regulations because of this Preamble may have overlooked that the regulations, themselves, offer no such bright line, and call for a vocational rehabilitation counselor to weigh several factors as

applied to the specific circumstances of each employment setting. In short, the regulations expressly call for a balancing test.

In applying this test, the VR counselor will make an individualized, case-by-case assessment into the very nature of the program and work setting in question, to determine whether it is integrated. In this analysis, a VR counselor may take whether a particular work placement is JWOD-funded into account generally as one of several factors in his or her decision about whether it is integrated, in addition to: (1) the nature of the specific work unit, (2) the entire work site, (3) the disbursement of people with and without disabilities throughout, (4) the nature of the work being performed, and (5) the work site's relationship to the community at large.

Moreover, the Secretary's interpretation of "integration" to exclude businesses established for the primary purpose of employing individuals with disabilities seems to be neither a new interpretation, nor something that detracts from a VR counselor's responsibility to scrutinize the particular circumstances of each employment setting before deciding whether it is integrated.

Indeed, as far back as 1997, in the comments to the Final Regulations to the Workforce Investment Act (WIOA's predecessor statute), RSA stated, "The Secretary, like many of the commenters, also believes that settings that are established specifically for the purpose of employing individuals with disabilities (e.g., sheltered workshops) do not constitute integrated settings since there are no comparable settings for non-disabled individuals."<sup>i</sup> Likewise, the comments to the Final Regulations to the Workforce Investment Act in 2001, the year that VR decided that extended employment (or sheltered workshops) could not count as a vocational rehabilitation outcome, stated, "The chief purpose of the regulations is to ensure that individuals with disabilities participating in the VR program are able to pursue the same type of employment opportunities that are available to the general public. Extended employment jobs. . . are primarily reserved for those with disabilities."<sup>ii</sup>

Prevalent in WIOA legislative history is concern for the typical features of employment and their comparability to the employment experiences of non-disabled peers. While

discerning what is a comparable experience is, as noted by the WIOA regulations, best kept to case-by-case analysis, the view of the agency historically appears to have been that settings like sheltered workshops that are physically separate from mainstream employment, and pay different wages, while employing only people with disabilities, except for paid staff, are not comparable or integrated. But knowing whether an employer is physically separate, or pays different wages, or employs only other people with disabilities, is certainly still the province of vocational rehabilitation counselors as discussed by the WIOA regulations.

Research over the past few decades has yielded support for the fact that employees placed in jobs that do not carry typical features (*i.e.* that lack employer-paid wages and benefits and other features comparable to those enjoyed by nondisabled workers) are actually shown to suppress wages, benefits, and opportunities for advancement in the long-term regardless of actual proximity in the community; while employment with more typical features is established to produce greater gains in wages, benefits, and advancement in the long-term.<sup>lii</sup>

The national employment experts that we interviewed noted that it has long been the rule that VR funding would not be used to fund sheltered workshop placements as outcomes. Nevertheless, they speculated that 14(c) and/or AbilityOne employment providers may be concerned about service-based contracts that were formerly regarded as integrated that they fear are now categorically excluded from VR funding because of the perception, under the WIOA Preamble, that they are not typical.

Even if a job on a service contract is one where workers with disabilities are widely dispersed in a typical employment setting earning wages well above minimum wage, there remains now the obligation on the part of the VR counselor to establish that such is the case. This is not a new change in law. And no experts found deficiencies with the regulations' use of factors to determine if something is typical in establishing whether a job is integrated.

Moreover, there appear to be several reasons why taking JWOD funding into account as one of several factors appears appropriate. As mentioned, to even qualify for the



JWOD program, one must establish that they are *not* capable of “normal competitive employment.”<sup>liii</sup> Thus, it would be difficult to establish that a JWOD work site is competitive integrated employment under those circumstances, and there may be a fair presumption that one may not be until further investigation reflects otherwise.

WIOA’s definitions of competitive integrated employment and integrated setting create a general presumption that 14(c) and JWOD-funded employment cannot count as a VR outcome. This does not mean, however, that such placements can never be counted.

#### **4. Stakeholder Feedback on the Changing Legal Landscape and Definition of Competitive Integrated Employment**

We interviewed or contacted numerous people with disabilities, 14(c) certificate holders, parents, families, self-advocates, national subject matter experts, and other providers across 26 states (including in-person interviews in 6 states) during the summer of 2018. The portion of these interviews recounted here focus upon the changing landscape of law and policy, including the ADA and WIOA, and WIOA’s definition of competitive integrated employment. Included in these discussions, were five AbilityOne providers across three states that are or were also 14(c) certificate-holders.

For the most part, stakeholders recognized the apparent tension between Section 14(c), and JWOD’s direct labor ratio requirement of 75%, with the ADA’s integration mandate, the *Olmstead v. L.C.* decision, and various states’ efforts to rebalance employment service systems to include integrated alternatives. Many of the individuals interviewed were in states that are considered leaders in transforming services away from segregated employment settings. Some vocalized concern that insofar as Section 14(c) and JWOD continue to exist, the pace of change at the state level will be slowed because of the significant financial incentives attached to AbilityOne’s \$3 billion dollars per year of federal set aside contracts coupled with its 75% direct labor ratio requirement. They feared that financial incentives existed that would make AbilityOne providers obdurate to proposed changes in the direction of integrated services.

However, most AbilityOne providers lamented that the federal government's competing requirements put them in a difficult position where their contracts require proof that the majority of people performing labor across their business are people with severe disabilities or blindness, on the one hand, while knowing that this increases the likelihood that they are not offering services in the most integrated setting appropriate and perhaps slowing their states' efforts at transformation away from segregated service models, on the other hand. However, with few exceptions, almost all of these providers vocalized a concern that with the shifting of rules and expectations, they should be supported to ensure that people with disabilities on AbilityOne contracts do not lose good paying jobs during the transition. Multiple providers also openly worried that if they would call for the reform of the AbilityOne program, that they might lose their AbilityOne contracts and accompanying revenue, something they viewed as untenable.

In fact, one provider, who is perceived to be a leader in supported employment in her state, was very forthright about her decision to maintain several lucrative AbilityOne contracts, at the precise time that she is leading efforts to expand placement of people with disabilities in competitive integrated employment and providing technical expertise to other providers about reducing their reliance on 14(c) employment and closing their sheltered workshops. She said that she was successful in closing three sheltered workshops and stopping the payment of subminimum wages, by acquiring additional infrastructure support through her AbilityOne contracts. She stated that there is not currently enough financial support in the Medicaid rate structure alone for providers to bridge the gap as they convert from a segregated to an integrated service model, and that diversification of funding sources for providers engaged in transformation efforts is essential. She acknowledged, however, that her AbilityOne contracts do not correspond with an integrated service model and as constituted should not be counted as competitive integrated employment. Nevertheless, she stated that she relies upon the financial revenues created by them to plan, administer, and fund other highly individualized supported employment and customized employment strategies provided in competitive integrated employment settings.

She, and other providers, noted that those AbilityOne providers that are committed to providing supported employment services often must take the added step of separating their JWOD funded contracts into separately incorporated businesses in order to maintain the ratio requirement, while not compromising other integrated supported employment services. The providers discussed that AbilityOne providers are not often supported employment providers and that, given the structural requirements of JWOD, being both may be the exception to the rule. It was further noted that having multiple business operations is not an ideal solution, as providing both kinds of services is likely to divide a provider's attention, staffing, and resources and may, in fact, risk slowing the pace of transformation even more. Providers with the intention of modernizing employment services to include supported employment lamented having to divine infrastructure support from a funding source that, by its very design, was likely to proliferate segregated employment settings.

Others expressed the strong desire for JWOD's requirements to be harmonized with other federal laws to incentivize and fund competitive integrated employment outcomes outright. In the view of many stakeholders, not just providers, the reform of the AbilityOne program to a more integrated service model would correspondingly enhance transformation away from 14(c) nationwide and ensure that support for individualized supported employment services is streamlined, if not accelerated, by additional resources.

In contrast, other providers took issue with what they perceived to be some VR agencies' incorrect interpretation of WIOA: that all JWOD funded contracts are *per se* segregated and therefore do not meet the definition of competitive integrated employment. Many of these providers expressed concern that AbilityOne jobs were being "all lumped together" because the VR agency in their state viewed them as categorically not in "typical settings," when, in their view, many service-based contracts are in places of mainstream employment where workers with disabilities are included and incorporated into typical businesses.

For instance, a provider conveyed the story of a blind employee who was working in management at the organization and sought additional support from vocational rehabilitation to continue to perform his office job in a work unit where there is significant interaction between people without disabilities. In the provider's view, the person was denied access to VR services before the VR counselor even examined his particular job because the employer was a known AbilityOne provider with facility-based manufacturing contracts. Yet the employee was not performing work on those contracts. The provider acknowledged, however, that perhaps what made this job typical also included that the employer did not maintain two roles, employer and service provider, in its relationship to this employee.

More than most any other issue explored in discussions about the changing landscape of law and policy interpretation, there was accord as between providers, persons with disabilities, families, private market employers and others that current questions about federal requirements are magnified by the lack of role clarity and conflicts of interest inherent in an employer also serving as a person's primary point of contact for all services and sometimes even for residential support and health care. For example, discussions about what is a typical, and therefore, integrated job would become exceedingly more clear, were these roles formally separated.

Numerous other stakeholders voiced concerns about providers that were in the process of "privatizing" their business models, disassociating with joint leadership and funding from the County Boards, and recruiting non-disabled community members to work several hours per week in the shop, so that the facility would be counted as "integrated," even though the employer and service provider role was still assumed by the same entity.

# Chapter Four: Characteristics of Profit-making Businesses in the 14(c) Program

DOL’s Wage and Hour Division classifies 14(c) certificates according to four main categories: The School Work Experience Program List (SWEP); the Business Establishment List (BEL); the Patient Worker List (PWL); and the Community Rehabilitation Program (CRP) List.

## School Work Experience Program

As of July 1, 2018, WHD issued SWEP certificates licensing 31 school districts, schools, or school programs to pay subminimum wages to approximately 2,000 students with disabilities.<sup>iv</sup> SWEP certificates must be renewed annually. Students in SWEP programs often perform piece-rate work on contracts for private companies during the school day in exchange for sub-minimum wages. During the prior year, as of July 1, 2017, there were approximately 105 SWEPs nationwide, and between approximately 3,000 and 7,000 student workers with disabilities paid subminimum wages. While this represents a marked decline, it is somewhat surprising that the program continues to exist at all, given the requirements of federal law, including the IDEA, WIOA, ADA, *Olmstead v. L.C.*, and the 2013 case, *United States v. Rhode Island and City of Providence* (finding a SWEP program contributed to the state and city’s violation of the

The Sonoma County Office of Education in Sonoma, California currently holds the most SWEP certificates nationally, as it is licensed to pay approximately 1,740 youth with disabilities subminimum wages.

ADA and *Olmstead*).

## Business Establishment List

The Business Establishment List (BEL) represents 14(c) certificates that are issued directly to mainstream private employers, allowing such businesses to pay employees with disabilities less than minimum wage. BEL certificates must be renewed annually with WHD. Like the 14(c) certificate program as a whole, the continued availability of the BEL is perplexing nearly thirty years after the enactment of the ADA. As stated earlier, over the past three decades, employers have been required to provide reasonable accommodations to employees based on the understanding that it is the work environment that must be adjusted— not employees’ wages— to create equality of opportunity for qualified workers. Yet, the BEL, a creation of the 1938 FLSA, calls for exactly the reverse. Oftentimes, through the BEL program, people with disabilities are performing the same job, for the same employer, in the same place as non-disabled peers, yet making dramatically lower wages.

Acceptance of the ADA and its requirements may explain, in part, why the number of business certificates has decreased substantially over the past decade, falling from 284 businesses in FY 2008 to 46 in FY 2017. Yet the businesses that remain on the list continue to receive the financial benefit of reduced labor costs for the approximately 133 workers that participate in the program.<sup>iv</sup> Moreover, WHD could not confirm whether the current list has been systematically reviewed for appropriate time studies or by the EEOC for whether they provide reasonable accommodations. And like all four of the 14(c) lists, WHD could not identify or report its enforcement efforts by list, and so the public currently has no way of knowing whether the WHD has conducted oversight over the private businesses that participate in this program.

**Table 5 – Section 14(c) Business Establishment Certificate Applications Per Year**

Fiscal Year	Business Applications	Business Applications	Business Certificates
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	<b>Received</b>	<b>Received – Renewal</b>	<b>Issued</b>
FY 2008	286	232	284
FY 2009	267	224	265
FY 2010	227	196	223
FY 2011	202	172	198
FY 2012	188	162	187
FY 2013	193	164	185
FY 2014	155	132	145
FY 2015	115	101	106
FY 2016	84	74	78
FY 2017	57	45	46
FY 2018 Q2	27	23	10
<b>Total</b>	<b>1,801</b>	<b>1,525</b>	<b>1,727</b>

Source: WHD April 1, 2018<sup>lvi</sup>.

We conducted a telephone survey to all of the approximately 50 current BEL certificate-holders across 18 states, and a paper review of the 14(c) applications of the top 10 business certificate-holders, based on the total number of workers with disabilities, to understand the current state of the program.<sup>lvii</sup> These businesses included a commercial landscaping company, a building and construction company, a temp agency, a grocery store, thrift shop, steel fabricator, and commercial restaurant and hotel chains like Chili's Restaurant, Quality Inn, and Super 8 Motel. Several of the respondents to the telephone survey noted that they were unaware of how their business began its participation in this program or why it had. Some employees with disabilities, nevertheless, had worked at

the business for quite some time earning subminimum wages. Some respondents noted their fear that without paying sub-minimum wages they did not think that the business could hire the person. Nevertheless, the businesses seemed to rely on the employees' work and saw their role in the business as vital.

For example, a Quality Inn and Suites in South Dakota has two employees working on its active 14(c) certificate, including one individual who has been employed as a housekeeper at subminimum wages for 17 of the 25 years that the hotel has had its certificate. The housekeeper is paid \$4.54 per room for "piece work by the room." The General Manager (GM) conducts the time studies, or in her absence, the Head Housekeeper, and according to the GM they have never received technical assistance from DOL as to how to do the time studies.<sup>lviii</sup> Indeed, WHD has conducted a mere 16 outreach events about the 14(c) program in each of the last two years.<sup>lix</sup> Similar work for commercial hotels is performed in other states through the BEL. For instance, data provided by the WHD reflect that three workers with autism perform housecleaning for \$4.36 per room or an average of \$4.19 per hour for a Super 8 Motel in Illinois that holds a 14(c) certificate when, by contrast, prevailing wages for that job are listed at \$9.02 per hour.

One business on the BEL, Riverview Productions in Wellston, Ohio, reported paying employees with disabilities wages as low as 25 cents and 30 cents per hour to perform assembly and disassembly work when the prevailing wage is \$8.15 per hour for the same work performed by non-disabled workers.<sup>lx</sup> The business specifically answered "no" on the 14(c) certificate application in response to a question about its compliance with core WIOA requirements, including whether it had verified that counseling, information, and referral had been provided to its 14(c) employees about competitive integrated employment and other training opportunities.<sup>lxi</sup>

### **Patient Worker List**

The Patient Worker List (PWL) is comprised of 14(c) certificates issued to private non-profit, for-profit, and public, including state and local, institutional healthcare facilities.<sup>lxii</sup> There are a total of approximately 4,961 workers on the PWL and 82 current certificate-



holders in 29 states.<sup>lxiii</sup> Patient worker certificates must be renewed every two years. PWL certificates allow such institutions to pay people with disabilities less than minimum wage, typically in sheltered workshops that are within the same facility or campus, where people perform tasks like recycling, shredding, kitchen, laundry, janitorial, and landscaping tasks for the institution. Ostensibly the purpose of patient worker programs is to train patients for employment. In reality, however, such programs serve as a means for workers to perform services at reduced labor costs for the very entity that controls their residential placement. In this regard, the entity plays three roles as it concerns the patient worker: employer, employment service provider, and residential treatment provider. As a result of these overlapping and often conflicting roles, patient workers are frequently assigned manual tasks as part of their rehabilitation, employment training, and residential placement.

Over the past ten years, the number of PWL certificates issued each year has declined significantly, by more than half, from 91 certificates issued in FY 2008 to 39 issued in FY 2017. While there have been fewer than 100 certificates issued each year for at least a decade, the number of people paid subminimum wages at each institution remains quite high, and as described below, their wages are exceedingly low. For example, large developmental training centers, like the J. Iverson Riddle Developmental Training Center in North Carolina and the Porterville Developmental Center in California, each have over 250 workers with disabilities performing labor in exchange for sub-minimum wages.

**Table 6 – Section 14(c) Patient Worker Certificate Applications Per Year**

<b>Fiscal Year</b>	<b>Patient Worker Applications Received</b>	<b>Patient Worker Applications Received – Renewal</b>	<b>Patient Worker Certificates Issued</b>
FY 2008	91	81	91
FY 2009	88	81	88
FY 2010	83	77	82

FY 2011	79	73	79
FY 2012	82	73	79
FY 2013	74	68	73
FY 2014	67	58	60
FY 2015	58	51	57
FY 2016	52	47	51
FY 2017	43	40	39
FY 2018 Q2	22	20	14
<b>Total</b>	<b>739</b>	<b>669</b>	<b>713</b>

Source: WHD, 2018.<sup>lxiv</sup>

We conducted a telephone survey of the top 10 PWL certificate-holders, based on the number of 14(c) workers, and reviewed 14(c) certificate applications for those same providers.<sup>lxv</sup> In June 2018, there were approximately 1,977 workers currently employed by the top 10 PWL certificate-holders, or 40% of all patient workers paid subminimum wages in the United States.<sup>lxvi</sup>

One of the employees that participated in the survey from Conway Human Development Center in Arkansas stated that she assumed that the employees with disabilities participating in Conway’s workshop were earning minimum wages, but, nevertheless, maintained that without a certificate such employees were not capable of working because in her view “their disabilities hinder higher pay.” Data from Conway’s 14(c) certificate application reveals that its reported 182 workers perform such tasks as “packaging rocks,” and “inserting card[s]” and “shredding paper” for far below minimum wage: an average wage of 90 cents per hour, with some workers being paid as little as 13 cents per hour.<sup>lxvii</sup> In fact, the wages across the top 10 PWL certificate-holders were unusually low, even for 14(c) programs.

**Table 7- Top Ten PWL Certificate-holders Reported Wages**

<b>PWL Top 10 Program</b>	<b>State</b>	<b>Lowest Wage Reported</b>	<b>Highest Wage Reported</b>	<b>Average Wage Reported Participants</b>
Booneville Human Development Center	AR	0.13	5.22	0.90
Conway Human Development Center	AR	1.67	1.88	1.70
J Iverson Riddle Development Center	NC	0.07	7.25	1.20
Lambs Farm	IL	0.11	6.92	2.50
Murdoch Development Center	NC	1.89	7.86	5.67
Tacachale Industries	FL	0.03	7.98	1.62
Utah State Development Center	UT	0.02	7.23	0.80
<b>Average</b>		<b>0.56</b>	<b>6.33</b>	<b>2.06</b>

Data Source: WHD, 2018.<sup>lxviii</sup>

In addition to reporting low wages, the 14(c) certificate applications reviewed showed signs that submitted records were incomplete, inaccurate, or, even in some cases, they appeared in contravention of the regulations and requirements governing the program.

For example, the 14(c) certificate application for the Utah State Developmental Center revealed that more than 41 people received the same wage of 24 cents per hour to sort certain items; 21 people made 43 cents per hour on shredding; and at least 33 people made 38 cents per hour on wood crafts. Even more concerning, 15 people made between 7 cents or 8 cents per hour on an activity called “pinatas;” and 26 other

people made 34 cents per hour on that same activity.<sup>lxi</sup> From these records, it appeared that the wages given to various groups were calculated irrespective of workers' individual productivity, as entire groups of workers were assigned the same exceedingly low wages apparently based more on their task than on their productivity. A telephone survey respondent at Utah State Developmental Center said that while they have 7 sheltered workshops with 170 subminimum wage workers, they do have a few workers in supported employment and group enclave employment. Nevertheless, the respondent, advancing a common mythology about the impact of work on benefits, noted that "if folks were paid minimum wage they would make too much money and lose their services and healthcare. It would also cost the state a lot more."

Beverly Farm Developmental Training Center in Godfrey, Illinois filled out its 14(c) certificate application by listing the "average paycheck" for each worker performing assembly, janitorial, and laundry work rather than the results of actual time studies that set wages per hour.<sup>lxx</sup> As a result, we could not discern how many hours per week workers are performing such activities, and how their wages were calculated.

Likewise, at Tacachale Industries in Gainesville, Florida, 140 workers were listed as all making either \$1.00 per hour or \$2.00 per hour, with the occasional worker making in the \$3.00 range, for performing benchwork.<sup>lxxi</sup> This too raises alarm that time studies are not being conducted correctly.

Despite these findings, our research also indicates that the patient worker program—like other parts of the 14(c) program— is in a state of flux, as some entities have relinquished their patient worker 14(c) certificates in accord with a push across the country for supported employment services provided in typical work settings. For example, the Polk Center in Northwestern Pennsylvania, a state-run Intermediate Care Facility for people with I/DD, did not renew its certificate in July 2018.<sup>lxxii</sup> The reason given by a respondent to the phone survey was because the state is "switching to an Employment First model," because patients can work in the community at higher wages, and she confirmed that former workshop participants are now engaged in different kinds of supported employment in the community.

## Community Rehabilitation Program List

The Community Rehabilitation Program (CRP) List represents the vast majority of subminimum wage employers and employees in the 14(c) program and is comprised of certificates issued to sheltered workshops that employ mostly only people with disabilities except for paid support staff. As of July 1, 2018, the WHD reported on its website a total of approximately 124,066 workers on the CRP list and 1,769 certificate-holders in 49 states.<sup>lxxiii</sup> However, during the same month, the DOL stated in a letter addressed to a Member of Congress that “certificate holders employed approximately 321,131 workers with disabilities in FY 2017.”<sup>lxxiv</sup> CRP certificates must be renewed every two years.

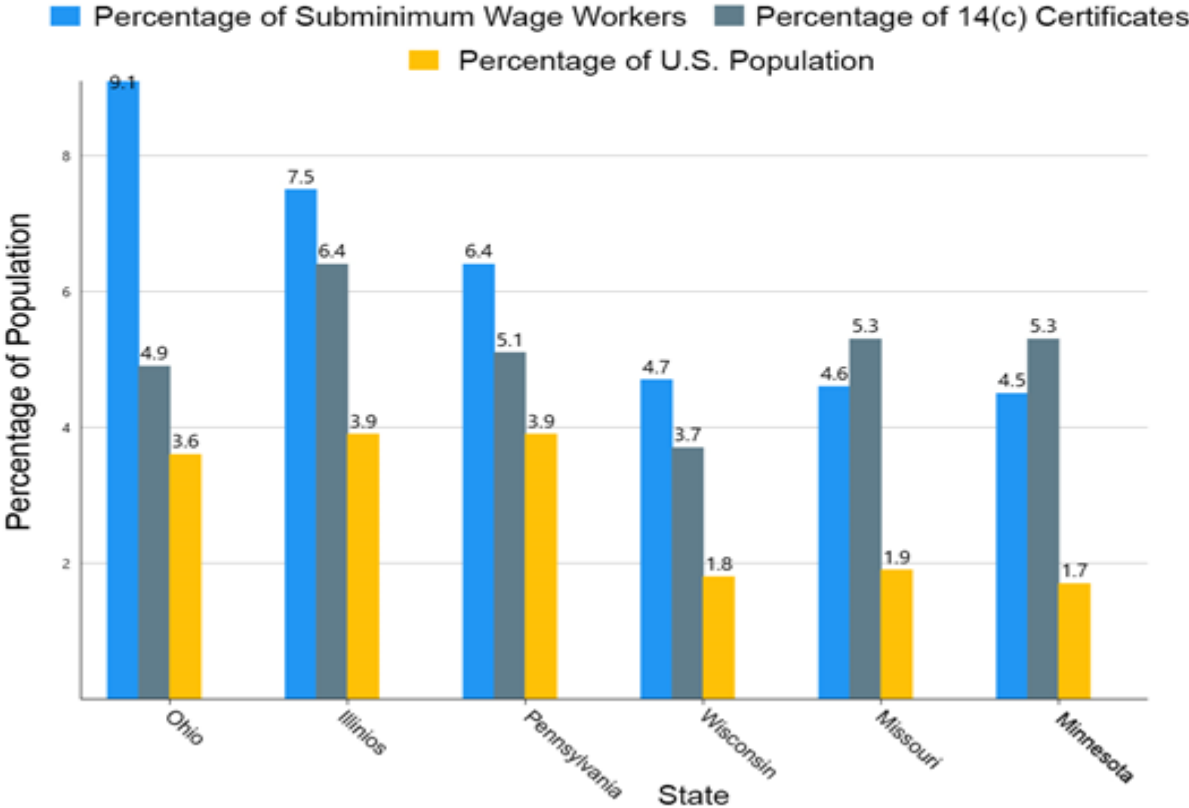
We examined the top 50 CRPs, by number of subminimum wage workers, to better understand the characteristics of the largest such operations. As with patient workers, in examining relevant data, we found that a disproportionately large number of workers are employed by a small number of CRPs. For example, 20 CRP certificate-holders employ approximately 14,422 workers.<sup>lxxv</sup> Put differently, while they make up only 1.1% of all certificate-holders, these 20 entities employ approximately 11% of all 14(c) employees. The top 50 certificate-holders, or just 2.8% of all certificate-holders, employ approximately 25,574 14(c) employees, or 19% of all 14(c) employees.<sup>lxxvi</sup>

This begs us to look at the characteristics of these employers and work settings, and to ask why such entities, given their large number of subminimum wage employees, appear to be insulated from changes that are afoot, including shifts away from subminimum wage employment and toward more modernized services.

The largest certificate-holders are concentrated geographically in a small number of states. Nine states have the highest number of 14(c) certificates-holders and subminimum wage employees: California, Ohio, Illinois, Pennsylvania, New York, Wisconsin, Missouri, Minnesota, and Texas. The number of workers employed at subminimum wages in these states is disproportionate to the population size. These nine states make up 44% of the U.S. population, but employ 56% of the people on 14(c) certificates.<sup>lxxvii</sup> For instance, Ohio comprises 5% of the country’s population, but makes

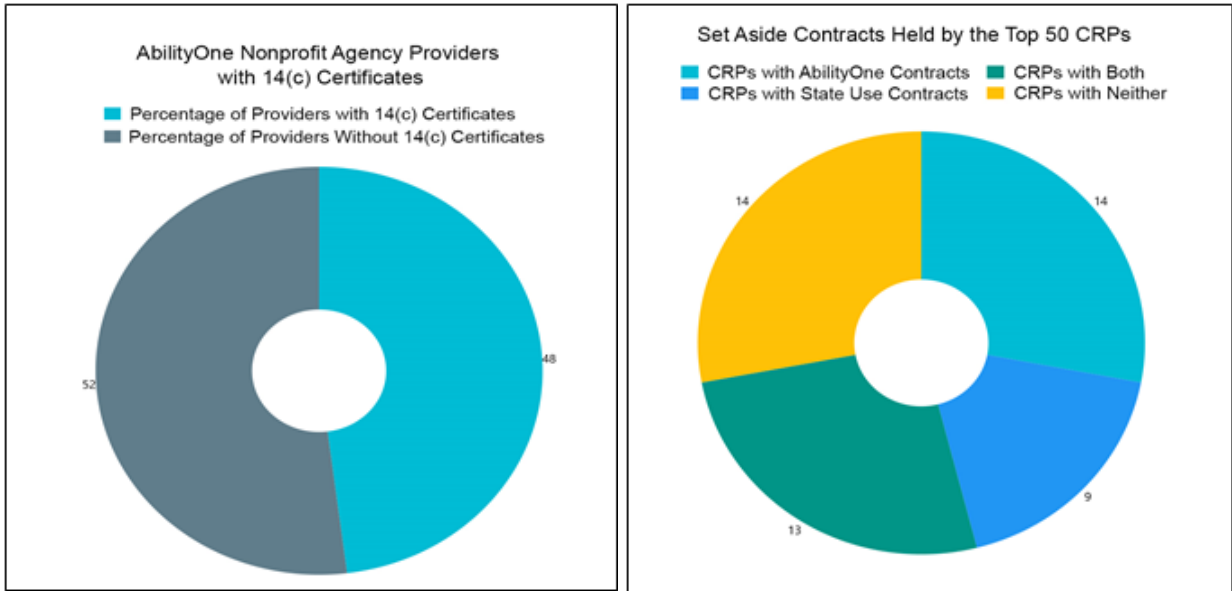
up 9% of the country’s subminimum wage employees.<sup>lxxviii</sup> Likewise, Illinois contains 4% of the country’s population, but comprises 7.5% of the country’s subminimum wage employees.<sup>lxxix</sup>

State’s Percentage of the U.S. Population Compared to their Percentage of Subminimum Wage Workers and 14(c) Certificates



To unlock the reason for such high concentrations of certificates in a few states, we asked WHD for information about the number of these top CRP employers that engage in the AbilityOne or state use programs— where people with disabilities manufacture goods or provide services to states on set aside contracts.<sup>lxxx</sup> WHD reported that it does not collect such information from employers. However, NCD independently collected and reviewed publicly available information from the AbilityOne program and state use laws across all 50 states and found that approximately 70% of the top 20 CRP certificate-holders, based on number of subminimum wage workers, are AbilityOne

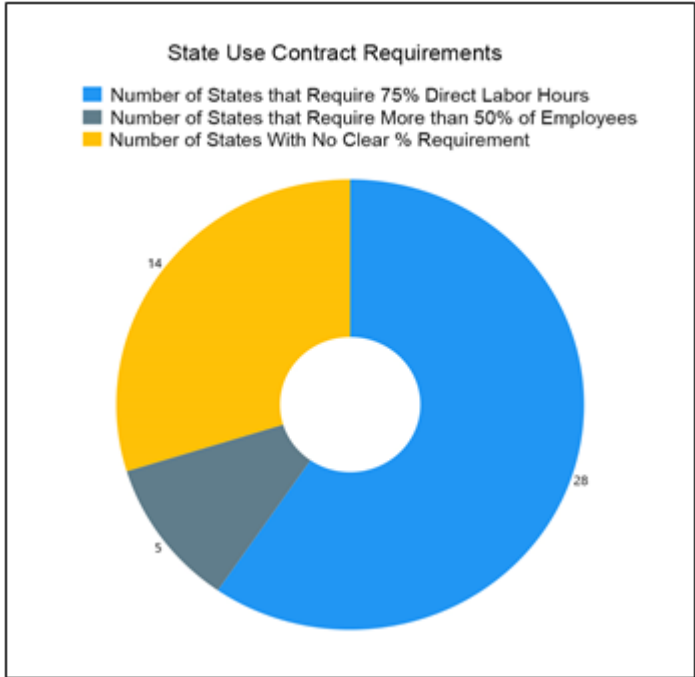
employers and participate in state use set aside contracts.<sup>lxxxix</sup> And 48% of all AbilityOne employers have 14(c) certificates.<sup>lxxxii</sup>



If we expand the scope of our review to the top 50 CRPs based on number of subminimum wage employees, less than a third (28%) of CRPs in the top 50 do not participate in either the AbilityOne or state use programs.<sup>lxxxiii</sup> Within the top 50 CRPs, 54% are AbilityOne employers; 44% participate in state use programs; and 26% participate in both the AbilityOne and state use programs.<sup>lxxxiv</sup> As mentioned above, nearly 20% of all 14(c) employees in the United States are employed by these top 50 CRPs. The data reflects that across all CRPs, those entities that have fewer subminimum wage workers, are less likely to be engaged in the AbilityOne program. For instance, just 15% of all CRP 14(c) certificate-holders, and 24% of all subminimum wage employees, are AbilityOne employers or employees.<sup>lxxxv</sup>

As mentioned throughout this report, the AbilityOne program, as controlled by the JWOD statute, requires that 75% of all direct labor hours across all operations are performed by people who are blind or have severe disabilities.<sup>lxxxvi</sup> Many state use programs mirror the JWOD requirements pertaining to a direct labor ratio. 28 states have incorporated the 75% direct labor ratio requirement; 5 other states require that people with disabilities comprise “more than 50% of employees”; whereas 14 states

have no clear labor ratio requirement.<sup>lxxxvii</sup> The states that host 7 of the top 10 CRPs by number of subminimum wage workers have 75% requirements: California, Ohio, Pennsylvania, New York, Wisconsin, and Missouri.<sup>lxxxviii</sup>



These same states are on the list of those with the highest proportion of sub-minimum wage workers and 14(c) certificates nationwide. We infer that manufacturing settings with mostly only people with disabilities are either the natural result of these laws or are financially sustained by them. As such, 14(c) employers in such places benefit from reduced labor costs by paying subminimum and/or sub-prevailing wages, and often also benefit from these federal and state set-aside contracts, while receiving payments from Medicaid, Vocational Rehabilitation, state, and local funding sources.

Opponents of eliminating the use of 14(c) certificates frequently argue that 14(c) employers would not be able to employ the people with disabilities that they do at minimum wages or above without going out of business. Several national experts and numerous employment providers that we spoke with, reflecting upon this assertion, stated that it is an acknowledgment that, even with substantial set aside contracts and federal, state, and local funding, the workshop business model is largely unsustainable



unless people are paid sub-minimum wages. Or, plainly stated, subminimum wage is not a bug of the workshop model, it is its primary feature.

In the experts' judgment, the sheltered workshop business model, itself, rather than the impact of disability on productivity, incentivizes low wages and correspondingly disincentivizes reasonable accommodations, better job matches, and more integrated employment services. In fact, some 14(c) employees are reportedly documented as at or near 100% productivity when time-studied but, nevertheless, remain in 14(c) employment, and a great many other employees reportedly perform jobs without ever being individually assessed for accommodations, thus suppressing their resulting wages. WHD has not reported targeted enforcement efforts to ensure that employees in the 14(c) program are not misclassified. Moreover, as NCD noted in its 2018 report *Has the Promise Been Kept?: Federal Enforcement of Disability Rights Laws*, to date, there have been no systematic efforts to review sheltered workshops for compliance with the reasonable accommodations provisions of Title I of the ADA. Yet, if reasonable accommodations were provided during required time studies, 14(c) employees' wages may see considerable overall improvement, calling into question an inestimable number of employees' classification in the program. Thus, in addition to paying artificially low wages, 14(c) employers may also be benefitting financially from the absence of vigorous enforcement of federal laws across the program.

And why would the workshop model not work unless labor costs are artificially low? Rising wages may indeed lead to worker layoffs for employers who have less reliable and outdated business models, meaning anemic contract revenues for manual labor that has becoming increasingly automated, older donated equipment and machinery, with too significant an investment in overhead expense, including physical plant and materials investment, and too few employees performing jobs that match their preferences and strengths. In fact, this was one of several reasons that many providers that we visited closed their sheltered workshops and engaged in modernization towards supported employment services. Basic labor market economics controlled. The confluence of both changing demand from youth emerging from schools who can and want to work in competitive integrated employment, and significant disruptions to the

market for manufacturing and service contracts made it less possible to continue with the current business model and maintain fidelity to the long-term interests of people with disabilities who can and want to engage in meaningful employment. At least this was the case for many small to medium size businesses.

In significant contrast, however, the largest CRPs that profit most significantly from federal, state, and local set aside contracts and other funding sources, do not appear at serious risk from being unable to afford minimum wages, yet they continue to pay sub-minimum wages. In fact, their revenues are proportioned in almost diametrical opposition to their need to pay these sub-minimum wages, as reflected in Table 8 below. IRS Form 990 tax documents reveal that the combined total annual revenue of the top 10 CRPs, by number of subminimum wage workers, is nearly \$523 million.<sup>lxxxix</sup> The top employer on this list, Social Vocational Services, Inc., a sheltered workshop in California, has annual revenue of nearly \$105 million from recycling operations, and its CEO has an annual salary of over \$1.1 million yet it continues to pay 1,790 workers subminimum wages.<sup>xc</sup> Likewise, Pride Industries, also in California, an AbilityOne and CRP employer, has annual revenue of over \$205 million, and its CEO’s annual salary is \$389,860, but it pays 1,103 workers subminimum wages.<sup>xci</sup> For these, and the other top 50 CRPs, arguments about their continued viability absent sub-minimum wages seem hardly appropriate.

**Table 8 - Annual Revenue for the Top 10 CRPs**

<b>CRP Top 10 Program</b>	<b>Annual Revenue*</b>	<b>Number of 14c employees</b>	<b>Industry/Trade</b>	<b>State</b>	<b>Ability-One or State Use</b>
Social Vocational Services Inc.	\$104,787,260	1,790	Clerical, retail, and food services. Recycling & shredding.	CA	
SAW Inc.	\$5,317,688	1,600	Retail and food services. Piece	OH	X

			work.		
Pride Industries	\$205,354,064	1,103	Janitorial and restaurant services. Packaging.	CA	X
S.T.E.P.	\$16,614,854	920	Assembly, recycling, retail, and food service.	MI	X
Ohio Valley Goodwill	\$41,611,900	799	Janitorial & landscaping services. Piece work.	OH	X
Arc Industries Inc.	\$10,651,160	726	Packaging, assembly, janitorial, and food services.	OH	X
NYSARC, Inc. NYC Chapter	\$16,933,868	658	Janitorial & landscaping services. Shredding.	NY	X
Monco Enterprises, Inc.	\$1,650,501	603	Piece work, janitorial, and dog biscuits.	OH	X
Associated Production Services	\$3,993,629	588	Piece work, packaging.	PA	
Pro-Act Inc.	\$115,981,579	483	Piece work. Clerical, janitorial, and food services.	MN	X
<b>Total</b>	<b>\$522,896,503</b>	<b>9,270</b>		<b>6</b>	<b>8</b>

Source: IRS 990 Form<sup>XCII</sup>

In addition to these economics, there are additional trends at play in the data reviewed. For instance, a few large disability provider organizations and their affiliates maintain a significant share of the sheltered workshops in the U.S. 24% of the top 50 CRPs by number of subminimum wage workers were Goodwill, Easter Seals, or ARC affiliated.<sup>xciii</sup> Goodwill, Easter Seals, or ARC affiliated sheltered workshops employ at least 17,321 sub-minimum-wage workers, or 13% of all 14(c) employees, and they hold 191 (11%) 14(c) certificates.<sup>xciv</sup> These three organizations gain considerable financial revenues from the older workshop model. Of the top 30 Goodwill, Easter Seals, or ARC affiliated nonprofits, as determined by number of workers paid sub minimum wages, 81% are AbilityOne providers.<sup>xcv</sup> In 1971, a coalition of Goodwill Industries International, National Easter Seal Society, ACCSES, The ARC, United Cerebral Palsy Association, and International Association of Jewish Vocational Services spearheaded legislative efforts to expand the Wagner O'Day Act to include set aside contracts to serve people with significant disabilities.<sup>xcvi</sup> As original proponents of such set aside contracts, many of these same organizations continue to have significant stakes in the AbilityOne program. Accordingly, these organizations and their affiliates collect sizable annual revenues. The average annual revenue for the top Goodwill affiliated nonprofits is nearly \$45 million, for Easter Seals is over \$17 million, and for ARC is over \$13 million.<sup>xcvii</sup>

The high concentration of subminimum wage workers employed by a small number of CRPs has real consequences for efforts to modernize employment service systems for people with disabilities. And because they employ so many people, have these CRPs convinced the public that they are too big to fail? The data shows that they are not even close to failing. Or that the interests of the top 50 certificate-holders represent the views of the remaining 1,719 certificate-holders? It seems medium and smaller size certificate-holders, not financially invested in 75% direct labor ratio models, have been vastly more open to change across states where transformation has begun. It is a reality that 14(c) employers that are significantly invested in supplying goods or services to federal and state governments, or that played historical roles in enacting such programs, are reluctant to change their service models due to these deeply ingrained structural barriers and strong financial incentives.

However, federal and state set aside contracts may not be the only financial incentives that are unduly influencing resistance to systems change, as private contractors, including U.S. and foreign corporations, continue to exert strong influence on the workshop model.

### **The Role of Private Business in Sustaining Subminimum Wages**

In examining the structural incentives that sustain the sheltered workshop model, we would be remiss if we did not also analyze the role of private companies. Little analysis has been conducted about the contract customers of Section 14(c) certificate entities, which benefit from reduced labor costs within their supply chains. Many such companies may be altogether unaware of the terms and conditions of 14(c) employment and not know that workers performing these contracts are earning sub-minimum wages and working without up-to-date equipment or accommodations.

Just as importantly, the question arises: can 14(c) employers sustain supplier contracts with these companies while also transitioning towards integrated service models, or do the contracts, themselves, need to change for larger systems changes to occur? After conducting extensive interviews for this report, NCD finds that the business community is a necessary partner to systems change, and changes are necessary to the way businesses contract with disability employers in their supply chain.

In July 2018, in partnership with the National Disability Rights Network, NCD conducted a 50-state survey to collect information about the companies and customers of sheltered workshops. The survey results demonstrated that there are a wide variety of national companies reported to purchase their products or services from 14(c) certificate-holders that pay workers with disabilities sub-minimum wages. For instance, companies like Firestone, Home Depot, Kohler, Kroger, Mary Kay, MAC Industries, Raytheon, Time Warner Cable, and Walmart are known to be invested in 14(c) labor.<sup>xcviii</sup> The results also demonstrated that there are numerous medium size to smaller companies, as well as federal, state, and local governments, that do business with 14(c) certificate-holders.

For a more specific exploration, we analyzed the subminimum wage ecosystem in Massachusetts, through a survey conducted by Disability Law Center in Massachusetts of 78 corporations and institutions that contracted with 14(c) certificate-holders in that state as of January 16, 2018.<sup>xcix</sup> As demonstrated by the companies listed below, in a single sheltered workshop network, customers range from some of the largest companies in the country to universities, schools, and other institutions, and retail and service companies.

Companies Invested in 14(c) Labor in Massachusetts' Sheltered Workshops

\*3M Corporation\* Advanced Flexible Composites\* American Dryer Corporation \*AmerisourceBergen\* Aramark Uniform Services (subsidiary of Aramark Corporation)\* Atlantic Union College\* Atlas Box and Crating (a/k/a AGS Global Solutions)\* Best Western Hotel\* Big Y Foods, Inc.\* Billerica Housing Authority\* Blue Cross Blue Shield of MA\* Boston Dermatology and Laser Center\* Bristol Myers Squibb\* Callaway Golf Corporation\* CareerSource\* Catalog Source Company\* Cintas\* Citizens-Union Bank\* Commonwealth of Massachusetts- Division of Capital Asset Management (DCAMM)\* Commonwealth of Massachusetts- Department of Developmental Services (DDS)\* Concord Municipal Light Plant\* Consentino Middle School, Haverhill Public Schools\* Covidien/ Medtronics\* Crowne Plaza Hotel Pittsfield-Berkshires\* Curriculum Associates LLC\* Cushing Academy\* CVS\* Dana Hall Riding Center of Dana Hall School\* Deerfield Packaging, a/k/a Mayhew Steel Products\* Emerson Hospital\* Exchange2Excel\* E-Z Way Cleaners\* Fallon Ambulance\* General Dynamics\* General Electric\* GMI/Gregory Manufacturing\* Guardair Corporation\* Hampton Inn\* Harvard University\* Harvey Tool\* Haverhill City Hall\* Holiday Inn\* Holt & Bugbee Co.\* Hutchinson Sealing Systems\* Hyde Tools\* KLT Industries\* Lantheus Medical Imaging\* Lawrence General Hospital\* Marine Polymer Technologies, Inc.\* Marshalls\* Milton Roy\* North Adams Housing Authority\* Polyfoam Corporation\* Price Chopper Supermarkets\* Ravensburger Schmid Puzzle Co., a/k/a Ravensburger Global\* Smith & Wesson\* Sodexo Food Services\* Sodexo-Marriott Food Services\* Southbridge- Department of Public Works\* Stop and Shop Supermarket\* Tedeschi Food Shops\* The Hilsinger Company d/b/a Hiclo Vision\* TJMaxx\* TJX\* U.S. Army Corps of Engineers/ U.S. Government\* U.S. Army Reserves Center\* U.S. Army Reserves Center/ U.S. Government\* U.S. Army Southbridge Recruiting Station\* U.S. National Park Service\* U.S. Naval Reserve Center\* Unifirst Corporation\* United Stationers Supply, Inc.\* Vita Needle Company\* Walgreens\* Walmart\* Westford Academy\* Whole Foods\* Ye Old Pepper Candy Company\*

In connection with this report, we also interviewed Disability:In (formerly the U.S. Business Leadership Network or USBLN), an organization dedicated to promoting inclusion and equality for people with disabilities in U.S. businesses. Disability:In, in partnership with the American Association of People with Disabilities (AAPD),

developed an annual benchmarking tool that offers businesses an objective score on a scale of zero (0) to 100, related to their disability inclusion policies and practices. The companies that participate in the DEI are committed to best practices in disability hiring, on-boarding, inclusion, and advancement within their workplaces.

It is noteworthy that for 2018, the highest scored DEI companies— those that attained a 100% rating for their disability practices—included several of the companies known to have investments in sheltered workshops during the same year. For instance, when the 2018 DEI is juxtaposed against the 2018 Disability Law Center of Massachusetts survey, we see that 3M, Aramark, CVS, Walgreens, and Walmart are top DEI companies but are also reported to be customers of 14(c) certificate-holders in Massachusetts. Moreover, during our travels and research in connection with this report, we encountered other businesses listed among top DEI companies that had goods or services that were being procured at subminimum wages. For example, we saw firsthand Boeing parts being assembled and manufactured in two different certificate-holders' facilities.

We asked Disability:In what steps the business community has taken to increase transparency and accountability in corporate supply chains to raise awareness of subminimum wage labor in the same way companies currently address child labor, unsafe working conditions, and human trafficking. Disability:In reported that in 2018, for the first time, it introduced questions about 14(c) labor in its DEI questionnaire, but those questions were not “weighted” against companies' overall score. As a result, they received numerous inquiries from companies that had either never heard of the 14(c) program before receiving the questions or had no supply chain auditing methods in place for the issue. Disability:In's incorporation of these questions into the DEI began the process of raising businesses' awareness of the issue. Next year, in the 2019 DEI, for the first time, those questions will be weighted and companies will be evaluated for overall disability inclusion based on this factor, among others.

Consistent with the experiences of Disability:In and its administration of the DEI, representatives from companies that are engaged in cutting edge efforts to recruit and hire people with disabilities often do not know whether their company has conducted

Supply Chain audits or written into its Supply Chain Code of Conduct safeguards against sub-minimum wage labor. In addition, they may be unaware of language in their Master Service Agreements and standard contracts that do not prohibit such low wages.

For example, we interviewed the Disability Law Center of Massachusetts (DLC-MA) in connection with this report. DLC-MA staff reported that a SWEP certificate held by a vocational collaborative of five school districts, the LABB Educational Collaborative, was used for students to work for subminimum wages on contracts with Harvard University and Whole Foods. The DLC-MA found that an entire warehouse in Allston, Massachusetts, was used for students with disabilities to sort through discarded computers, computer salvage, and other recyclables like clothes, books, and furniture left behind by Harvard University students. Student workers earned wages as low as \$2.59 per hour to do this recycling. Students with disabilities would insert a computer part into another computer to see if it worked, hundreds of times in repetition. Other times they sorted books and clothing. After it became aware of the requirements of WIOA, in 2018, the school district collaborative abandoned its SWEP certificate and began to transition students into supported employment in integrated settings, reportedly phasing out all subminimum wages. When asked by DLC-MA about why the Collaborative never asked Harvard to consider directly hiring the student workers with disabilities, the Collaborative staff demurred, stating that it was concerned that Harvard would “balk” and that the opportunity for any employment would be lost. In other words, one of the largest employers in Massachusetts was never asked to pay competitive wages on its contracts, or to directly on-board its workers with disabilities, and so five school districts carried on for years on a contract that paid subminimum wages.

We also interviewed companies that have paid careful attention to disability hiring and inclusion in their supply chains, but that have yet to directly address the issue of subminimum wage. For example, we met with representatives from Microsoft’s supported employment project in Seattle, a recognized model employer of people with disabilities. Beginning in 2013, Microsoft’s Real Estate and Facilities Division worked with its numerous vendors to identify jobs that needed to be filled and then worked to identify and hire qualified employees with I/DD with the assistance of local supported



employment providers. The program has been successful by any number of measures, modeling exponential growth of supported employment over a short period of time within one company's wide and varied supply chain. As a result, it has placed over 200 people with I/DD in competitive integrated employment over the past four years.<sup>c</sup> The company trumpets the return on investment of taking these steps, including \$26.69 return on each dollar invested in accommodations; an average turnover rate of 8% versus 45% for other employees; and the fact that 87% of customers prefer businesses to hire employees with disabilities.<sup>ci</sup> In many ways, Microsoft has become a standard setter among its peers by innovatively capitalizing on the employers within its supply chain, and their unmet needs, to exponentially increase its disability hiring efforts. It has even produced a toolkit for other companies to emulate the model.<sup>cii</sup> However, when asked, its representatives did not know whether subminimum wage labor was also expressly excluded from its supply chain or mentioned in its supply chain Code of Conduct. Like many companies, upon closer examination, the Microsoft Supply Chain Code of Conduct makes no specific reference to the exclusion of subminimum wage labor. It states in relevant part:

*Wages and benefits paid for a standard working week must meet local and national legal standards.*<sup>ciii</sup>

While this would seem at first glance to impose standards that meet federal minimum wages in all instances, it does not. Why? Because Section 14(c) of the FLSA is a "national legal standard" and is often also incorporated into state subminimum wage laws. As such, it is not illegal to pay sub-minimum wages, and, without clearer prohibitions in Supply Chain Codes of Conduct, Master Service Agreements, and procurement contracts, companies are likely unwittingly continuing to invest in such labor. Moreover, without specific audit processes to check supply chains for such investment, companies may be perpetuating such labor practices. Microsoft is committed to seeking a solution to these recognized gaps in its policies and contracts.

On the other hand, many companies in the country are aware that they have contracted with sheltered workshops for subminimum wage labor, may even have toured the workshop facilities and interacted with sheltered workshop leadership and staff, and

engaged in such relationships, in part, to strategically lower labor costs while ostensibly serving the company's interest in supporting people with disabilities.

In 2017, a first of its kind case was filed in federal court by a Plaintiff sheltered workshop employee seeking to hold a company accountable for discrimination perpetuated through its exclusive supplier contract with a sheltered workshop. The case, filed in the United States District Court for the Southern District of Ohio, *Michael A. Denoewer v. UCO Industries Inc. and Honda of America Manufacturing Inc.*, Case No.: 2:17-cv00660-GCS-KAJ, alleged that Honda “aided and abetted” discrimination by contracting with the sheltered workshop to pay some workers with disabilities subminimum wages while offering other workers higher wages and greater opportunities. In its Motion to Dismiss the Complaint, Honda stated that it did not discriminate by merely, “exercising its economic power to ensure UCO’s labor costs were low, which led UCO to pay certain employees less; and (2) making specific production demands, which led UCO to place certain employees on certain lines to meet those production demands.”<sup>civ</sup> In addition Honda stated, “there is absolutely nothing unlawful or even irregular about Honda contracting or engaging in the normal course of business with a supplier to keep labor costs low.”<sup>cv</sup> The brief went on to say “. . . in a market economy, this is commercially reasonable.”<sup>cvi</sup> From these public filings, we see that Honda, like many other companies, takes the position that it is entitled to bargain for reduced labor costs, it is “commercially reasonable” to do so— as long as the option is available within the market economy— even if it means paying people with disabilities differently on account of their disability status.

# Chapter Five: Observations and Findings

While it has become widely recognized that the 14(c) program is a historical anachronism in need of modernization and transformation, questions continue to exist about the efficacy, benefits, and consequences of various modernization strategies.

## New England Tour

### 1. Rhode Island

#### Purpose of Visit

Rhode Island was selected because over the past five years, and after entering two distinct ADA and *Olmstead* court-ordered settlement agreements with the U.S. Department of Justice,<sup>cvii</sup> the State has committed to rebalancing its employment service system, closing the front door to sheltered workshops, and assisting thousands of people with I/DD and other disabilities to move from subminimum wage segregated employment to competitive integrated employment. Data demonstrate these significant changes. A survey conducted in 2012 and the fourth quarter of 2017 demonstrates the change.<sup>cviii</sup>

Year	Population	Individual Jobs	Sheltered Work	Facility-Based Day	Community-Based Day
2012	3235	383 (12%)	839 (26%)	2572 (80%)	
2017	3232	834 (26%)	78 (2.5%)	1490 (47%)	2473 (78%)

Meaning, over the past six years, Rhode Island has more than doubled the number of people working in integrated employment and reduced the number of people in sheltered workshops by 90%. During the time these people are not working, Rhode Island has shifted from 80% being in facility-based day services to 78% being in community-based day services at least part of the time. And 1,178 people have career development plans.<sup>cix</sup> The average wage for individuals in competitive integrated employment in Rhode Island is between \$10.00 and \$11.00 per hour.<sup>cx</sup>

The state has also reduced its segregated day service population by almost half, dispelling any myth that it has phased out 14(c) employment by populating its facility-based day programs. In fact, it has improved access for more than three-quarters of respondents to integrated supports during the hours that they are not working, including volunteering and other forms of civic participation. Visiting Rhode Island has provided important perspective on how providers have been supported to make significant changes to their employment services, in a relatively short period of time, and how they have offered support to people with disabilities to build and expand personal networks.

### Summary of Activities

On July 9-10, 2018, we visited North Kingstown, Wakefield, and Providence, Rhode Island to meet with leadership, staff, and supported employees of the Perspectives Corporation and the director of the Rhode Island Sheltered Workshop Conversion Institute. The meetings began with a visit to the conference room at the former Adeline LaPlante Memorial Center sheltered workshop. Perspectives Corporation acquired Adeline LaPlante in 2013 and assisted in transitioning its services from a segregated sheltered workshop to a small hub for 77 individuals who receive all of their employment and day services in community-based settings. Perspectives staff reported that it gained the confidence to engage in this transformation effort following its success in 2016 in closing the Perspectives Community Center, another facility-based day program, over the course of 8 months, and moving 49 individuals to person-centered community-based day activities.

At the Adeline LaPlante location, we met with a senior director of the employment program, another senior director, a program manager, a site supervisor, a direct support professional, two community liaisons and two individuals with disabilities supported in competitive integrated employment. We also met separately with the CEO of Perspectives Corporation.

Perspectives submitted a multi-year rebalancing strategy and plan to the Conversion Institute and receives ongoing training and technical assistance to implement it. Using its grant funds, Perspectives expanded its employment department by adding five new

members to its team so that it now maintains three full-time job developers, three full-time career developers, and three full-time vocational specialists. As a result, the agency has placed 160 people into competitive integrated employment since 2015, including approximately 40 placed since January 2018. With regard to the 114 former sheltered workshop's workers, as of June 30, 2018,

- 50 individuals are employed in the community, and/or are receiving supported employment services to find, keep, and maintain a job in competitive integrated employment;
- 28 individuals are engaged in discrete individualized volunteer activities as a result of person-centered plans and the work of staff community liaisons.
- 58 individuals are engaged with the activities department and involved in community engagement activities more broadly including during the hours that they are not working (Note: numbers do not add to 114 because some people are engaged in multiple activities).

**Perspectives**

Agency overall budget: \$30,000,000

In 2010 (Adeline LaPlante):

- 114 people in sheltered workshop

In 2018:

- 25 people in competitive integrated employment
- Average wage in CIE \$10.35
- Average hours in CIE 12
- 28 in volunteer activities
- 77 in community based day activities

We met with one supported employee who formerly worked for years in the Adeline LaPlante workshop wrapping soap in paper in exchange for subminimum wages on a contract with the Bradford Soap Company. She now works in the bakery of a community

supermarket three days per week and earns above minimum wage. She reported enjoying her job and especially her interactions with the market's regular customers. Although she uses Adeline LaPlante as a hub that she stops by on her way to or from work, she reported that she does so to keep valued friendships and social contacts and to touch base with staff, but that she did not want to return to the workshop or to spend more time at the center. Perspectives staff stated that this employee's supports have faded since she obtained her competitive job in the market, and now she no longer needs job coaching. This is in contrast to her days in the workshop when she was supervised through standard 1:8 staffing ratios.

Another supported employee that we met with also used to work in Adeline LaPlante's sheltered workshop, where he wrapped soap, and worked to sort and pack jewelry on contracts with Swarovski and Alex and Ani in exchange for subminimum wages. He now works for a nearby naval base in the mess hall in an above minimum wage job doing dishes, sorting and preparing silverware, serving food, managing and stocking the milk and juice machines, and monitoring the mess hall floor during meal times. He expressed tremendous pride in his job and enjoyment in serving the men and women of the military. So much so, in fact, that he used some of the money that he earned working at the base to buy a camouflage uniform from a consignment shop. He works approximately 13-14 hours per week and conveyed that he enjoys numerous social connections at his job in addition to positive relationships with supervisors and co-workers. He, too, no longer receives job coaching support. During the hours that he is not working, he volunteers at a social service/donation center.

The following day we interviewed the director of the Rhode Island Sheltered Workshop Conversion Institute, which is housed at the State's University Center for Excellence, Rhode Island College's Paul V. Sherlock Center on Disabilities and provides ongoing technical assistance, curricula, and training to all provider agencies in the state, including workshops engaged in modernization, as they expand supported employment strategies while reducing the number of people in sheltered workshops. The Conversion Institute is funded annually through the Rhode Island Department of Behavioral Health, Developmental Disabilities (DBHDD) budget. In 2015 and early 2016, the state's

Sheltered Workshop Conversion Trust Fund distributed \$80,000-\$90,000 to each of the state's nine sheltered workshops to assist them during transformation, for instance, by hiring additional job coaches, coordinators, and job developers. During this time, the Institute assisted the nine workshop grant recipients to develop detailed plans including, among other things, how to build and expand capacity, train and recruit qualified staff, and implement person-centered planning strategies across life domains.

### Observations

After interviewing Perspectives leadership and staff, the critical importance of technical assistance in undergoing transformation was apparent. Perspectives' employment department has received guidance from the Conversion Institute, among other things, on person-centered planning, career development, and the development of a new business model while undergoing the transformation of Adeline LaPlante. Nine members of Perspectives' leadership participated in the Conversion Institute's 18-hour "Person-Centered Thinking" facilitator training based on the "Rhode Island Person Centered Thinking Guide" and sixteen public forums that the Institute held in collaboration with the state DD agency on the subject.<sup>cxii</sup> A core component of Person-Centered Thinking is a facilitator who advises and assists the person with a disability to actively participate in developing a plan for all domains of his or her life. Person-centered thinking requires facilitators to think beyond just the services and supports that are paid for through public funds. This involves a holistic approach to community supports, social networks, experiences, technologies, and opportunities necessary to reach personal goals.

“A big focus in many service agencies is for individuals to participate in community activities. Yet, participating in activities is different than getting to know people. Some of the most common community activities for people who receive services (and for many of us!) are going to restaurants, shopping and movies. Yet, when was the last time you made a new friend at any of those places? A big tip for success is to start shifting our focus, shifting our thinking, from “activities” to “people.” The most important question we can start asking is: “Who are they going to get to know there?” Remember, where will they see the same people, in the same place, over time? How will they get involved with others there, in meaningful ways?”

Perspectives’ commitment to providing integrated supports to its service recipients during non-work hours was striking. According to statewide data, people with disabilities in competitive integrated employment in Rhode Island are working on average 11-12 hours per week. Service providers feel a strong responsibility to support such persons during the hours that they are not working. Many direct support professionals at Perspectives have participated in a multi-session community membership training from Dr. Angela Amado of the University of Minnesota’s Institute on Community Integration, entitled “Friends: Connecting People With Disabilities and Community Members.”<sup>cxii</sup> The curriculum is supported by research demonstrating the need to support people with disabilities to expand their social networks and to broaden their circles of support beyond family members, paid staff, and other people with disabilities. The curriculum recounts how these broader social networks can lead to better health outcomes, stronger inclusion and connection to the community, and, in the long run, economic self-sufficiency and advancement. This curriculum has been added to Perspectives’ new employee orientation. Moreover, in July 2016, Perspectives formed an activities team for the specific purpose of expanding access to meaningful community engagement, membership, and inclusion. The results have been innovative and, in many ways, have challenged the organization to disrupt its own prior practice of relying on a standard



fixed schedule for day programming activities that may not have expanded meaningful relationships with non-disabled community members. Among other things, Perspectives has now created a strategic partnership with Brown University's Swearer Center called the Partnership for Adult Learning Program (PAL). PAL is a continuing education program conducted on Brown's campus where 26 student tutors are paired with adults with I/DD from seven service providers. Through weekly in-person meetings at Brown, students and adults with I/DD develop mutual relationships as they expand knowledge in academics, vocational skills, and hobbies. The partnership enables people with disabilities to access these relationships while also pursuing credentials that will further their pursuit of their own interests, preferences, strengths, and employment goals. Perspectives' activities team also has engaged in partnerships with 28 other mainstream civic organizations to create unified volunteer experiences, like Roger Williams Park Botanical Center, South Kingstown Senior Center, Exeter Public Library, Ronald McDonald House, YMCA, Elks Lodge, Knights of Columbus, unified sports teams and a unified chorus. In short, Perspectives has assisted in creating the same volunteer and recreational opportunities that exist for people without disabilities. These opportunities build relationships between people with and without disabilities outside of paid support staff and widen and broaden social networks, interest areas, and participation in the community. Perspectives has plans to expand the PAL program to the University of Rhode Island in the Fall of 2018.

### Key Success Factors

A key success factor in the conversion of Adeline LaPlante was the availability of qualified trained staff. The agency's senior director for employment is co-president of the APSE Rhode Island Chapter and a member of the RI Employment First Task Force. Receiving the support of Perspectives' CEO, she and all employees of the department are both ACRE certified and have passed the CESP exam. The CEO's leadership was noted as an important reason this level of training exists in the organization, as she took steps to ensure funding to support it, even though staff time to engage in such time intensive professional development is not reimbursable through the Medicaid system.

The CEO described how the organization first committed to its core mission and values, and then rearranged its finances to support that mission. She said that she could not have funded Adeline LaPlante's transformation without this approach. The CEO also noted the importance of ensuring that the organization's funds were diversified so that, even during times when budgets were exceedingly tight, she was able to ensure high quality training and professional development opportunities for her staff. Like others interviewed for this report, the CEO strained to think of how Perspectives could have succeeded in the conversion process without diverse funding sources.

### Obstacles and Solutions to Transformation Success

One core obstacle to transformation appears to be gaining the support of staff that were formerly invested in a segregated model of service delivery to adjust and support change. Adeline LaPlante support staff who had worked there since the early 1980's told us that they had become so accustomed to the sheltered workshop that they were, at first, somewhat resistant to its transformation. They worried that people would lose the social connections and support that they found at the workshop. However, they also noted that the workshop was often out of viable contract work and people were not engaged in many sustaining work activities during the day, even though they wanted to work. Because they saw the change as likely inevitable, they supported the transformation efforts despite their fears. They now appreciate the growth and progress they have seen in the lives of people placed into competitive integrated employment, while recognizing the importance of people with disabilities still having a meeting place, like the hub, to check in and receive support and social connection with peers with disabilities, if and when they would like to.

Leadership and staff noted the difficulty of organizing schedules, especially for transportation, in the new less centralized model. The logistical aspects of arranging staffing schedules, attendance, and vehicles have been challenging while trying to recruit, hire, train, and retain qualified staff. Perspectives leadership noted that the state is in the midst of a direct support "staffing crisis," because it is hard to secure and retain qualified staff with the wages paid currently to direct support staff. The director of the

Conversion Institute noted that Perspectives has one of the lowest direct support staff turnover rates in the state, but still, on some days there are insufficient staff to support some people in the community for the full day and people have to be limited to half a day of activities. As a short-term solution, Perspectives has offered staff overtime, enlisted additional drivers, and worked to identify volunteers to support individuals with disabilities in some community engagement activities.

Another difficulty is that across Rhode Island, people with disabilities are being placed in jobs in industries that require unskilled manual labor rather than in emerging industries of the future. For example, according to a statewide survey, of the individuals with I/DD who worked in integrated employment in Rhode Island in the fourth quarter of 2017:

- Approximately 19% worked in janitorial or housekeeping jobs;
- 13% worked as stock clerks or on a sales floor and in a stockroom;
- 11% worked as baggers or in carriage retrieval jobs;
- Nearly 8% worked in food service jobs; and
- 8% worked in dishwasher jobs.

These are precisely the jobs that economists fear will be disrupted and displaced by machines. In contrast, very few people worked in jobs that involved technology of any kind or were information based:

- 1% worked as a data entry keyer,
- 1 person was a social media specialist, and
- 1 worked as an automotive technician.

Perspectives has established a relationship with the Rhode Island Department of Labor and Training (RIDLT), which has awarded workforce development grants to incubate and expand supported employment business models and self-employment using public

workforce system funding. Perspectives signaled its interest in further collaborating with RIDLT to expand public-private partnerships to support launching people with disabilities into the information and technology-based industries of the future, including through apprenticeships and on-the-job training.

In meeting with both Perspectives staff and the Conversion Institute director, we learned that benefits counseling was also crucial to assisting individuals with disabilities and their families to overcome the myths about the impact of work on public benefits. The Institute has sponsored a Benefits Counseling Pilot, where thirty-eight (38) individuals supported by Perspectives received detailed benefits plans through a Certified Work Incentive Benefits Counselor. Prior to this pilot program, however, there were nearly half as many resources available in Rhode Island for benefits counseling, and even fewer counselors that were certified.

## **2. Maine**

### Purpose of Visit

Maine was selected because it has significantly decreased its reliance on sheltered workshops while building strong models for supported employment. In 2006, Maine created a waiver program that expands supported employment services for people with I/DD, while reducing funding for sheltered workshops.<sup>cxiii</sup>

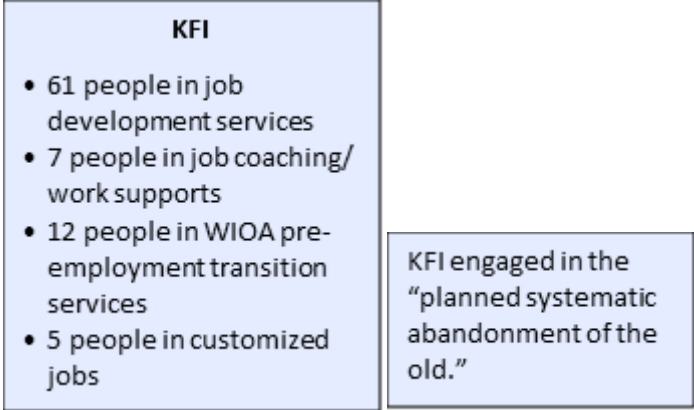
### Summary of Activities

On July 24-25, 2018, NCD visited Portland, Maine to meet with the Executive Director and two employment specialists from KFI, Inc., a supported employment agency headquartered in Millinocket with satellite offices in Portland, Lincoln, and Bangor, Maine.

### Observations

KFI is a small, non-traditional organization premised upon personalizing supports for people with disabilities. While KFI assists people with disabilities to build community and expand social connections, it does not run a day program. Likewise, while it assists

people with disabilities to find jobs or to develop their own business, it does not run a sheltered workshop or serve as the employer-of-record for group employment or enclaves. This commitment to being entirely community-based and person-centered has made this small organization a key player in providing technical assistance to other providers across the country that are interested in transforming their service models away from 14(c) employment.



KFI’s success in providing technical guidance began 15 years ago when it was selected by the U.S. Department of Labor’s Training and Technical Assistance to Providers (T-TAP) grant program, to guide other organizations in transforming their service delivery models away from 14(c) employment, and more recently, in 2015, when its CEO became a Subject Matter Expert for the DOL’s Office of Disability Employment Policy Employment First State Leadership Mentoring program. Without these resources, it was noted that it would be difficult to bring the lessons learned from rural Maine to agencies across the country that are beginning the process of modernizing their services.

In its earliest days, KFI did run a sheltered workshop. In 1974, the organization received a 14(c) certificate for the Katahdin Workshop in Millinocket, a vocational program for students ages 20 and over who had “aged out” of school special education services. The workshop was in the basement of the Katahdin School. The Katahdin Workshop obtained contracts to make leather utility knife cases, wooden seedling racks, and utility clothes from recycled clothing for the Great Northern Paper Company, the town’s largest employer. In 1981, with federal funds from the Bureau of Rehabilitation, the organization purchased a building to open Earl Bruce Industries, a sheltered workshop

where people with disabilities worked in industrial furniture stripping and refinishing. But in 1986, the organization's leaders were challenged to reassess their service model, after receiving a grant from the state developmental disability service agency to establish individual supported employment services. That year, the agency made its first competitive job placement when a person was hired as an Auto Reconditioner by K&K Motors in Millinocket. By 1989, KFI leadership decided that it could sustain a purely supported employment model that was better aligned with the interests and preferences of its clients. That year, it abolished sub-minimum wages and by 1996, KFI abandoned all center-based services including in its day program and group/enclaves. The Executive Director underscored the importance, in undergoing organizational change, of drawing clear boundaries about what the organization will no longer do.

The Executive Director commented that, understandably, there would always be resistance to change on the part of parents and families because people have historically equated bricks and mortar with safety. But she said, when the bricks and mortar are gone, families realize that there is more safety in meaningful relationships in the community than there ever was in the facilities, themselves. She noted that KFI performed consistent outreach to families as well as to the individuals they supported during this change. There was also very intentional peer-to-peer support offered by people who were formerly in the sheltered workshop who found jobs. She saw many family members' views evolve as they witnessed people begin to work and fully participate in the community. In addition, she reflected that intentionally selecting spaces is important for any agency intending to transform their services, as a large program space will almost always result in a large number of people populating it, whereas smaller spaces or office spaces will make this not possible and promote greater inclusion in the community. Indeed, the KFI office that we visited in Portland, Maine was tiny, with only one modest conference room and a small office large enough for a single desk and computer.

KFI's Executive Director credits the organization's ability to change, to the success observed in the earliest employees placed in competitive integrated employment. The early successes caused staff to question the efficacy of vocational training provided in

segregated spaces. They reflected that the sheltered workshop taught few of the skills that individuals were using in their competitive jobs, and that people were better able to learn these skills on the job. Likewise, staff began to question why people with disabilities needed to participate in daytime activities in those same spaces when they could be supported to engage in their community in activities they preferred at times and with people they chose when they were not working. In other words, KFI's Executive Director noted, they just decided to support people, and not groups, and work with one person at a time with a focus on real homes, real jobs, and valued social roles.

KFI told clients clearly  
"Don't come to us. From  
now on, we'll come to  
you."

KFI supports 66 people in combinations of customized employment supports, home, and supports for other activities. In the third quarter of FY 2018, 41% of all the people served maintained individual competitive integrated employment; while 77% of the people they served joined a community group, club, or class; and 71% volunteered for a non-profit or other community entity (averaging 510 hours of volunteer time per month). KFI maintains 95 full-time staff and 35 part-time staff (including 104 direct support staff and 26 administrative, supervisory, clerical and other staff).

KFI supported one woman to start her own vending machine business. She was especially interested in meticulously and repeatedly matching various objects by shape and size. KFI assisted her to meet with the Small Business Association to develop a business plan and then take the plan to VR to fund her for self-employment. She now runs her own business restocking and filling vending machines. Another person with I/DD who was accused of being a "slow worker" in the sheltered workshop became "a raging success" working competitively in a family restaurant. He was better matched, and therefore performed better, in a job where he could interact with customers. As a result, his paid supports were reduced to just 7 hours per week.

Key Success Factors

KFI now approaches its core mission as assisting people with disabilities to have as many opportunities as possible to become regular members of their communities including by working in mainstream businesses and participating in other civic, social, and recreational activities. To do so, the Executive Director noted several important strategies. She stated that it was critical that the organization committed to values-based decision-making. Each decision that KFI makes, whether big or small, is held up against its overall commitment to support people with disabilities to be fully included in the community in socially valued roles. She also stressed the importance of seeing supported employment organizations like KFI as professional collaborators. Unlike sheltered workshops, where the service provider is also the employer, in KFI's model, the agency is the linking organization between a person with a disability and the experiences, contacts, networks of support, and allies that they need to find a job, the supports needed on the job, and complementary activities to engage in during the hours that they are not working. In this regard, the agency is first and foremost a collaborator with the person with a disability, as the client drives his or her own life choices. While KFI is not supplying the experiences, they are supporting people to find them. Moreover, KFI tasks itself with being a collaborator to cultivate allies within state government, the business community, and social and civic organizations to support this goal on an ongoing basis. Finally, she stressed the importance of showing the benefits of employment once people are placed in competitive jobs, including the related cost-efficiencies.

For example, one person served by KFI was described as incredibly expensive to serve because he had significant behavioral issues that resulted in his moving between numerous foster homes. He received 1:1 supports in a day program. KFI began to serve him and identified his preference for living alone in an apartment, but some professional staff believed he should not live alone because he might experience behavioral outbursts or require continuous paid supports in case of emergency. KFI helped him find a centrally located apartment that was next to an all-night taxi dispatcher's station. It solved a problem; if he broke things, they were his own things, and if he needed assistance in case of emergency, there were people next door 24 hours per day, who eventually became his friends and natural supports. As a result of this move, the



individual's behaviors subsided significantly, and he was able to more fully participate in community life and maintain many social connections, at far less cost.

### Obstacles and Solutions to Transformation Success

The Executive Director stressed the importance of flexible funding during transformation. The state allowed KFI to “unbundle” services, which allowed them to fade services in order to address the specific needs of each individual as they came up, thus creating individualized supports for each person served, while also allowing reallocation of unused funding to other people in crisis or with acute needs. This created flexibility and cost efficiencies that generally do not exist in Medicaid rate systems in many states today. She also noted the importance that bridge funding played in incubating new models, reflecting upon the importance of initial grant monies to experiment with supported employment services, and to discover those practices that were more likely to work.

KFI leadership and staff noted that many organizations make the mistake of worrying that they cannot modernize their services until they have enough money to do so. While infrastructure support is crucial, KFI believes an organization can use the money it already has wisely to take concrete steps to change service models. In FY 1996, the same year that the agency decided to end all center-based activities, KFI had projected revenues of \$755,293 and projected income over expenses of \$3,804 with 81% of total costs attributable to personnel. At the time, the organization had 43 staff members. It continued on course to commit its money toward qualified staff and community placements rather than larger physical plants and fewer trained staff. In FY 2019, KFI has projected revenue of \$6,000,000, with a projected income over expenses of \$391,000, and 77% of projected costs attributed to 130 trained staff. According to the Executive Director, this not only makes sense as a values proposition, but being entirely community based is altogether a better business model.

### **3. Vermont**

#### Purpose of Visit:

Vermont was selected because it stopped funding new entrants to sub-minimum wage employment in 2000, allowing for a three-year phase-out period to shut down existing sheltered workshops. This transformation began in 1983 when Vermont began to provide supported employment services to people with disabilities. By 2003, Champlain Community Services (Champlain) was the last sheltered workshop in the state to close. Afterwards, agencies fully transitioned to providing supports to people with disabilities in competitive integrated employment. Over the past two decades, Champlain has become a leader in the nation for providing individual supported employment and customized employment services, and the state of Vermont has named it the state's top supported employment initiative for each of the last seven years. In February 2017, the Executive Director of Champlain along with the director of the Vermont Sheltered Workshop Conversion Institute at the University of Vermont traveled to a United Nations meeting in Austria, with other Vermonters, to receive an award from the Zero Project recognizing the state for its progress in integrating people with disabilities into the workforce.

### Summary of Activities

On July 26-27, 2018, the team visited Burlington and Colchester Vermont to meet with the Executive Director of Champlain, Champlain employment staff, and the director of the Vermont Sheltered Workshop Conversion Institute. Like other providers discussed in this report, Champlain provides services for people to obtain competitive integrated jobs and to engage in meaningful activities during the hours they are not working. It currently runs no facility-based employment services or day programs. Champlain also assists people with disabilities to be entrepreneurs.

### Observations

"For Champlain, clients are clients, and employers are clients too."

Champlain’s employment program, called Way2Work, is an economic empowerment agency by and for people with disabilities, local employers, and families. Champlain engages in a person-centered process of Discovery<sup>cxiv</sup> with each person served by their program, inventorying interests and preferences and supporting them to find strong job matches in competitive integrated employment. Importantly, the agency also engages in an individualized process with local employers to inventory their business needs. Like Rhode Island, Maine, and other states, Vermont’s economy is highly dependent on small businesses and “mom and pop” operations. Way2Work has experienced great success in assisting local employers and small businesses to: (1) identify inefficiencies in their businesses, (2) incubate better training models, (3) diversify their workforce, (4) enhance workplace culture and communication, and (5) create industry specific training and adaptive technology for their employee(s) with disabilities, at no cost to the employer. In this regard, it is a valued community partner as much to employers and small businesses as to the employees with disabilities that it supports.

Way2Work participates in the Vermont Supported Employment Consortium, a partnership of supported employment professionals comprised of 16 agencies including the Vermont Association of Business, Industry, and Rehabilitation, along with Vermont’s DD, VR, and education agencies and post-secondary professionals.

To be successful, a supported employment agency must be *of* the community, not just *in* the community.

The evening that NCD arrived in Vermont, Champlain was hosting a fundraiser at a local tavern. The Executive Director remarked that, while the money is useful, the principal reason that Champlain hosts such events is to remind the entire community, including local business, people with disabilities, and others of Champlain’s value to it and, in turn, their value to Champlain, reinforcing a sense of belonging. Champlain aims to serve as a bridge between talented workers with disabilities and local employers in the community that it serves.

## Key Success Factors

“There has been a discernible shift in the expectations of families of youth with disabilities, one that moved from, ‘my child is unemployable,’ to ‘my child has a right and responsibility to work.’”

### **Champlain Way2Work**

- 70 staff, including 45 direct support professionals
- 46 people placed in competitive integrated jobs in 2017
- 85% of people served are employed
- works with nearly 60 businesses
- When its entrepreneurs program began, Champlain supported 5 people with disabilities in self-employment, and now supports about 25 people.

Champlain staff described the success of its school transition program, “School2Work,” as a key factor in launching young people into competitive integrated employment. In this program, the agency provides transitioning high school students with comprehensive tools to find, seek, and obtain competitive integrated employment prior to leaving school. The Executive Director explained that the organization has seen students with disabilities and families fully embrace competitive integrated employment over the past decade. Without the availability of segregated service models, she remarked that students with disabilities have grown up in Vermont having assumed high expectations for themselves, and received the curriculum, instruction, and work-based learning to work in competitive integrated employment.

Another key success factor has been Champlain’s innovative supports for self-employment. In 2007, Vermont received a three-year Medicaid Infrastructure Grant to support self-employment initiatives for people with disabilities throughout the state. Building on the success of that program, Champlain has committed resources to supporting people with disabilities to be entrepreneurs and to customize their own businesses. For example, a 28-year-old woman with I/DD started a horse treat business, Nickerling Nuggets, where she sells preservative-free peppermint flavored horse treats to horse owners and boarders at a cost of \$3.00 per bag of 10. Nickerling Nuggets is one of five micro-businesses in the incubation stage, supported by

Champlain. The start-up owner bakes the treats, mixing oats, molasses, peppermint oil, wheat flour and water together, making two to three batches of 24 cookies at a time, to create enough product to sell to local stables. Prior to her business' launch, Champlain provided supports as she developed product molding, branding materials, a recipe, and chose among various product design considerations like taste and the longevity of the treats. Then she undertook an outreach and marketing strategy to convince barns to carry her product. Champlain has assisted her to certify her business with the state. Nickering Nuggets was a strong job match for the owner because of her interest in animals and the therapeutic benefits of working with them, as well as an opportunity for her to deepen, strengthen, and expand her social interactions, business formulas, problem solving, and independence.

#### Obstacles and Solutions to Transformation Success

The Executive Director of Champlain and the director of the Vermont Sheltered Workshop Conversion Institute noted that, like other places, Vermont is undergoing a direct support staffing crisis. Champlain incurred the expenses of high turnover in the past. In FY 2017, however, it was able to reduce staff turnover from 42% to 30%. Because salaries and benefits make up the majority of Champlain's annual expenses, reducing the cost of re-training and acclimating new employees to the values, training, and objectives of the organization is significant. To address the high turnover rate, Champlain began to provide professional development and training opportunities, pay incentives, benefits plans, and even a microloan program for support staff. The money to support these changes came from additional fundraising and contracts over and above the funds acquired through Medicaid.

#### **4. Massachusetts**

##### Purpose of Visit:

Massachusetts was selected because within the past five years it has announced its commitment to rebalancing its employment service system. In November 2013, the state issued the Blueprint for Success, a statewide plan that committed to closing the

front door of workshops to all new referrals and phasing out sheltered workshops by a date certain, while transitioning individuals into integrated employment.<sup>CXV</sup>

Summary of Activities

On July 26-27, 2018, NCD visited New England Business Associates (NEBA) in Springfield, Massachusetts where we met with NEBA’s Executive Director, finance director, HR specialist, and program director for employment services. NEBA focuses on the employment needs of people with disabilities and their communities in Massachusetts and Connecticut. Founded in 1983, NEBA has never paid subminimum wages or operated a sheltered workshop.

Observations

**NEBA**

- \$3.2 million annual budget
- 254 people with disabilities served annually – in employment, self-employment, skill-building, and community inclusion
- 9 people assisted to start businesses in 2017

NEBA’s services are designed to support people with disabilities to: (1) achieve competitive integrated employment based on their individual preferences and needs; (2) expand and strengthen natural supports; (3) maximize work hours; and (4) experience integrated community settings during the hours they are not working. NEBA also specializes in comprehensive services to assist people in self-employment and entrepreneurship.

NEBA receives revenue from the State’s Department of Developmental Disabilities, the Massachusetts Rehabilitation Commission, the Bureau of Rehabilitation Services, the Department of Transitional Assistance, and local school system contracts.

“We are detectives for integration.”

The most striking aspect of NEBA, and its agency and staff, is its clarity of purpose in the role it plays in the lives of the people it serves. Like other organizations profiled in this report, NEBA is neither the employer nor principally a “place” for people with disabilities to go. Instead, in the words of one staff person, the agency is “a work around” from the facility-based employment model, as its employment consultants begin with each person and work to support them to find the people, services, and supports they need to succeed in competitive integrated employment and career advancement.

To support its highly individualized service model, NEBA has diversified its funding sources, to include, not just the developmental disability and VR service agencies, but also the Massachusetts welfare system and contracts with various school systems to provide transition services to youth with disabilities. The agency supports people with disabilities to find competitive integrated employment in a range of industries and work settings. For example, NEBA has supported people with disabilities to find, obtain, and retain competitive integrated employment in retail establishments, and in the service, clerical, hospitality, customer service, childcare, and direct support industries.

The fact of someone working can often transition them in the mind of the family from “an eternal child to now a responsible adult.”

The Executive Director and NEBA staff commented on the growth in confidence, self-worth, and sense of inclusion observed when people with disabilities enter competitive integrated employment. The Executive Director said that employment is transformative for the people they serve and for families too. In particular, she stated that families’ viewpoints often change from hesitance about working in the community to full support after they see how successful a family member can be in a typical work setting, and how that success can run to other domains of life. In the Executive Director’s view, employment can give family members a new vision for what it means for a son, daughter, or sibling to engage in age-appropriate roles.

Leveraging its own entrepreneurial spirit, NEBA has supported people with disabilities to be entrepreneurs and to create start-up businesses. For example, one person was supported by NEBA to start his own web design company. He was deeply interested in computers and had trouble finding employment with more traditional technology companies. NEBA referred him to an Information Technology Specialist to help him expand his skills with web design, assisted him to learn about small business ownership through a course at a community college, and helped him complete the paperwork to start a small business. He then began a start-up web design company and grew a client base, which has expanded to over 30 regular clients in Western Massachusetts.

NEBA staff commented on the power of self-employment and entrepreneurship to allow people with disabilities to capitalize on their unique talents, experience a high level of customization in their jobs, and build independence, personal autonomy, and financial freedom. However, they lamented the barriers that remain for people with disabilities to access the public workforce system to incubate new businesses. While NEBA helps link people with disabilities to the resources necessary to create small businesses, they said that many more people would benefit from more formalized relationships between the Small Business Administration, VR, providers, and people with disabilities, and from new sources of unprogrammed “start-up” capital to create such businesses.

- 418 people with disabilities received skills training in 2017
- 416 were placed in competitive integrated employment
- Annual income of the 418 people = \$3,968,401
- State revenue estimated savings = \$5 million over 2 years

For both self-employment and other competitive integrated employment, NEBA’s Executive Director described a strong job match as not only vital to supporting people with disabilities to acquire positive socially valued roles, and inclusion in the community, but also as something that makes good economic sense. In 2017, NEBA established or continued partnerships with 639 employers, assisting them to inventory their business’



needs, create greater efficiencies, utilize better training and supports, and diversify their workforce at no cost to the employer. In addition, nine people with disabilities were supported to start small businesses.<sup>cxvi</sup> NEBA staff also described youth emerging from school transition programs as increasingly ready to work in competitive integrated employment, with the highest expectations, and on average less expensive to serve while producing significant returns to the local economy.

“Supported employment is a vital economic stimulus for the whole community.”

NEBA has calculated that the average cost of services per person referred by the VR system is \$5,000, while the same persons in NEBA’s programs are earning, on average, \$12,600 per year. Taking Western Massachusetts as an example, NEBA’s clients are working in a range of jobs and industries, at average wages of \$11.05 per hour for 20 hours per week. With NEBA’s assistance, numerous individuals have obtained jobs at or near 40 hours per week.

### Key Success Factors

According to the Executive Director, much of the agency’s success is possible because of the high quality of their staff. NEBA staff are inventive and inquisitive in matching people with jobs that correspond to their preferences and strengths, and they demonstrate a high level of flexibility and personalization in how they provide services. Some NEBA staff, like the HR specialist, formerly ran small businesses of their own, and identify and relate to the unique needs of businesses and the importance of a strong job match. This combination of out-of-the box thinking with understanding business’ needs is what precipitates, in staff’s view, strong employment placements.

For example, staff explained that they support a non-verbal individual with autism who was formerly labeled by VR as unemployable. This individual had significant behavioral support needs, and during his placement in a sheltered workshop, he was documented to have “beaten himself up” almost every day. He was then referred to NEBA where an

employment consultant began to explore his preferences and interests. The consultant observed that anytime he walked near houses in a residential neighborhood, the individual wanted to stop to look at storm doors. He was fascinated with the shape, design, and composition of the doors. NEBA supported this individual to obtain competitive integrated employment. During the hours that he is not working, they support him to go to Home Depot as a way to utilize his interest in storm doors to work on his social pragmatic language skills. The individual's behaviors subsided, and he is now communicating verbally and no longer receives speech and language services. Since he began going to Home Depot, he has established relationships there, and is interested in seeking employment there in the future. According to the employment consultant, working has become a virtuous cycle, as he now sees the relationship between his behavior at work and his ability to earn a paycheck; his paycheck has taken on new value to him, now that it is substantial enough to fund his participation in other integrated and recreational activities in the community; and the more fully included he is in community activities the fewer behaviors he experiences, making it easier for him to sustain his job.

### Obstacles and Solutions to Transformation Success

NEBA staff described how the limitations of the Medicaid rate structure could often be a barrier to competitive integrated employment. NEBA's Executive Director described a notable difference between the Medicaid rate structure in Massachusetts versus Connecticut in creating incentives for supported and customized employment services for people with disabilities. With its programs in Connecticut, NEBA is paid an incentive rate, on top of a lower base rate, based on outcomes, including how many people are placed in competitive integrated employment and the number of hours that they work per week. In Massachusetts, however, they are paid hourly rates based just on face-to-face time with clients. In the latter formulation, NEBA is penalized for the increasing independence of its clients and their use of natural supports once people are stabilized on the job and no longer in need of as intensive supports. By contrast, in Connecticut, the agency is incentivized to help the client to work as independently as possible, for the maximum number of hours per week, and for supports to fade. These different rate

structures have produced different outcomes overall between the two states. For instance, the number of hours worked per week by clients in competitive integrated employment in Connecticut is higher than Massachusetts.

In addition, NEBA staff described the lack of certified benefits counselors as a barrier to transitioning more individuals into competitive integrated employment. Often, NEBA staff have observed people who can, and likely should, transition off public benefits, but who lack the individualized benefits counseling to help them do so or maintain fears about the ramifications of losing their healthcare.

## West Coast Tour

### 1. Oregon

#### Purpose of Visit

Oregon was chosen because the State has been working to systemically transform employment services for people with I/DD from facility-based subminimum-wage models to community-based competitive integrated employment since 2015. As of 2015, small-group employment in Oregon is required to be paid at or above the state minimum wage.<sup>cxvii</sup> Sheltered work in Oregon continues to be payable at subminimum wages. Data regarding employment outcomes for people with I/DD show substantial increases in individuals with I/DD entering competitive integrated employment over the past three years, as well as decreases in the number in small-group and facility-based work.<sup>cxviii</sup> Average wages in September 2017 in competitive integrated employment in Oregon were nearly \$11 per hour (above the then-current standard state minimum wage of \$10.25).<sup>cxix</sup> Wages for sheltered workers were less than \$6 per hour.<sup>cxx</sup> Because Oregon specifically supported sheltered workshops to transition to supported employment services in competitive integrated employment, Oregon offers useful insights into how providers can transform their service models and barriers to such transformation.

#### Summary of Activities

On July 30-31, 2018, NCD visited McMinnville, Hillsboro, and Portland, Oregon to meet with employment service providers, disability groups, employer associations, experts, and other stakeholders.

**MV Advancements**

3 years ago

- 88 people with I/DD in Wood Products and Industrial Services workshops.

Now

- 123 people in CIE
  - Average wage = \$11.41
  - Average hours = 21/week
- 76 people in small group
- 10 at Serendipity ice cream store (Employment Path Community)
- Industrial Services closed
- No subminimum wage work

NCD visited MV Advancements<sup>cxvi</sup> in McMinnville, Oregon, a rural area in the Northwest of Oregon between Portland and Salem, on July 30, 2018. The visit began with a meeting with leaders and staff of the organization in the conference room at the site of its wood products shop, which formerly operated as a sheltered workshop. After the meeting, NCD toured the wood products shop, which builds wooden pallets, shipping crates, and bins for commercial clients. MV Advancements also had an Industrial Services facility, in which employees with disabilities engaged in repackaging, production and shredding, which had closed on June 28, 2018. NCD also drove by the MV Advancements ice cream shop, which is operated by individuals with I/DD. MV Advancements also offers residential services and three facility-based day programs. MV currently supports 123 people with disabilities in competitive integrated employment, 76 people in small group supported employment, and 10 people with “employment path” supports in the community. As MV Advancements closed its workshop programs, of the 88 workshop workers, initially 32 people moved to small group employment, 12 obtained integrated employment, 12 moved to day support, 2 entered job development, 13 retired or exited services, and a few are unknown. MV

Advancements used small group employment as a stepping stone from the workshop to competitive integrated employment, if it was clear that it was a short-term setting.

**TVW**  
Budget - \$6,089,817  
3 years ago

- 87 people in workshop

Now

- 52 people in workshop (closing March 2019)
- 80 people in CIE (37 transitioned from workshop)
  - Average wage = \$12.13
  - Average hours = 13.3/wk
- No subminimum wage

Later that day, NCD met with Tualatin Valley Workshop (TVW)<sup>cxix</sup> in Hillsboro, Oregon, including the Executive Director and staff of the organization and toured the workshop facility, which assembles and packages various products. When NCD arrived, employees with disabilities were leaving for the day and one person stopped the team in the parking lot to spontaneously announce that she was getting a new job on Friday clearing tables and washing dishes at a restaurant. She was very excited about the new opportunity for community-based employment. TVW has reduced its sheltered workshop census, with approximately 37 people with I/DD transitioning to competitive integrated employment. TVW plans to close its workshop in March 2019. TVW also offers day services, a janitorial service that pays competitive wages and is open to both individuals with various types of disabilities and without disabilities, and recently entered into a partnership with a local school to offer community-based transition services for students with disabilities. TVW found it challenging to maintain the two service models, which require different staff skills and have different funding mechanisms, at the same time during the transition. In addition, it found starting the supported employment program, which is funded by after-the-fact reimbursement, to be difficult and bridge funding was important to get started. TVW faced significant resistance from families at first, but after transition, employees with disabilities and their families report that, they

had never thought they would be able to work in the community, but they are happy with the results and have greater confidence, independence, and financial health, along with an improved quality of life and greater networks of colleagues and friends.

**Wise**

Supported employment  
Technical Assistance  
provider for Oregon and  
Washington

- Develops innovative best practices in supported employment
- Provides immersive technical assistance to government employment systems and service providers
- Provides developmental training to supported employment staff

On July 31, 2018, NCD met with representatives of the Oregon Manufacturing Extension Partnership (OMEP), an association of manufacturing industry employers based at the National Institute of Standards and Technology, to discuss their human resource and labor needs, their approaches to technology, onboarding, on-the-job training, and their awareness of the state’s efforts to support employees with disabilities in integrated jobs. Manufacturing Extension Partnership is a public-private partnership working in all 50 states and Puerto Rico and works with 1,300 manufacturing experts at over 400 service locations. NCD then met in Portland with a group of Oregon stakeholders, including employment services providers, disability organizations and advocates, family groups and experts in supported employment. NCD also met with the Executive Director of WISE (aka Washington Initiative for Supported Employment),<sup>cxixiii</sup> which provides Oregon and Washington with expert technical assistance to the states and employment services providers regarding transforming workshops and increasing competitive integrated employment.

Observations

Service providers in Oregon who are several years into transitioning segregated subminimum wage employment programs to competitive integrated employment programs noted that such a transition process is important to the goal of ensuring that all people with disabilities can benefit from supported employment services, not just people who are newly entering the employment services system. These service providers agreed that the workers in their workshops were capable of working in competitive integrated employment with the right supports and opposed any suggestion that current sheltered workers should remain in workshops while new entrants were diverted to competitive integrated employment. They emphasized that no one should be left behind in the move toward competitive integrated employment. These providers were committed to the people who use their services, not to the sheltered workshop model, and were happy to engage in transformation for the benefit of both new entrants and people for whom the state had previously funded workshop services. Some were concerned that initial discussions about disability employment services in Oregon sometimes portrayed all service providers as having low expectations for their clients, insisting on the sheltered workshop model for business or profit reasons, or opposing greater opportunities for people with I/DD. The interviewees reported that this perception made some providers less willing to engage in transformation.

“We can’t protect people from real life. We employed a person with a serious hygiene problem [in a workshop] for years without consequence. We didn’t prepare him for the real world. We own that.”

Service providers, as well as advocates and experts noted that transition to competitive integrated employment is often more difficult for people who have worked in segregated settings, not necessarily because of their disabilities, but because they have been acculturated to a workplace that differs significantly from integrated workplaces and that is not generalizable to the experience of working in a mainstream place of employment. For example, the employment relationship in a workshop often hinges more on

supervision and day custody than on a concrete set of job requirements and expectations. As such, disruptive behaviors, poor hygiene, and unexplained absenteeism in sheltered workshops are often allowed to continue. In addition, workshops often cultivate dependence, not only for work activities, but for meals, social activities, and transportation. Therefore, service providers stated that it often takes longer, more intensive, services to help a sheltered employee develop new expectations, soft skills, and work behaviors that are suitable to the competitive integrated workplace. Because of this, some providers felt small group employment in an integrated setting was useful as a temporary interim bridge placement between sheltered work and fully integrated work in order to allow workers to learn and practice new work habits and expectations more appropriate to competitive integrated workplaces. However, they were clear that such interim group placements should be short-term (“a service, not a job”), with a clear expectation that the end goal is competitive integrated employment. Other national subject matter experts that we interviewed for this report strongly cautioned against using group supported employment as a stepping stone, referring to longitudinal data in several states, such as Wisconsin, that show that using group supported employment as a bridge has significantly increased the group employment population long-term and has not increased competitive integrated employment. In their estimation, the best way to learn soft skills for jobs in the mainstream economy is on the job. Their observations confirm that segregated placements are not effective as a stepping stone to competitive integrated employment, and people with disabilities, regardless of severity, were more easily supported when they transitioned directly from school to competitive integrated employment.

Providers, experts and stakeholders agreed that simply raising the wages in sheltered workshops would not be sufficient to equip workers with disabilities for mainstream employment, because of the divergence of expectations from integrated jobs, the limits on soft skill development in workshops, and the suppression of long-term advancement and pay raises in workshops. Moreover, stakeholders and experts agreed that closing the front doors to the workshops by not permitting new entrants was important to make transition more effective. In addition, providers observed that the risk and consequences



of being fired from a competitive integrated job can be a strong motivator for people with (and without) disabilities to improve their workplace behavior and productivity and illustrates that it is important that expectations and services not depend on the success of a single initial placement. Service systems must recognize that not every job is a good fit and be prepared to continue services until a good job match is found, as well as to support promotion and job changes.

### Key Success Factors

“We don’t knock on [businesses’] doors asking for favors. We knock on doors with solutions.”

When asked about key factors in successful transformation, the service providers emphasized the need for positive, committed leadership following principles that value integration for the people they serve and that begin with the presumption that competitive integrated employment is achievable. At both MV Advancements and TVW, new leadership brought a positive, committed approach to transformation and implementing the new model of services. Both of these providers possess a very apparent creativity, positive energy, and willingness to explore and try new approaches in the transformation. In addition, the providers who were most successful at transformation took a business approach, rather than a social work approach, to transformation. Their goal was to serve both their sets of customers – their clients with disabilities and the businesses with whom they placed and supported employees. These providers approached potential employers with a business proposition – to help meet their real needs, and provide real added value, by providing qualified employees – not a charitable request. These providers also saw that most new entrants to the disability employment system no longer seek segregated subminimum wage employment, and the service providers must respond to that dwindling demand. Some expressed skepticism that sheltered workshops could be sustainable in the face of such a changed market, particularly without federal subsidies and subminimum wages.

"Sheltered workshops are on the Titanic headed for the iceberg. We know it's going to sink. We need to build more life boats and get people in the life boats or we'll all go down with the ship."

A key factor in successful transformation was access to expertise, quality technical assistance, and core competencies on how to accomplish the change and successfully implement the new model. A goal of closing a workshop was not sufficient without resources to show how a new model could be achieved. In Oregon, the providers were grateful for the expert assistance they received from the state-funded Transformation Project, which showed them what was possible and how to achieve it. All stakeholders and experts in Oregon also emphasized that another key factor in transformation was Oregon's provision of several years of flexible grant assistance as bridge funding through the Transformation Project. These transformation grants allowed providers to purchase what they needed to build their new model, even while gradually closing the old model. Providers used these funds to hire job developers and employment specialists, to train workshop staff in new service models, to adapt the tools used by experts to meet their particular needs, and fill service gaps to support individual job placements. Providers who transitioned from sheltered programs to competitive integrated employment programs in Washington and other states prior to Oregon's current initiative noted that these grants sped up the process of transformation substantially (from over 8 years to approximately 3 years). Stakeholders noted that early transition funding needs to be flexible and may be more effective if limited to providers who demonstrate a real commitment to transformation. However, they also discussed that some providers' initial grant applications might not have met that test at the time of their applications but eventually, thanks to the grants, developed the necessary momentum and commitment and were successful. Stakeholders suggested that in later years of transition, grants should be tied to outcomes.

Providers in Oregon also noted that having or developing a diversity of funding sources, such as fundraising, fee-for service, business income, as well as having financial expertise, was important as transformation took hold, particularly in the early stages. All the providers NCD spoke with were clear that the new individual placement model was financially sustainable without maintaining a sheltered workshop. They also indicated that repeated changes to government service rates created unpredictability that made it difficult to adjust.

The providers stated that their physical facilities were an asset to them in transformation because they owned the buildings and equipment and could sell them, lease them, or repurpose them in ways that supported the new service model. They also found that their existing staff at the workshops were sometimes able to transition to the new model effectively and sometimes were not and that, early on, it took substantial time (6 months to nearly a year) to re-train workshop staff to provide supported employment services in competitive integrated employment. Supported employment experts agreed that workshop staff could be retrained to provide supported employment services if they were motivated to make the change. Some of the delay is caused by the paucity of approved training and certification providers (e.g., Virginia Commonwealth University training and Cornell training), so the service providers have used new options for training to speed up their staff's achievement of productivity. They found that whether existing workshop staff could make the change depended on the person's values, skills, and commitment. Regarding hiring new supported employment staff, some providers and other stakeholders found that individuals with customer service, marketing and teaching skills were often a better fit for the work than traditional social-work skills. Experts in supported employment services agreed that supported employment professional jobs compete with customer service, marketing, teaching, and vocational rehabilitation careers for applicants, so they need to be paid at those levels in order to attract quality staff.

“There’s no such thing as ‘most.’”

The Oregon providers found that employers in a wide variety of industries with a wide variety of jobs were hiring supported employees. There was no one industry where “most” people went. MV Advancements also found that some of their sheltered workshops’ contract customers were willing to hire workshop workers directly or as small group in-house contractors. Other contract customers, however, had been conditioned to think of their contracts with workshops as a charitable act or as a means of reducing costs and did not understand the value the workers could bring to their businesses as employees. Other contract customers cited union contracts or the cost of purchasing the equipment used on the job as barriers to hiring former sheltered workers to do the jobs in-house. However, MV Advancements found that placing a small group with one of its customers convinced the customer that bringing on more workers with disabilities was good for their business and their culture. TVW was exploring the possibility of workshop staff or sheltered workers taking over some of their contracts as independent businesses, however was finding the Vocational Rehabilitation rules on entrepreneurship for people with disabilities to be difficult to work with. TVW had also invited outside employers to tour the workshop and succeeded in having some sheltered workers hired by those employers and has successfully engaged the local Chamber of Commerce and local city government in celebrating the workshop closure and hiring the people with disabilities who worked there. Providers and other stakeholders noted that engaging businesses and other employers is important to future transformation efforts at both the statewide and provider levels to prepare them to access the pipeline of qualified supported workers with disabilities.

### Obstacles and Solutions to Transformation Success

The Oregon providers NCD interviewed found resistance from existing clients’ families, service coordinators, and residential service providers to be obstacles to their transformation. Some of these stakeholders felt the sheltered workshop was good enough and feared that change would be too disruptive and require too much effort, with a possibility of failure causing more harm than good. Other concerns included fear of what would happen if an individual placement did not work out, possible reductions in hours and the need to occupy non-work time, and fear of the impact increased income

would have on eligibility for public benefits. Some of those concerns were based on the impact of the change on the family or the residential service provider, others were based on the impact on the workshop program participant. MV Advancements used many approaches to generate buy-in for transformation, including community forums, rotating closures of the workshop to help workers and their families adjust to the change, and sharing individual placement success stories. They found that, in order for community forums to be successful, a provider needed access to expertise to be able to answer stakeholders' questions about benefits, non-work hours, and back-up plans. Success stories about and by people with disabilities were a particularly successful buy-in strategy, including having former sheltered workers return to talk about their successful transitions to competitive integrated employment. TVW also physically separated its workshop area within the TVW building, constructing a new wall between the shop and its other offices, lending a physical reminder that two different services were being provided during the transition (sheltered services and supported employment services) and that moving from within the workshop walls to outside the workshop was desirable, visible, and achievable. Some providers thought firm early closure dates for the workshops might have been a useful strategy for forcing families and residential providers to start engaging with the new model, but these providers did not take that approach for fear of leaving some of their clients behind. Instead, they chose to gradually decrease the size of workshop operations as they increased placements in competitive integrated employment. Participants in the stakeholder meeting in Oregon noted the continued need for more benefits planners to assuage workers' and families' fears over the impact of competitive income on government benefits and healthcare and noted that Oregon is currently focusing on increasing benefits planning capacity. MV Advancements is also developing a Handbook for supported employees to help set clear shared expectations about competitive integrated employment. Supported employment experts noted that supporting self-advocacy groups would go a long way toward developing employment service systems that serve the expressed needs and choices of people with disabilities.

Oregon providers found that systemic changes with the state's Vocational Rehabilitation program, which happened largely at the same time as provider transformation efforts

took place, created difficulties in terms of receiving consistent advice, having consistent points of contact, and having a stable, shared understanding of the rules. In addition, staff turnover in training, approval, and oversight, and inconsistencies in interpretation between one government office and another and even between one employee of an office and another, inhibited providers' efforts to implement emerging strategies, to get new staff trained and working productively, and to bring successful strategies to scale.

Providers and other stakeholders also noted the importance of connecting with schools in order to prepare students with disabilities for competitive integrated employment so they do not fall into a gap of unemployment or sheltered workshop services between the school and the adult service system. All had found these connections difficult to establish, noting that until very recently most special education programs knew nothing about employment services. At the Oregon stakeholder meeting, some noted progress, including through the state's policy of prohibiting mock sheltered workshop activities in schools and promoting youth transition strategies like Project Search and Seamless Transition. Both MV Advancements and TVW specifically reached out to local schools to assist in their transition programs and to train teachers and assistants about vocational rehabilitation and supported employment services.

Government funding also significantly affects transformation. Providers noted that small but frequent changes in rates made budgeting difficult. Experts noted that rates based on service hours rather than outcomes would likely be problematic in the long term. And all stakeholders noted that Oregon continues to wrestle with how best to balance a rate structure that prefers face-to-face services versus the need to incentivize providers to fade job coaching and other support services when the client no longer needs them.

Providers and some stakeholders noted that individuals with I/DD, their families, and their residential service providers were rightly concerned that competitive integrated employment might result in fewer "work" hours than the hours formerly spent in the sheltered workshop. However, they largely acknowledged that during some of the hours that people spent at sheltered workshops they were not actually working. The question, therefore, was really about how many hours the person would have to fill outside their

jobs and whether services would be available to make those hours meaningful. Both MV Advancements and TVW operate facility-based day programs but both were careful not to let those programs become a fallback for those leaving sheltered workshops, which would have undermined efforts by both the providers and the clients to really commit to implementing competitive integrated employment and might have created conflicts of interest. Stakeholders recommended that Oregon's day services program be addressed through a transition process similar to its employment services transformation initiative, and that its resources be rebalanced to promote person-centered and integrated day services during the hours when people are not working.

Staff from MV Advancements mentioned that, particularly in rural areas, where public transportation is limited, transportation remains a barrier for individuals with disabilities and an additional cost for supported employment providers.

### Shared Expectations

Clear, consistent, and mutually understood goals and expectations between government service funders and service providers were perhaps the most important factors that providers, experts, and stakeholders pointed to as essential to effective transition, both on the statewide and on the provider level. Clarity and consistency as to the funder's expectations were cited as essential for providers to plan, invest, budget, and implement both their transformations and their long-term service models.

"The state has been asking providers to play basketball and now it's asking them to play baseball. The state now needs to set the new rules and give the providers the new tools."

In Oregon, defining what outcomes the state would pay for and how it would assess whether the outcomes were met helped establish the rules of the game. Those rules require competitive wages and benefits, typical employment settings, comparable

interaction with employees and others without disabilities, and equal opportunities for advancement.<sup>cxxiv</sup> Oregon has interpreted this definition, at least for customized employment, to exclude, as not meeting the typicality requirement, work settings that are created to hire people with disabilities, comply with a mandated direct labor- hour ratio of persons with disabilities, are identified by other government agencies as sheltered workshops, or are group or enclave settings operated for the purpose of employing people with disabilities.<sup>cxxv</sup> The federal WIOA definition of competitive integrated employment provides a presumption that such contracts are not integrated, but allows for an individualized determination of whether an employment setting is, in fact, integrated.<sup>cxxvi</sup>

Stakeholders noted that the definition of a “typical” employment setting is not satisfied merely by the provision of competitive wages and highlighted that assessing the integration, opportunities for advancement, and access to equal benefits of some placements requires greater judgment than a mere paperwork exercise can provide.<sup>cxxvii</sup> In addition, as more people with disabilities begin to benefit from customized employment, affirmative action hiring programs by employers (including those mandated by Sections 501 and 503 of the Rehabilitation Act) and greater employer-provided, rather than government-funded, accommodations, it will be important to ensure that such innovative programs are not unintentionally excluded from state definitions.

One element of Oregon’s rules that complicates some providers’ ability to transform all their programs is the continued requirements of state (QRF) and federal (AbilityOne) contract preference programs. These preference programs require 75% of direct labor hours organization-wide to be performed by people with disabilities.<sup>cxxviii</sup> This requirement is legally inconsistent with the state and WIOA definition of competitive integrated employment. In addition, many state-use contracts are reportedly difficult or impossible to satisfy through current models without paying subminimum wage.<sup>cxxix</sup> Moreover, in many states, a subminimum wage certificate is required to qualify for state set aside contracts. MV Advancements has given up most of its QRF contracts. However, TVW has continued to operate a government contract for janitorial services,



which is competitive, both in terms of wages and hiring/selection/retention, and in settings comparable to other janitorial jobs (services provided during the day, interactions with nondisabled customers, individual positions). TVW sees this program as valuable to many populations of people with disabilities, including people with serious mental illness, and sees it as a form of competitive integrated employment that should be permitted as long as the roles of service provider and employer are separated. Therefore, TVW has been careful to avoid acting as the government-funded employment services provider for the workers while also being the workers' employer. TVW emphasized that this separation of roles is essential to avoiding conflicts of interest for the employer/provider. Instead, TVW's janitorial supervisors are trained to provide accommodations, including job coaching, as part of their supervision responsibilities (without government fees). If additional coaching or supports are needed, TVW will bring in an unrelated outside supported employment provider to provide those services.

Many stakeholders raised the need for increased quality assurance efforts to ensure that the state's expectations regarding outcomes are being achieved.<sup>cxxx</sup> Particularly with regard to the integration requirements of typicality, comparable interaction with people without disabilities, and equal opportunities for advancement, those factors often cannot be assessed with a standard black-or-white approach. Assessing those factors will require state monitoring through site visits and interviews.

## **2. Washington**

### Purpose of Visit

Washington was chosen because it has been implementing supported employment for people with I/DD for decades including since 2004 by official policy and since 2012 by state law.<sup>cxxxi</sup> In 2010, Washington committed itself to doubling the number of people with I/DD working by 2015.<sup>cxxxii</sup> Washington is widely recognized as a national leader in competitive integrated employment for people with I/DD.<sup>cxxxiii</sup> Washington's efforts have borne fruit, as more people with I/DD entered competitive integrated jobs than in any other state, even during a nationwide recession.<sup>cxxxiv</sup> This has been accompanied by a

reduction in the number of Washington entities holding FLSA 14(c) certificates from 35 in 2015 to 12 in 2017 and reduction in the number of people with disabilities working for subminimum wages from 2,030 in 2015 to 792 in 2017.<sup>cxxxv</sup>

	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
<b>Integrated employment closures</b>	281	283	375	325	440	380	365	405	401	403	443	493	510

Washington data shows that the transition from sheltered workshops to competitive integrated employment has provided a much better return on investment of Developmental Disability Agency services than sheltered work. The earnings achieved per services dollar spent for competitive integrated employment has ranged from over two to four times the return on investment of sheltered work.<sup>cxxxvi</sup>

Summary of Activities

NCD met with the Director of Morningside Services in Olympia, Washington, on the afternoon of July 31, 2018. Morningside<sup>cxxxvii</sup> is a former sheltered workshop that transitioned early to solely providing services in competitive integrated employment. Morningside transitioned 120 individuals with I/DD out of its sheltered workshop between 2000-2004. Approximately half of the people went into competitive integrated employment, half into small groups consisting of 4-8 workers, while some people retired or moved to day services. Between 2004-2015, Morningside phased out its group employment and, in 2015, eliminated subminimum wages. Morningside now serves approximately 900 people annually in several counties, including placing approximately 200-300 people in competitive integrated employment annually. Morningside found that not having to comply with the administrative requirements of FLSA Section 14(c) saved them a good deal of time and money. Its clients also have expressed a greater sense of pride and accomplishment from working in integrated jobs and receiving a paycheck like everyone else.

**Morningside**  
 Budget - \$5,999,207  
 2004

- 120 people in workshop

Now

- 909 people served; 245 placements in 2016
- No small group
- Workshop closed in 2004

On August 1, 2018, NCD met with supported employees and their employment services provider, Able Opportunities, Inc.,<sup>cxviii</sup> at Harrison Medical Center in Bremerton, Washington,<sup>cxvix</sup> followed by a longer meeting with Able Opportunities' Chief Executive Officer. Able Opportunities is an employment services provider that has never provided sheltered workshop services. Through its Work Independence Network (WIN) it partners with employers to place and support people with I/DD in individual competitive integrated jobs. Through its partnership with Harrison Medical Center, it has placed and supported 29 individuals with I/DD in 17 Medical Center departments. Able Opportunities also develops and markets technology tools to serve the support and supervision needs of both employees with disabilities and their employers, which allows job coaches to fade more quickly. NCD met with several supported employees, each of whom had progressed in their responsibilities and independent job skills since their initial hiring, and many of whom had long tenures at the hospital. Some clients currently working through the WIN program had previously been deemed unemployable by school, VR, and other CRP agencies but were now thriving in competitive integrated employment.

**Able Opportunities**

- No small group
- Average wage = \$14.25
- Average hours = 58/mo

"With the Work Autonomy App, the job coach can go away!"

The tour was led by a Harrison Medical Center employee supported by WIN. He has worked at the hospital since 2008 and makes \$15.35/hour, \$415/month. He began the

tour by showing us the Work Autonomy App on his iPad, a person-centered accommodation tool developed by Able Opportunities. The Work Autonomy App is a highly customizable interface with five core features: Communication, Track Schedule, Track Expectations, Track Production, and Track Earnings. This employee sanitizes and stocks ICU treatment trays. Each tray contains over 300 pieces of medical equipment that must be intricately placed in a specific order. Using the app to both remind him of the job's various steps and to memorialize the progress he makes, he can complete a tray in under 12 minutes, allowing the medical staff to provide more hours of direct patient care.

NCD met with four employees who work as Nursing Floor Clerks in different departments of the hospital, sanitizing nurse servers, stocking medical supplies and responding to nurses' requests as they arise for \$15.35 per hour. Given the sometimes unpredictable needs of the nurses, one of these employees reported that she is often asked to do tasks that are not directly in her job description or already accounted for in her Work Autonomy app. This left gaps in her weekly productivity chart despite the fact that she was actively working. She worked with Able Opportunities to create a task in her schedule titled 'Arbitrary' so she can now start the timer on 'Arbitrary' whenever she is doing a work-related task not in her job description. Its adaptability allowed her to modify the app's features to meet her needs on the job. Another Nursing Floor Clerk with disabilities works in the hospital's Oncology Wing where, in addition to her other duties, she offers and delivers drinks and care items to patients. She was the first supported employee to provide direct patient care. She participated in a series of staff trainings to learn to support grieving families and expanded her job description to include offering and delivering care items to patients. Last, we met with two supported employees who were participating in a 10-week Work Ethics course, which teaches Harrison policies, professionalism, HIPAA compliance, safety protocols, and self-advocacy.

"You know, it just comes naturally to me."

After the site visit NCD met with the CEO of Able Opportunities to learn more about the WIN program and using technology as a tool for supported employment. Able Opportunities trains all its employment specialists in the use of iPads, video editing, and accommodation apps. Along with the Work Autonomy app, job coaches use tools like video resumes to give supported employees autonomy to represent themselves during job interviews. Video resumes use a short video to show the components of a resume, such as skills, work history, and education. One supported employment specialist mentioned that technology like this was not taught to her in school and that she rarely saw it being used by her peers in the field.

**Chinook Enterprises**  
Budget - \$5.3 million  
5 years ago  
• 18 people in sheltered workshop  
Now  
• 180 people in CIE  
• 31 job placements per year  
○ Average wage = \$14.07  
○ Average hours = 43/mo

On August 2, 2108, NCD traveled to Chinook Enterprises<sup>cxl</sup> in Mount Vernon, Washington, approximately 60 miles north of Seattle in a rural part of the state, where we met with the supported employment director and toured the former sheltered workshop. As of the end of June 2018, Chinook has transitioned its workshop to a fully integrated business working on assembly contracts for Boeing. Chinook also provides placement and supported employment services in competitive integrated employment for approximately 180 people outside its facility, including 31 new placements per year. Chinook is also helping several people with disabilities pursue self-employment and operating several group employment programs.

### **Lighthouse for the Blind**

- Facility-based employment at 3 facilities plus military bases and government office operations
- 476 employees,
  - 260 of whom are blind, deaf, or deaf-blind
- Gave up FLSA 14(c) certificate
- 75% of direct labor hours organization-wide provided by workers with disabilities pursuant to AbilityOne contract requirements

That same afternoon, NCD traveled to the Lighthouse for the Blind<sup>cxli</sup> in Seattle, where it met with the employment team and toured the facilities. Lighthouse is a provider of facility-based work and, although it now pays at least minimum wage, it is not integrated and has not engaged in transformation of its service system. The purpose of this visit was to explore how services through the traditional sheltered workshop model, supported by AbilityOne and state use contracts, continue despite the growth of the newer supported employment model mandated by state and federal vocational rehabilitation and Medicaid programs. NCD met with two employees with disabilities, one of whom is deaf-blind and one of whom is blind. The deaf-blind individual discussed how some of his deaf-blind colleagues had worked in competitive integrated employment but had returned to the Lighthouse because the support services, including deaf-blind interpretation services were inadequate, either in quality or quantity or both. This led to isolation and reduced productivity, prompting them to return to the Lighthouse for quality communication services and accommodations, while still maintaining a competitive wage. The employment staff at the Lighthouse confirmed this experience and noted that the availability of high-quality deaf-blind and deaf interpreter services was a serious stumbling block to competitive integrated employment. Even if the former workplace met the definition of competitive integrated employment, deaf-blind employees were not truly integrated with their colleagues because of the lack of

interpreter services, the lack of Braille materials, and the lack of understanding of deaf-blindness among nondisabled staff. The Lighthouse staff agreed that their interpreter and other services could be portable but found that the state was not willing to pay for sufficient hours of such high-quality services. Unlike many sheltered workshops, the Lighthouse has invested in modern manufacturing equipment which it has modified to provide large-print outputs, tactile buttons, and braille instructions. They reported that, although their workers with disabilities learned marketable skills through the Lighthouse, the Lighthouse did not provide job placement services or support services in competitive integrated employment for employees outside Lighthouse facilities.

NCD then met with a self-advocate and then with a variety of stakeholders, including advocates, people with disabilities, family representatives from the state DD Agency, Protection and Advocacy lawyers, and service providers in Seattle on August 3, 2018. Stakeholders noted that they were all in agreement about the desired outcome but disagreed about the timing for completing systems changes. They also found that placing people with disabilities in competitive integrated employment had ripple effects for the employers and coworkers – increasing their understanding of disability and increasing their willingness to be inclusive of more employees with disabilities. Many stakeholders noted that too many former sheltered workshop providers were still not transitioning to supporting people in competitive integrated employment and, some of those that had transitioned were still using the old approaches in the new model, such as by having job coaches do much of the work, and continuing job coaching without encouraging natural supports or fading of paid supports. They believed the state should stop investing in those providers and focus on investing in new integrated providers, expanding capacity of existing integrated providers, increasing benefits counseling to help people with disabilities understand the benefits of competitive integrated work, and investing in technology and new ways of providing services. They also expressed that the expertise people with disabilities, themselves, have regarding employment of themselves and others with disabilities is not supported through entrepreneurship. Rather, it is sought out on a volunteer basis, thus continuing the cycle of potential exploitation.

## Observations

Service providers in Washington have been engaged in providing supports in competitive integrated employment for a long time. In fact, Washington along with Oregon led the country in developing early supported employment techniques. Oregon was funded in the 1980's with a Medicaid Infrastructure Grant at the University of Oregon to implement and provide technical guidance on supported employment. Likewise, Washington received an RSA federal systems change grant from 1986-1991 that supported it to become a leader in technical guidance on the issue including through WISE. Nevertheless, the process of transformation in Washington took longer than it has in recent years in Oregon, in part because state bridge funding was not made available. In fact, workshops that transitioned early found that government agencies did not know how to support providers of supported employment, so the providers had to make their own roadmaps. For service providers in Washington, the transition from workshops to individual jobs was motivated as much by the demands of their clients with disabilities as by government pressure. For example, Morningside Services, at the time that it was still a workshop participated in a research survey of its clients conducted by Professor David Mank then of the University of Oregon's MIG funded program. The survey found that 80% of Morningside's sheltered employees preferred integrated employment. According to Morningside's Executive Director, the decision was then made that the workshop needed to transform in order to meet its clients' demands. Similarly, providers reported that, when asked and offered other options, their clients did not choose group employment, further moving providers to focus on providing services in competitive integrated employment. Many noted that transformation success did not depend on size, but on values and training. Some also noted that, once placed in the community, their clients with disabilities expressed no desire to return to a workshop and their behavior problems were substantially reduced.



“The people we see in workshops in other states – we would have placed those people [in competitive integrated employment]. The workshops [in other states] would have placed our sheltered workers in day services/unemployment.”

Because Washington state providers have been providing supports in competitive integrated employment for decades, they maintain that the workers who are considered to have the most significant disabilities in workshops in other states would easily be served in competitive integrated employment in Washington. They maintain that the people currently served in workshops would have been considered unemployable and relegated to nonemployment day services in other states. The assumptions about who is competitively employable have clearly changed in Washington in ways other states have not yet achieved. Nonetheless, because of limits on government funding, and Washington’s lack of funding support for day services, some providers worry that the relatively few people with very significant disabilities who need the most supports may be left out.

NCD interviewed providers who believed that integration in employment is as important as wages because integrated employment is the primary way people with disabilities build the networks of friendships, supports, and opportunities in the community that allow them to be fully included in all aspects of life. Merely raising wages in sheltered work, they maintained, would not support those effects. Providers in Washington took different approaches to closing the front door to sheltered workshops for new entrants. Some workshops who transitioned early did not close the front door until they were near closing. Others found that it motivated families and people with disabilities to know early that the workshop would be closing and that new entrants would be served in community-based employment rather than workshop services.

## Key Success Factors

Providers in Washington, like Oregon, found that the keys to succeeding in rebalancing supported employment services were values and training. They agreed that these factors made the difference between sheltered workshop staff who could transition to providing integrated employment services and those who could not. Providers also noted that support for self-advocacy among people with disabilities can significantly speed and improve transition from sheltered to competitive integrated employment, both at the statewide and provider levels.

“The secret sauce in motivating supported employment staff is praise – thank and encourage staff and help them support each other.”

“You have to run the service organization like a business. If someone says they can’t, it means they don’t know how to run a business.”

The most successful Washington providers, as in Oregon and places we visited across the Northeast, ran their organizations as a business, rather than a social work endeavor. One noted that it is more profitable now than it was when it operated a sheltered workshop because it operates more efficiently and smarter. This provider found that appropriate staffing ratios, sufficient caseloads, placement and billable goals for staff, and teaching staff not to spend more time than necessary were keys to ensuring success both for the provider and the person with a disability. They also have goals for fading<sup>cxlii</sup> of paid supports. Some providers are also considering exploring more diverse sources of funding, including fundraising, which they had not needed before. Some were operating (integrated) commercial enterprises and using profits to support transition. However, at least one provider maintained that, after the bridge period, such commercial income is not necessary and may create other problems. Some providers found they overestimated the amount of bridge funding they would need during transformation and that it was more manageable than they had predicted.

Washington supported employment providers agreed that employers in a wide variety of businesses with a wide variety of jobs hired people with disabilities. Some went directly

from school, others from the workshops, and still others from interim group settings. Again, whether employers who were workshop customers would hire employees from the workshop varied. Some willingly brought on former workshop participants as employees. Some workshop customers agreed to employ people with disabilities through contracts with the providers acting as the employer, because of union rules or limits on authorized FTE slots. Some of this depended on whether the industry was in need of workers; the current growing economy and low unemployment rate provides a prime opportunity to place people with disabilities. Providers frequently noted the importance of developing and cultivating strong relationships with local businesses, industry groups, and chambers of commerce, and that highlighting the success of one employer at hiring qualified supported employees regularly led other employers to ask to follow suit.

“Service providers have two clients: The employee and the employer. We are providing employees with the skills and support needed to find employment, and employers with access to a talented pool of individuals that meet their business needs.”

Providers also noted that documenting their experiences over the last decade has allowed them to show how, above and beyond any effects on workplace culture and morale, hiring people with disabilities and assigning them jobs for which they are qualified consistently and predictably makes other employees more efficient and effective and saves the employer money. They also noted that they often have their job seekers with disabilities interview and compete for the jobs, which generates buy-in by the employer. Able Opportunities, in particular, has shifted traditional services both through using technology and by taking a business-catered approach to job development. Able Opportunities uses strategic financial modeling to showcase to potential employers the financial benefits of hiring employees with I/DD to fill the

company’s unmet needs. This allows businesses to see the direct monetary benefits of hiring an employee with I/DD.

The use of technology to provide innovative accommodations allows people with I/DD to compete in a modernized job market and can be a relatively low-cost way to offer innovative individualized accommodations. Able Opportunities invested \$22,000 in 26 iPads, software, insurance, and adaptive gear. iPads were chosen because of built-in accessibility features that make it easier for users with visual, auditory, motor, or other physical disabilities, and their ability to be individualized through apps and adaptive gear. In addition, instead of carrying a specialized device that addresses one area of need, people with disabilities are using the same tool as their colleagues, increasing natural supports across numerous environments. Moreover, technology allows job coaching and other in-person services to fade more quickly and yet still be available on an as-needed basis and reduces transportation barriers.

Three callout boxes with a light blue background and a thin black border. The top-left box contains the text: "It's time to Break the Myth of the Math". The top-right box contains the text: "People leaving the workshop at first missed their friends, so they started a recreation club so they could see each other socially." The bottom-left box contains the text: "Integrated employment is the bedrock of integration generally."

Obstacles and Solutions

Washington providers no longer face much, if any, opposition to transformation efforts from people with disabilities or their families. However, given the lack of state support for non-work day activities, some providers worried about what their program participants would do during non-work hours. In addition, integrated employers, particularly at Washington’s increasing minimum wage, have higher expectations than sheltered workshops; preparing sheltered workers to meet those expectations takes effort.

Washington providers have been focusing on supporting people with disabilities in integrated self-employment. However, they reported that the state's support for such entrepreneurship was limited, possibly because of difficulties with quality assurance and ensuring the person with a disability is really doing the work and reaping the benefits. Providers have accessed volunteer resources, such as SBA's SCORE, to assist in setting up businesses. However, their clients encounter major barriers to accessing many government programs designed to support nondisabled entrepreneurs.

The Lighthouse's operation continues to be facility-based and not integrated and relies primarily on contract income to support its employees, who are blind, deaf, or deaf-blind. They have diversified their contracts to ensure that a downturn in one source of income would not undermine the whole business. This diversification, as well as the cross-training of their staff and workers with disabilities gave them the flexibility to stop paying subminimum wages across the board. As Washington Disability Services Boards are no longer referring people with disabilities to segregated settings, the Lighthouse has some trouble finding qualified blind employees in recent years. Lighthouse has given up acting as both service provider and employer. It now focuses on its role as an employer who provides supportive services as reasonable accommodations. These accommodations for people who are blind, deaf, or deaf-blind, such as orientation and mobility, communication accessibility (e.g. Braille), and interpretation (including tactile interpretation), are not commonly understood by mainstream employers. Therefore, some of their workers (particularly workers who are deaf-blind) have returned to the Lighthouse because of poor services and resulting isolation from their colleagues. Lighthouse is beginning to explore providing more community-based support services for other employers and employment service providers and for Lighthouse employees that desire to move to competitive integrated employment. They expressed interest in supporting workers to work where they want, including in competitive integrated employment, and are interested in ways to help make the Lighthouse's employment supports and expertise (including adapted equipment, qualified interpretation, and communication access) more transportable into the community.

As in other states, transportation is a barrier for both people with disabilities and supported employment service providers, particularly in more rural areas.

### Shared Expectations

Because Washington state is further along on its journey to prioritize competitive integrated employment, the providers and government funding agencies have greater shared understanding of the meanings of the expected outcomes. All appeared to agree that a competitive integrated job is one that is designed to be profit-making, not merely rehabilitative; intended to get a job done for the employer, not a special disability-specific program; and that one entity can't be both the service provider and the employer for a person. Disagreements focus on whether integrated administrative and management offices within segregated organizations should be considered integrated and how the state government can better support self-employment for people with disabilities while maintaining adequate oversight.

State-use contract preferences are used little, if at all, in Washington state, so the conflicts among state policies regarding integrated and segregated employment are not a significant factor here. However, AbilityOne contracts are carried out in Washington, creating an inherent tension between those providers that can fulfill AbilityOne contracts and meet the 75% direct labor ratio requirements, and those that can be considered successful state vocational rehabilitation placements under Title IV of WIOA or supported by state Developmental Disabilities Administration funding.

## Chapter Six: Recommendations for Federal Agencies, Congress, and the President

During the course of NCD's 2018 interviews and travels, it became clear that a five-point consensus is emerging with regard to disability employment:

(1) conducting business as usual in the 14(c) program is neither desirable nor any longer viable, given changes in other laws, new demand from people with disabilities to work in competitive integrated employment, and increasing automation and diminished supplier contracts;

(2) effective support strategies, techniques, and technologies exist now for people with disabilities to be included, and thrive, in the economic mainstream;

(3) workers with disabilities in 14(c) programs will not be fully supported to transition to mainstream jobs if the intended outcome of employment services is not clearly defined in American law, including by WIOA, as competitive jobs that are typically found in the community;

(4) each person with a disability that can and wants to work in competitive integrated employment should be fully supported to do so, without delay;

(5) for people with disabilities to experience full participation in the emerging economy, they must be supported as the entrepreneurs, inventors, and business people of the future, rather than simply as the clients, consumers, and service recipients of the past.

### **A. Phasing Out Section 14(c)**

There is little doubt that this report comes at a crucial moment in labor history and the history of the civil rights of people with disabilities in the United States. While for the better part of 80 years, people with disabilities in 14(c) employment have been paid far less for their work than most other Americans, and separated from non-disabled peers, in mostly manual, sometimes menial jobs, the tide is now turning -- in fact, dramatically so. The vast majority of stakeholders NCD interviewed are simply waiting for the design

of public employment service systems to catch up to their accelerated demand for competitive integrated employment.

For example, students with disabilities across the country are coming of age with the highest expectations of themselves and others, and they can and want to work in typical jobs. School transition programs like Project Search and Seamless Transition and others are demonstrating the effectiveness of work-based learning experiences and linking students in high school with paid employment before they leave school. Families, and parent organizations are working to develop communities of support and peer-to-peer mentoring so adults that have worked in sheltered workshops, sometimes for decades, become familiar with real-world examples of peers working in competitive integrated employment, can ask questions, and can glean assistance and support in making informed choices about competitive integrated employment.

Mainstream companies are now engaged in cutting edge disability recruitment, hiring, and on-boarding strategies, not as charity or marketing, but because it serves their bottom line. In the words of the Executive Director of the Marriott Foundation's Bridges from School to Work program, "there's now a war for talent," and workers with disabilities bring strategic advantage to any employer's position in that war, including by increasing job retention, introducing new efficiencies, and increasing and widening diversity.

Meanwhile, American law has shifted in significant ways, including through the ADA, *Olmstead v. L.C.*, and WIOA. Yet, in nearly perfect contradiction, other laws have aged in place, including two vestiges of the New Deal era: Section 14(c) of FLSA, and the Javits Wagner O'Day Act (also known as AbilityOne). Indisputably, 14(c) and JWOD have failed to keep pace with the dramatic changes that have rippled through American life due to civil rights enforcement, the deinstitutionalization movement, increased access to education and training, and the exponential growth of new technologies. As this report has chronicled, it is the overwhelming consensus of a diverse range of stakeholders that these New Deal laws are barriers to the kind of modernization of employment service systems that is vitally necessary for more people with disabilities to



leave sheltered workshops, transition to competitive integrated employment, and access opportunities in the 21st century economy.

In NCD's view, we cannot make people with disabilities wait for these calcified laws, and corresponding systems, to change before we support those who can and want to work in the mainstream economy to do so. Yet, we also know that many people with disabilities will be unable to enter the mainstream of American life unless and until they are changed. *We need to do both, at once.* Indeed, the pronounced commitments of federal, state, and local governments and the private sector are now necessary for competitive integrated employment to become a reality for the approximately 321,131 people with disabilities that are currently employed by 14(c) certificate-holders.<sup>cxliii</sup>

**Recommendation A1: NCD renews its call from six years ago for a phase-out of the 80-year-old 14(c) program and the concomitant phase-up of the systems changes necessary to allow people with disabilities to move into competitive integrated employment. Congress should amend Section 14(c) of FLSA to require a six-year phase out of sub-minimum and sub-prevailing wages.**

**Recommendation A2(a). NCD recommends The Secretary of Labor should impose an 18 month to two year moratorium on the issuance of new 14(c) certificates, including on the SWEP, CRP, BEL, and PWL lists. Current certificates and the renewal of certificates would not be impacted by this moratorium.**

As discussed in this report and in NCD's 2018 report *Has the Promise Been Kept? Federal Enforcement of Disability Rights Laws*, there is ample evidence that WHD exercises minimally effective oversight and control over existing 14(c) certificates and therefore a moratorium is necessary, as among other things:

(1) WHD has incomplete knowledge of the total census of workers employed by 14(c) certificate-holders; in one month, it cited wildly varied estimates of this number to NCD and to Congress, ranging from 141,081<sup>cxliiv</sup> to 321,131 employees.<sup>cxlv</sup> It also does not maintain data about the total number of AbilityOne programs that are also certificate-holders,

even though AbilityOne participating programs make up a considerable portion of the top CRP certificate-holders by number of subminimum wage workers nationwide.

(2) While in recent years it has engaged in more directed enforcement actions than in the past, WHD's overall enforcement of the program pales in comparison to the program's size. In July 2018, WHD provided Congress with data that demonstrate that there is a high prevalence of violations, if and when it does engage in strategic enforcement within the program, yet its oversight activities have impacted less than 2% of all workers in the 14(c) program.<sup>cxlvi</sup>

(3) The 14(c) certificate applications reviewed in connection with this report at times appeared to show time studies that were not conducted adequately, that were applied inconsistently, or that were incomplete. Moreover, some applications showed wages so low as to be of *de minimis* economic value. For example, wages as low as 7 cents for performing a work task called "pinatas" in an institution.

(4) WHD, along with other federal agencies, has failed to coordinate adequate or effective enforcement efforts with the EEOC and DOJ to ensure that 14(c) employees are provided reasonable accommodations, calling into question whether workers are properly classified in the program. Nor has WHD exercised its own enforcement efforts to ensure that certificate-holders that have failed to renew their 14(c) applications are not continuing to pay subminimum wages.

In connection with this report, we reviewed evidence sufficient to convince us that after 80 years, a program so desperately in need of modernization and run with ineffective oversight controls, cannot continue its business as usual, given the potential for a high gravity of harm and economic exploitation.

**Recommendation A2(b): NCD recommends Within 90 days of this report, the Secretary of Labor should convene an interagency panel, comprised of all relevant agency representatives, to develop and implement a detailed phase-out plan that utilizes a systems change approach as outlined in the recommendations section of this report, including viable measures to provide people with disabilities and their families information and experiences that will allow them to make informed choices about employment as transformation takes place.**

In addition, students with disabilities are often tracked toward sheltered workshops through school transition programs that prepare, train, and acculturate them to perform sheltered workshop tasks and that do not train them in skills that are generalizable to competitive integrated employment.<sup>cxlvii</sup> Even though, with the 2014 enactment of WIOA, schools have now been prohibited from contracting with sheltered workshops to provide transition services, the WHD continues to license school programs and school districts to hold 14(c) certificates for school-operated sheltered workshops. WHD could point to no efforts to conduct strategic or directed enforcement activities of the remaining SWEP certificate holders to identify whether they were in compliance with FLSA and WIOA. Moreover, we are unaware of any efforts by DOJ to enforce the ADA and *Olmstead v. L.C.* in this context.

**Recommendation A3(a): NCD recommends that the Secretary of Labor take appropriate steps to revoke all remaining SWEP certificates. Given the high potential gravity of harm to students, the overall lack of enforcement, and the inconsistency of SWEPs with the requirements of WIOA and the ADA.**

**Recommendation A3(b) In the meantime, NCD recommends that WHD take immediate steps to engage in directed investigations of the remaining SWEP certificate holders to determine compliance with WIOA.**

**Recommendation A4: NCD recommends Congress should require DOL to report to Congress within 180 days on the total census of workers with disabilities receiving subminimum wages under 14(c).**

**Recommendation A5: NCD recommends, as discussed in our report *Has the Promise Been Kept?: Federal Enforcement of Disability Rights Laws*, until such time as the six-year phase out takes effect, that WHD improve its oversight, enforcement, and data collection regarding 14(c) certificate holders and their employees with disabilities, including:**

- WHD should issue a public report on the industry classification or NAICS codes of jobs performed by 14(c) workers.
- The 14(c) certificate application should be updated to require employers to report the number of workers with disabilities, for the prior reporting period, who have transitioned from 14(c) employment to competitive integrated employment and the industry classification codes for such workers' new positions.
- WHD should report in its publicly available certificate data, the total number of 14(c) providers that are also AbilityOne providers.
- The WHD should collect as part of all 14(c) certificate applications and/or renewal applications the total number of employees with disabilities employed by the 14(c) certificate holder at or above minimum wage, and the total number of 14(c) employees that have been transitioned off of special minimum wages in the last reporting period but who continue to receive services from the provider.
- The WHD should collect and systematically track how many 14(c) certificates have expired, and the reasons for the expiration and the non-renewal of the certificate.

**Recommendation A6: NCD recommends that Congress, concurrent with changes to Section 14(c), amend the Javits Wagner O'Day Act to support the employment of people with disabilities in competitive integrated employment, as defined by WIOA.**

Recognizing the great extent to which the JWOD program interrelates with the continued existence of the 14(c) program, it is unquestionable that JWOD must be revised and overhauled, including by: changing the definitions that control qualification for the program, expressly prohibiting service providers from acting simultaneously as employers, and reconfiguring the program to support people with disabilities to engage in new industries of the future. As the service providers that we visited sought to expand their services and diversify funding sources in order to transition to providing supported employment, they found that compliance with new employment service models foreclosed their participation in older models such as JWOD and state use systems. These models' direct labor ratio requirements directly conflict with competitive integrated employment and, by excluding services in competitive integrated employment, make it harder for workshops to transition without losing funding sources. Those older programs also send mixed messages about government commitment and expectations. All government programs supporting segregated employment for people with disabilities should be changed to be consistent with the new models the government has committed to.

**Recommendation A7: NCD recommends the National Governor's Association (NGA) to formulate and disseminate model state legislation to eliminate state disability-based exemptions to the minimum wage.**

#### **B. Building on Systems Changes Spurred by WIOA, ADA, Medicaid, and Social Security Reforms**

At the same time that subminimum wages are being phased out, systems changes that are occurring as a result of WIOA, the ADA, and Medicaid and Social Security reforms, should be expanded and built upon to increase capacity for integrated service models, enhance the availability of technical assistance resources, increase the number of qualified and trained staff, strengthen and support peer-to-peer networks and family supports, increase benefits counseling resources, improve school transition and access to higher education, implement business engagement strategies, and introduce and

develop new resources and innovations to allow people with disabilities to access the jobs of the 21st century.

**Recommendation B1: NCD recommends to the Department of Education, including the Office of Special Education and Rehabilitation Services, that the WIOA regulations — and specifically the definition of competitive integrated employment — not be reopened for public comment or amendment, because the consensus of the disability, business, and employment service provider communities is that the current regulations are of vital importance to the modernization of employment service systems and efforts to on-board people with disabilities into jobs in the economic mainstream.**

In the course of formulating this report, NCD's team engaged in numerous conversations and extensive travels, contacting over 160 people in 26 states, and visiting six states in person during July 2018. We spoke with people with disabilities and their families as well as employers, advocates, supported employment service providers, direct support staff, mainstream industry representatives, employer associations, national and local subject matter experts, university centers for excellence, technical assistance centers, sheltered workshops and their employees, institutions, federal and state agencies, protection and advocacy organizations, entrepreneurs, and foundations, and asked nearly all of them about WIOA's definition of competitive integrated employment.

We consistently heard that people with disabilities are tired of being relegated to work in artificial settings for employers that are also their service providers. In the view of many, such a set up often ensures different pay, benefits, opportunities for advancement, levels of accommodation, and even break rooms and bathrooms, from non-disabled peers and staff. Professional literature reveals that lack of typicality leads to reduced wages and social interaction outcomes in the long run.<sup>vi</sup> Working in jobs without corresponding typical features of employment (*i.e.* standard wages, job acquisition processes, compensation structures, work roles, employee orientation and on-boarding procedures, etc.), even if they are physically located in mainstream settings, suppresses

wages and opportunities for advancement One job coach recounted to us what a supported employee declared to him when he had the realization that he needed to move from segregated employment to competitive integrated employment, “I could no longer afford to only work around people paid to be in my life.”

The vocational rehabilitation system has defined employment “typically found in the community” as an expected outcome for more than twenty years. And we encountered no vocal opponents of the VR system continuing to do so. More poignantly, in visits across six states, we found no examples of states, agencies, or providers that successfully closed sheltered workshops and converted services to supported employment without having first defined expected outcomes to include a regular job in the community including the typical features of employment. In fact, all of the providers we interviewed that were successful in modernizing their services had found typicality to be an essential part of the intended outcome of transformation. Many of these providers feared that eliminating what is “typically found in the community” from the definition of competitive integrated employment would allow VR program funds to be dedicated to various forms of segregation at precisely the time that more and more people with disabilities need and want those vital public funds to support their transition to regular jobs. As one expert noted, if the defined outcome is changed at this point, “we will lose another generation” to segregated subminimum wage work.

When queried about their views of this issue, representatives from the business community expressed astonishment and dismay that there would even be a question about what a job was, let alone a conversation about whether VR funds should be devoted to support anything other than a regular job. Representatives of an association of employers across industries noted that, at this time, when more and more employers are committing themselves to increasing their employment and inclusion of people with disabilities—often with little assistance from VR— VR services should be targeted toward assisting these mainstream employers. They could not understand then why some might want the VR system to provide those incentives to any entity other than a mainstream employer in typical employment settings, especially when there is, as mentioned, an ongoing “war for talent” occurring in the private sector.

Finally, even service providers did not support the idea of repeatedly adjusting the goals and definitions of the employment services system. Based on our interviews with providers, clarity and stability of the rules and scoring of the game were at least as important as having the “perfect” rules and scores. Service providers can be flexible and creative in how they accomplish the goals, as long as they know what the goals are and how they will be assessed. Particularly in Oregon, where the rules and rates continue to be adjusted, providers sought predictability of rates and stable definitions of the goals. This counsels against changing the definitions currently in place under WIOA until they have been fully implemented and outcomes assessed for several years.

### **C. Building Capacity and Infrastructure for Supported Employment Services in Competitive Integrated Employment**

Many of the people we interviewed possessed an ineffable sense that the nature of work for all people is changing even as we speak. As the world becomes more automated and technology-based, still more changes will be necessary to bridge the gap between unemployment and underemployment and the full participation of people with disabilities in the industries of the future. Yet, sheltered workshops continue to prepare people with disabilities for the jobs of the 19th century.

Certainly, over the past three decades, new innovations have pried open the door to employment for those who have historically been excluded. For example, innovations in the field of supported employment have demonstrated that people with even the most severe disabilities can work and succeed in competitive integrated employment, and in the long run, at less cost to the American taxpayer. In fact, supported employment allows such persons *to become taxpayers*.

But these innovations have been out of reach for thousands of people with disabilities that can and want to work in regular jobs. Instead, they perform manual tasks, often using outdated equipment without accommodations in sheltered workshops because an acceptable outcome of public service systems continues to be segregation. Indeed, the lion’s share of public service dollars are still committed to segregated sheltered workshops rather than supported employment services provided in competitive



integrated employment.<sup>cxlviii</sup> And each year, people with I/DD, who are blind, who experience autism and are non-verbal, or who have other disabilities are referred from school to the front door of sheltered workshops where they are given few, if any, accommodations or technologies, and once they enter, only approximately 5 percent of such workers ever leave sheltered workshops to take a job in the community.<sup>cxlix</sup>

Additional federal investments are necessary and vital in the short term, to encourage states to shift funds away from segregated sheltered workshops and towards supported and customized employment services provided in competitive integrated employment settings. Congress faced a similar need in 2005 when it enacted the Money Follows the Person rebalancing demonstration to encourage states to shift funding from residential institutions to home and community-based services. That approach provides an important model.

In addition, across the states that we visited, where systems change is in process or has happened, such changes often were initiated and supported by federally supported “systems change grants.” For example, by 1994, nearly \$100 million was invested in state systems change grants from the U.S. Department of Education, a program initiated at the behest of the Reagan Administration’s Assistant Secretary of OSERS Madeleine Will; an additional \$10 million was invested by the Rehabilitation Services Administration for community demonstration projects for supported employment; and \$4.5 million had been invested in national-scale technical assistance projects. Yet, the funding for supported employment services and accompanying technical guidance to states was not sustained at this level, and as a result supported employment never gained the financial support that it needed to rival other more segregated employment options. Even so, one can draw a straight line between these early federal investments, and the current examples of excellence in supported employment chronicled in this report. Additional sustained federal investment is now necessary and must be initiated concurrently with any efforts to phase-out the 14(c) program.

**Recommendation C1: NCD recommends that Congress, with technical assistance from CMS, create a program similar to Money Follows the Person to provide**

**additional financial support for individualized integrated services leading to competitive integrated employment by designing a community-based services waiver providing grants to states for individualized integrated services designed to transition people from sheltered workshops or day programs to Supported Employment Services in CIE.**

**Recommendation C2: NCD recommends that CMS grant Section 1115 research and demonstration funding to states to promote and enhance “pay for performance” and outcome-based strategies based on outcomes tied to identifying, finding, obtaining, and sustaining CIE. NCD recommends that states implement performance-based payment systems for supported employment services provided in competitive integrated employment.**

In an interview with Opportunity Development Centers, Inc. (ODC) of Wisconsin, we learned that the provider found success in gradually decreasing its sheltered workshop population while increasing supported employment services because of the state’s tiered outcome-based funding model. States must be supported to pay for the outcome of competitive integrated employment.

**Recommendation C3: NCD recommends that OSERS reinstate a large scale state systems change grant program dedicated to sustained funding over multiple years for two primary objectives: (1) the incubation of new entities in every state whose primary purpose is to provide supported and customized employment services in competitive integrated employment including in 21st century jobs; and (2) the transformation of existing facility-based employment service providers to phase out sheltered workshops and phase-up supported and customized employment strategies provided in competitive integrated employment.**

NCD believes it is of significant importance to meet *both of these objectives simultaneously* over a sustained number of years to serve the interests of people with disabilities who can and want to work in competitive integrated employment in the near term, while modernizing state employment service systems over the longer term.

## Incubating New High Quality Supported Employment Providers and Methods

As it pertains to the first objective, transformation grant monies should be distributed to start-up supported employment organizations to assist people with disabilities to find, obtain, and succeed in competitive integrated employment, as defined by WIOA. The mission of such organizations should be tailored to the provision of high quality supported employment services and customized employment services for all people with significant disabilities, with the outcome of competitive integrated employment. In fact, public investment in such organizations should be specifically tied to competitive integrated employment outcomes. We visited numerous agencies of this kind on both coasts, that began with few resources and have been able to support numerous people to find competitive integrated employment. But such places need to become more the rule than the exception, and there need to be more of them to meet increased demand and the need to scale these critical resources. NCD recommends using systems change grant money to grow new supported providers with similar leadership, values-based decision making, dedication to person-centered planning, and the core mission of placing people in typical jobs as those supported employment providers that we visited.

## Supporting Transformation of Sheltered Workshop Providers

As it concerns the second objective above, grant monies should be provided to every state to fund transformation bridge money and incentives to providers to modernize their services from segregated to integrated service models. 14(c) certificate-holders need support to learn the skills necessary to implement the new model of supported employment services, they need to hire additional staff, while gradually ramping down the old model of segregated services, and they need time to diversify funding streams and convert fixed assets to moveable assets. Providers in Oregon and Rhode Island found such flexible bridge funding and technical assistance to be essential to the successful conversion of their business models. Providers in Washington, where bridge funding was not available, noted that transition can be accomplished without such support, but it takes much longer, resulting in more people remaining in segregated settings longer.

Similar to the work of the Rhode Island and Vermont Sheltered Workshop Conversion Institutes, WISE, and Living Opportunities, states should be funded, through OSERS systems change grants, to designate technical assistance (TA) entities to provide targeted and intensive TA to providers, training and qualification to direct support staff, and technical guidance to people with disabilities and families during systems change. It is of vital significance to the efficacy of national systems change efforts that there be TA entities of this kind in every state. Such TA entities should also provide guidance about the business and financial aspects of provider transformation and provide targeted advice transferable to providers' particular circumstances (e.g., rural vs. urban). Moreover, like in Oregon and Rhode Island, these TA entities should review and approve detailed multi-year transformation plans from providers, delineate and clearly define expected processes (person-centered planning) and outcomes (using the definition of competitive integrated employment, including the typical features of employment, as the north star of service provision), and collect data and measure progress toward those outcomes. A significant portion of transformation grant funds should be expressly tied to the outcome of placement in competitive integrated employment.

It should not be expected, or even desired, that all sheltered workshops will make the transition to the new model of employment services. Those that do not demonstrate a true commitment to, and plan for, transformation of services to achieve competitive integrated employment outcomes, or that do not show such successful outcomes within a defined number of years, should not continue to receive transformation bridge funding or incentive payments.

### Supporting States to Transform their Employment Systems

We also noted in many of the states we visited, federally funded ODEP subject matter experts, deployed through the Employment First Leadership State Mentoring Program, had played critical roles in the transformation and rebalancing of state service systems. In particular, they provided intensive support to states with regard to rebalancing Medicaid rates and rate structures, interagency coordination, training and qualification

standards for direct support staff, school transition, and provider transformation. State specific TA entities should rely on the expertise and institutional knowledge of national subject matter experts that have directly played a hand in systems change in other states. In addition to these areas, ODEP SMEs could advise states on how to redirect state contracting preferences away from funding segregated settings to support mainstream employers that hire people with disabilities from sheltered workshops or disability-owned businesses started by people with disabilities who have transitioned from sheltered workshops.

**Recommendation C4: NCD recommends that Congress increase ODEP’s budget, so that ODEP can support critical technical assistance to states engaged in systems change through its Employment First Leadership State Mentoring Program. ODEP subject matter experts should be funded and supported to: (1) serve as national subject matter liaisons to states on systems change and provider transformation; (2) provide technical guidance to all relevant state agencies, including VR, DD, and State Education Agencies on a range of issues impacting provider transformation, including funding strategies (i.e. rates), capacity-building strategies, interagency coordination, professional competence standards, and data collection methodologies; (3) provide technical guidance to states about shifting contracting preferences from those that support sub-minimum wage labor toward those that support competitive integrated employment.**

#### Using Technology to Facilitate Employment

Access to assistive technologies and other new and emerging technologies— like smart devices, apps, websites, kiosks— exponentially expand access to information, social networks, and methods of travel, and, thus, employability, for people who are blind or have communication disabilities.<sup>cl</sup> Similarly, augmentative communication devices and other technologies allow people with disabilities to communicate directly with co-workers, customers, and peers, and for individuals who are non-verbal, it has liberated them from the erroneous assumption that not speaking inherently means not working.

However, we learned that many individuals with disabilities in sheltered workshops have been deprived of the very tools that could help them communicate their employment preferences including at annual service planning meetings. They often lack access to augmentative communication devices and other technologies and staff are not well trained in alternative forms of communication. In fact, the very lack of communication may have precipitated such persons' referral to the workshop in the first place. Similarly, students with disabilities often lose access to their school-provided assistive and augmentative technologies upon exiting the education system, thus limiting their ability to move into competitive integrated employment.

According to the Director of the Rhode Island Sheltered Workshop Conversion Institute, the results of a recent survey demonstrate that nearly 60% of the individuals in sheltered workshops in that state are non-verbal or experience barriers to communication. Similarly, he reported that other survey results in states like Pennsylvania demonstrate that over two thirds of people that do not communicate using words do not have a communication system in place.<sup>cli</sup> Yet as demonstrated by a mid-1990's survey of sheltered workshop participants in Olympia, Washington, when individuals with disabilities are supported with information and the best means to communicate their preferences for where they would like to work, they overwhelmingly choose regular jobs and not subminimum wage employment.<sup>clii</sup>

Finally, NCD saw during our visits, how relatively small investments in technology that is flexible, adaptable, and customized to the needs of an individual with a disability and his or her job can reduce the need for, or even replace, costly permanent in-person staff assistance, such as job coaches. Yet VR agencies have little ability to fund the development, purchase, or implementation of such technologies or to incentivize providers to use those technologies, because payments are based on in-person time working with the individual.

**Recommendation C5: NCD recommends that CMS and OSERS (OSEP and RSA) jointly provide guidance, funding, and, if necessary, regulatory amendments, to assist people with significant disabilities who are at risk of entering, are in, or are**

**transitioning from sheltered workshops can gain access assistive technology and augmentative communication devices for purposes of preparing for, achieving, and succeeding in competitive integrated employment.**

**Recommendation C6: NCD recommends that RSA fund private business in consultation with state agencies to develop and implement new technologies to improve autonomy of supported employees, to increase early fading of in-person supports and development of natural supports, to provide services via online and other technology to support employees on the job, and to explore the cost savings and the funding models that best incentivize use of such technology.**

#### Increasing Availability of Qualified Trained Staff

In numerous interviews and meetings, participants emphasized that there is a staffing crisis among direct support professionals, and that provider staff are not compensated appropriately to their educational attainment levels, causing high attrition and economic loss to the providers. Direct support staff are vital to the success of any systems change efforts. Moreover, it takes significant professional development, and training in core competencies, to be able to provide the services necessary to support individuals with significant disabilities to be placed in CIE. However, it becomes an overly burdensome cost proposition for providers to fund direct support staff's training and certification if they lose those same staff due to attrition. Incentives must be rendered to direct support staff to reduce turnover. Stakeholders repeated that direct support professionals in supported employment are comparable in training and responsibility to teachers, customer service representatives, marketing professionals, and vocational rehabilitation professionals and should be compensated accordingly.

**Recommendation C7: NCD recommends that State Medicaid and VR agencies adjust their compensation structures (reimbursement structures and pay scales) for direct support professionals to take into account certification standards and professional development activities, to promote the retention of skilled frontline staff.**

## **D. Evaluating Cost-Efficiencies**

NCD's interviews and travels were replete with firsthand accounts from numerous stakeholders, including government agencies, providers, and advocates, about the cost-effectiveness of providing supported employment services versus sheltered employment. A good many people involved in systems change have noted the return on investment to taxpayers. While there have been studies establishing the cost-effectiveness of supported employment in academic scholarship, the field lacks a more comprehensive analysis conducted with recent data. As states implement transformation, they need to collect data on baselines and changes in outcomes, earnings, expenses, and other factors that will allow assessment of the cost effectiveness of transformation from sheltered work to competitive integrated employment.

**Recommendation D1: NCD recommends that federal grants, waivers, and demonstration projects on supported employment and pre-vocational services require states to collect consistent baseline and ongoing data across VR, DD, and Education systems and that NIDLRR be charged with collecting, assessing, and reporting on that data and on the return on investment of state employment service systems providing supported employment services versus sheltered employment.**

## **E. The Future of Work in the 21st Century: Competitive Integrated Employment, Self-Employment, and Entrepreneurism by and for People with Disabilities**

Just as people with disabilities are demanding the supports that will give them access to regular jobs, those jobs are changing. The nature of work for people with and without disabilities is changing— away from full-time employment, including on-site workers with full benefits, pensions, and long tenure with one employer— to those where workers are independent contractors working at flexible times in flexible locations and paying their own benefits while serving many customers. By all accounts, self-employment and entrepreneurship will continue to be the anthem of the next century of employment, as people with and without disabilities are less likely to be employed across the span of



their working age years by one employer, and people are increasingly mobile, independent, and employed in jobs with such self-managed schedules and customers. In fact, the majority of new jobs in the economy consist of independent contracting, part-time, temporary, or gig economy jobs.<sup>cliii</sup> Some economists estimate that the gig economy is expected to reach 40% of all jobs by 2020.<sup>cliv</sup> The next phase of innovation will require us to support people with disabilities in business enterprises and entrepreneurship. In other words, supports and services need to be available to not only get in the door to employment, but to help people to stay there and thrive, or to invent new ways to be employed through self-employment. We interviewed a provider who was trying to support several people with disabilities to run their own businesses yet was trapped in the old analog world of retail sales in physical locations. Neither the state VR office nor the service provider knew how to support a business in the current digital marketplace, and they did not have access to the systems that support entrepreneurs without disabilities. To compete in the new American economy, however, these entrepreneurs and others like them need focused tools and funding to develop business plans, to acquire e-commerce platforms or business development tools and apps, and to market and manage their sales. With more modern tools, these disability-owned businesses could expand from incidental in-person sales to an online store with high volume sales in a very short period of time. Likewise, other sheltered workshop employees have discussed interest in becoming app developers and coders. Yet, systems are not currently in place to support this.

In our visits to supported employment agencies throughout the Northeast and Pacific Northwest, we saw numerous examples of supported employment providers, through their own resourcefulness, partnering with the local Chamber of Commerce and Small Business Administration to assist people with disabilities to write business plans and launch businesses. Several agencies supported people to have their businesses registered with the state, but they acknowledged the lack of resources available to support them also to market their businesses and expand their reach. Nevertheless, in many cases, people who were formerly deemed competitively unemployable had become the masters of their own entrepreneurial ideas and had built solid, albeit small, networks of local customers and suppliers by word of mouth and traditional forms of

networking, and as a result, enjoyed a pronounced level of autonomy and personal freedom.

In addition to historical exclusion from self-employment and lack of qualified support services focused on entrepreneurship, disability-owned businesses do not have access to contract preferences available to businesses owned by other traditionally underrepresented groups. For example, the federal Section 8(a) program under the Small Business Act does not provide federal contracting set-asides for disability-owned businesses. Nevertheless, Disability:IN (formerly the United States Business Leadership Network)<sup>clv</sup> has developed a robust disability-owned business certification program that could be expanded to support such a set-aside program by verifying that businesses are eligible.

**Recommendation E1: NCD recommends that RSA administer technical assistance grants to qualified supported employment providers to develop and pilot new systematic instruction techniques, technologies, and accommodations for employment professionals to support people with disabilities in the jobs of the future, including in new and emerging industries of the 21st century, including creating business plans, marketing their services or products, and building strong networks within local business communities, to effectuate sustainable business enterprises.**

**Recommendation E2: NCD recommends that NIDLRR create a Jobs of the Future Research grants program dedicated to supporting people with disabilities to custom design and access their own technology-based business development tools to assist them in working in new and emerging industries of the 21st century.**

**Recommendation E3: NCD recommends that the resources committed to supporting people with disabilities to start their own businesses be improved. We recommend that CMS fund a Medicaid Infrastructure Grant (MIG) program for self-employment expressly dedicated to the incubation of start-up businesses created by and for people with significant disabilities.**

**Recommendation E4:** In addition, NCD recommends that Congress increase federal funding to RSA for VR offices to commit additional dedicated VR staff to the incubation of small businesses and self-employment for people with disabilities. RSA should ensure a dedicated staff person in every VR office to small business development, self-employment, and entrepreneurship.

**Recommendation E5:** NCD recommends that Congress amend Section 8(a) of the Small Business Act to make small businesses owned by people with significant disabilities eligible for federal set-aside contracts or create a new federal set-aside contract program, similar to the disabled veteran-owned business program, for businesses owned by people with significant disabilities. The recommended expansion of the Section 8(a) program should neither be confused with the AbilityOne program, nor allow AbilityOne participating businesses to compete in it.

**Recommendation E6:** NCD recommends that SBA, DOL, ETA, and the Office of Innovation and Entrepreneurship collaborate to increase access for people with disabilities to programs supporting entrepreneurs.

**Recommendation E7:** As recommended in NCD's 2018 report *Has the Promise Been Kept?: Federal Enforcement of Disability Rights Laws*, ETA should take immediate concrete steps to make American Job Centers more accessible and capable of serving people with intellectual and developmental disabilities, who are blind, and with other disabilities, including those who are in sheltered workshops.

Stakeholders also shared with us their considerable consternation that the public workforce system, as set forth under Title I WIOA, was less accessible and available to people with disabilities in or transitioning from sheltered workshops than the VR system. Many providers lamented that, in particular, the two systems were specifically not leveraged to the maximum benefit of people with significant disabilities and who were blind.

**Recommendation E8:** NCD recommends that RSA and ETA commit additional resources to identifying people with disabilities that are dually eligible for both Title I WIOA programs and the Title IV WIOA VR system. For those individuals that are concurrently eligible, RSA and ETA should issue guidance as to how federal funds can be leveraged and braided across systems.

**Recommendation E9:** NCD recommends that Congress should mandate that within the Title I WIOA public workforce system, a percentage of local Adult and Dislocated Worker and Vocational Rehabilitation Program funds be set aside to support apprenticeships, on-the-job training, and paid work experiences for individuals with significant disabilities in industries of the future and 21st century jobs.

#### **F. Business Engagement and Outreach**

The U.S. economy is approaching full employment. As a result, more and more businesses are changing their approaches to hiring, expanding their applicant pools, and specifically targeting historically underrepresented groups. The Oregon Manufacturing Extension Partnership (OMEP) told us that entry-level manufacturing jobs have increasingly become the work of supervising computerized machines, a far cry from the early 20th century manual processes employed in most sheltered workshops. Manufacturers are experiencing a significant labor shortage in operating these machines. Yet, OMEP said this labor shortage is not primarily the result of job applicants not having technical experience. In fact, the essential skills that OMEP's manufacturers are looking for in prospective employees are reportedly classic ones, particularly well-suited for people with disabilities: problem-solving and a willingness to be trained on the job, including in the technologies of the next century. This made it all the more surprising that OMEP was unaware that thousands of people with I/DD are set to receive the services and supports they need to leave Oregon workshops and enter competitive integrated employment over the next few years under the *Lane v. Brown* Consent Decree. Thousands of *Lane* class members are looking for jobs, yet OMEP had never been approached by VR or any other agency in the state about the issue.

Similarly, Disability:IN reported that more and more companies are seeking its support in order to expand their ability to hire, retain, and fully include people with disabilities, in part to fill their staffing needs to compete for applicants.

NCD's site visits and interviews confirmed that mainstream employers are often unaware of the services supported employment providers offer to businesses that hire people with disabilities, are unaware of the financial benefits to the companies of hiring people with disabilities with supported employment services and have a variety of misconceptions about what is required to support an employee with a disability. In addition, many businesses are deeply suspicious of government programs because of the perceptions that they carry a great deal of bureaucracy, expense, and restrictions.

**Recommendation F1: NCD recommends that RSA and ETA should issue guidance to all AJC and VR staff to deploy robust “business engagement strategies” within regional job markets on behalf of people with significant disabilities, as is required under Title I of WIOA.<sup>civi</sup>**

For example, AJCs are already charged with providing “business services” through the AJC network to assist businesses and industry sectors in recruiting, retaining, and developing the on-boarding of talent for the regional economy. AJCs should do this as a means of engaging business regionally in hiring people with disabilities from sheltered workshops and performing outreach to businesses about the availability of qualified workers with disabilities. These outreach strategies should include growing and emerging 21st century industries, using Bureau of Labor Statistics and other data-driven strategies. Business engagement strategies should include specifically consulting emerging industries of the future about their hiring goals, preferences, and business needs. It should also include identifying companies and industries with supply chain footprints in subminimum wage employment and informing and encouraging them to hire those workers directly. Moreover, it should include outreach to the direct customers of subminimum wage employers to encourage them to on-board workers into competitive integrated employment. Such efforts will assist employers to recruit, retain, and develop effective on-boarding strategies for sheltered employees. Business

engagement strategies should include partnerships between government agencies, private supported employment agencies and programs, foundations, and employers.

**Recommendation F2: NCD recommends that RSA fund private business to develop apps that will allow businesses, supported employment service providers, and VR agencies to calculate the estimated financial benefits to businesses of hiring a person with a disability to perform a supported or customized job.**

### **G. Supporting People with Disabilities and Their Families to Enter Competitive Integrated Employment**

In many of our interviews and site visits, we heard people say that people with disabilities, parents, and families have benefited significantly from peer-to-peer mentoring to alleviate fears or concerns about the transition from sheltered workshops to competitive integrated employment. Certainly, for those who have had very few opportunities to learn about or try competitive integrated employment after having been in sheltered employment for many years, questions and concerns about such a transition are warranted, and peer to peer mentoring and family support networks are of great value. As one parent advocate pointed out, some families were involved in the original founding of their family member's sheltered workshop because they thought they were the vanguard of community services at the time, and they continue to feel judged about their choice to allow their family member to work in them and earn subminimum wages. In her estimation, as a result, sometimes these feelings disrupt the process of a parent supporting an adult son or daughter to try competitive integrated employment. Yet, trying competitive integrated employment, in addition to talking to others who have made the transition to it, is one of the primary means by which it is possible to make an informed and meaningful choice about working. Peer mentoring and support is of significant value for this.

In fact, peer-to-peer mentoring may present unique opportunities for employment and self-employment for people with disabilities that have left sheltered workshops. Under WIOA, "peer mentoring" is one of five Pre-Employment Transition Services provided to

students with disabilities. Also, sub-minimum wage employers are required to inform individuals with disabilities of “self-advocacy, self-determination, and peer mentoring training opportunities available in the individual’s geographic area.”<sup>clvii</sup> These opportunities cannot be provided by an individual’s 14(c) employer.<sup>clviii</sup> Individuals with disabilities should be supported to provide these services themselves as entrepreneurs and business people.

**Recommendation G1: NCD recommends that the ACL provide additional grant funds to state developmental disability planning councils, and the University Affiliated Centers (now known as Centers of Excellence) coordinate and expand efforts to support peer support for both families and people with disabilities transitioning from the 14(c) programs to integrated employment.**

**Recommendation G2: NCD recommends that ODEP, RSA, and ETA provide technical assistance to states including state agencies for supporting people with disabilities to develop disability-owned businesses or self-employment for the purpose of providing peer mentoring. In addition, ODEP, RSA, and ETA should provide technical assistance to non-profit organizations, including developmental disability councils, associations for the blind, and centers for independent living, to find strategies for hiring people with disabilities that formerly worked in sheltered workshops to fill the burgeoning demand for peer mentoring services. This would implement WIOA’s call for the expansion of self-advocacy, self-determination, and peer mentoring opportunities in geographic proximity to youth and adults with disabilities, and prohibits the provision of such services by 14(c) entities,**

Even apart from the issue of accessing peer mentoring supports, some families still fear that the supported employment model will not support their family member for all the hours that they were formerly working in the sheltered workshop. Other families reportedly have expressed concern for their family members’ safety in not being provided the same level of continuous supervision throughout a given week.

Many people with disabilities work part-time in competitive integrated employment (i.e. 15-20 hours per week) for a number of reasons including the availability of part-time versus full-time work, stringent institutional housing rules including group home curfews, and lack of flexible access to transportation. NCD has found it to be a false equivalence that individuals with disabilities in part-time work are “working less” than people in sheltered workshops. We know from our extensive research and site visits that in many sheltered workshops contract work is drying up and workers are often not engaged in work at all for significant portions of the day. Moreover, in our travels, many of the providers that we met with advised us not to equate bricks and mortar with safety; as people who are more fully engaged with broader networks of support, in their view, were far safer than those in sheltered workshops. It was reported that many sheltered workshops are, in fact, providing day custody in the guise of work.

#### Increasing Self-sufficiency and Self-determination During Non-Work Hours

In our site visits across the country, we repeatedly saw supported employment models that provided effective supports to people with disabilities to promote their inclusion in integrated settings during the hours that they were not working. The providers we visited did not see their jobs as providing respite or day custody services, but rather as serving as a linking organization to fully support people to maximize their self-sufficiency during the hours that they were not working. In this regard, supported employment providers assisted people to engage in wrap around services that enhanced their career development and economic self-sufficiency, broadened social networks, and injected them into mainstream civic, recreational, and educational commitments of their choice. Importantly, those supported employment providers did not advocate counting the mere number of hours in integrated day services or provider-run activities as success. As one national subject matter expert advised, the strongest metrics for inclusion in the community during hours that people are not working include personal outcomes and not hours, like the number of unpaid personal relationships built, valued adult social roles played, and the breadth of expanded networks created to advance one’s career. Additional technical guidance may be necessary to states to plan, fund, and support



providers to establish holistic integrated wrap-around service models for people with disabilities to access during the hours that they are not working.

**Recommendation G3: NCD recommends that the Administration on Intellectual and Developmental Disabilities (AIDD), Administration for Children and Families (ACF), U.S. Department of Health and Human Services, fund the Association of University Centers on Disabilities (AUCD) to provide pilot programs across the states to incubate and assess models for ensuring that people with disabilities are supported to fully participate in the community during the hours that they are not working, including in activities that expand self-sufficiency and employability. These pilot projects should determine appropriate objectives, techniques, and data collection criteria for wrap-around integrated day services and should seek to measure cost efficiencies for providing such services.**

#### Benefits Counseling and Planning

Throughout NCD's meetings and interviews, people with disabilities, their family members, their service providers, and state agency officials repeatedly and fervently stated that people with disabilities were dissuaded from working, or from working as many hours as they can, because of pervasive and deeply-held beliefs about the impact of competitive integrated employment on their public benefits. Some of these beliefs are incorrect because the rules for Medicaid and Social Security benefits have changed over the past two decades. Some of these beliefs are correct because legitimate disincentives to work still exist in the Medicaid and Social Security systems. And the truth of some of the beliefs is complex and depends on the particular circumstances of the individual. These concerns about benefits relate particularly to the loss of Medicaid health care benefits and to the loss of SSI and SSDI cash benefits as earnings increase.

Qualified benefits counselors make a tremendous difference as people with disabilities decide whether to join the integrated workforce and as they decide how many hours they can work. By making clear to people with disabilities the reality of the financial consequences of their work decisions, benefits counselors dramatically transform

attitudes of people with disabilities and their families about the risks inherent in working. For example, benefits counselors can explain, as NCD did in its report *Medicaid Managed Care for People with Disabilities: Policy and Implementation Considerations for Federal and State Policymakers*,<sup>clix</sup> that:

states are required to continue Medicaid benefits to people under age 65 who (a) have not recovered from the physical or mental impairment(s) that formed the basis of their eligibility; (b) need Medicaid coverage in order to continue working; (c) would otherwise lose Medicaid and SSI benefits due to earnings in excess of the SGA test; and (d) continue to meet other SSI and Medicaid eligibility requirements. These Medicaid beneficiaries are referred to as “Qualified Severely Impaired Individuals.” They are entitled to receive Medicaid coverage after the loss of SSI eligibility until they reach an income level the Social Security Administration considers sufficient to purchase “reasonably equivalent” health insurance coverage (or buy into Medicaid coverage) and, if required, pay for attendant care services.

In addition, benefits planners can explain how the Medicaid Buy-In program allows states that have opted into it to allow individuals with disabilities to buy in to Medicaid coverage depending on the income of themselves or their family.<sup>clx</sup> Or they can explain how reinstatement of SSI benefits can be accomplished without a new application if a competitive integrated job does not work out within 12 months,<sup>clxi</sup> and how SSDI cash benefits and Medicaid can be reinstated on an expedited basis and temporarily provided during the reinstatement process for up to six months if a person with a disability stopped receiving benefits within five years because they went to work.<sup>clxii</sup> Finally, benefits counselors can explain how the increased income from competitive integrated employment can more than replace any lost income from public benefits, supporting people to achieve the result that is most beneficial for them, their families, their states, and the federal government.

However, stakeholders across the states lamented the lack of sufficient availability of qualified benefits counselors and information on how benefits would be affected by work. To be qualified, benefits counselors require five days of in-person training, 25 hours of self-study, 24-45 hours of assessment, certification, and continuing education. Training and certification are generally only available through two universities (Virginia Commonwealth University and Cornell University) nationwide. 10-12 trainings are offered without charge at various locations across the country annually, but often requires trainees to incur travel and lodging expenses, as well as a week away from work. VCU had trained over 2,500 benefits counselors as of 2017. According to VCU, those counselors have served over 800,000 beneficiaries. However, there are over 8.5 million people with disabilities receiving SSDI benefits in the country.<sup>clxiii</sup>

Strong qualification and credentialing is important due to the complexity of state and federal benefits. However, the need for additional benefits counselors across the country calls for increasing the capacity of training providers, incentivizing people to participate in the training and certification programs and encouraging service providers and their staff to provide benefits counseling, particularly in rural areas.

**Recommendation G4: NCD recommends that Congress authorize additional funding for training, assessment, and credentialing of benefits counselors, or Certified Work Incentives Counselors (CWICs), in additional locations across the country each year, as well as for exploration of the efficacy of online and other forms of training to assist in developing new benefits counselors in rural areas.**

**Recommendation G5: NCD recommends that SSA, CMS, and RSA support state agencies and service providers to offer benefits counseling through remote methods for individuals who live in remote areas or who have difficulty traveling, in order to better serve rural areas.**

For example, just as online and tele-medicine has shown promise in serving the healthcare needs of people in rural areas, online and tele-counseling could do the same for people with disabilities pursuing employment in rural areas.

In addition to increasing the availability of benefits counselors, benefits transition calculators and other tools should be developed to allow beneficiaries and their families and service providers, as well as benefits counselors, to access up-to-date information about how their benefits will be affected by a transition to competitive integrated work. Software applications (“apps”) that are regularly updated could help a great deal in keeping benefits counselors up to date on changes to benefits availability within their states and could help reduce the fear that people with disabilities and their families face when considering a transition to work or an increase in income.

**Recommendation G6: NCD recommends that SSA, RSA, and CMS in partnership with private business, fund the development of a software application that can demonstrate, on an individual basis that includes state law differences, how health care and cash benefits will be affected by a person with a disability going to work or increasing income.**

#### Disconnecting the Availability of Medicaid Benefits for People with Disabilities from Income and Assets

People with significant disabilities tend to have greater, more long-term, and more specialized, health care needs than the general public. Yet employee-sponsored health care benefits tend to be targeted to serving the employees who do not have those extensive, long-term, or specialized needs. In addition, many employers do not offer health care benefits to part-time employees or contractors. As a result, many potential employees with disabilities cannot benefit from their employer-sponsored health care benefits. Nor do private market individual insurance policies cover the long-term specialized needs of people with significant disabilities, including I/DD. Only Medicaid covers the specialized long-term disability-related services needs of people with disabilities. While the Medicaid Buy-In program allows people with disabilities to pay part of their Medicaid premiums, that program imposes caps on income at which a person is not eligible for the Buy-In program. Federal law caps the program at monthly income of \$2,512.50 and asset limits of \$2,000 but allows states to impose lower limits.

Limits in participating states range from a low of \$981 monthly (\$11,772/year) income to a high of \$6,250 monthly (\$75,000/year).<sup>clxiv</sup> Most participating states limit monthly income to \$2,000-\$3,000. State asset limits range from \$2,000 to \$75,000, with most states capping assets at below \$15,000. Seven states do not participate in the Buy-In program at all.

To the extent the loss of Medicaid benefits continues to stop people with disabilities from entering the workforce, giving up cash benefits, and becoming taxpayers, these Buy-In limits are counter-productive.

**Recommendation G7: NCD recommends that people with significant disabilities be eligible for Medicaid long-term disability-related services (not necessarily full Medicaid) regardless of income and eligibility or employer-sponsored health benefits.**

**Recommendation G8: NCD recommends that the Medicaid Buy-In program be expanded in every state for working individuals with disabilities who are not eligible for employer-provided health benefits without limitation on monthly income or assets.**

The expenses people with significant disabilities incur when engaging with the community, including work, are significantly higher than the expenses people without disabilities incur. An accessible vehicle, for example, costs between \$20,000 and \$80,000 above the cost of the vehicle.<sup>clxv</sup> Paratransit, where it is available at all, imposes timing restrictions (the paratransit provider is permitted to schedule your ride up to two hours before or two hours after your requested time) that make it incompatible with a work schedule and insufficiently flexible. For those who may not require a physically accessible vehicle but cannot drive themselves, taxi or ride-share services, where they are available, are an extra expense.<sup>clxvi</sup>

In addition, the extraordinary extra costs of living with a significant disability do not end with retirement, which tends to occur earlier for people with pre-existing disabilities. One of the major issues facing people with I/DD and their families is the concern about

what those individuals will do when their caregiver parents are deceased or unable to care for them and how they will live when they are no longer able to participate in work and day services. Nursing homes loom large in these fears. The federal government provides a variety of tax and other incentives to assist people without disabilities to save for their retirements but does little to allow people with significant disabilities to do the same. Instead, workers with disabilities are disincentivized from accepting employer contributions to retirement savings because they will count as assets that will undermine Medicaid eligibility. This is short-sighted on the government's part, as encouraging such retirement savings would reduce both the public benefits burden on the government when these individuals are working and earning and saving more, and when they retire and, without retirement savings, are likely to fall entirely on to government benefits, Medicare, and Medicaid, as well as experiencing a lower than necessary quality of life.

**Recommendation G9: NCD recommends that income and asset limits for Medicaid Buy-In be raised significantly to account for increased out-of-pocket disability-related expenses, such as transportation, personal care, assistive technology, and other disability-related employment expenses.**

**Recommendation G10: NCD recommends that retirement savings in qualified retirement accounts be excluded from assets considered in determining eligibility for Social Security and Medicaid for people with significant disabilities.**

## **H. Supporting Youth to Enter Competitive Integrated Employment and Higher Education**

Stakeholders consistently identified the importance of education systems taking concrete steps to align educational curriculum and instruction with employment-related transition planning. The strongest predictor of whether a student will be placed in post-secondary competitive integrated employment is whether they have engaged in one or more paid work experiences while in school.<sup>clxvii</sup> WIOA has ushered in requirements for Pre-Employment Transition Services including work-based learning experiences in the least restrictive environment. States should be supported to link eligible students with disabilities with the services that they need to access competitive integrated

employment as early as possible in the school trajectory, and then to seamlessly transition to the adult employment service system to sustain such employment. Many states have incorrectly interpreted the WIOA requirements to allow work-based learning experiences on school campuses or in adult sheltered workshops if subminimum wages are not paid to the student. States must be supported to model and implement truly integrated work-based learning experiences. These programs should incorporate new technologies, and workplace and business development tools, wherever possible.

**Recommendation H1: NCD recommends that a portion of OSERS' systems change grants, as recommended above, be dedicated to supporting states to scale school transition programs like Project Search, Seamless Transition, and Guideposts to Success. NCD also recommends that these programs be expanded to include the piloting of training and systematic instruction around the use of technologies during transition including the use of smart devices and business application tools, where appropriate.**

**Recommendation H2: NCD recommends ED OSEP, within its oversight authority of the IDEA, should encourage the use of Indicator 14 for youth with disabilities to obtain paid work experiences and require annual Indicator 14 reporting data to specifically track the number of students who transition to sheltered workshops versus competitive integrated employment with specific data on type of employment, hours worked, and wages earned.**

**Recommendation H3: NCD recommends ED and DOL should prohibit the use of sheltered workshops as placements for transition-related activities or skills assessment and prohibit the use of "mock sheltered workshops" in schools. ED and DOL should impose clear financial sanctions on school districts that violate this prohibition. ED and DOL can use as a guidepost in instituting this prohibition the Oregon Department of Education's policies prohibiting such activities.**

NCD has long understood that failure to earn a high school diploma or GED is nearly an insurmountable barrier to employment, and students with disabilities are often tracked away from regular high school diplomas. Numerous times throughout our travels and

interviews, we were also reminded of the critical impact access to institutions of higher education have on future employability.

**Recommendation H4: NCD recommends ED, including its Office of Postsecondary Education and the ThinkCollege program, should identify partnerships or programs to incubate or expand access to community college programs and other institutions of higher learning for professional development, certifications, and skills advancement, as students with disabilities are leaving school or sheltered workshops and entering the mainstream workforce.**



## Appendix A: Research Methodology

### **Interviews**

Using the same series of open-ended questions, the team interviewed advocates, supported employment providers, state policymakers, workers with disabilities, families, researchers, providers of workshop programs, and subject matter experts. Over the course of two months we spoke with over 160 people in 26 states including the District of Columbia.

### **Site Visits**

Six states were selected for site visits: Rhode Island, Massachusetts, Maine, Vermont, Oregon and Washington – taking into account geographic diversity, state and local policy, states that had successfully converted and/or eliminated sheltered workshops and providers within them that have not; states that once had a large population of people with disabilities in sheltered settings and now do not; suburban; urban; and rural settings. The team selected a cross-section of states and communities to get a detailed understanding of how states are funding transformation, modeling supported and customized employment strategies, and defining their outcomes. In Oregon and Washington, two of the largest states, group stakeholder meetings were held as well as individual site-specific interviews. The stakeholder meetings consisted of a combined three hours of moderated discussion with self-advocates, parent groups and family members, protection and advocacy lawyers, 14(c) and AbilityOne providers, representatives from the blind and I/DD communities, supported employment providers and staff, job coaches and job developers, technical assistance staff, subject matter experts, and others.

### **Telephone Surveys**

Using the 14(c) Certificate Holders list provided by the Wage and Hour Division we also conducted telephone surveys of employers from the Business Certificate Holder List

and Patient Worker List. The survey asked questions about certificate-holders' knowledge of the 14(c) certificate program, competitive integrated employment, the number of people employed under their 14(c) certificate, the type of work being done, working conditions, wages, and barriers to paying prevailing wage. Each employer was attempted to be reached twice.

From the Business Certificate Holder list we contacted all 50 employers. Twelve agreed to participate in the telephonic survey from seven states: California, Colorado, Maryland, Massachusetts, Ohio, Oklahoma, and South Dakota.

From the Patient Workers List we contacted the top 10 employers based on the number of employees paid subminimum wages. Three agreed to participate in the survey from facilities in three states: Arkansas, Illinois, and Utah.

### **Online Survey**

An online survey was sent using the platform Surveygizmo to the National Disability Rights Network distribution list of protection and advocacy staff. The survey asked employees from each statewide Protection and Advocacy system to share information on the customers of sheltered workshops, or those companies with workshops in their supply chains in their state. The survey was completed by representatives of 18 states.

### **Employment Data Collection**

Data on the number of people employed in subminimum wage settings was collected from the 14(c) Certificate Holders list provided by the Wage and Hour Division, that was last updated April 1, 2018. The most recent 990 Tax Form was used to collect financial data on each of the top 50 Community Rehabilitation Programs (CRPs) based on the number of employees paid subminimum wage. Additional information about the top 50 CRPs contracts, finances, and services was collected through their websites and annual reports.

### **Contract Data Collection**

Information on state use contracts and providers was gathered from individual state government websites and procurement offices.

Information on AbilityOne contracts and providers was gathered through the AbilityOne Annual Report, National Industries for the Blind (NIB) associated agency list, and the SourceAmerica Nonprofit Locator.

## Endnotes

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<sup>i</sup> K. Charlie Lakin, “Residential Services for Persons with Disabilities: Status and Trends”, *Research and Training Center on Community Living* (2009), <https://rtc.umn.edu/docs/RISP2009.pdf>.

<sup>ii</sup> In 1975, the Education for All Handicapped Children Act (EHA) was passed, and mandated free and appropriate public education for children with disabilities, and the provision of special education and related services. EHA was amended as the Individuals with Disabilities Education Act (IDEA) in 1997 and 2004. IDEA requires states that accepted IDEA funding to ensure that all students with disabilities receive a free and appropriate public education (FAPE), and that they do so in the least restrictive environment (LRE).

<sup>iii</sup> Individuals with Disabilities Education Act, 20 U.S.C. § 1400 (2004).

<sup>iv</sup> Letter from Patricia Davidson, Deputy Administrator for Program Operations, United States Department of Labor to Senator Elizabeth Warren, July 5, 2018.

<sup>v</sup> Bureau of Labor Statistics, “Persons with a Disability: Labor Force Characteristics Summary,” <https://www.bls.gov/news.release/disabl.nr0.htm>.

<sup>vi</sup> *Ibid.*

<sup>vii</sup> Dorthy Hiersteiner et al., “Working in the Community: The Status and Outcomes of People with Intellectual and Developmental Disabilities in Integrated Employment”, *National Core Indicators Project*, (2016).

<sup>viii</sup> *United Nations Global Status Report on Disability and Development Prototype*, United Nations Department of Economic and Social Affairs (2015), <http://www.un.org/esa/socdev/documents/disability/2016/GlobalStatusReportonDisabilityandDevelopment.pdf>.

<sup>ix</sup> President George H.W. Bush, “Statement on the Signing of the Americans with Disabilities Act” (Washington, DC, July 26, 1990).

<sup>x</sup> *Subminimum Wage and Supported Employment*. Washington, D.C.: National Council on Disability, 2012. <https://www.ncd.gov/publications/2012/August232012>.

<sup>xi</sup> *Ibid.*, 18.

<sup>xii</sup> *Report to U.S. Secretary of Labor Thomas E. Perez and Senate Health, Education, Labor and Pensions Committee*, Washington DC: Advisory Committee on Increasing Competitive Integrated Employment for Individuals with Disabilities, 2016. [https://www.dol.gov/odep/topics/pdf/ACICIEID\\_Final\\_Report\\_9-8-16.pdf](https://www.dol.gov/odep/topics/pdf/ACICIEID_Final_Report_9-8-16.pdf)

<sup>xiii</sup> *Groups support the repeal of Section 14(c) of the Fair Labor Standards Act*, 2015. National Federation for the Blind.

[https://nfb.org/images/nfb/documents/word/opposition\\_list\\_section\\_14c\\_20150114.doc](https://nfb.org/images/nfb/documents/word/opposition_list_section_14c_20150114.doc).

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- <sup>xiv</sup> "Declaration in Support of Minimum Wage for All People Who Are Blind or Have Significant Disabilities", AbilityOne, March 18, 2016, [https://www.abilityone.gov/Commission/Commision\\_Declaration.html](https://www.abilityone.gov/Commission/Commision_Declaration.html).
- <sup>xv</sup> Transitioning to Integrated Meaningful Employment Act (TIME Act), H.R. 1377, 115th Cong. (2017), <https://www.congress.gov/bill/115th-congress/house-bill/1377/text>; see also Transitioning to Integrated Meaningful Employment Act (TIME Act), H.R. 188, 114th Cong. (2015), <https://www.congress.gov/bill/114th-congress/house-bill/188>; TIME ACT FAQ, <https://nfb.org/time-act-faqs>.
- <sup>xvi</sup> "Special Employment", Wage and Hour Division, Department of Labor, 2017, <http://www.dol.gov/whd/specialemployment/index.htm>.
- <sup>xvii</sup> "Special Minimum Wage Program, Centers Offer Employment and Support Services to Workers with Disabilities, But Labor Should Improve Oversight," GAO Report 01-886, 2001. <https://www.gao.gov/new.items/d01886.pdf>.
- <sup>xviii</sup> Wage and Hour Division staff, interview with author. June, 2018.
- <sup>xix</sup> Letter from Patricia Davidson, Deputy Administrator for Program Operations, United States Department of Labor to Senator Elizabeth Warren, July 5, 2018.
- <sup>xx</sup> "14(C) Certificate Holders", Wage and Hour Division, Department of Labor, 2017, <https://www.dol.gov/whd/workerswithdisabilities/certificates.htm>.
- <sup>xxi</sup> J. Butterworth, et al., *StateData: The National Report on Employment Services and Outcomes*. Boston, MA: University of Massachusetts Boston, Institute for Community Inclusion, (2011).
- <sup>xxii</sup> J. Winsor, J. Timmons, et al., *The National Report on Services and Outcomes*, Boston, MA: University of Massachusetts Boston, Institute for Community Inclusion, (2016). [https://www.statedata.info/sites/statedata.info/files/files/statedata\\_bluebook\\_2016.pdf](https://www.statedata.info/sites/statedata.info/files/files/statedata_bluebook_2016.pdf)
- <sup>xxiii</sup> *Ibid.* (citing .Winsor et al., 2017; Nord et al., 2016; Mank, 2003; Domin & Butterworth, 2012).
- <sup>xxiv</sup> *Ibid.*
- <sup>xxv</sup> "Persons with a Disability: Labor Force Characteristics," Bureau of Labor Statistics, June 21, 2017, <https://www.bls.gov/news.release/disabl.nr0.htm>.
- <sup>xxvi</sup> Industry Profile: *Basic Infrastructure*, World Economic Forum, 201. <http://reports.weforum.org/future-of-jobs-2016/basic-infrastructure/>.
- <sup>xxvii</sup> "Industry Profile: Basic and Infrastructure" The Future of Jobs, World Economic Forum. <http://reports.weforum.org/future-of-jobs-2016/basic-infrastructure/>
- <sup>xxviii</sup> 29 C.F.R. §§ 525.7, 525.8, 525.9, 525.11, 525.12, and 525.13.
- <sup>xxix</sup> 29 U.S.C. § 214(c)(1)-(2).
- <sup>xxx</sup> *Id.* at § 214(c)(2)(A).
- <sup>xxxi</sup> Carter, Erik W., Diane Austin, and Audrey A. Trainor. "Predictors of Postschool Employment Outcomes for Young Adults With Severe Disabilities." *Journal of Disability Policy Studies* 23, no. 1 (2011): 50-63.
- <sup>xxxii</sup> General Accounting Office (GAO), September 2001, *Special Minimum Wage Program, Centers Offer Employment and Support Services to Workers with Disabilities, But Labor Should Improve Oversight* GAO-01-886, Page 4.

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<sup>xxxiv</sup> Robert Evert Cimera, "The cost-trends of supported employment versus sheltered employment", *Journal of Vocational Rehabilitation*, Kent State University (2008), 15-20, Pages 18, 19.

<sup>xxxv</sup> "A Brief History of the AbilityOne Program", U.S. AbilityOne Commission, 2016, [https://www.abilityone.gov/abilityone\\_program/history.html](https://www.abilityone.gov/abilityone_program/history.html).

<sup>xxxvi</sup> *Ibid.*

<sup>xxxvii</sup> 41 U.S.C. § 8501 (6)-(7).

<sup>xxxviii</sup> 41 U.S.C. §8501 (stating, to be eligible to work on an AbilityOne contract, an individual with a disability must be legally blind or must have a physical or mental disability that "constitutes a substantial handicap to employment and is of such a nature as to prevent the individual under such disability from currently engaging in normal competitive employment.").

<sup>xxxix</sup> *Lane v. Kitzhaber*, 841 F. Supp. 2d 1199, 1205-06 (D. Or. 2012).

<sup>xi</sup> *Ibid.* at 1206.

<sup>xii</sup> 34 C.F.R. § 361.5(b)(16); see also 29 U.S.C. §§ 720(a)(1), (a)(3)(B) (Title I of the Rehabilitation Act) ("Individuals with disabilities must be provided the opportunities to obtain gainful employment in integrated settings."); U.S. Department of Education, Office of Special Education and Rehabilitative Services, Rehabilitation Services Administration, Technical Assistance Circular, 06-01 (Nov. 21, 2005), available at <http://www2.ed.gov/policy/speced/guid/rsa/tac-06-01.doc>.

<sup>xiii</sup> Section 7(5) of the Rehabilitation Act of 1973, 29 U.S.C. § 705(5), 34 C.F.R. § 361.5(c)(9).

"Competitive Integrated Employment," consistent with the federal Workforce Innovation and Opportunity Act (WIOA), means work that is performed on a full-time or part-time basis (including self-employment): (a) For which an individual is compensated at a rate that: (1) Meets or exceeds state or local minimum wage requirements, whichever is higher; and (2) Is not less than the customary rate paid by the employer for the same or similar work performed by other employees who are not individuals with disabilities, and who are similarly situated in similar occupations by the same employer and who have similar training, experience, and skills; or (3) In the case of an individual who is self-employed, yields an income that is comparable to the income received by other individuals who are not individuals with disabilities, and who are self-employed in similar occupations or on similar tasks and who have similar training experience, and skills; and (b) For which an individual is eligible for the level of benefits provided to other employees; and (c) Which is at a location where the employee interacts with other persons who are not individuals with disabilities (not including supervisory personnel or individuals who are providing services to such employee) to the same extent that individuals who are not individuals with disabilities and who are in comparable positions interact with other persons; and (d) Which, as appropriate, presents opportunities for advancement that are similar to those for other employees who are not individuals with disabilities and

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who have similar positions. See WIOA, Pub. L. No. 113-128, 128 Stat. 1425, 1633-34 (2014).

<sup>xliii</sup> 34 C.F.R. § 361.5(c)(32).

<sup>xliv</sup> *Ibid.*

<sup>xlv</sup> *Ibid.*

<sup>xlvi</sup> RSA TAC 06-01 (2005), states “For CRPs that provide employment opportunities for individuals with disabilities under the JWOD program, the very nature of the JWOD program may raise questions as to whether the employment position at such a CRP sought by an individual with a disability through the VR program satisfies the definition of “integrated setting” and, thus, would constitute an “employment outcome... Factors that typically distinguish JWOD-funded job positions from other positions include: (1) allowances under the Fair Labor Standards Act for compensatory sub-minimum wages; and (2) mandated direct labor-hour ratio of persons with disabilities... These factors are important when analyzing whether a particular work-unit within a CRP satisfies the definition of “integrated setting” and, thus, constitutes an employment outcome under the VR program because they are critical elements of the definitions pertinent to this analysis, namely, “integrated setting,” “employment outcome,” and “extended employment.”

<sup>xlvii</sup> RSA Technical Assistance Circular 06-01 (2005); US Department of Education, OSERS, FAQ (January 18, 2017).

<sup>xlviii</sup> “RSA: Integrated Location Criteria of the Definition of ‘Competitive Integrated Employment’ FAQs”, OSERS, U.S. Department of Education, January 18, 2017, <https://www2.ed.gov/about/offices/list/osers/rsa/wioa/competitive-integrated-employment-faq.html>.

<sup>xlix</sup> 81 FR 161 at 55463 (August 19, 2016).

<sup>l</sup> 62 FR 6308 (Feb. 11, 1997).

<sup>li</sup> 66 FR 361 (Jan. 22, 2001).

<sup>lii</sup> David Mank, Andrea Cioffi, and Paul Yovanoff “Direct Support in Supported Employment and Its Relation to Job Typicalness, Coworker Involvement, and Employment Outcomes.” *Mental Retardation*, Vol. 38, No. 6 (December 2000): 506-516. <http://www.aaidjournals.org/doi/abs/10.1352/00476765%282000%29038%3C0506%3ADSISEA%3E2.0.CO%3B2>).

<sup>liii</sup> See 41 U.S.C. §8501 (stating, to be eligible to work on an AbilityOne contract, an individual with a disability must be legally blind or must have a physical or mental disability that “constitutes a substantial handicap to employment and is of such a nature as to prevent the individual under such disability from currently engaging in normal competitive employment.”).

<sup>liv</sup> “Student Work Experience List.” 14(c) Certificate Holders, Wage and Hour Division, July 1, 2018. [https://www.dol.gov/whd/specialemployment/SWEPlist.htm](https://www.dol.gov/whd/specialemloyment/SWEPlist.htm).

<sup>lv</sup> Business Certificate Holders List.” 14 (C) Certificate Holders, Wage and Hour Division. July 1, 2018. <https://www.dol.gov/whd/specialemployment/BusinessCertList.htm>

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<sup>lvi</sup> “WH - 226 and WH-226(A), 14(c) Certificate Applications”, April 1, 2018. Data provided by the Wage and Hour Division, U.S. Department of Labor. Accessed July, 2018.

<sup>lvii</sup> “WH - 226 and WH-226(A), 14(c) Certificate Applications”, April 1, 2018. Data provided by the Wage and Hour Division, U.S. Department of Labor. Accessed July, 2018.

WHD provided Section 14(c) certificate applications for the “Top 10” largest certificate holders on the Business certificate list, based upon the number of employees paid a subminimum wage as reported by the employer on their application, as of WHD’s April 1, 2018 list. Each page provided was redacted under the Freedom of Information Act guidelines.

<sup>lviii</sup> “Telephone survey results”, survey conducted by the Council, August 2018. “Response to Request for Data”, Wage and Hour Division, U.S. Department of Labor. Accessed July, 2018.

<sup>lix</sup> “WH - 226 and WH-226(A), 14(c) Certificate Applications”, April 1, 2018. Data provided by the Wage and Hour Division, U.S. Department of Labor. Accessed July, 2018.

<sup>lx</sup> Riverview Productions, 14(c) Certificate Application, 2018. Data provided by the Wage and Hour Division, U.S. Department of Labor. Accessed July, 2018.

<sup>lxi</sup> *Ibid.*

<sup>lxii</sup> “Response to Request for Data”, Wage and Hour Division, U.S. Department of Labor. Accessed July, 2018.

According to data provided by the WHD, approximately 24% of PWL certificate-holders are non-profit organizations, approximately 16% are for profit companies, and approximately 59% are public including state and local institutions.

<sup>lxiii</sup> “Employers of Patient Workers List.” 14 (C) Certificate Holders, Wage and Hour Division. July 1, 2018.

[https://www.dol.gov/whd/specialemployment/PatientWorkerList.htm](https://www.dol.gov/whd/specialemloyment/PatientWorkerList.htm)

<sup>lxiv</sup> “WH - 226 and WH-226(A), 14(c) Certificate Applications”, April 1, 2018. Data provided by the Wage and Hour Division, U.S. Department of Labor. Accessed July, 2018.

The data reflects the number of FLSA Section 14(c) patient worker certificate applications received per year, and of the applications received, the number that are renewal applications; and, the number of patient worker certificates issued in that year. The number of certificates issued may include applications received in a prior year. Of the certificates issued, WHD does not separate those that were renewal certificates.

<sup>lxv</sup> “WH - 226 and WH-226(A), 14(c) Certificate Applications”, April 1, 2018. Data provided by the Wage and Hour Division, U.S. Department of Labor. Accessed July, 2018.



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WHD provided Section 14(c) certificate applications for the "Top 10" largest certificate holders on the Patient Workers list, based upon the number of employees paid a subminimum wage as reported by the employer on their application, as of WHD's April 1, 2018 list. Each page provided was redacted under the Freedom of Information Act guidelines.

<sup>lxvi</sup> "Employers of Patient Workers List." 14 (C) Certificate Holders, Wage and Hour Division. July 1, 2018.

<https://www.dol.gov/whd/specialemployment/PatientWorkerList.htm>

<sup>lxvii</sup> Conway Human Development Center, 14(c) Certificate Application, 2018. (Provided by WHD, July 2018).

<sup>lxviii</sup> "WH - 226 and WH-226(A), 14(c) Certificate Applications", April 1, 2018. Data provided by the Wage and Hour Division, U.S. Department of Labor. Accessed July, 2018.

<sup>lxix</sup> Utah State Developmental Center, 14(c) Certificate Application, 2018. (Provided by WHD, July 2018).

<sup>lxx</sup> Beverly Farm Developmental Training Center, 14(c) Certificate Application, 2018. (Provided by WHD, July 2018).

<sup>lxxi</sup> Tacahale Industries, 14(c) Certificate Application, 2018. (Provided by WHD, July 2018).

<sup>lxxii</sup> "Response to Request for Data", Wage and Hour Division, U.S. Department of Labor. Accessed July, 2018.

<sup>lxxiii</sup> "Community Rehabilitation Programs List." 14 (C) Certificate Holders, Wage and Hour Division. July 1,

2018. <https://www.dol.gov/whd/specialemployment/BusinessCertList.htm>

<sup>lxxiv</sup> Letter from Patricia Davidson, Deputy Administrator for Program Operations, United States Department of Labor to Senator Elizabeth Warren, July 5, 2018.

<sup>lxxv</sup> "Community Rehabilitation Programs List." 14 (C) Certificate Holders, Wage and Hour Division. July 1,

2018. <https://www.dol.gov/whd/specialemployment/BusinessCertList.htm>

<sup>lxxvi</sup> *Ibid.*

<sup>lxxvii</sup> *Ibid.*

<sup>lxxviii</sup> "State Population totals and Components of Change: 2010-2017", Data, U.S. Census Bureau. July 9, 2018.

<https://www.census.gov/data/datasets/2017/demo/popest/state-total.html>

<sup>lxxix</sup> *Ibid.*

<sup>lxxx</sup> "Response to Request for Data", Wage and Hour Division, U.S. Department of Labor. Accessed July, 2018.

<sup>lxxxi</sup> "Community Rehabilitation Programs List." 14 (C) Certificate Holders, Wage and Hour Division. July 1,

2018. <https://www.dol.gov/whd/specialemployment/BusinessCertList.htm>

"Nonprofit Agencies", U.S. AbilityOne Commission. Accessed July 2018.

[https://www.abilityone.gov/abilityone\\_network/nonprofit.html](https://www.abilityone.gov/abilityone_network/nonprofit.html)

<sup>lxxxii</sup> *Ibid.*

<sup>lxxxiii</sup> *Ibid.*

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lxxxiv *Ibid.*

lxxxv *Ibid.*

lxxxvi Javits-Wagner-O'day Act, 41 U.S.C. § 8504.

lxxxvii "Procurement Preferences", accessed through each state legislative code.

lxxxviii "Community Rehabilitation Programs List." 14 (C) Certificate Holders, Wage and Hour Division. July 1, 2018. [https://www.dol.gov/whd/specialemployment/BusinessCertList.htm](https://www.dol.gov/whd/specialemloyment/BusinessCertList.htm)

lxxxix IRS Form 990, Part I line 12, "Total Revenue". Accessed for the Top 10 CRPs by number of Subminimum wage workers as determined through the DOL 14(c) CRP List.

<sup>xc</sup> Social vocational Services IRS Form 990, Part V11 Section A, "Officer, Directors, Trustees, Key Employees, Highest Compensated Employees"

<sup>xc</sup>i Pride Industries IRS Form 990, Part V11 Section A, "Officer, Directors, Trustees, Key Employees, Highest Compensated Employees"

<sup>xc</sup>ii IRS Form 990, Part I line 12, "Total Revenue". Accessed July, 2018.

<sup>xc</sup>iii "Community Rehabilitation Programs List." 14 (C) Certificate Holders, Wage and Hour Division. July 1, 2018. <https://www.dol.gov/whd/specialemployment/BusinessCertList.htm>

<sup>xc</sup>iv *Ibid.*

<sup>xc</sup>v "Nonprofit Agencies", U.S. AbilityOne Commission. Accessed July 2018. [https://www.abilityone.gov/abilityone\\_network/nonprofit.html](https://www.abilityone.gov/abilityone_network/nonprofit.html)

<sup>xc</sup>vi "History", About Us, SourceAmerica, 2018. <https://www.sourceamerica.org/history>

<sup>xc</sup>vii IRS Form 990, Part I line 12, "Total Revenue". Accessed July, 2018.

<sup>xc</sup>viii "Survey on Sheltered workshop Supply Chains", distributed by NDRN, August 2018.

<sup>xc</sup>ix Glassman, Rick. *78 Illustrations of Large Corporations and Institutions Benefiting from Subminimum Wage Employment of Workers with Disabilities in Massachusetts, under FLSA Section 14[c]*, Disability Law Center, Boston, Massachusetts, January 16, 2018. [www.dlc-ma.org](http://www.dlc-ma.org).

<sup>c</sup> Microsoft Real Estate and Facilities Supported Employment Program, *Supported Employment Program Toolkit*, 2018. <https://www.microsoft.com/en-us/procurement/diversity-sep.aspx>.

<sup>ci</sup> *Ibid.*

<sup>cii</sup> *Ibid.*

<sup>ciii</sup> "Microsoft Supply Chain Code of Conduct", Procurement, Microsoft. 2018. <https://www.microsoft.com/en-us/procurement/supplier-conduct.aspx>

<sup>civ</sup> Motion Of Defendant Honda Of America Manufacturing, Inc. To Dismiss Plaintiff Michael A. Denoewer's

First Amended Complaint Honda Motion to Dismiss, *Denoewer v. UCO Industries Inc. and Honda of America Manufacturing Inc.*, Case No.: 2:17-cv00660-GCS-KAJ (S.D.OH 2018).

<sup>cv</sup> *Ibid.*

<sup>cvi</sup> *Ibid.*

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<sup>cvii</sup> U.S. v. Rhode Island and City of Providence, Interim Settlement Agreement, available at <https://www.ada.gov/olmstead/documents/ri-providence-interim-settlement.docx>; U.S. v. Rhode Island, Consent Decree, available at <https://www.ada.gov/olmstead/documents/ri-olmstead-statewide-agreement.docx>.

<sup>cviii</sup> “RI DD Employment and Day Activity Data Summary,” Statewide Summary 2017, Quarter 4. *Paul V. Sherlock Center on Disabilities*, Rhode Island College.

<sup>cix</sup> “Quarterly Status Report on Court Ordered Placements for the Period Ending September 30, 2016”, Information and Technical Assistance on the American with Disabilities Act, U.S. Department of Justice. March 2, 2017. [https://www.ada.gov/olmstead/documents/ri\\_reports/55-Quarterly%20Status%20Report%20on%20Ct%20Ordered%20Placements%20for%20the%20Period%20Endin....pdf](https://www.ada.gov/olmstead/documents/ri_reports/55-Quarterly%20Status%20Report%20on%20Ct%20Ordered%20Placements%20for%20the%20Period%20Endin....pdf)

<sup>cx</sup> “RI DD Employment and Day Activity Data Summary,” Statewide Summary 2017, Quarter 4. *Paul V. Sherlock Center on Disabilities*, Rhode Island College.

<sup>cx i</sup> “Rhode Island Person-Centered Thinking Guide”, *Paul V. Sherlock Center on Disabilities*, Rhode Island College. Rhode Island Division of Developmental Disabilities, February 2018. <http://www.ric.edu/sherlockcenter/personcentered.html>.

<sup>cxii</sup> Amado, A.N. “Friends: Connecting people with disabilities and community members.” Minneapolis, MN: University of Minnesota, Institute on Community Integration, Research and Training Center on Community Living, 2013. [https://ici.umn.edu/products/docs/Friends\\_manual.pdf](https://ici.umn.edu/products/docs/Friends_manual.pdf).

<sup>cxiii</sup> Timmons, Jaimie. “Maine's Peer-Support Training: Helping People with ID/DD Transition Out of Sheltered Workshops”, Institute for Community inclusion, University of Massachusetts Boston. 2018.

[https://www.communityinclusion.org/article.php?article\\_id=303](https://www.communityinclusion.org/article.php?article_id=303)

<sup>cxiv</sup> “Customized Employment Competency Model”, ODEP, Department of Labor. 2011. <https://www.dol.gov/odep/pdf/2011cecm.pdf>

“Discovery [means] [g]athering information from the job seeker and the [employment] support team (a group of multiple partners, including the employment specialist who all jointly take some responsibility for the job seeker’s needs; however, the job seeker is the ultimate decision-maker) to determine the job seeker's interests.)”

<sup>cxv</sup> “Massachusetts Blueprint for Success: Employing Individuals with Intellectual Disabilities in Massachusetts”, State of Massachusetts, November 2013. <https://www.mass.gov/files/documents/2016/07/qc/blueprint-for-success.pdf> (last visited August 21, 2018).

<sup>cxvi</sup> *Ibid.*

<sup>cxvii</sup> *Id.* at para. 16.

<sup>cxviii</sup> “Employment First: Outcomes and Successes”, p. 3-4, p. 5, Oregon Department of Human Services. October 2017. at [https://www.oregon.gov/DHS/EMPLOYMENT/EMPLOYMENT-FIRST/Documents/EF\\_Outcomes\\_Successes\\_October\\_2017.pdf](https://www.oregon.gov/DHS/EMPLOYMENT/EMPLOYMENT-FIRST/Documents/EF_Outcomes_Successes_October_2017.pdf) (October 2017);

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[https://www.oregon.gov/DHS/EMPLOYMENT/EMPLOYMENT-FIRST/DataReports/Lane\\_v\\_Brown\\_Semi\\_Annual\\_Report\\_2-28-18.PDF](https://www.oregon.gov/DHS/EMPLOYMENT/EMPLOYMENT-FIRST/DataReports/Lane_v_Brown_Semi_Annual_Report_2-28-18.PDF)

<sup>cxxix</sup> “Lane v. Brown Semi-Annual Report”, p. 8, Table 3, Oregon Department of Human Services. February 28, 2018. [at](#)

[https://www.oregon.gov/DHS/EMPLOYMENT/EMPLOYMENT-FIRST/DataReports/Lane\\_v\\_Brown\\_Semi\\_Annual\\_Report\\_2-28-18.PDF](https://www.oregon.gov/DHS/EMPLOYMENT/EMPLOYMENT-FIRST/DataReports/Lane_v_Brown_Semi_Annual_Report_2-28-18.PDF)

<sup>cxx</sup> *Ibid.*

<sup>cxxi</sup> MV Advancements, <https://mvadvancements.org/>.

<sup>cxxii</sup> Tualatin Valley Workshop. <https://www.tv-workshop.com/>.

<sup>cxxiii</sup> Washington Initiative for Supported Employment. <https://www.gowise.org/>.

<sup>cxxiv</sup> “Supported Employment Manual”, p. 16, Oregon office of Vocational Rehabilitation, March 14, 2017. <https://apps.state.or.us/Forms/Served/re1724.pdf> (March 14, 2017).

<sup>cxxv</sup> “Supported Employment Manual”, p. 26, Oregon office of Vocational Rehabilitation, March 14, 2017. <https://apps.state.or.us/Forms/Served/re1724.pdf> (March 14, 2017).

<sup>cxxvi</sup> WIOA, Pub. L. No. 113-128, 128 Stat. 1425, 1633-34 (2014).

34 C.F.R. § 361.5(c)(32); RSA TAC 06-01 (2005).

<sup>cxxvii</sup> “Oregon stakeholder meeting”, Interview with the council. Portland Oregon, July 31, 2018.

<sup>cxxviii</sup> O.R.S. § 279 *et. seq.* See also JWOD, 41 U.S.C. § 8501 *et. seq.*

<sup>cxxix</sup> “MV Advancements Site Visit”, interview with The Council. July 30, 2018

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<sup>cxxx</sup> A. Cohen-Hall, “Washington Substitute Senate Bill 6384”, March 3, 2012.

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<sup>cxxxii</sup> “Washington State Employment Report”, p. 2, WISE. June 19, 2013.

<https://www.gowise.org/resources/employment-first/washington-state/>

<sup>cxxxiii</sup> “State Employment Snapshot: Washington”, StateData, Institute for Community Inclusion at the University of Massachusetts Boston.

<https://www.statedata.info/statepages/Washington>

<sup>cxxxiv</sup> “State Vocational Rehabilitation (VR) Agency Data” and “VR Closures with an Intellectual Disability (ID)”, *Washington: Integrated employment closures*, 2018. StateData, Institute for Community Inclusion at the University of Massachusetts Boston.

<http://www.statedata.info/data/showchart/803215>

<sup>cxxxv</sup> “Data and Resources to Inspire a Vision of Employment”, Washington State Data, Drive Disability Employment. July 2017.

[http://drivedisabilityemployment.org/washington#quicktabs-states\\_big\\_screen=1](http://drivedisabilityemployment.org/washington#quicktabs-states_big_screen=1)

<sup>cxxxvi</sup> Data provided by representatives from Developmental Disabilities Administration, Washington State Department of Social and Health Services, July 2018.

<sup>cxxxvii</sup> Morningside Services, [www.morningsideservices.com](http://www.morningsideservices.com).

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- cxxxviii Able Opportunities, <https://www.ableopps.com/>.
- cxxxix Harrison Medical Center, <https://www.chifranciscan.org/harrison-medical-center-bremerton.html>.
- cxl Chinook Enterprises, <https://chinookenterprises.org/>.
- cxli Lighthouse for the Blind, <http://thelighthousefortheblindinc.org/>.
- cxlii Job Fading is a process used after a supported employee has learned a task or set of tasks. It is at this point that the job coach begins to reduce the person's dependency on the job coach's supports that the employee has needed in order to learn a task, assisting the supported employee to expand his or her self-sufficiency in the job.
- cxliii Letter from Patricia Davidson, Deputy Administrator for Program Operations, Wage and Hour Division, U.S. Department of Labor to the Honorable Elizabeth Warren (July 5, 2018).
- cxliv Wage and Hour Division Data provided to the Council in connection with this report in July 2018.
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- cxlvi *Ibid.*
- cxlvii Eve Hill, Regina Kline, Curtis Richards, "Preparing Transition-Age Youth with Disabilities for Work: What School Leaders Need to Know About the New Legal Landscape", 2018. <http://iel.org/sites/default/files/Preparing-Transition-Age-Youth-with-Disabilities-for-Work.pdf>.
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- cxlix "Special Minimum Wage Program, Centers Offer Employment and Support Services to Workers with Disabilities, But Labor Should Improve Oversight," U.S. Government Accountability Office, September 2001. <https://www.gao.gov/products/GAO-01-886>
- cl The screen reader that was brought to market as JAWS in 1995 actually stands for *Job Access With Speech*, allowing blind and visually impaired users to unlock a text-to-speech or refreshable Braille display function.
- cli Dr. Anthony Antosh, "Interview Discussion with Rhode Island Provider Agency Directors", (2018). See also Pennsylvania National Core Indicators Data.
- clii Dr. David M. Mank, "Employment Planning Questionnaire," 1994. Administered at Morningside Services in Olympia, Washington.
- cliii Klaus Schwab, "Shaping the Fourth Industrial Revolution," page 24. World Economic Forum, 2018.
- cliv *Ibid*, page 30.
- clv Disability:IN is a national organization, with 160 corporate partners, committed to empowering business to achieve disability inclusion and equality. See <https://disabilityin.org>.
- clvi WIOA regulations, 20 C.F.R. § 678.435; 34 C.F.R. §§ 361.435,463.435.

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clvii 29 U.S.C. § 794(g)(c)(1)(B) (Section 511(c)(1)(B) of the Rehabilitation Act, as amended by WIOA).

clviii *Ibid.*

clix "Medicaid Managed Care for People with Disabilities: Policy and Implementation Considerations for Federal and State Policymakers", Appendix G at 175. National Council on Disability,  
[https://www.ncd.gov/rawmedia\\_repository/20ca8222\\_42d6\\_45a5\\_9e85\\_6bd57788d726.pdf](https://www.ncd.gov/rawmedia_repository/20ca8222_42d6_45a5_9e85_6bd57788d726.pdf).

clx *Ibid.*

clxi See Social Security Administration Program Operations Manual System, SI 02301.205 Suspension and Reestablishing Eligibility.

clxii "Expedited Reinstatement", Social Security Administration, 2018.

<https://www.ssa.gov/disabilityresearch/wi/exr.htm>.

clxiii "Social Security Beneficiary Statistics", Social Security Administration, 2018.

<https://www.ssa.gov/oact/STATS/DIbenies.html>.

clxiv "Medicaid Eligibility through Buy-In Programs for Workers with Disabilities", Kaiser Family Foundation, 2018. <https://www.kff.org/other/state-indicator/medicaid-eligibility-through-buy-in-programs-for-working-people-with-disabilities/?currentTimeframe=0&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D>

clxv "Adapting Motor Vehicles for People with Disabilities," National Highway Traffic Safety Administration, June 2015.

[https://www.nhtsa.gov/sites/nhtsa.dot.gov/files/documents/adapting\\_motor\\_vehicles\\_brochure\\_810733.pdf](https://www.nhtsa.gov/sites/nhtsa.dot.gov/files/documents/adapting_motor_vehicles_brochure_810733.pdf).

clxvi Lyft, Average Rates & Costs to Ride, available at <https://estimatefares.com/>.

For example, while costs vary from city to city, Lyft rides have average initial costs of \$0.90, average service fee of \$1.90, average \$.09 per-minute charge, and average \$0.90 per-mile charge, with an average minimum fare of \$3.50.

clxvii Erik W. Carter, Diane Austin, & Audrey A. Trainor (2011). "Factors associated with the early work experiences of adolescents with severe disabilities." *Intellectual and Developmental Disabilities*, 49(4), 233-247. DOI: 10.1352/1934-9556-49.4.233