



National Council on Disability

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.

Letter of Transmittal

August 23, 2012

President Barack Obama
The White House
1600 Pennsylvania Avenue NW
Washington, DC 20500

Dear Mr. President:

On behalf of the National Council on Disability (NCD), I am pleased to submit NCD's report, *Subminimum Wage and Supported Employment*.

Section 14(c) of the Fair Labor Standards Act allows employers certified by the United States Department of Labor to compensate people with disabilities for work at a rate less than the minimum wage—a wage set by Congress for all other workers in the United States. Many disability advocates argue that 14(c) should be abolished because it discriminates against people with disabilities and is thus inconsistent with our national disability policy goals enshrined in the Americans with Disabilities Act (ADA). Others argue that the subminimum wage certification program still has an important role among a range of employment options because it provides opportunities to people with disabilities who are unable to obtain competitive employment jobs. Debates among advocates and policymakers about the future of Section 14(c) have often been divisive, and consensus has been elusive.

NCD recognized it had a unique opportunity to develop a constructive path forward on subminimum wage policy. Following discussion at a December 2011 meeting of the Council, I appointed Council Member Clyde Terry as Chair of the Subminimum Wage Committee to examine the issue and bring forward recommendations to the full Council.

The recommendations contained in this report reflect the considered judgment and analysis of NCD. As part of our exploration, we engaged in a series of site visits around the country to learn from the ground up about how policies are actually working in the lives of people with disabilities. Our report is not empirical in its approach, but we have tried to capture the essence of all of the voices and perspectives we heard. Our comprehensive recommendations seek to be responsive to all of the opportunities and concerns identified.

The central theme of our recommendations is that the 14(c) program should be phased-out gradually as part of a systems change effort that enhances existing resources and

creates new mechanisms for supporting people in obtaining integrated employment and other nonwork services. The comprehensive system of supports we propose is designed to improve opportunities for people with disabilities. NCD recommends a phase-out of the 14(c) program rather than immediate repeal because those who have been in the program for many years need time to transition to a supported employment environment. Our comprehensive approach includes formal requirements of mandatory information-sharing to workers, as well as informal systems of peer support and incentives to states and providers to expand supported employment services in integrated settings.

NCD further recommends that the U.S. Department of Education should improve K–12 education and expand opportunities for higher education and postsecondary training for people with disabilities. As with all of our disability policies and programs, our transition programs and supportive employment programs should strive for maximum self-sufficiency. The end result will be greater opportunities and a stronger, more inclusive workforce for American businesses.

NCD recognizes that a report such as this is a starting point rather than the final word on overhauling a longstanding policy and program. NCD stands ready to assist you in taking the next steps to expand opportunities for people with disabilities to achieve economic independence and self-sufficiency.

Sincerely,

A handwritten signature in black ink, appearing to read "Jonathan Young", with a long horizontal flourish extending to the right.

Jonathan Young, Ph.D., J.D.

Chairman

(The same letter of transmittal was sent to the President Pro Tempore of the U.S. Senate, the Speaker of the U.S. House of Representatives, and the Director of the Office of Management and Budget.)

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List of Acronyms

ADA	Americans with Disabilities Act
CMS	Centers for Medicare & Medicaid Services
DDS	Vermont Developmental Disability Services
DOL	U.S. Department of Labor
ED	U.S. Department of Education
ESD	Education Service District
FAFSA	Free Application for Federal Student Aid
FMAP	Federal Medicaid Assistance Percentage
GAO	Government Accountability Office
GSA	General Services Administration
ID/DD	intellectual and developmental disabilities
IEP	individualized education plan
NCD	National Council on Disability
SSA	U.S. Social Security Administration
VR	vocational rehabilitation

Introduction

In December 2011, the National Council on Disability (NCD) began discussions relative to Section 14(c) of the Fair Labor Standards Act. This provision allows employers certified by the U.S. Department of Labor (DOL) to compensate people with disabilities for work at a rate less than the minimum wage—a wage set by Congress for all other workers in the United States. Following the Members' discussion, Chairman Jonathan Young appointed Council Member Clyde Terry to chair the Subminimum Wage Committee (the Committee) to examine the issue and bring forward recommendations to the full Council.

The Committee met several times in early January to review national research. The Committee determined that there are approximately 420,000 people with disabilities in the 14(c) program.¹ The Committee also discussed the history of other attempts to address this issue. It was the Committee's intent to learn from those attempts, recognize the concerns raised by people with disabilities and their families, and come forward with a series of recommendations that would address them. The guiding principle for the Committee's work was to apply the vision of the Americans with Disabilities Act (ADA) to assure equality and opportunity for all and eliminate any policies of discrimination on the basis of disability.

It became clear the Committee needed to hear from stakeholders to determine how best to approach the issues. The Committee decided to visit seven states that reflected regional diversity, including both urban and rural settings. The Committee also selected states that exhibited a range of progress in transitioning from 14(c) programs to supported employment programs in integrated, competitive settings.

The visits occurred between March and May 2012. The Committee met with individual workers with disabilities, family members, parents and siblings, workshop operators who hold 14(c) certificates, state policymakers, and operators of supported employment programs.

The Committee recognized early that any statement of public policy or a simple recommendation to eliminate all Section 14(c) certificates would jeopardize the security of many people who are currently involved with the program. The Committee thus concluded that a transformation strategy was needed to phase out a policy relic from the 1930s, when discrimination was inevitable because service systems were based on a charity model, rather than empowerment and self-determination. NCD stands for the principle that no person with a disability should be discriminated against in an employment setting by paying less than the minimum wage available to all other citizens.

This report offers a systems change approach. It puts forward a comprehensive system of support that will result in greater opportunities for people with developmental and intellectual disabilities. This report recommends a phase-out of the 14(c) program, realizing that those who have been in the program for a long period of time will need time to transition to a supported employment environment. This approach includes formal requirements of mandatory information sharing to workers, informal systems of peer support, and incentives to states and providers to expand supported employment services in integrated settings. The Committee also recognized the need to make certain recommendations to the U.S. Department of Education (ED) to improve K–12 education and to expand opportunities for higher education and postsecondary training for people with disabilities. Those recommendations acknowledge that even supported employment is not the end of a career but rather a stepping stone for greater self-sufficiency. The end result will be greater opportunities for these people and a stronger, more inclusive workforce for American businesses.

The Committee researched and studied the issues of the subminimum wage program and Section 14(c) during the winter and spring of 2012. The Committee sought out views and experiences from workers with disabilities, family members, workshop operators, policymakers, and supported employment programs to learn how best to address the many issues surrounding the 14(c) program.

In addition to its site visits, the Committee also reviewed the broad scope of research literature and policy information surrounding supported employment, sheltered workshops, and the outcomes and cost-effectiveness of each. Key findings include:

- Sheltered workshops are ineffective at transitioning people with disabilities to integrated employment. According to the 2001 investigation by the Government Accountability Office (GAO) into the 14(c) program, only approximately 5 percent of sheltered workshop employees left to take a job in the community.²
- According to the Centers for Medicare & Medicaid Services (CMS), Medicaid-financed pre-vocational services to sheltered workshops are “not an end point, but a time limited (although no specific limit is given) service for the purpose of helping someone obtain competitive employment.”³
- People with disabilities in supported employment who had previously been served in sheltered workshop settings do not show a higher rate of employment as compared to those who had gone straight to supported employment without ever being in a sheltered workshop.⁴ However, research indicates that those who had previously been in sheltered workshops had higher support costs and lower wages than comparable people who had never been in sheltered workshop settings.⁵
- The 14(c) subminimum wage program is utilized primarily by nonprofit or state-operated social services providers—specifically, sheltered workshops—rather than private, for-profit businesses. According to GAO, 95 percent of all workers with disabilities being paid less than minimum wage under the 14(c) program were employed by sheltered workshops.⁶
- Research indicates that employees receiving supported employment services generate lower cumulative costs than employees receiving sheltered workshop services and that, whereas the cost-trend of supported employees shifts downward over time, the opposite is the case for people receiving sheltered workshop services.⁷

It is important to note that the purpose of NCD is to promote the policies, programs, practices, and procedures that guarantee equal opportunity for all people with disabilities, regardless of the nature or severity of the disability; and empower people with disabilities to ***achieve economic self-sufficiency, independent living, and inclusion and integration into all aspects of society.***

This is not an empirical study. The Committee did not review every state, every sheltered workshop, and every piece of literature on the subject. However, the Committee did set out to systematically ensure all stakeholders were represented and given an opportunity to present their views.

In addition to examining subminimum wages and legacy programs such as sheltered workshops, NCD is also looking at what states are doing regarding supported employment and Employment First initiatives. The overarching framework for NCD's examination is modernizing systems, eliminating segregation, and encouraging fair wages and competitive, integrated employment for workers with disabilities.

At its June 2012 quarterly meeting in Los Angeles, the Council was presented with the recommendations in this report and voted unanimously to approve them.

NCD Recommendations

Benefit Planning, Work Incentive Counseling

During the course of the Committee's site visits, the Committee heard from workers, families, and providers alike about how important benefit/work incentive counseling is to a successful transition into a competitive, integrated employment situation. This counseling allows the person with a disability to make decisions that assure their critical needs are supported. The Committee learned that the transition was much more successful when the person had this counseling support, but some people were not aware of this valuable service.

The U.S. Social Security Administration (SSA) has important, long-established work incentives that allow Supplemental Security Income beneficiaries to accumulate income and/or resources without risking loss of benefits while working toward a future occupational goal or maintaining self-employment and small business ownership. However, the Plans for Achieving Self-Support program and the Benefits Planning, Assistance, and Outreach Program, among others, are still relatively unfamiliar to agency personnel and service provider agency staff, as well as beneficiaries. For these programs to have any widespread or lasting impact, SSA needs to embark on a major public awareness, outreach, education, and technical assistance campaign.

In addition, these programs preclude savings for nonemployment related purposes and are perceived as being complex and bureaucratic in nature. Thus, while SSA has taken steps to improve its return-to-work services through the provision of work incentives, these efforts are hampered by the underlying program rules that were designed for people assumed to be permanently retired from the workforce and people who were viewed as unable or unlikely to work in the future.

Recommendation: NCD recommends that Congress reauthorize and direct SSA, CMS, the Department of Housing and Urban Development, and DOL's Employment and Training Administration to develop and implement an expanded, integrated benefits planning and assistance program that coordinates

resources and oversight across several agencies, enabling beneficiaries, including those transitioning out of subminimum wage settings, to access benefits planning services within multiple federal systems. SSA should also make changes to the existing system to improve the accuracy and quality of services provided to individual beneficiaries.

Peer Support

The Committee identified a need for strong peer support for people and their families transitioning from the 14(c) program to a supported employment environment. The consumers the Committee met with in Vermont, for instance, described how helpful their peers were in resolving workplace issues they encountered. Some of the issues included how to talk to coworkers who were rude or how to speak with supervisors. One worker, who now has a job at a music store, stated how important peers have been to him.

In the 1970s, Congress passed the Development Disabilities Bill of Rights Act. This legislation created an infrastructure of state developmental disability planning councils, the University Affiliated Centers (now known as Centers of Excellence), and the Protection and Advocacy system. Within these systems much has been done to build both peer and family support programs. These programs have proved helpful in those states that have closed institutions. This same type of support would be most helpful to create successful transitions from sheltered workshop settings to integrated, competitive employment opportunities. NCD's recent report on the Developmental Disabilities system offered recommendations to improve coordination and peer support. This issue could provide an excellent opportunity for all the partners to come together and make systems change for the benefit of people with intellectual disabilities.

Recommendation: NCD recommends that the three partners authorized under the Development Disabilities Bill of Rights Act coordinate and expand efforts to support peer support to both families and people with intellectual and developmental disabilities transitioning from the 14(c) programs to integrated employment.

Notification of Services

Through the course of this effort, the Committee found people who are currently in the 14(c) settings earning subminimum wages have had very few opportunities to learn about the possibilities of integrated employment outside the workshop. Similar to the Committee's findings regarding benefit planning and work incentives, the need for knowledge is great—not unlike the needs of people in nursing homes to know about their rights to transition into the community. In the case of nursing home transition, CMS now requires nursing home residents be given notice of the possibilities to live in the community.

A similar approach would be helpful in this context. Thus, operators of 14(c) workshops should be required to provide notice and information of the availability of supported employment services for positions in integrated employment, as well as the availability of benefit counseling and peer support. Systems change recommendations are needed to improve and enhance the supported employment infrastructure so this will not be a hollow promise.

Recommendation: DOL should undertake rulemaking to require all participants of 14(c) certificate programs to provide twice annually to all workers the opportunities to transition from a 14(c) setting to a supported employment situation in an integrated worksite with competitive wages. Such notice should also include information about benefit work incentive counseling and peer support.

Infrastructure

Over the course of the Committee's site visits and general research, it became evident that financial incentives could play an important role in shifting behavior on the part of people, provider organizations, and state and local governments. Rate-setting, contracting methodologies, Federal Medical Assistance Percentages and other considerations in the financial relationships between the federal government and state and local government entities, and that between state and local entities and individual providers, have a profound and significant impact on the likelihood of integrated

employment outcomes for people with intellectual and developmental disabilities. As one state policymaker in Vermont put it, “We made the decision many years ago to invest our money where our values were, and not fund the outcomes we didn’t believe in. That has made all the difference.”

Throughout the history of supported employment services, federal funding policies in both the Medicaid and vocational rehabilitation programs have profoundly impacted the expansion of integrated employment outcomes for people with intellectual and developmental disabilities. Several states NCD visited credited key initial efforts to build supported employment infrastructure to systems change grants provided by the Rehabilitation Services Administration throughout the 1980s, at the behest of then Assistant Secretary of Education for Special Education and Rehabilitation Services Madeline Will. Numerous other examples of federal policy changes impacting or having the potential to impact the rate of growth in supported employment services emerged during our site visits.

Prior to 1997, Medicaid waiver funding had a limited impact on supported employment services as compared to the vocational rehabilitation system. Before the Balanced Budget Act Amendments of 1997, which expanded the availability of supported employment services to all people receiving services under the HCBS waiver, people with disabilities could only receive supported employment funding from Medicaid if they had previously been institutionalized.⁸ As a result of this policy shift, federal supported employment expenditures under the HCBS waiver jumped from \$35 million in FY 1998 to \$108 million in 2002.⁹ Unfortunately, this increase in supported employment expenditures seems to have come primarily from a relatively small group of states.¹⁰

States with strong track records of integrated employment outcomes have reflected a values-based philosophy in their financial arrangements with providers, reflecting a strong preference for integrated employment outcomes as opposed to segregated and nonwork options. Approaches varied significantly, but all carried with them an explicit and unequivocal endorsement of integrated employment as the preferred outcome for people with disabilities. Vermont decided to stop funding new entrances into sheltered

workshops in 2000 and by 2002 had decided to close its workshops altogether, utilizing a three-year phase-out period. According to state officials, the last workshop was closed 18 months later in 2003. Today, Vermont's integrated employment rate for people with developmental disabilities is twice the national average.¹¹

Other states have adopted strategies focused more specifically on expanding supported employment services. A growing number of states are adopting the Employment First model as the guiding philosophy for their day and employment services, setting an expectation that integrated employment should be considered the first and preferred option for all people with disabilities, including intellectual and developmental disabilities. Some participating states, such as Tennessee, have adjusted their rate setting to align with this philosophy.¹² At least one state—Oklahoma—has adopted a performance-based, rate-setting system within their developmental disability service-provision system, paying for hours worked rather than hours of service provided. This has incentivized service-providers to maximize the use of natural supports, accommodations, and other similar strategies that enhance the independence of the employee with a disability.¹³ Almost all states that have been successful in expanding integrated employment services have depended on close collaboration between the state intellectual and developmental disabilities (ID/DD) and vocational rehabilitation (VR) agencies.

Unfortunately, despite promising outcomes in several key states, the national picture for supported employment services has been worsening over the course of the last decade. Between the mid-1980s and mid-1990s, supported employment services expanded rapidly, driven by key federal investments and the expansion in expertise and awareness of the potential for this form of service-provision for people who have historically been excluded from employment. The integrated employment rate for people receiving services from a state ID/DD agency peaked in 2001 at 25 percent. Since then, it has declined to 20.3 percent in 2009.¹⁴

Additional federal investments are necessary to encourage states to shift funds away from sheltered workshops and nonwork day services toward supported employment services and integrated employment outcomes.

Recommendations: NCD recommends the following steps be taken with respect to the expansion of supported employment services:

At the state level:

- Align reimbursement rates to providers to reflect a bias in favor of integrated settings and a primary preference in favor of integrated employment services.
- Explore the possibility of performance-based payment systems for employment supports, keeping in mind the need for ensuring adequate reimbursement to maintain and grow an adequate provider network.
- Expand access to customized employment and job carving services.
- Develop a strong working collaboration, including a Memorandum of Understanding outlining funding and administrative responsibilities and mechanisms for resolving disputes, between the state VR agency, ID/DD service-provision agency, and state education authority.

At the federal level:

To CMS:

- Require states applying for waivers or demonstration authority shifting part or all of their long-term services and support systems into managed care to indicate how they will maintain access to employment services, track quality through the use of nonclinical outcome measures, and ensure managed care organization competency to develop and maintain the employment supports service-provision system.

- Enhance monitoring, compliance and enforcement activities regarding state employment support policies to promote alignment with CMS September 2011 Informational Bulletin on Employment Support.

Congress:

- Create a Money Follows the Person for Integrated Employment program, enabling the Federal Government to pick up 100 percent of the costs of supported employment services for people leaving a sheltered workshop or day habilitation setting for integrated employment.
- Increase the Federal Medicaid Assistance Percentage (FMAP) for Supported Employment Services in integrated employment settings while reducing the FMAP for pre-vocational services.
- Instruct CMS to develop a minimum standard definition for integrated employment settings aligned with national best practices.
- Create a federal grant program, administered by the Administration on Developmental Disabilities, aimed at supporting state systems change efforts regarding integrated employment outcomes. Require states applying to include in their application clear and measurable systems change goals relating to integrated employment and a memorandum of agreement indicating means of collaboration between a consortium of relevant state entities, including at minimum the state VR agency, the state ID/DD service-provision agency, and the state education authority.
- Enhance the Administration on Developmental and Intellectual Disabilities budget for Projects of National Significance, specifically targeting initiatives relating to enhancing integrated employment outcomes.

Transformation of the 14(c) Program

The Committee recommends that the Section 14(c) program should be phased out gradually to provide adequate time for transition to new alternatives. The Committee recognized early on in this project that any statement of public policy or

recommendation to DOL or Congress to simply eliminate all Section 14(c) certificates would jeopardize the security of many people who are currently involved with the program. The committee realized what is needed is a conversion or transformation strategy and phase-out of a relic in policy left over from the 1930s. To that end, this report offers a systems change approach to focus on a comprehensive system of support that will result in greater opportunities for people with disabilities. This approach includes formal requirements of mandatory information sharing to workers, informal systems of peer support, as well as incentives to states and providers to expand supported employment services in integrated settings.

The Committee realizes that change will come slowly and the facts on the ground require a phased-in approach to support people who currently receive subminimum wage be given the chance to earn at least minimum wage or greater. In addition, the Committee learned that younger workers have a higher expectation of employment than older workers, and there is a real need to prevent those graduating from high school from entering the workshop environment. This was best demonstrated by a man from Baton Rouge, Louisiana, whose family had this insight early. Eighteen years ago, his family realized his potential and rather than let him stay in a workshop, worked with a provider to get him a job at McDonald's. He has been there ever since. He told the Committee how much he enjoys the work, lives in the community, and is much happier than when he was at the workshop. His sister reported that he considers the lobby as *his* lobby and has worked with many different managers who end up relying on him regarding how the lobby is cleaned and organized.

To accomplish this transformation, the first step is to prohibit DOL from issuing 14(c) certificates following the passage of the legislation. As part of this phase of the effort, NCD also recommends prohibiting any individualized education plan (IEP) to identify placement in a subminimum wage program as a permissible goal (see ED recommendation).

The second phase will require all providers who administer 14(c) certificates to convert to a supported employment model supporting people with developmental or intellectual

disabilities in an integrated, competitive environment. Even this conversion should be phased in with priority given to those people who have held a 14(c) certificate for 10 years or less. Those individuals should be supported in an integrated setting within 2 years.

Those individuals who have held a 14(c) certificate for a period of time between 10 and 20 years should be supported in an integrated setting within 4 years, and all people who have held a 14(c) certificate for any period of time greater than 20 years should be supported in an integrated setting within 6 years.

Recommendation: NCD recommends Congress should pass legislation phasing out the 14(c) program as outlined in this report.

Recommendation: NCD recommends that DOL cease issuing all Section 14(c) certificates 30 days after passage of this legislation.

Recommendation: NCD recommends that ED undertake rulemaking to prohibit school districts from establishing placement in a setting whereby the student will receive subminimum wage as a goal in any IEP.

Recommendation: NCD recommends that DOL undertake rulemaking to phase out all existing 14(c) certificates to providers of employment services according to the following schedule:

- All people in certificate settings for 10 years or less shall be transitioned within 2 years.
- All people in certificate settings for 10 to 20 years shall be transitioned within 4 years.
- All certificates shall expire in 6 years, and all people in certificate settings longer than 20 years shall be transitioned within 6 years.

Education Systems Change

During the Committee's site visits, it became clear that two key indicators suggested an individual was more likely to choose competitive employment. The first indicator was age, with younger people with disabilities more likely to advocate for competitive employment at or above the minimum wage. In addition, young people transitioning to work out of inclusive K–12 education environments where they had access to the general curriculum and experiences in integrated classrooms were also most likely to state a desire for integrated employment. In these cases, parents also seemed more likely to support this desire.

Although few states demonstrated clear alignment between education planning and post school outcomes, the state of Washington intentionally begins focusing on employment outcomes for all students in early childhood. For instance, elementary school-aged children (including students with intellectual and other disabilities) may be supported to take on chores, school responsibilities, and other activities that develop job skills alongside their peers without disabilities. It was clear from the Committee's visits that an individual's desire to work at all, and at what wage, was influenced heavily by the expectations that were set for that person beginning in childhood and all the way through school. It is because of this change in expectations that the 14(c) program is outdated in 2012 and needs to be phased out.

Further, with NCD's recommendation to convert the 14(c) program to a supported employment model for people with disabilities to work in integrated settings with competitive wages, it is imperative that students are educated in integrated environments. Students with disabilities, including those with intellectual disabilities, need to access the general curriculum in inclusive settings beginning in early childhood. Students who learn in segregated settings are less likely to believe they can earn money in competitive, integrated settings as adults.

Participation in inclusive settings should include both academic work and opportunities to take on their share of classroom chores and responsibilities along with their nondisabled peers. It is important to note, however, it is not helpful for students with

disabilities to be assigned chores and work in place of academics, nor be assigned work and chores not typically assigned to peers without disabilities. All of this will lead to an expectation that meaningful work in an inclusive environment is possible and part of each student's future.

To that end, students with disabilities need to have the high school credentials and the same access to higher education as their contemporaries without disabilities. Failure to earn a high school diploma or GED is a nearly insurmountable barrier to employment for all people. Students with disabilities are no exception. Students with disabilities should be supported to pursue diplomas, and states should pursue the development of statewide standards for achievable diplomas that demonstrate content mastery and the ability to complete school and attain goals. Oregon offers an example of this type of statewide approach to rigorous, attainable goals for students with intellectual and learning disabilities through its statewide modified and extended diploma standards.

Obtaining this credential is vital for some students with disabilities who may benefit from pursuing postsecondary educational opportunities, either in a four-year institution or in a certificate program at a community or technical college. Recent changes in the law surrounding the Free Application for Federal Student Aid (FAFSA) create new barriers for students with disabilities through the elimination of the Ability to Benefit Test. Under these changes, students with disabilities who have not earned a standard diploma or GED are not eligible for any federal aid, including loans or Pell grants, even if they have been admitted to a postsecondary institution. This shuts the door to affordable training programs that might help more people with disabilities, including intellectual disabilities, gain skills in trades, culinary arts, child care, and other programs offered at these institutions. This issue needs to be reexamined.

Recommendation: ED should issue technical assistance guidance to help school districts understand that, while a student with a disability is enrolled in kindergarten through grade 12, the primary focus should be on attainment of a rigorous school completion document. Preparation to earn this document should include academics aligned with the general curriculum and transition services designed specifically to address job development and independent living skills.

Recommendation: Legislation should be passed to restore the Ability to Benefit Test for FAFSA. This is critical if we are to remove barriers to postsecondary educational and career opportunities for students with disabilities. The ED should modify the rules concerning FAFSA to incorporate the educational and career opportunities for students with disabilities.

Recommendation: ED should prohibit the use of sheltered workshops as placements for transition-related activities, or for skills assessments completed during a transition program in a public school. There should be clear financial sanctions for districts that violate this prohibition.

Recommendation: When collecting data about post-school outcomes for people with disabilities, work in a sheltered workshop or in any setting for less than minimum wage should not be counted as a successful placement.

Enforcement

In 2009, the Civil Rights Division of the Department of Justice (DOJ OCR) launched an aggressive effort to enforce the Supreme Court's decision in [*Olmstead v. L.C.*](#),¹⁵ a ruling that requires states to eliminate unnecessary segregation of people with disabilities and to ensure that people with disabilities receive services in the most integrated setting appropriate to their needs. States are obligated to maintain plans demonstrating movement of people with disabilities living in such institutions to community-based settings with support. The Department of Justice (DOJ) is seeking similar authority to move people with disabilities in segregated worksites to more integrated employment settings and has filed a Statement of Interest asserting that the "integration regulation prohibits the unnecessary segregation of [people] with disabilities by public entities in nonresidential settings, including segregated sheltered workshops." The recommendations contained in this report provide a road map for movement to community inclusion and integrated employment for all.

Recommendation: DOJ should exercise its monitoring and enforcement authority to assure that all people with disabilities are transferred to an integrated employment setting and that such a person receive a competitive wage.

Methodology

NCD Chairman Jonathan Young appointed a Council Member, Clyde Terry, to Chair an ad-hoc group dubbed the Subminimum Wage Committee, made up of five Council Members and NCD staff. Seven states were selected for site visits—New York, Ohio, Vermont, South Dakota, Louisiana, Oregon, and Washington—taking into account diversity, geography, states that had successfully converted and/or eliminated sheltered workshops and those that have not; states that have a large population of people with disabilities in sheltered settings and those that do not; suburban; urban; and rural settings. The Committee selected a cross-section of states and communities to get a detailed understanding of how employment programs work best and to identify the difficulties faced by workers with disabilities in gaining competitive, integrated employment.

Using the same series of open-ended questions, each set of questions crafted for a specific group of stakeholders, the Committee interviewed advocates, supported employment providers, state policymakers, workers with disabilities, families, and providers of workshop programs. The Committee's methodology is intended to help the Council advance recommendations to improve opportunities for adult workers with disabilities in competitive, integrated employment at fair wages.

The Council started its analysis and crafted its recommendations from the stakeholder level rather than the policy level. In other words, the Council's preferred entry point is the lives of people with disabilities rather than a policy debate. That conviction led to undertaking site visits and the interviews. The Council focused on identifying frameworks that will promote improved quality of life for people with disabilities, and particularly what people with disabilities believe better quality of life means for them.

NCD's primary constituents are people with disabilities. In this context, that meant focusing primarily on people with ID/DD. The Committee has ensured their voices received priority and have resisted the assumption that parents, siblings, and providers speak for these adults. Adults with ID/DD have a long history of others claiming to

speak for their interests. While they care deeply, we, as NCD, seek to ensure that this population of adults is empowered to speak for themselves. We are mindful of the slogan adopted by those in the disability community who successfully negotiated the first human rights treaty of the 21st century, the Convention on the Rights of Persons with Disabilities—“Nothing about us, without us.”

Notes from Council Dialogue

Key points that emerged from Council deliberations include:

- There are two main forces at work. On the main, those who might seem to be opposed to subminimum wages and sheltered workshops emphasize the inherent injustice and flaws in the systems, while those who might seem to be in support of them reflect concerns about the alternatives that will be available for themselves and/or their loved ones should subminimum wage be abolished.
- The Council did not meet many stakeholders who believe the current system represents an intrinsic ideal. Very few stakeholders are proponents of the perfection of the existing system.
- There are weaknesses in the availability of community-based options, and it would be as short-sighted and inconsistent with NCD’s mission to ignore those realities as it would be to recommend the immediate shutdown of what is an outdated system that is ill-equipped to maximize the life and choices of people with disabilities. However, NCD must ensure the injustices propagated by the current system are eliminated.
- NCD has a responsibility to make recommendations prepared to meet the needs of people who will be affected.
- There needs to be a genuine remedy to a flawed system.
- There is a divide within the ID/DD community, exacerbated by the age of the individuals (generational gap) and the varying stakeholders (self-advocates, family members, providers, etc.) within the community.

- Some disability service providers welcome the transition. Some fear it as much as many parents of older adults with disabilities do, because they are vested in the current system and have fears about how it will be replaced.
- The discussions NCD is encountering regarding subminimum wage and sheltered workshops parallel the discussions in the 1970s and 1980s regarding deinstitutionalization.
- Historically, consensus is hard to come by whenever the disability service provision system has needed change.

Site Descriptions

Burlington, Vermont

Purpose of Visit: Vermont represented an extraordinary opportunity to view the outcome of a state that had eliminated sheltered workshops and subminimum wage almost 10 years prior. After making heavy investments in supported employment infrastructure and capacity, the state's intellectual and developmental disability service-provision agency—Vermont Developmental Disability Services (DDS)—determined in 2000 that they would no longer fund new entrances into sheltered workshops. In 2002, Vermont changed its system of care to indicate that it would no longer fund sheltered workshop services, allowing for a three-year phase-out period to shut down existing sheltered workshops. By 2003, the last sheltered workshop in the state had closed, with agencies transitioning to providing supported employment services instead and people with disabilities moving into integrated employment and integrated nonwork options.

Summary of Activities: The Committee's site visit in Vermont was broad and wide ranging, including senior officials in DDS and the state vocational rehabilitation agency, self-advocates, family members, supported employment coordinators, executives at support agencies, and past clients of workshops. According to state officials, approximately 80 percent of the workers in the last workshop closed transitioned into supported employment, while the remainder moved into a state integrated nonwork program called Community Support. Approximately 40 percent of people with intellectual and developmental disabilities are in integrated employment, with the remainder in community-based, integrated nonwork activities. There are no people in Vermont in facility-based work or facility-based nonwork activities. Data sets from the Institute for Community Inclusion's StateData.info website confirms these statistics.

Observations: A consistent narrative emerged describing the state's transition from sheltered workshops to a fully integrated employment support and day activity system. In the 1980s, the University of Vermont received a Systems Change grant from the Rehabilitation Services Administration, tasking it to work in tandem with the Vermont VR Agency and DDS to build up supported employment services throughout the state. The

grant provided for extensive technical assistance and the creation of supported employment coordinators in key positions in state government. After the five-year grant cycle, both VR and DDS agencies decided to sustain the positions of supported employment coordinators within their agency. By 2002, every county in Vermont had a supported employment agency.

Vermont's supported employment infrastructure depends on close collaboration between VR and DDS. VR agency funds supported employment through grants to providers rather than a fee-for-service reimbursement arrangement based on people served. VR's grants to agencies for supported employment services are supplemented by Medicaid reimbursements from DDS, resulting in an effectively braided funding stream. The flat grant amounts made by VR allow many agencies to support services, such as "follow-along" tracking of people who no longer require direct service-provision to maintain their employment, that are not reimbursable by VR or Medicaid.

DDS noted that they funded a wide array of different kinds of integrated employment models. Those models range from supporting people with intellectual and developmental disabilities in applying for and succeeding in competitively posted jobs; working with employers and people with disabilities on designing positions through job carving and customized employment strategies; and supporting people to start their own business, having established self-employment services as a funded service from DDS. During the movement to close sheltered workshops, Vermont also eliminated enclave work settings as well. Prior to our visit, DDS officials reached out to the Department of Labor Regional Office and confirmed that there are no currently operating 14(c) certificates in Vermont.

New York, New York

Purpose of Visit: The Committee conducted the New York site visit on March 7, 2012. New York was selected because it has one of the largest and oldest ID/DD service systems in the state, and gave the Committee the opportunity to look at employment opportunities in a very complex urban environment.

Summary of Activities: Most of our visits took place in collaboration with AHRC, the state's largest and oldest ID/DD service provider. AHRC provides advocacy, residential, day habilitation and educational services in addition to supported employment and sheltered workshop services. The Committee spent the full day on March 7 at one of the AHRC centers, which was well used by dozens of adults with disabilities and their families. During the course of our day at AHRC, we met with:

- AHRC program staff
- People with disabilities working in the sheltered workshop or at AHRC
- Parents of people with disabilities working in supported employment settings
- State policy officials, including a representative from the state ID/DD program and a representative from New York's VR agency

The Committee also toured the on-site workshop. On the day of the visit, the workshop activities included packaging insoles for shoes, packaging beverages marketed to lessen the symptoms of a hangover, and rehabilitation of printers. Work was done primarily on a piece rate.

Because the full Council was in New York City for our quarterly meeting, the Committee was able to extend the visit by an additional half day and include other Council members. On March 8, Council members divided into teams to visit different supported employment worksites, including the transit center, some law offices, and a fabric store. Other types of supported employment described by AHRC staff included messenger services throughout the city, janitorial services, and hospital work.

On the afternoon of March 8, the full Council also had the opportunity to visit a nonprofit organization called Job Path that specializes in customized employment. The Council listened to a detailed presentation about the process the organization uses to develop jobs for its clients, and got to speak with two clients about their jobs.

Observations: New York State has a large and complex DD system, which is one of the most expensive in the nation. According to AHRC staff, consumer expectations for

services are high and (according to AHRC staff) services for day habilitation and residential services are generous. The Committee noted that individuals were enthusiastic to participate in day habilitation programs, and all of the people with disabilities the Committee spoke with talked about the social benefits of coming to the day program and the workshop. Several mentioned returning to the day program and subminimum wage positions after successful placement in integrated employment settings with competitive wages. There was clearly a strong social attachment to the program and the people (staff and clients) involved with the program.

The Committee discussed with program specialists the reasons why some people came back. The most commonly cited issues were benefits planning and social isolation in integrated work environments. AHRC provides both integrated employment and sheltered employment, and reported that individuals move between both settings. Concerns were expressed that if 14(c) were eliminated or reduced, it would be very difficult to continue to provide employment services to many of the individuals the program serves. AHRC leaders also provided a useful history about services for people with DD in New York. One of the individuals helped move individuals out of Willowbrook [State School], and it became easier to see how the current state of services is part of an evolving service system. Many of those with whom the Committee spoke were strong leaders that helped create New York's service system after Willowbrook in order to include more community-based supports for people with disabilities.

One person with a disability with whom the Committee met was working for a piece rate at the workshop when work was available, and participating in the day program when there was no work. He was in his early 30s, and had strong conversational and adaptive skills. If he were encountered by a member of the general public, they might not perceive him to be a person with a disability. This person recounted to the team his success in integrated employment. He was working regular hours at a café inside a Barnes and Noble Booksellers store. His performance was high enough that he continued to be rewarded with wages, at one point exceeding \$12/hour. At this point, his benefits were at risk, so his mother required him to quit his job and return to piece rate

work at the workshop. He reported that his benefits were needed to help pay rent each month.

The Committee also interviewed the mother of a person in his 20s. By report, her son has a significant intellectual disability, has limited verbal communication skills, and experiences challenges with fine motor dexterity. She was determined, however, that he would work in an integrated employment setting for a competitive wage. She utilized her natural networks and drew upon her son's unique interests to work with the Disney Store in Times Square to develop a customized employment opportunity for him. His job responsibilities include performing the opening ritual with children each morning, greeting customers, bagging purchases, and ensuring customers have baskets in which to carry their goods. He works about 10 hours a week, and though he started at minimum wage he has earned several raises, which boosted his pay. He utilizes public transportation to get to his worksite. His mother describes this as a situation that gives her son meaningful work that he enjoys, allows him to earn some money, and contributes to the bottom line of the business for which he works.

One Council member had the opportunity to spend some individual time with one of the AHRC executives. The executive described messenger services as a competitive job with which many adults with intellectual disabilities found success. People deliver parcels, packages, and letters across all boroughs of the city utilizing public transportation and even taxis. This is a valuable service to the customers, and it allows the employees to earn competitive wages. She described one adult person with an intellectual disability who was working as a messenger on 9/11. He was able to navigate through the unexpected chaos to safety.

At Job Path, the Committee met a woman who participated in a customized employment development process. Her job coach spent a couple of weeks with the client in her neighborhood. He observed her interests and skills, as well as the business opportunities in the neighborhood. He noticed that when they visited retail stores, his client would fold merchandise that had not been put away properly. He used this information to approach one of her preferred retail stores about a potential job opportunity. She was hired at minimum wage to fold their merchandise as it arrived.

Since being hired, she has been recognized as one of their most productive employees and has received pay raises. She reported that she enjoys her work, enjoys her colleagues, and appreciates that they include her in staff social activities and events.

Salem, Oregon

Purpose of Visit: Oregon was chosen because, based on data, it had a high rate of supported employment placement. However, after this selection was made, a class-action lawsuit was filed against the state because of an increasing number of sheltered workshop placements. As part of this lawsuit, the federal court ruled in May 2012 that the integration mandate under Olmstead is not limited to housing, and it applies to employment. Since the original draft of this report was offered to the Council in June 2012, the U.S. Department of Justice also issued a letter to Oregon stating that its own investigation of employment in Oregon found that the state was noncompliant with the ADA in regards to employment. Oregon also gave us the opportunity to see a state that has no private or public residential institutions for adults with intellectual/developmental disabilities and to examine a less urban area.

Summary of Activities: The Committee's interviews in Oregon took place in Salem, the state capital. Because this is a central location in the state, we were able to talk with people from a variety of communities.

The Committee began the day with a tour of Shangri-La, one of Oregon's largest providers of residential, employment, and day habilitation services for people with intellectual and developmental disabilities. The tour was led by the CEO of Shangri La, the Director of the Oregon Rehabilitation Association, and the Employment Program Director for Shangri La.

When the Committee arrived on site, it had the opportunity to observe a landscape crew at work, and to talk briefly with a couple of employees. These landscaping crews complete work on a contract basis with local businesses, and employees earn wages based on their productivity. The Committee also visited a woodshop on site as well as a sewing site. In the woodshop, the Committee saw a variety of specialized technologies that allowed people with disabilities to safely increase their productivity. Employees

were engaged in loading, hauling, milling, sawing, stacking, and sorting wood products. The Committee also visited a day habilitation program on site, which included a variety of activities and classes, including cooking, computers, games, and functional academics. When the Committee arrived, there was a person sitting outside the facility waiting for the day program to open. He indicated his enthusiasm for the program and described how important it was to his quality of life.

Following the visit to Shangri-La, the Committee moved to a conference room at the state capitol to complete our interviews for the day. Interview panels included:

- Employment providers using 14(c) certificates from several areas of the state
- State policy officials, including representatives from the Developmental Disabilities Program (the team lead for the Oregon Employment First Initiative, the director of Vocational Rehabilitation, and the Assistant Superintendent from the Oregon Department of Education).
- Advocates, including representation from The Arc of Oregon (an advocacy organization that does not provide direct services), Disability Rights Oregon (the state protection and advocacy center), a brokerage director, and the Oregon Council on Developmental Disabilities. Two of these people are also parents—one is the mother of a transition-age student, the other has a son in his 30s with significant physical and developmental disabilities who enjoys integrated employment with competitive wages.
- Six adults with developmental/intellectual disabilities from Corvallis (a city of about 54,000 people), along with their DD program director and a support person.

Observations: The Committee noted that all of the panels seemed aligned to a core set of values that focused on self-determination and community inclusion, despite some disagreements about 14(c) and appropriate employment settings. The policymaker panel and the advocate panel referred extensively to Oregon specific data, which is readily available on the Oregon Employment First website.

The Committee's first visit in the morning was to Shangri-La, which provides a variety of worksites. The Committee talked to some employees, as well as to supervisors. The organization provides employment and day services to many people, and the providers explained the significant role the organization plays in providing structure during the course of the day for people. In this sheltered work environment, the type of work performed by people with disabilities was more complex, challenging, and meaningful than the type of work the Committee saw in some other workshops on our site visit tour. These worksites looked much like any manufacturing or mill worksite one would visit that primarily employed people without disabilities. We noted complex equipment, particularly in the mill and woodshop area of the site. The providers explained their significant investment in equipment to maximize efficiency for their employees (thus boosting wages), as well as to enhance safety and make the work accessible to more people. They lamented that industry has not adopted similar technology that would make it possible for more people to work in integrated settings.

The providers the Committee interviewed each provided supports for a variety of work environments and wage scales. All talked about a desire to help individuals maximize their wages, but argued that without 14(c) they could not sustain their business model. As a result, they were concerned that the elimination of 14(c) would lead to fewer people being employed and diminish their ability to serve Oregonians with disabilities.

The Committee noted that the support needs of the people with disabilities we met were higher than the needs of those we met in other states. Despite this, with the exception of one individual living in foster care, all of the individuals the Committee interviewed were in supported-living situations where they had their own apartment or home. All of the people the Committee spoke with referenced busy lives that included work, romantic relationships, and volunteer commitments. The types of volunteer commitments people referenced included everything from membership in a Kiwanis Club, to serving on the board of a League of Women Voters, to providing mentoring and support to younger people with intellectual and developmental disabilities. Though not all people interviewed were earning minimum wage, they were all outspoken in their belief that they should earn minimum wage. The group seemed uniquely empowered about their

employment, civil, and community inclusion rights. One person described walking off of a job after he saw his employer refuse to consider the application of a person in a wheelchair. He said that was not right, and he could not work at a place that discriminated. Another person talked about losing work from a towing company, but following up with a discrimination complaint. “He got in lots of trouble and had to pay fines,” said the employee.

One of the people interviewed works in a grocery store. He collapses boxes, works in the bottle recycling center (all Oregon beverage containers, including teas and water, have deposits; thus this is a big need in grocery stores), and returns carts. He earns more than minimum wage, and recently earned a raise that he was very excited about. He credited a supportive employer in creating a work environment that he enjoys. He said he can count on his employer to step in if customers are mistreating him because of his disability, or generally exhibiting bad behavior in the store.

Another person has been working at a golf course for more than 10 years. He uses a combination of special transportation and taxis to get to his worksite, where he earns more than minimum wage. His job responsibilities include maintenance of the golf course, supporting golfers, and he was recently promoted to driving service carts, which is an accomplishment of which he is very proud. The Committee received a letter from his parents, who were not available for an interview, explaining that the golf course manager recently reminded them that he is not employing this person as an act of charity—this person has a job because he does it well, and is an asset to the team. The person reported finding the job after he interned at the golf course as part of the job discovery process while he was still in high school. He did reference a job opportunity that did not work out at a burger fast-food restaurant. Initially, he had a lot of support at the worksite; however, when management changed he reported that he had a harder time making sure the burgers “weren’t pink.” He left the job.

A couple of the employees worked for an organization that creates small businesses in the community with the purpose of creating integrated, supported employment. People with disabilities work alongside people without disabilities in a variety of activities. Some people are earning more than minimum wage, others are earning less. Of note, one of

the people we met with Down syndrome lives in her own apartment, is engaged, and participates in a variety of volunteer activities. She works at a bakery operated by Cornerstone and earns less than minimum wage. On the other hand, another person interviewed who has much higher support needs works in the downtown book bindery. She earns significantly more than minimum wage.

Vancouver, Washington

Purpose of Visit: Washington was added to the Committee's site visit list late in the process because of a strong recommendation from people in the field about the state's success with supported employment, particularly in Clark County. Because of the easy proximity to the Oregon site visit, it was added to the itinerary. It also gave the Committee an opportunity to look at how different employment policies apply in the same region and how the same basic economy impacts the experiences of people in the system. Vancouver, Washington, and Portland, Oregon, are separated by a bridge over the Columbia River. They share a workforce (people travel from one state to the other for work each day), a common demographic base, and are impacted by the same economic trends.

Summary of Activities: All of the interviews took place in a conference room at the Education Service District (ESD) building in Vancouver. The ESD facility is a mission-driven facility, with signage and photographic displays portraying the history of public education in Washington, particularly for historically underserved groups such as Native Americans and students with disabilities. There was also a clear focus on workforce development in the building, with a student-run coffee shop on site.

During the Washington visit, the Committee met with:

- A director of an employment-focused consulting firm
- The ESD superintendent
- A special education director from Clark County Public Schools
- The Clark County DD Program Employment specialist

- The Washington State DD program director
- Two parent advocates
- Two employees with disabilities
- Two employers
- Two employment agencies

Observations: Like Oregon, Washington seemed to have a very clearly articulated and aligned set of values. Where Oregon was focused on community inclusion (at the social, residential, and community levels), Washington (or at least Clark County) has a laser focus on employment. Throughout the day, different stakeholders said: “Everyone can work. Everyone should work.”

The policymakers indicated that this focus begins in early childhood. Beginning in Early Intervention/Early Childhood Special Education, Washington students are given opportunities to contribute to their classrooms, and parent education includes encouragement to engage students in chores and productive activities at home. High schools focus on vocational opportunities, and there is a robust transition program in Clark County. All students—those with and without disabilities—are encouraged from an early age that they have a responsibility to work as adults.

There are no sheltered workshops in Clark County. All but one closed voluntarily as the service model in the county transitioned to supported, integrated, and competitive employment. The initiative seems to be successful because of proactive engagement with local employers, and a commitment from state and local government to participate by providing supported employment opportunities. People with disabilities are working for the county and for public transit agencies. Labor organizations have also been engaged in this work, with people with disabilities joining unions and becoming engaged in the worksite, social, and political activities of the organization. One anecdote was shared about a union steward who suspected one of his members with a disability as being financially abused. He became engaged in the situation, advocated for his union colleague, and eventually became the person’s trustee.

When the sheltered workshops closed in Clark County, all of the people transitioned to supported employment jobs, primarily individual, and the buildings were used for early intervention programs and gathering places for families (family support centers). There are no day programs in Clark County. The two parent advocates the Committee met with observed that much of the conversation about 14(c) and sheltered workshops is based on a misunderstanding of the definition of work. They argue that respite, day programming/day habilitation, and work are not the same thing, and the Committee should not intertwine them. All three items are important and are not mutually exclusive. However, respite and day habilitation are not work, and they suggested policymakers should stop arguing that they are work.

One innovative state policy adopted by Washington is legislation that allows state agencies to use savings in their budgets to hire a person with DD/ID into a supported employment position without impacting the full-time employment allowance for the state.

The Committee interviewed two adults with disabilities on this visit. The first person was an older man with significant and multiple disabilities. He serves on the county advisory board. He does not have traditional employment (he is retired, is in his early 70s, and is beyond the traditional employment phase of his life), but instead works as a graphic design artist. He has art shows and sells his work to earn money.

The other person was in his early 30s and was accompanied by his mother. He works at a local hospital Monday through Thursday, four to five hours per day. He sterilizes surgical equipment, and makes more than minimum wage. He is proud of his work, and credits the job he has to his prior work at a grocery store. He said learning to manage the carts was a skill that he was able to use in his new, more challenging role at the hospital. He enjoys his work and reports that he spends his lunch break with the surgical nursing staff who include him in their conversations and social activities. He likes to use the money he earns to pay his bills, take trips, and pay for drum lessons.

Important findings from the Oregon/Washington experience include:

- 1) Some people with DD/ID who live in Washington are being placed into integrated, competitive work opportunities in Portland, Oregon. This raises questions about the argument that competitive jobs in private sector employment are not available. Perhaps it is about job development and outreach activities.
- 2) Oregon does not technically have a waiting list for services for Medicaid-eligible adults with DD/ID. However, Washington has a long waiting list. Although Clark County is not serving people with DD/ID in sheltered workshop environments for employment, there are people who are not getting any support at all. If the Committee were to do further work, it may be useful to circle back to each state and find out more about the characteristics of individuals not being served, and why they are not receiving any support.

Pierre, South Dakota

Purpose of Visit: South Dakota was selected for a site visit because it reflects a rural site and seems to have a relatively large percentage of people with ID/DD working in sheltered workshops. The Committee visited the state capital of Pierre, which reflects the state: Pierre has about 15,000 residents; the government is the largest employer, followed by the regional hospital; and the city is 30 miles away from the closest interstate. The host was the South Dakota Coalition of Persons with Disabilities.

Summary of Activities: The Committee first visited the OAHE, Inc., a nationally accredited private, nonprofit community-based agency, which has been providing supports and services to people with developmental disabilities since 1982. The agency started as a group of concerned parents and guardians searching out available services for those people in their care. Today, the agency provides a wide range of supports in the areas of employment services, living services, professional services, support services, and total service coordination.

OAHE indicated that the primary employer of people with ID/DD in South Dakota is the Federal Government, specifically the General Services Administration (GSA), which has

a \$2.8 million contract for services, primarily custodial, in the seven GSA offices in South Dakota. OAHE also operates several businesses, including a thrift store and shredding business. The main focus of employment is community employment, although the state seems to be struggling with work in integrated employment.

At OAHE, the Committee met with four front-line staff, consisting of two job coaches, an employment specialist, as well as a staff member who worked as the coordinator for training for the Ability One contract. The Ability One Program uses the purchasing power of the Federal Government to buy products and services from participating, community-based nonprofit agencies nationwide dedicated to training and employing people with disabilities.

The significant role of the Federal Government through the Ability One programs was reiterated. One person estimated that, without the 14(c) certificate, about 30 percent of the people currently working in competitive employment would not be able to maintain their jobs. One comment made was that finding easier ways to obtain the certificates would be of assistance to the people at OAHE.

OAHE struggles to balance the day habilitation programs, sheltered work, and competitive employment. Many of the OAHE participants worked one or two hours a day in competitive, integrated employment—paid by the employer.

The Committee met with six people with disabilities who are employed in the competitive job sites available through OAHE. Their jobs were with FedEx, Slumberland (a mattress/bed store), a paper route, and in custodial positions. All were interested in working more hours and being paid more money. The Committee also met with four parents of young adults with ID/DD; four advocates, including one from the Protection & Advocacy for People with Developmental Disabilities. We also met with three employers who are currently hiring people with ID/DD. One employer was the Slumberland bed store mentioned above, as well as a craft shop in town.

The Committee ended the day in a discussion with major policymakers including representatives from the state DD, VR, HHS, and Medicaid agencies.

Observations: There is strong interest by front-line staff, their supervisors, and policymakers to have additional training available to service providers. Well-meaning people begin to create their own programs when there is not training on competitive employment, job supports, and coaching/assessment. The development of combination day habilitation, sheltered, and competitive employment programs for people speaks more to the program design than the needs of specific individuals.

One person works a few hours a week for FedEx scanning packages. But, since these are the only hours available in the competitive setting, she works the rest of the week in sheltered employment or in volunteer positions.

Federal programs such as the Medicaid Infrastructure Grants and the Social Security Navigator programs have resulted in improved services and are appreciated by everyone the Committee spoke with while in South Dakota. The people with disabilities and the parents interviewed seemed very aware of benefits available to them and were interested in pursuing maximum employment.

Several parents and policymakers commented on the need to have a holistic approach to employment, which they considered as having all options available to them including subminimum wage and sheltered workshops, along with supported, integrated, community-based employment. It was mentioned that the sheltered workshop for people who are blind and people with vision disabilities had been closed, taking away a choice for people seeking employment.

Several people in the different groups mentioned stigma as a major issue in the development of job opportunities for people with ID/DD. They indicated there was still a bias against hiring people with disabilities, especially those with ID/DD.

Several of the service providers and policymakers commented on the disparity between Medicaid waiver funding for sheltered versus competitive employment. Increasing the FMAP rate was also seen as a potential change to improve the opportunities for employment.

Baton Rouge, Louisiana

Purpose of Visit: Baton Rouge was selected to represent a medium-size city in the South. It represents a city that has undergone significant change in the past few years. Louisiana has a diverse population of both urban and rural that creates challenges to state officials in locating employment opportunities for people with intellectual/development disabilities.

Summary of Activities: The agenda consisted of meeting with a worker and family member. This was followed by an interview with Barry Meyer, The Arc Executive Director and a tour of the facility Metro Enterprises; and meetings with the executive directors of Vocational Rehabilitation; Medicaid & Developmental Disabilities; and Louisiana Rehabilitation Services, Regional Office.

The day began with a conversation with a sheltered workshop participant and his mother. Prior to coming to the workshop, he had a job in Virginia as a janitor in a state library. The job was in a competitive situation with competitive wages. He left that job after many years. He stated he left because he could not handle the pressure from supervisors. It appeared he had more than one supervisor and they were giving him mixed directions on how to do his job. He is now working in the workshop with the shredder, four hours a day. He is making around \$50 dollars every two weeks. He would like to earn more money, but was not sure at what job. He did not want a job with pressure. He said there was no one at the other job he could have talked to about the problems he was having with his supervisor.

The Committee then spoke to Barry Meyer, The Arc Executive Director, about his ideas regarding competitive, integrated employment. After the discussion, the Committee toured the workshop. Work included shredding, recycling coat hangers, and cleaning remote controls. The enterprise also had another section that makes survey stakes, covers for large pipes, as well as a gardening endeavor.

Observations: The director said he had a 60/40 mix of people who earned subminimum wage (60 percent in supported employment and 40 percent in workshops). He also said he has people with disabilities working in the community in integrated

worksites. He said he had about 100 employees. He, along with Rosemary Morales from the Office for Citizens with Developmental Disabilities, indicated that CMS barriers (such as definitions) were limiting access to competitive, integrated employment. Also limiting access are students with disabilities dropping out of high school and not receiving transition services. They stressed that more benefits planning is needed, along with the need for activities after work hours.

The Committee also met with state officials, including Mark Martin, the Director of Vocational Rehabilitation; Laura Bracken, the Director of the Developmental Disability office; Don Gregory, the Director of Medicaid; and his Deputy Stacey Gidrey. Don Gregory indicated that the Medicaid Buy-in program in Louisiana allowed 2,600 people with disabilities to be employed; but of that number, only 300 pay a premium, meaning that earnings for the population is low. He also stated that employment is an outcome valued by the agency. Mark Martin indicated that the supported employment system needed significant improvement. This included more training of staff. Laura Bracken was encouraged that there were many who could work in the community, but they needed a stronger system to support them. She was also concerned that there are not enough jobs with flexibility for customized employment, including microenterprises. She thought that families needed the security of supports for their family members, such as respite. The state was developing an Employment First initiative. All the departments said they worked well together.

We also spoke to a person who worked at McDonald's for 18 years, and his sister. He enjoyed the work and he was getting there on his own. He took pride in his work, declaring that it was "his hobby." He worked the lunch shift. After work, he would come home and enjoy music. He had been living with his mother and now was with his sister. When asked whether he would like another job, he indicated he would not and did not know where he would get a job. He was making more than minimum wage. His sister indicated he was due for a change so that he could earn higher wages and work more hours—something that his shift work would not allow since he cleans during the peak afternoon lunch rush. She also indicated that the job helped her brother branch out as

an independent human being. She identified transportation as an issue, as well as the need for employers to learn about the benefits of hiring people with disabilities.

Columbus, Ohio

Purpose of Visit: Ohio was chosen as a state visit site for several reasons. Ohio is one of the few states where counties fund more of the cost of ID/DD services than does the state. In the most recent survey from the Coleman Institute, the funding break-out for ID/DD services was 46 percent federal, 30 percent county, and 17 percent state. The local funds are generated by a robust county levy system. It is also a state that has (by the most recent Institute for Community Inclusion State Data Report) a very high percentage of its ID/DD population in facility-based work. In 2009, more than 14,000 people in Ohio were in facility-based work.

Summary of Activities: The Committee interviewed or met with more than 40 people during our site visit. We met with parents and siblings, some of whom had been involved years ago when workshops were first set up in Ohio. These older parents were quite protective of the benefits of sheltered workshops and were not concerned about the issue of wages. One couple volunteered the information that they have willed their home to the local county program as a “thank you” for the services provided to their child.

Younger parents, especially those whose children have been in integrated educational environments, had very different perspectives. They did not want their children directed to segregated environments and had expectations of wages at minimum wage levels or above. None of the parents expressed a strong desire to close sheltered workshops; however, the younger parents definitely did not want their children working in a segregated environment.

Siblings present a unique perspective of expectations for adults with ID/DD. Although the Committee did not interview many siblings, they were additionally looking for settings where the person is accepted and happy as much as one with higher wages.

The Committee met with people with ID/DD who currently are situated in the workshops. They had expectations to someday work outside of the workshop but were concerned that they would not have friends in the worksite or be invited to participate in work activities. They were all disappointed in the low wages that they are currently being paid. The Committee toured a large sheltered workshop and had informal conversations with people working at the site.

The Committee also met with about 20 policymakers over lunch. Those attending included the Director of the Ohio Department of Developmental Disabilities, as well as the VR Director. The counties were represented by the Ohio Superintendents of the County Boards of Developmental Disabilities, the Ohio Association of County Boards of Developmental Disabilities, and the Ohio Association of Adult Services. Several representatives of self-advocacy groups and community rehabilitation providers were also at the luncheon. The Committee engaged in a wide-ranging conversation that addressed issues such as the disparity in funding for supported employment, the recession, and lack of community jobs, especially in certain parts of the state. The governor had just issued an Executive Order declaring Ohio an Employment First state and established a diverse committee, including people with ID/DD, to improve the opportunities for community-integrated employment at minimum wage or higher. All in attendance saw the Executive Order as a new emphasis on increasing opportunities for employment for people with ID/DD.

The Committee also had the opportunity to visit two people with ID/DD who are working in competitive, integrated employment. The Committee interviewed them at their respective worksites. One gentleman, who was blind, had moved from a sheltered workshop to his current position as a box folder at a mail order contact lens firm. The second gentleman works from his home and is self-employed. He reviews radio program transcripts to ascertain that purchased advertising is actually aired on the radio as contracted.

Observations: Generally, the workers the Committee interviewed were not satisfied with their wages. They did not feel they were being paid for the work they are doing. The two men mentioned earlier, who were working in competitive, integrated

employment, are good examples. Neither of these men was satisfied with their current employment. One of them had actually made more in the sheltered workshop on a piece rate basis than he was currently earning at minimum wage in a competitive, integrated job. The second man, because of the extent of his disability, took so much time to do the job that he actually was working for less than a dollar an hour as a self-employed contractor.

It was clear in our interviews that people with ID/DD are interested in working in the community and are very concerned about making so little money. One woman related a story about how, after she got her job in the sheltered workshop, she promised her family that when she got her first paycheck she would take them out to dinner. In her words, “nothing too fancy.” She related how surprised and sad she was when she received that first check . . . for 38 cents. All of the people we interviewed were fully aware of piece rate wages compared to hourly wages.

At the same time, people working in sheltered workshops were quite content with their relationships with coworkers and staff in the sheltered workshops. They did not feel that they would be as accepted in integrated environments and related personal stories about people returning back to the workshop because of dissatisfaction with relationships within integrated work environments. Several of the trained self-advocates were especially frustrated with low wages.

Most of the people and their families were aware of benefits planning or at least knew where they could go to get such information. Ohio has had several benefits planning grants from DOL and SSA, so it is likely this is the means by which people were aware of the work incentive programs.

Training for employment was discussed quite a bit in several of the sessions. Several workers had certifications (human resources, child care) from private employment programs and/or the local community college. Programs like Project Search and the Ohio State University TOPPS program, both of which provide internships or work experiences, were mentioned as models for pathways to employment. The Ohio Rehabilitation Services Commission and the Ohio Department of Developmental

Disabilities have a long history of written agreements using state or local funds as a VR match. Currently, this relationship is demonstrated with the Bridges program, which serves young people with ID/DD who are transitioning from school to work.

Training for providers of supported employment services was also discussed. In this area there seemed to be little communication between traditional DD service providers and the VR community rehabilitation programs. Instead, a parallel service delivery system seemed to be developing.

All of the people interviewed clearly desire moving toward a more supported employment model. The challenges will be major in doing so, but the clear message from people with ID/DD and their families was to do so with all choices available, but at a fair wage.

Appendix

Implementation Plan for Subminimum Wage Recommendations

NCD recognizes that its recommendations impact thousands of people and their families. NCD further recognizes that it will take support from many stakeholders to eliminate the discriminatory practices of the 14(c) program and build a sustainable, supported employment infrastructure along with other supports. This fall, to accomplish these goals and make the system change effort necessary, NCD plans to draft proposed legislation. In addition, NCD will educate interested parties on the recommendations and proposed legislation through a variety of mechanisms, including presentations at national or regional conferences, webinars, newsletter articles, and other media. This effort will focus on the goal of introducing the legislation in the next Congress.

Proposed Council Vote (July 26, 2012)

On the 22nd anniversary of the Americans with Disabilities Act, the National Council on Disability votes for final adoption of this report, and to develop model legislation implementing the recommendations contained herein.

Endnotes

¹ General Accounting Office (GAO), *Special Minimum Wage Program, Centers Offer Employment and Support Services to Workers with Disabilities, But Labor Should Improve Oversight* (Washington, DC: U.S. General Accounting Office, GAO-01-886, September 2001), 4.

² *Id.*

³ Centers for Medicare & Medicaid Services, Center for Medicaid, CHIP and Survey & Certification, (), “Updates to the Section 1915(c) Waiver Instructions and Technical Guide regarding Employment and Employment-Related Services,” *CMCS Informational Bulletin* (September 16, 2011): 2.

⁴ Robert Evert Cimera, Paul Wehman, Michael West, and Sloane Burgess, “Do Sheltered Workshops Enhance Employment Outcomes for Adults with Autism Spectrum Disorder?” *Autism* (May 24, 2011), <http://aut.sagepub.com/content/early/2011/05/19/1362361311408129>

⁵ Robert Evert Cimera, “Does Being in Sheltered Workshops Improve the Employment Outcomes of Supported Employees with Intellectual Disabilities?” *Journal of Vocational Rehabilitation* (March, 2011): 8–9.

⁶ GAO, *Special Minimum Wage Program, Centers Offer Employment and Support Services to Workers with Disabilities, But Labor Should Improve Oversight* (Washington, DC: U.S. General Accounting Office, GAO-01-886, September 2001), 9.

⁷ Robert Evert Cimera, “The Cost-trends of Supported Employment Versus Sheltered Employment,” *Journal of Vocational Rehabilitation* (2008): 15–20.

⁸ M. West, J. Hill, G. Revell, G. Smith, J. Kregel, and L. Campbell, “Medicaid HCBS Waivers and Supported Employment Pre- and Post-Balanced Budget Act of 1997,” *MR Journal* 40 (2002): 142–147.

⁹ D. Braddock, M. C. Rizzolo, and R. Hemp, “Most Employment Services Growth in Developmental Disabilities During 1988–2002 Was in Segregated Settings,” *MR Journal* 42(4) (2004): 317–320.

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¹¹ J. Butterworth, F. A. Smith, A. C. Hall, A. Migliore, J. Winsor, D. Domin, and J. C. Timmons, *StateData: The National Report on Employment Services and Outcomes* (Boston, MA: University of Massachusetts Boston, Institute for Community Inclusion, 2012).

¹² A. C. Hall, S. Freeze, J. Butterworth, and D. Hoff, “Employment Funding for Intellectual/Developmental Disability Systems.” *Journal of Vocational Rehabilitation* 34(1) (2011): 1–15.

¹³ *Id.*

¹⁴ J. Butterworth, A. C. Hall, F. A. Smith, A. Migliore, J. Winsor, J. C. Timmons, and D. Domin, *StateData: The National Report on Employment Services and Outcomes* (Boston, MA: University of Massachusetts Boston, Institute for Community Inclusion, 2011).

¹⁵ *Olmstead v. L.C.* (98-536), 527 U.S. 581 (1999), 138 F.3d 893, affirmed in part, vacated in part, and remanded.