

Unjustified Isolation, Unwarranted Assumptions

**Why South Carolina's System of Sheltered
Employment Services Needs to Change**

May 2017

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ABOUT PROTECTION AND ADVOCACY FOR PEOPLE WITH DISABILITIES, INC. (P&A)

Since 1977, Protection and Advocacy for People with Disabilities has been an independent, statewide, non-profit corporation whose mission is to protect and advance the legal rights of people with disabilities. P&A's volunteer Board of Directors establishes annual priorities, including investigation of abuse and neglect; advocacy for equal rights in education, health care, employment and housing; and full participation in the community. P&A's vision is that South Carolinians with disabilities will be fully integrated into the community with control over their own lives; be free from abuse, neglect, and exploitation; and have equal access to services.

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EXECUTIVE SUMMARY

Recognition that unjustified institutional isolation of persons with disabilities is a form of discrimination reflects two evident judgments. First, institutional placement of persons who can handle and benefit from community settings perpetuates unwarranted assumptions that persons so isolated are incapable or unworthy of participating in community life. ... Second, confinement in an institution severely diminishes the everyday life activities of individuals, including family relations, social contacts, work options, economic independence, educational advancement, and cultural enrichment. *Olmstead v. L.C.*, 527 U.S. 581, 600 (1999).

Twenty six years after the passage of the Americans with Disabilities Act (ADA),¹ far too many South Carolinians with intellectual and related disabilities still lack opportunities for real work. They spend their days in segregated environments doing unskilled work for virtually no wages. Many languish in these settings for years: supposedly being prepared for work, but never moving to meaningful employment. Even individuals who work outside a segregated facility may work in groups that include only other individuals with disabilities.

During 2014-2015, Protection & Advocacy for People with Disabilities, Inc. (P&A) monitored ten work programs operated by local disabilities and special needs boards² chosen to be representative of diverse communities across South Carolina.³ The facilities provide career preparation and employment services funded primarily through Medicaid waivers. P&A identified these sites as approved by the United States Department of Labor to pay less than minimum wage (often referred as 14(c) certificates).⁴

P&A conducted site visits, talked with administrative staff, and interviewed 69 individuals receiving services. The average length of time that individuals in the sample had participated in the program was 7.3 years. P&A further found that these facilities had common characteristics:

- Only individuals with disabilities were working at the facility, other than supervisory staff.
- The sites had fixed schedules for lunch and other activities; individuals had no choice.
- Work stations seemed similar to segregated special education classrooms, rather than to typical work places.
- Tasks were often limited and repetitive (such as folding boxes), with no opportunity to learn new skills.
- Even if individuals had jobs outside the facility, such as a janitorial work crew, the other crew members were individuals with similar disabilities.
- Transportation was provided only to job sites where all members of a group worked, rather than to individual job sites.
- The structure of career preparation services is questionable given the length of time that participants indicated they spent in these services.
- There were not enough job coaches to serve participants in vocational services that need this service.
- Most facilities did not have technology and computers that individuals could use for job skills preparation.
- Concerns were raised about participants' limited perceptions of their own capabilities.
- Current case management practices for vocational services may not comply with person centered planning under the Medicaid Final Rule for Home and Community Based Waivers (Final Rule).⁵

These segregated programs violate the ADA's mandate that individuals with disabilities receive services in the most integrated environment.⁶ They also raise serious questions about compliance with Medicaid's new rules regarding home and community-based waiver services,⁷ as well as about the roles of South Carolina Department of Disabilities and Special Needs (SCDDSN)⁸ and South Carolina Vocational Rehabilitation Department (SCVRD)/South Carolina Commission for the Blind (SCCB)⁹ in implementing the new Workforce Innovation and Opportunity Act (WIOA).¹⁰

People with disabilities want to and can work in the community with appropriate supports and services. Changing the current segregated model will not be easy, but all agencies and providers must move from a facility-based model to a community-based model focusing on each individual's unique desires, abilities, and potential.

RECOMMENDATIONS

South Carolina's system of segregated workshops does not currently comply with the ADA/Section 504 or the Final Rule. Individuals with disabilities in South Carolina should have opportunities for meaningful employment in their community. These recommendations are designed to enable individuals receiving services from SCDDSN to participate in integrated, competitive employment.

Recommendations for SCDDSN:

- Develop a plan, in compliance with the Final Rule and the ADA, to implement its Employment First directive by phasing out segregated facilities, not renovating or opening new facilities, and providing vocational services in integrated, community settings appropriate to the needs of the participant. Include individuals with disabilities in the planning process.
- Develop procedures to ensure that all boards and providers are consistently following the SCDDSN Employment First directive.
- Conduct outreach to all participants in career preparation and employment services to ensure they are evaluated to determine what services can assist them to work in integrated employment based on informed choice, such as reasonable accommodations, assistive technology and job coach services. SCDDSN should make sure that these services are delivered, including ensuring that there are enough job coaches for all participants who need them.
- Expedite implementation of conflict free case management and recruit more providers of Medicaid-funded career preparation and employment services.

Recommendations for SCDDSN in conjunction with South Carolina Department of Health and Human Services (SCDHHS):

- Review and evaluate funding streams for career preparation services and employment services and reallocate funding to support integrated, individualized employment services in the community.
- Develop a plan to determine the training needs of staff providing vocational services, participants of services, and their families and to deliver those services. Areas to be addressed should include the concerns raised in this report. The planning process should include input from providers of services, participants of vocational services, families, SCVRD, South Carolina Department of Education (SCDE), and agencies serving individuals with ID/RD.
- Establish a mechanism to determine and address barriers and concerns faced by participants in career preparation and employment services, including barri-

ers and concerns raised by this report. Involve stakeholders, including participants in vocational services and their families, independent living centers, DSN Boards, private providers, other state agencies serving individuals with ID/RD, and outside organizations serving individuals with ID/RD.

- Address barriers to transportation that impact individuals with disabilities that limit their ability to drive to work.

Recommendation for SCDE:

- Develop guidance for school districts emphasizing that, consistent with the ADA integration mandate and the WIOA provisions on segregated employment, students receiving transition services in school should not be guided or steered toward segregated employment settings like sheltered workshops as an employment outcome in their individualized education program (IEP). Students should receive robust transition services including community work experiences to ensure them the opportunity for integrated employment consistent with their wants, strengths, and desires.

INTRODUCTION - SEGREGATED WORK

Thousands of South Carolinians with intellectual and related disabilities work in segregated settings receiving services called “career preparation” and “employment services” in a mobile work crew or an enclave.¹¹ These services are provided through Medicaid Waivers funded by the South Carolina Department of Health and Human Services (SCDHHS) and operated by the South Carolina Department of Disabilities and Special Needs (SCDDSN).¹²

Segregated work facilities, commonly referred to as “sheltered workshops,”¹³ are part of a long history of segregating workers with disabilities, dating back to at least 1840 with the Perkins Institute for the Blind. At the time, it was a novel idea to protect individuals with disabilities from the labor market by creating jobs in a segregated setting.¹⁴ Unfortunately, despite our growing knowledge about the capabilities of individuals with disabilities, improvements in services, and changes in the law favoring integration, little has changed in the rationale since 1840 – “sheltering” individuals with disabilities perceived as vulnerable from market-based competition and providing them with segregated opportunities for employment services and work.

Vocational services should be designed to help individuals with disabilities learn job skills, if needed, and then gain meaningful employment in the community.¹⁵ However, the current practice of sheltered work is not effective in helping most individuals with disabilities in those settings move to integrated employment.¹⁶ Many disadvantages of sheltered workshops have been identified:

- Workshops can encourage long term placement. For instance, a provider may desire to retain productive, low-cost workers to fulfill contractual obligations.¹⁷
- Typical work in workshops, often limited to menial, repetitive tasks, is not effective in teaching skills needed for competitive employment.¹⁸
- The lack of opportunities for individuals with disabilities to interact with peers who are not disabled,¹⁹ which can foster poor socialization skills and lower self-esteem.²⁰ Interaction with non-disabled peers is a workplace skill, but it is far more difficult to learn in a segregated setting.
- Vocational success may be limited by teaching individuals with disabilities to be “compliant” and to “settle for mundane tasks.”²¹
- Segregated employment is a one-size-fits-all approach. It often denies individuals with disabilities the right to self-determination by failing to consider their input in making important decisions, such as where the individual would like to work or what skills the individual would like to learn.²²
- Workers in segregated employment do not always have the same benefits and protections as those offered to non-disabled workers in the traditional work environment.²³ For example, workers in sheltered workshops generally receive less than minimum wage and also typically lack the right to receive unemployment compensation or workers’ compensation if they are injured on the job.²⁴
- Segregated employment is not the best financial choice for most individuals with disabilities²⁵ or the most cost-effective option from the taxpayer’s perspective.²⁶

Today, although states are legally required to provide services to individuals with disabilities in the most integrated setting appropriate, most states, including South Carolina, still provide vocational services to individuals with intellectual and related disabilities in segregated settings. Unfortunately, the system of sheltered work is well-established in South Carolina. Substantial money has been invested in brick and mortar buildings, staff, and programs. In addition, many participants and their families rely on and are comfortable with these services. However, P&A's monitoring data raises concerns over unnecessary segregation of individuals with disabilities in these services. In addition, recent changes in Medicaid law and the Workforce Innovation and Opportunity Act (WIOA)²⁷ require changes in the way vocational services are offered in South Carolina. In revamping these services, South Carolina needs to acknowledge the problems with current segregated vocational services and develop a system that truly focuses on and implements Employment First²⁸ principles. These changes will enable individuals with disabilities to have informed choices in the planning process and meaningful opportunities to develop vocational skills in community settings.

What is “competitive integrated employment”?

Full or part-time employment in the community paying at least minimum wage, which is not less than the rate paid to non-disabled employees with similar skills and background doing similar work. Similar opportunities that are provided to non-disabled employees should be offered, including:

- benefit eligibility;
- work interactions with other employees in performing job duties; and
- advancement.²⁹

EMPLOYMENT FIRST

Employment First strategies are “centered on the premise that **all** citizens, including individuals with significant disabilities, are capable of full participation in integrated employment and community life.”³⁰ There is currently no South Carolina statewide Employment First policy in place.³¹ Employment First is not a new initiative. In 2012 -2013, Employment First was a National Governors Association (NGA) initiative, “*A Better Bottom Line: Employing People with Disabilities.*”³² The NGA initiative’s goal is that competitive and integrated employment should be the first and preferred option for employment of individuals with disabilities. The initiative suggests ways that state governments and businesses can improve employment for people with disabilities. The five areas suggested for states to focus on to improve outcomes are:

- Making disability employment part of the state workforce development strategy.
- Finding and supporting businesses in their efforts to employ people with disabilities.
- Being a model employer by increasing the number of people with disabilities in state government.
- Preparing youth with disabilities for careers that use their full potential, providing employers with a pipeline of skilled workers.
- Making the best use of limited resources to advance employment opportunities for people with disabilities.³³

In states with an Employment First task force, the task force can promote competitive, integrated employment for people with disabilities. It can make recommendations on effective employment first practices,³⁴ provide outreach on Employment First, create a way to gather data and report on it, and provide recommendations on rule changes.

Despite a lack of a statewide policy, SCDDSN has taken the initiative and developed an Employment First directive that is consistent with Employment First principles. SCDDSN may be the only South Carolina agency at this time to have implemented such a directive.³⁵ The Directive issued October 28, 2015 states, “[e]mployment services – Individual, provided in integrated settings is the first and preferred Day Service option to be offered to working age youth and adults (ages 16 – 64) who have exited school and who are eligible for DDSN services. No other DDSN Day Service, including Career Preparation, should be considered, or implied to be, a prerequisite to receiving Employment Services.”³⁶ This Directive further encourages employment by identifying specific responsibilities in the case management process that can help achieve an employment outcome as well as resources in the community that can assist. The Directive encourages provider agencies to partner with local school systems to enable students to plan for work in competitive, integrated employment. SCDDSN has been working with school districts to strengthen the transition process. While the Directive is an encouraging step, SCDDSN still has an overreliance on workshops and segregated work opportunities. However, effective implementation of this Directive by SCDDSN boards and providers should result in more individuals with disabilities attaining integrated employment.

The “South Carolina Employment First Initiative,” which began in September 2016, is a new project that focuses on individuals with intellectual and/or developmental disabilities, ages 16-30, not in integrated, community employment. Numerous agencies and entities serving individuals with disabilities in South Carolina³⁷ have signed a memorandum of understanding to implement a federal grant,³⁸ which includes objectives of educating target youth about employment possibilities and supports for employment; promotion of Employment First principles; improvement of existing services; and education for employers and the general public about ways to develop better employment outcomes.

The initiative offers the possibility of better work for students and younger workers, but individuals currently in the segregated work system still face great difficulty in moving into competitive employment.

MEDICAID HOME AND COMMUNITY-BASED SERVICES WAIVERS

SCDDSN is the designated state agency that provides services to eligible individuals with an intellectual disability, traumatic brain injury, spinal cord injury, or autism and related conditions.⁴² Direct services are provided through a network of county disabilities and special needs boards⁴³ and private providers. Most individuals receiving services through SCDDSN have Medicaid.⁴⁴ SCDHHS is designated to administer the Medicaid program in South Carolina.⁴⁵

States can waive certain Medicaid requirements to help individuals live in the community through programs called “Medicaid Home and Community-Based Services (HCBS) Waivers.”⁴⁶ In South Carolina there are currently nine waivers,⁴⁷ each with its own eligibility criteria and services. While SCDHHS has primary responsibility for all the Medicaid waivers, it contracts with SCDDSN to operate four of the waivers.⁴⁸ Both the Community Supports (CS) Waiver and the Intellectual Disability and Related Disabilities (ID/RD) Waiver, which are operated by SCDDSN, contain career preparation services and employment services.⁴⁹ The goal of these services is for the participant to have a work outcome. Unfortunately, the majority of these waiver vocational services are currently delivered in segregated work settings, where individuals can work for years at extremely low-skilled jobs paying subminimum wages.

P&A monitored a representative group of facilities providing career preparation/employment services in 2014-2015.

What are Subminimum Wages?

Under section 14(c) of the Fair Labor Standards Act³⁹ (FLSA), employers that have a special certificate from the U.S. Department of Labor can pay individuals with disabilities less than federal minimum wage when their earning or productive capacity is affected by their disability,⁴⁰ also called subminimum wage. The individual’s hourly wage is determined based on comparisons of nondisabled individuals working in a similar job to the productivity of an individual with a disability.⁴¹ Subminimum wages may be paid on an hourly basis or by piece rate. In the fall of 2013, P&A submitted a Freedom of Information Act (FOIA) request to the U.S. Department of Labor for information about entities holding 14(c) certificates in South Carolina. In reviewing the response, P&A learned that some individuals working under these certificates in South Carolina earn cents per hour of work.

The Role of Medicaid Case Management in Employment Services

Participants enrolled in the Medicaid ID/RD and Community Supports waivers receive “targeted case management” (TCM),⁵⁰ which is the primary method of monitoring the health, safety and welfare of participants. The core functions of TCM include service coordination, service authorization, case monitoring, care plan development, and reassessment of needs. Case managers are responsible for providing information about waiver services, including vocational services, to participants and families. SCDDSN’s current Employment First directive discusses specific responsibilities of case management providers in supporting the agency’s Employment First Principles: “Case managers are to promote employment as the first and preferred outcome for working age adults receiving DDSN services.”⁵¹ Case managers should initially and regularly discuss employment aspirations with participants and inform any participant who desires individualized work about links to services and authorize appropriate supports. Case managers should also be knowledgeable about different benefits, work incentives, and community resources that can assist individuals in individualized employment. They “can play a central role in dispelling myths, alleviating fears of losing public benefits, correcting misperceptions and raising expectations.”⁵²

Medicaid Waiver Funds Used for Employment Services

SCDDSN has developed internal standards⁵³ for both career preparation and employment services. As the term suggests, career preparation is designed to teach basic workplace skills, rather than explicit employment objectives. Career preparation services should prepare participants to “launch successful careers” and to “insure job stability.”⁵⁴ Career preparation services are delivered in SCDDSN licensed day facilities. Some examples of the work being done during P&A monitoring included: folding boxes, folding gloves for vending machines, baling clothing, and putting parts together for manufacturing companies. SCDDSN does not maintain data on the movement of participants from career preparation to employment services/integrated work in the community.

Employment services are designed to provide intensive, on-going supports to perform work in a regular work setting. They are offered through one of three models: enclave, mobile work crew, or individual community placement. Enclaves and mobile work crews are small groups composed only of people with disabilities, and according to SCDDSN standards must depart from SCDDSN licensed facilities to work in the community. Enclaves work in community businesses or government offices. The mobile work crew is a self-contained business providing services such as landscaping or janitorial work. Participants in an individual community placement are provided with supports to work in competitive employment.⁵⁵ SCDDSN does not maintain data on the movement of participants from group employment services to individual community placement/integrated work in the community.

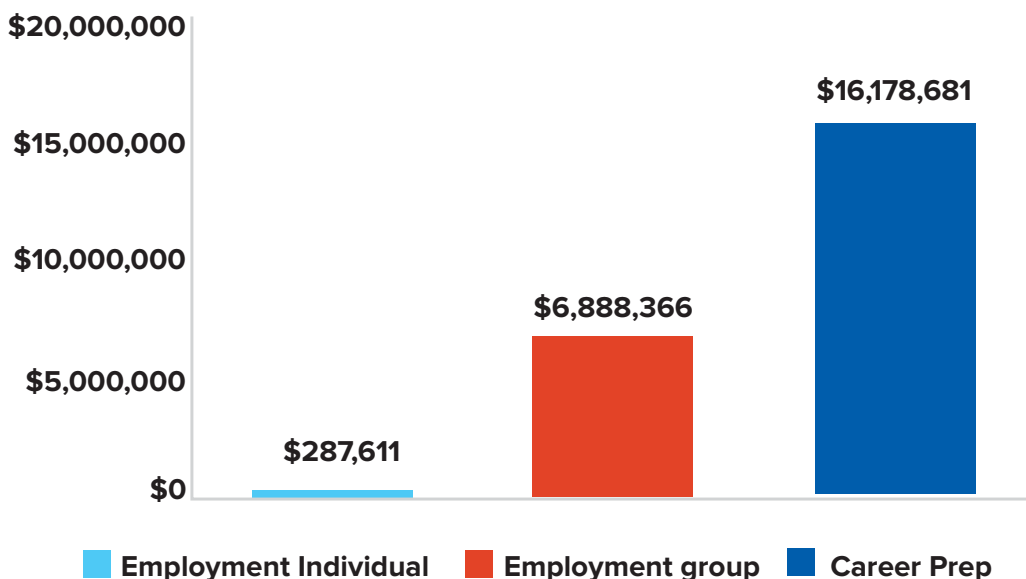
Career preparation and employment services are supported through state funding, both directly and through the state share of the waivers. In addition, boards or private providers may contract with businesses to provide work, which can also be a source of funding for SCDDSN/boards/private providers.⁵⁶ Most providers of these services hold 14(c) certificates⁵⁷ that enable them to pay sub-minimum wages.

Under the current SCDDSN standards, participants of both career preparation and employment services must be initially and annually assessed. The assessment should focus on the participant’s interests, preference, abilities, and strengths in a variety of areas. This information, along with input from the participant (or legal guardian), is used to develop the plan for services. The plan should be monitored at least monthly based on data collected about the individual’s performance.⁵⁸ Current

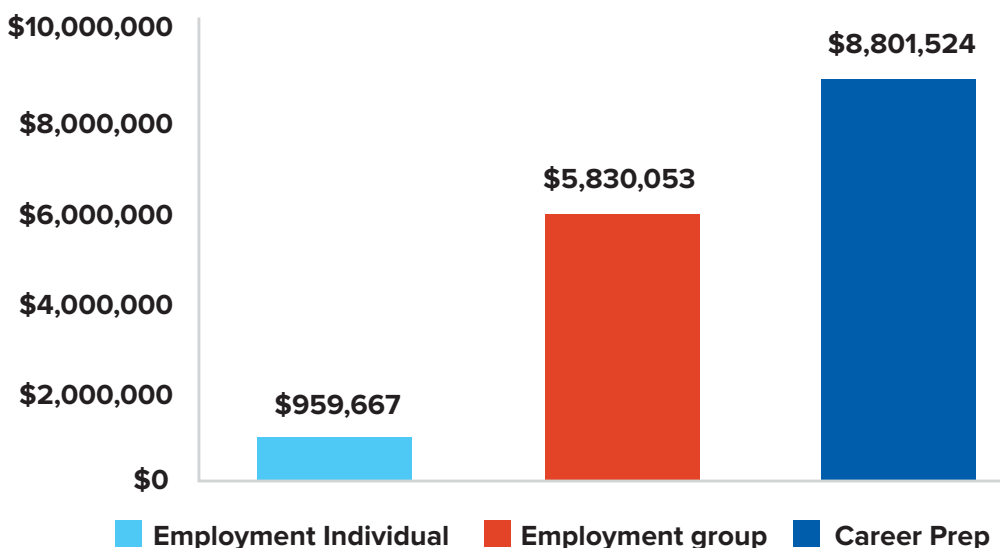
DDSN standards provide the boards and private providers with minimum qualifications for the staff that provide these services. These standards do not appear to require any staff members to have a background in vocational services.⁵⁹

The following charts show that South Carolina spends more money on group employment and career preparation services than on individual employment. Individual employment also has the fewest number of participants.⁶⁰

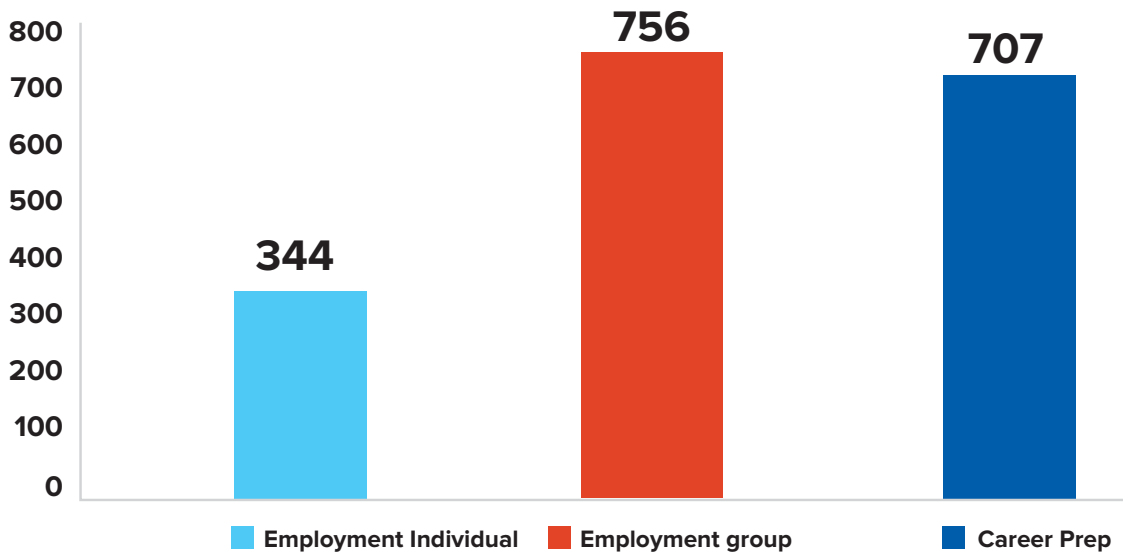
ID/RD Waiver 2015



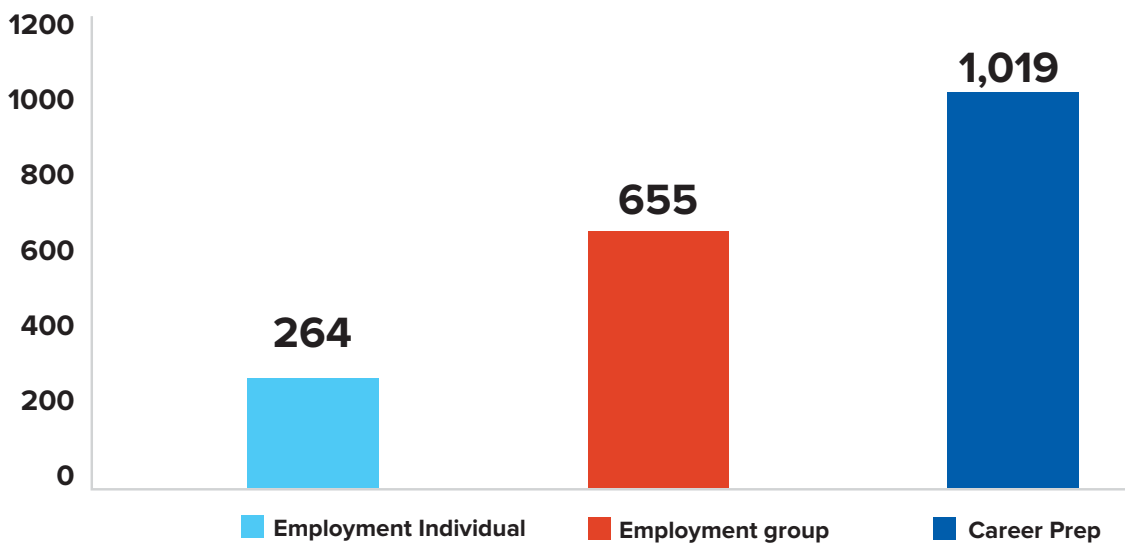
CS Waiver SFY2015



ID/RD Waiver 2015



CS Waiver SFY2015



*Total CS Waiver SFY2015 service cost was \$24,602,028

*Total ID/RD Waiver 2015 service cost was \$293,037,910

SCDDSN's Efforts to Improve Vocational Services

SCDDSN has recognized shortfalls in the provision of vocational services. For instance, prior to the Employment First directive discussed above, SCDDSN had “embraced” an employment first policy since 2009.⁶¹ In 2013, barriers identified by SCDDSN itself included insufficient and unfunded post-employment support, insufficient number of job development slots for special education students exiting high school, federal disincentives to prioritize individual employment services over other services, and insufficient collaboration with SCVRD and schools.⁶² In addition, in 2013, it was noted that contracted providers had not implemented the policy consistently.⁶³

SCDDSN has taken some encouraging steps to address these concerns. In an effort to make individualized employment services a priority, SCDDSN launched a two-year Individual Employment Services Pilot Program in 2014.⁶⁴ The design was based on data collected and analyzed regarding concerns with the current individualized employment services system.⁶⁵ The report, “Individual Employment Services Pilot Certified Public Manager Project Report,” highlighted a number of the concerns that the pilot program aimed at addressing. These concerns included funding that did not support ongoing employment support needs, data that indicated participants wanted community employment, waiting lists for individuals seeking these services, and some counties that did not even have a provider of these services (leaving SCVRD as the only option for employment services).⁶⁶ Many of the concerns raised in this report were consistent with concerns raised from P&A's monitoring.

The pilot program, comprised of four providers representative of the different communities in the state, is designed to test a new method of funding and delivering quality individualized employment services.⁶⁷ It is aimed at increasing and promoting employment outcomes as well as reducing the number of participants in vocational services that are more costly to the state.⁶⁸

In addition, SCDDSN's 2015 “Employment First” directive provides that the first and preferred day service option offered is individual employment services in an integrated setting.⁶⁹ At this time, however, it is not clear that boards and private providers are effectively implementing this policy, especially given the history of inconsistency of services across the state recognized by SCDDSN. In addition, new segregated facilities came into operation in 2015--a work activity center in Batesburg-Leesville was newly renovated, a new training/work center opened in Irmo, and a new center was opened in Clinton.⁷⁰ In 2016, a news report indicated that Tri-Development Center of Aiken County is expanding.⁷¹ This continued focus on segregated work settings is not consistent with the Employment First Directive, the ADA integration mandate, or the requirements of the Final Rule.⁷²

For individuals with disabilities who are not receiving services under a HCBS waiver, but are eligible for SCDDSN services and need supports to maintain employment, SCDDSN may be able to assist through the State Funded Follow Along (SFFA).⁷³ SFFA is a way to provide employment supports when an individual has secured integrated employment in the community through SCVRD (receiving at least minimum wage for 10 hours/week or 20 hours/2 weeks) and SCVRD has successfully closed its case. Case management is provided to those eligible for these services. Potential SFFA services may include employment services, assistive technology, and behavior support. There are funding limits on these services. These services could be for SCDDSN clients who need employment support after a successful SCVRD closure and could be a model of the kind of flexibility needed for waiver vocational services.

SCDDSN is also reaching out to school districts to address transition age students. SCDDSN signed a memorandum of understanding with a number of other agencies for the “South Carolina Secondary Transition Capacity Building Consortium” to help improve transition outcomes.⁷⁴ In addition, SCDDSN has at least two post-secondary transition coordinators who are working with a number of school districts in South Carolina.

Transition Services for Students with IEPs

In South Carolina, students eligible for special education services under an individualized educational program (IEP) are entitled to transition services starting at age 13. Transition services are a coordinated set of activities that help students prepare for life after school, such as post-secondary education, vocational education, integrated employment, supported employment, and daily living skills.⁷⁵ Transition services vary depending on the student's individualized needs, but can include instruction on life skills and community experiences. These services are vitally important for initially preparing and then transitioning students into the next phase of their life after school. Agencies who may be able to help with transition services, such as SCVRD, should be invited to IEP meetings with the consent of the parent/adult student. Students who desire to work after school should be given thorough functional vocational assessments. They should also be provided with community work experiences in integrated settings, as well as needed employment supports to appropriately plan and prepare for work.

SC Vocational Rehabilitation Department (SCVRD)

SC Vocational Rehabilitation Department (SCVRD) is the state agency⁷⁶ charged with assisting individuals with disabilities who want to work. "The foundation of the VR program is the principle that individuals with disabilities, *including those with the most significant disabilities*, are capable of achieving high quality, competitive integrated employment when provided the necessary services and supports."⁷⁷ (emphasis added) The purpose of SCVRD is to, "assess, plan, develop, and provide vocational rehabilitation services for individuals with disabilities, consistent with their strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice, so that such individuals may prepare for and engage in gainful employment." Typically, to be eligible for SCVRD services, an individual must have a disability that is a substantial impediment to employment and needs SCVRD services for an employment outcome.⁷⁸ SCVRD has a high burden of proof to show that an individual cannot benefit from vocational rehabilitation services because the disability is so severe.⁷⁹ SCVRD is a vital resource in South Carolina for assisting individuals with disabilities in preparing for and securing work. Individuals that receive SSI and/or SSDI are presumed eligible for SCVRD services if an employment outcome is intended.⁸⁰ SCCB has similar duties and responsibilities.⁸¹

The Workforce and Innovation Opportunity Act (WIOA), discussed below, resulted in amendments to the Rehabilitation Act of 1973 that benefit youth with disabilities and individuals with significant disabilities receiving services from SCVRD.⁸² For instance, SCVRD will play a larger role in preparing students with disabilities for work or post-secondary education. At least 15% of a state's public vocational rehabilitation funds must be used for pre-employment transition services, which can be provided to all students with disabilities even if they have not applied for services from SCVRD.⁸³ Required pre-employment services are:

- Job exploration counseling;
- Work-based learning experiences (integrated, in the community to the maximum extent possible);

- Counselling on enrollment in postsecondary/transition programs;
- Workplace readiness training (social skills and independent living skills); and
- Self-advocacy instruction.⁸⁴

In addition, supported employment services provided by the vocational rehabilitation program have been increased from 18 to 24 months (it is possible a longer period can be established).⁸⁵ Another improvement is that customized employment is now considered a vocational rehabilitation outcome for an individual with a significant disability.⁸⁶ “Customized employment is a flexible process designed to personalize the employment relationship between a job candidate and an employer in a way that meets the needs of both. It is based on an individualized match between the strengths, conditions, and interests of a job candidate and the identified business needs of an employer. Customized Employment utilizes an individualized approach to employment planning and job development – one person at a time . . . one employer at a time.”⁸⁷ WIOA will also have an impact on improving the relationship between SCVRD and businesses in the community, including training and technical assistance services to businesses.⁸⁸

P&A MONITORING

P&A is part of the federally mandated system with the authority and obligation to protect and advocate for the human and legal rights of individuals with developmental disabilities, mental illness, and other disabilities in South Carolina.⁸⁹ P&A's vision is that individuals with disabilities will be fully integrated into the community with control over their own lives.⁹⁰ P&A frequently monitors facilities and institutions to determine progress towards this vision.

In 2014, P&A began to monitor facilities providing employment preparation services/day services to individuals with developmental disabilities in South Carolina.⁹¹ A data collection tool and process was developed after careful consultation with other P&As around the nation doing similar monitoring work, as well as with the National Disability Rights Network (NDRN).⁹²

In fall 2013, P&A submitted a Freedom of Information Act (FOIA) request to the U.S. Department of Labor requesting information regarding organizations holding a special minimum wage certificate (14(c)) in South Carolina.⁹³ P&A reviewed the FOIA response and chose 10 facilities providing employment preparation services/day services through the Medicaid waivers. There was an intentional focus to select 10 facilities that were representative of the diverse communities within South Carolina. P&A visited these facilities:

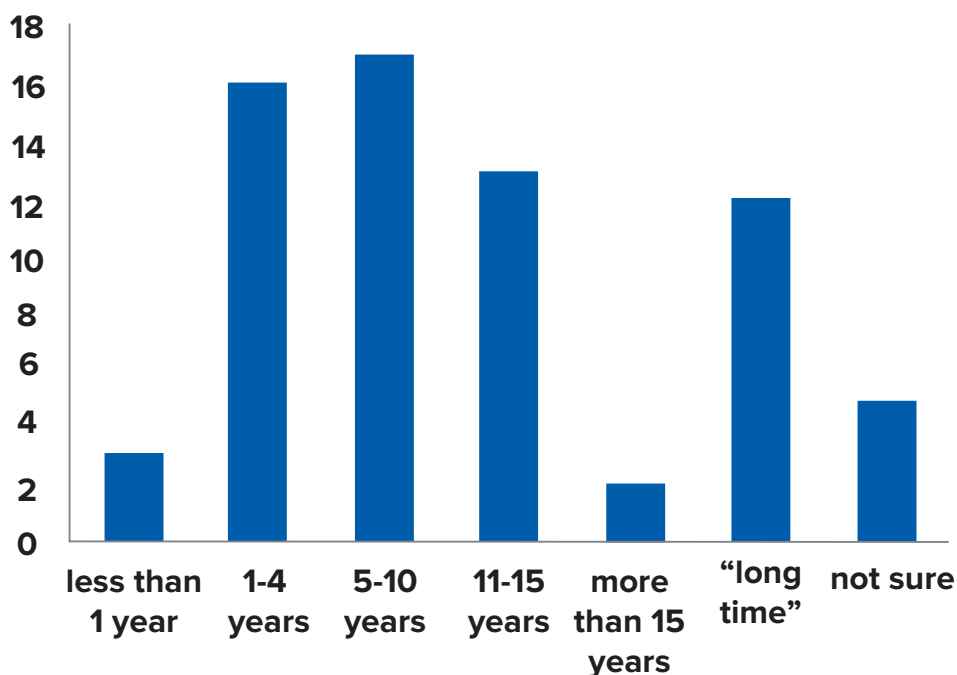
- Tri-Development Center, 1016 Vaucluse Rd., 314 Hampton Ave. and North Augusta/Belvedere Site, Aiken (September 3, 2014)
- Kershaw County Board of Disabilities and Special Needs, Camden (September 12, 2014)
- CHESCO Services, Pageland and Cheraw (two sites) (September 17, 2014)
- Charles Lea Center, WorkAbility, Spartanburg (September 25, 2014)
- Cherokee County Disabilities and Special Needs Board, Gaffney (September 30, 2014)
- Florence County Disabilities and Special Needs Board, Braxton W. Collins Center, Florence (October 27, 2014)
- Burton Center, Greenwood (October 30, 2014)
- Allendale/Barnwell Disabilities and Special Needs Board, Barnwell site (February 13, 2015)
- Horry County Disabilities and Special Needs, Adult Development Center, Conway (February 12, 2015)
- Dorchester County Board of Disabilities and Special Needs, Venture Industries Adult Center, Summerville (February 18, 2015)



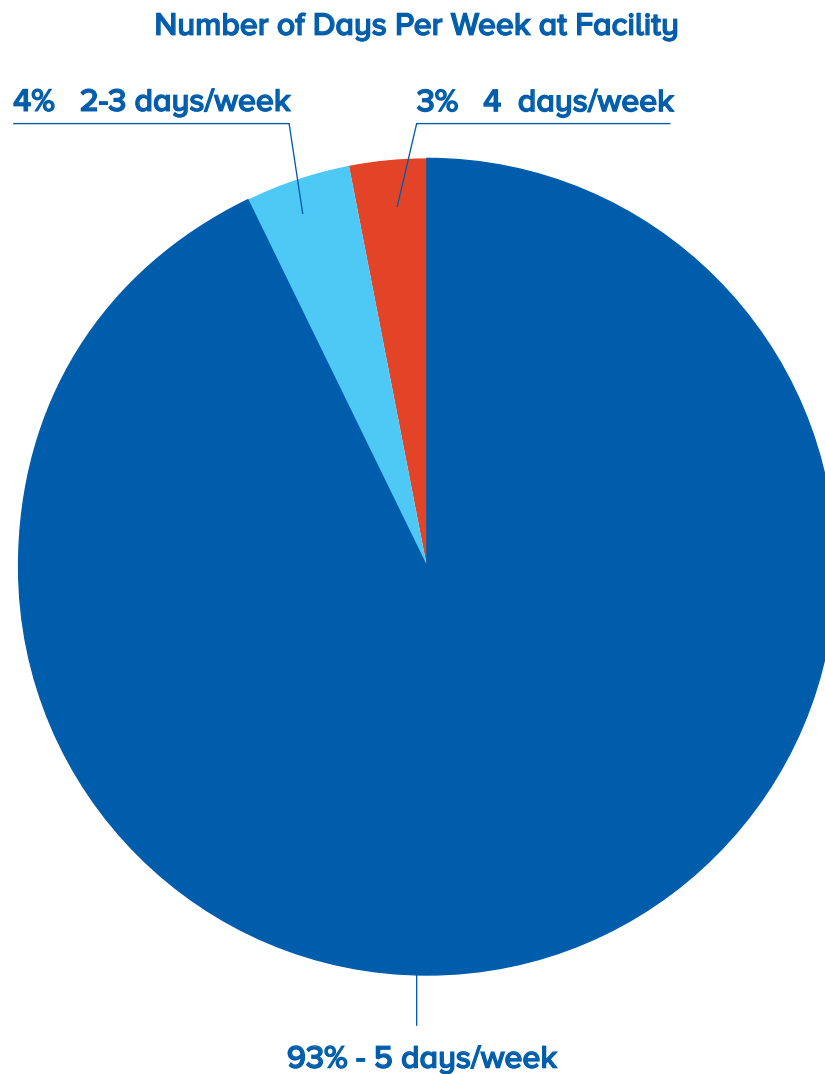
After identifying the facilities, P&A staff scheduled visits for a tour. Facility administrative staff were interviewed before the visit to learn more about the services offered to participants and to get their perspective on the services provided. After the interview, P&A staff toured the workshop area and interviewed participants willing to talk. P&A staff interviewed a total of 69 participants present at the sheltered workshop sites for this project. The following findings are significant from the responses:

- Average age of responding individuals working at the sheltered workshop: 39 years
- When asked how long the individual had been working at the sheltered workshop setting, a wide range of times was provided. What became clear is the workshop setting, while meant to be temporary in nature, appears to be a long-term reality for most individuals we interviewed. The number of individuals and the length of time working at the sheltered workshops was:
 - 3 individuals: less than 1 year
 - 16 individuals: 1-4 years
 - 17 individuals: 5-10 years
 - 13 individuals: 11-15 years
 - 2 individuals: over 15 years
 - 12 individuals: had been working there so long they couldn't provide a number
 - 5 individuals: not sure

Number of Years at Workshop

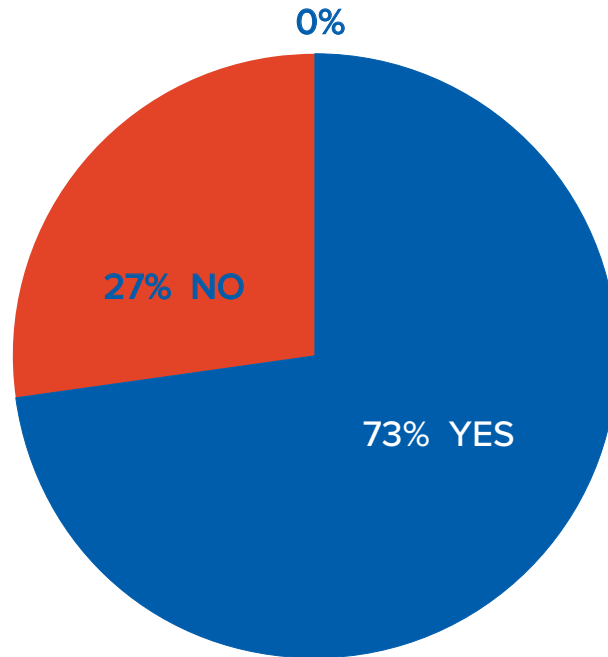


- 94% of interviewed individuals do not work anywhere else in the community outside of the sheltered workshop.



- 93% of interviewed individuals reported coming to the sheltered workshop 5 days a week.
- 97% of interviewed individuals shared that they enjoyed working at the sheltered workshop. However, when asked if they had a “dream job” or something they wished they could experience in the community instead, 73% had an answer. The individuals’ answers were varied and included choices such as food service, mechanic, childcare, janitorial services, landscaping, or working in a grocery store.

Is there a place you would like to work if you weren't working here (dream job)?



- 68% of interviewed individuals shared that they are working toward a job goal or career, 32% were not. Interestingly, a handful of participants mentioned waiting for a job coach to start working with them so they could get out into the community.
- Job coaches vs. facility staff: Based on the information obtained from facility staff at the 10 facilities visited, an average of 1.5 job coaches were available to participants desiring community based employment. The range was 0-3. In contrast, a range of 6-150 staff members were said to work with participants on site attending a day program at the sheltered workshop.
- The relationship with the South Carolina Vocational Rehabilitation Department (SCVRD) varied based on location. Ninety percent of the facilities reported that they had a relationship with the local SCVRD center; 10% reported no relationship. While 70% of facilities said they make referrals to VR, the other 30% do not. In contrast, when participants were asked if they have or have had a SCVRD counselor, the responses were yes 15%; no 61%; unsure 24%.

Job Coaches

A job coach can go by different names, but is generally an individual who assists individuals with disabilities in finding employment and maintaining it.⁹⁴ Services are typically individualized and can include: assistance in learning how to perform job duties, working with the participant one on one with skills, help with developing accommodations, working on soft skills, and reaching out to potential employers. There are many ways job coaching services can be performed to help individuals with disabilities find employment in the community.

P&A staff observed many aspects of these facilities indicating the isolation of individuals with disabilities from the community:

- No individuals without disabilities were present other than the staff. Community activities were planned throughout the week at various locations, but the individuals with disabilities were always in a group.
- Work stations were set up in ways similar to self-contained special education classrooms; for instance, work stations/tables would be set up and participants would be assigned to an area with a staff member. Parallels were noted between how students with disabilities are treated in more restrictive placements in school and then at these facilities.
- Individuals followed a regular schedule; they generally would come and go at the same time and had lunch at the same time (sometimes lunch was taken in shifts depending on the size of the facility). They did not appear to have choice about how to spend their time.
- Individuals worked on rote tasks (ex: folding boxes, folding gloves for vending machines, baling clothing, and putting parts together for manufacturing companies). Work seemed to be dependent on the contracts the facilities had, not based on the individualized needs. On a few occasions, workshop staff was helping participants complete contract work because of production demands.
- Some job coaches, typically in the smaller communities, would serve different functions in the facility, thus limiting their time to provide job coaching services.
- It was observed that some individuals with disabilities would receive services in the facility, then move to an enclave or mobile work crew and/or community placement, rather than moving to integrated employment. Further, P&A talked to a few participants who shared that they were waiting on a job coach slot so they could start working in the community.
- Most of the facilities monitored did not have assistive technology and computers that participants could use for job training preparation
- Monitoring raised concerns about the participants' perceptions of their own capabilities. For instance, a handful of individuals interviewed mentioned in various ways that they couldn't work because no one would hire them because of their disability.
- Individuals were transported by the provider on segregated vans to the facilities and any jobs off-site. Payment is not available for transportation to jobs not affiliated with the facility.

P&A found during monitoring that a majority of participants receive Social Security/Supplemental Security Income (SSDI/SSI) benefits. Many individuals receiving disability benefits are afraid that if they work they will lose reliable income and, especially, essential health care, or face an overpayment of benefits.⁹⁵ Part of expanding work opportunities is for beneficiaries to have access to information about how work can affect benefits and the work incentives, which offer the chance to move gradually to self-supporting status without loss of health care. Community Work Incentive Coordinators (CWICs)⁹⁶ have been trained to assist beneficiaries in understanding how employment affects benefits. Unfortunately, many individuals and their representatives are not aware of this valuable service.

CURRENT PRACTICES VIOLATE THE ADA AND MEDICAID REGULATIONS

South Carolina's Workshop System Does Not Comply with the Americans with Disabilities Act (ADA)

It has been nationally recognized that most, if not all, persons with I/DD are capable of working in integrated settings and engaging in integrated day activities in the community. In promulgating Title I of the Rehabilitation Act, the federal statute governing the administration of vocational rehabilitation services for people with disabilities, Congress advanced the principle that even "individuals with the most significant disabilities are generally presumed to be capable of engaging in gainful employment and the provision of individualized vocational rehabilitation services can improve their ability to become gainfully employed." 29 U.S.C. § 720(a)(3)(A).⁹⁷

The Americans with Disabilities Act (ADA) was passed over 26 years ago as a national mandate to eliminate the discrimination of individuals with disabilities.⁹⁸ A bipartisan Congress found that, "historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem."⁹⁹ Title II of the ADA prohibits discrimination in services provided by public entities, such as SCDDSN.¹⁰⁰ The ADA requires public entities to provide services in the most integrated setting¹⁰¹ appropriate to the needs of the individual with a disability; this requirement is commonly known as the integration mandate of the ADA.¹⁰² Thus, individuals with disabilities should not be unjustifiably segregated in programs and services such as career preparation and employment services.

Integrated settings are those that provide individuals with disabilities opportunities to live, work, and receive services in the greater community, like individuals without disabilities. Integrated settings are located in mainstream society; offer access to community activities and opportunities at times, frequencies and with persons of an individual's choosing; afford individuals choice in their daily life activities; and, provide individuals with disabilities the opportunity to interact with non-disabled persons to the fullest extent possible. Evidence-based practices that provide scattered-site housing with supportive services are examples of integrated settings. By contrast, segregated settings often have qualities of an institutional nature. Segregated settings include, but are not limited to: (1) congregate settings populated exclusively or primarily with individuals with disabilities; (2) congregate settings characterized by regimentation in daily activities, lack of privacy or autonomy, policies limiting visitors, or limits on individuals' ability to engage freely in community activities and to manage their own activities of daily living; or (3) settings that provide for daytime activities primarily with other individuals with disabilities. "Statement of the Department of Justice on Enforcement of the Integration Mandate of Title II of the Americans with Disabilities Act and *Olmstead v. L.C.*," Answer to Question 1, June 22, 2011 ¹⁰³

South Carolina is not unique in its dependence on segregated employment practices.¹⁰⁴ The United States Department of Justice (DOJ), which enforces the ADA, has taken the position that states' reliance on segregated training and work settings violates the ADA. The DOJ filed a statement of interest in *Lane v. Brown*,¹⁰⁵ a pivotal case filed in Oregon on behalf of individuals who had spent years in segregated work settings, and yet were qualified and wanted to work in the community.¹⁰⁶ Plaintiffs alleged the Oregon employment system unnecessarily relied on sheltered workshops,

despite a significant number of individuals with disabilities with the ability to succeed in integrated employment. Pivotaly, the Judge ruled that the ADA's integration mandate applies to segregated employment services. This case settled before trial. Through the settlement, Oregon is going to change its service system to reduce the use of sheltered workshops and improve services to increase opportunities for integrated employment based on individual's capabilities and desires.¹⁰⁷

Highlights from Settlement Agreement of *Lane et al. v. Brown et al.*

(https://www.ada.gov/olmstead/documents/lane_sa.pdf)¹⁰⁸

- Increase integrated employment services in the community.
- Move individuals from sheltered workshops into competitive, integrated employment in the community.
- Decrease the hours spent and number of individuals with intellectual and developmental disabilities receiving services in sheltered workshops.
- Base supported employment services on the capabilities, choices and strengths of the individual.
- Improvements to the employment services system with goals of improving employment outcomes, such as increased guidance to staff, training, and looking at financial changes.
- Establish career development planning.
- Improve planning for transitioning youth.

In another matter, the DOJ investigated Rhode Island's system of employment services for individuals with intellectual and developmental disabilities, including services in sheltered workshops.¹⁰⁹ While segregated work may be permissible if an individual has made a decision to be placed there based on informed choice, the DOJ found Rhode Island had "unnecessarily and unjustifiably over-relied on such programs to the exclusion of integrated alternatives like supported employment and integrated day services."¹¹⁰ Rhode Island agreed to settle this matter with a ten-year agreement providing for the state to change its employment services, including more supported employment and reallocating funding.¹¹¹

DOJ Findings in Rhode Island Investigation

- Problems with State action/policies:
 - Failure to develop a sufficient quantity of integrated transition, employment, vocational, and day services and supports for individuals with I/DD;
 - Use of state resources for segregated workshops and day programs, rather than integrated services;
 - “[U]se of systemic criteria and methods of administration that unnecessarily require persons with I/DD to attend sheltered workshops and facility-based day programs in order to access and receive employment, vocational, and day services.”¹¹²
- Individuals working in sheltered workshops were isolated from interacting with their non-disabled peers.
- Sheltered workshops had the traits of an institution. For instance, participants were transported to and from the facility; their schedules were structured and highly regimented; services were provided in shared spaces with other individuals with disabilities; work spaces did not look like those in the community; tasks were rote in nature and not matched to the individual’s needs and strengths; and participants had limited freedom.
- Long term placements in sheltered workshops, which resembled permanent placements.
- Only a small portion of individuals with intellectual/developmental disabilities received supported employment/integrated day services.
- Few individuals receiving employment services were offered meaningful informed choice.
- Segregated work can result in very low wages compared to individuals with disabilities in integrated employment, lack of benefits, lack of opportunities for economic independence, and lack of income for recreational and community activities.
- Rhode Island is capable of providing integrated services and individuals with disabilities are capable of receiving services in integrated settings.

The DOJ issued a statement dated October 31, 2016, with questions and answers on the application of the ADA’s integration mandate to state and local government employment service systems for individuals with disabilities.¹¹³ This reiterates that “[a] public entity may violate the ADA’s integration mandate when it plans, administers, operates, funds, or implements its employment service system in a way that unnecessarily relies on segregated employment facilities or programs for individuals with disabilities.”¹¹⁴ In comparing what P&A found from monitoring South Carolina sheltered workshops to the Lane case in Oregon and DOJ’s findings in Rhode Island, *South Carolina’s system appears to suffer from the same deficiencies as criticized in both of those matters.*

Myths and Lack of Knowledge about Integrated Workplaces

Olmstead addressed the desire of individuals with disabilities who lived in segregated settings to move to the community. The Supreme Court held that institutionalizing individuals with disabilities when they are capable of living in the community perpetuates stereotypes that “persons so isolated are incapable or unworthy of participating in community life.” Confinement in an institution can detrimentally affect the everyday life of an individual with a disability, including social and work options.¹¹⁵ Likewise, limiting individuals with disabilities to work in segregated environments isolates them from society and severely limits their work opportunities. Segregated workshops have a long history that makes change difficult, but experience in other states shows that many of the fears and misconceptions about the people with disabilities can be overcome through education and experience.

South Carolina has an example of a very successful work environment at the Walgreens distribution center in Anderson.¹¹⁶ The company educated its management on myths regarding people with disabilities and how these individuals can successfully work in competitive integrated settings. Walgreens has documented this success through a peer reviewed study of productivity and safety/workers compensation claims of employees with disabilities compared to employees without disabilities. The study showed:

- People with disabilities perform equal to people without disabilities in productivity rate, accuracy and safety incident reports; and
- People with disabilities deliver superior results, in terms of safety incident costs and rate of employee retention.¹¹⁷

According to a 2013 Walgreens Diversity & Inclusion Report, 10% of Walgreens distribution center employees are individuals with disabilities and Walgreens found their “distribution centers have achieved greater efficiency, higher productivity and improved employee retention by proactively employing people with and without disabilities, on equal footing, side by side.”¹¹⁸

South Carolina’s Workshop System is Inconsistent with Medicaid Requirements

In early 2014, CMS issued extensive regulations and guidance (usually referred to as the Final Rule) for services provided under home and community based services (HCBS) waiver. The HCBS Final Rule requires services under these types of waivers to be in an integrated setting supporting full access to the community.¹¹⁹

The purpose of these final regulations is to maximize the opportunities for participants receiving Medicaid [Home and Community Based Services]...to receive services in integrated settings and realize the benefits of community living, including opportunities to seek employment and work in competitive integrated settings.¹²⁰

CMS has offered guidance in the form of “exploratory questions” to help states assess non-residential settings as part of the Home and Community-Based Settings Toolkit,¹²¹ which includes questions to assess non-residential settings.¹²² For instance:

- Is the setting in the community/building located among other residential buildings, private businesses, retail businesses, restaurants, doctor's offices, etc. that facilitates integration with the greater community?
- Does the setting allow individuals the freedom to move about inside and outside of the setting as opposed to one restricted room or area within the setting? For example, do individuals receive HCBS in an area of the setting that is fully integrated with individuals not receiving Medicaid HCBS?
- Does the setting reflect individual needs and preferences and do its policies ensure the informed choice of the individual?
- Was the individual provided a choice regarding the services, provider and settings and the opportunity to visit/understand the options?¹²³

All states, including South Carolina, are required by CMS to submit a "Statewide Transition Plan," which explains how the state will come into compliance with the setting requirements of the Final Rule. South Carolina must be in compliance by March 17, 2019. SCDHHS received preliminary approval of its transition plan on November 3, 2016.¹²⁴ This plan points out a compliance issue with current South Carolina law:

S.C.Code Ann. § 44-20-490: "When the department determines that a client may benefit from being placed in an employment situation, the department shall regulate the terms and conditions of employment, shall supervise persons with intellectual disability, a related disability, head injury, or spinal cord injury so employed, and may assist the client in the management of monies earned through employment to the end that the best interests of the client are served."

a. This law is not compliant with 42 C.F.R. § 441.301(c)(4)(iv). Having the director or his designee determine that a client may benefit from being placed in an employment situation, and then regulating the terms and conditions of that employment does not optimize an individual's initiative, autonomy, and independence in making life choices.¹²⁵

According to the current revised plan, there are around 83 "Day Services Facilities" (most are licensed as an Adult Activity Center and/or Work Activity Center).¹²⁶ These will be assessed by SCDHHS for compliance with the Final Rule. Based on our monitoring of these facilities, it is likely that many will not comply with the "heightened scrutiny" requirements of the Final Rule¹²⁷—that is, each will have to be reviewed.¹²⁸ SCDHHS contracted with a consulting firm, Technical Assistance Collaborative (TAC), to review its planning process for developing the transition plan.¹²⁹ In its review of waiver recipients living in SCDDSN Community Residential Care Facilities (CRCFs) and Community Training Homes (CTHs), TAC found that:

...most residents participate in the residential providers' day programs. When residents were onsite during the visits and could be interviewed, some reported they were fine with attending the day program or sheltered workshop, while others said they would prefer to do something else. One facility director commented that some residents don't want to attend their sheltered workshop but said it "gets them out of the house." **It's questionable that all residents within a home would choose to attend the provider-run day program if they had an alternative** (emphasis in original). The final rule stresses informed choice of daily activities.¹³⁰

SCDHHS has contracted with the Public Consulting Group to conduct the site reviews, which began in early 2017.

The Final Rule requires that individuals must be able to make an informed choice about the setting where services are received and be documented in the person-centered plan (PCP). The setting should provide for optimal independence.¹³¹ The individual leads the planning (to the extent possible), chooses who participates in developing the PCP, and is provided enough information/support in an accessible format to make informed choices.¹³² The PCP must identify all services and supports needed to enable the individual to be integrated into the community, including natural supports such as families and churches.¹³³

The lack of employment choices for ID/RD and Community Support waiver participants now makes true person-centered planning extremely difficult.

The Final Rule for Medicaid HCBS waivers also includes requirements for the provision of conflict-free case management. SCDHHS, the State Medicaid Agency, must devise protections for participants that separate provider functions and the delivery of direct services from the provision of case management services.¹³⁴ The Centers for Medicare and Medicaid Services (CMS), part of the United States Department of Health and Human Services, administers Medicaid. CMS has published¹³⁵ guidance about the key components of conflict-free case management, which include:

- Separation of eligibility determinations from provision of services.
- Separation of development of person centered plan from provision of services.
- Effective state oversight.

Conflict-free case management will represent a significant challenge to existing practices, both logistically and philosophically. For instance, many small providers have always developed the plan and provided services. Participants using services as well as providers will need education about the benefits of separating planning and service delivery. SCDHHS is developing a plan to phase in separation of case management and services over several years.

Based on P&A's on-site review of ten facilities, review of SCDDSN directives and standards, and review of federal laws and regulations, P&A finds that the current SCDDSN/board/non-profit system of providing career preparation services and providing employment services through sheltered workshops, enclaves and mobile work crews does not comply with the ADA or the Final Rule. Current Day Activity Services Standards, Career Preparation Services Standards, and Employment Services Standards do not address these concerns under the ADA or the Final Rule.¹³⁶

The South Carolina General Assembly Legislative Audit Council (LAC) audited DDSN in 2014.¹³⁷ The report stated,

We reviewed day program activities at selected facilities across the state. We found that DDSN's day program assessment does not inform consumers of the options they may have for integrated work opportunities; consequently, the agency has not fully implemented the federally-mandated Olmstead decision. (emphasis added).¹³⁸

The LAC noted that the SCDDSN annual vocational section of the assessment did not inquire if participants were aware of other options/settings (a question asked in the supported living section).¹³⁹ The LAC also found that SCDDSN relies too much on "artificial work settings" and has not focused enough on integrated work opportunities. The LAC cited the Rhode Island DOJ findings

and settlement and noted, “South Carolina’s day program is similar to Rhode Island’s in services offered.”¹⁴⁰ The report findings support P&A’s conclusion that current practices do not comply with the Final Rule.

Tennessee Makes Changes under the Final Rule

Tennessee is an example of a state that is making changes to its workshop system under the Final Rule. Facility-based day services will be approved under Tennessee’s new program only if the participant needs *pre-vocational* skills.¹⁴¹ Tennessee had identified two instances when facility-based services will be approved. The first is for time-limited prevocational training not available on a job site. The second is for a participant who chooses this service through the person centered planning process to focus on specific skill development to support job goals. Specific details are required for the approval of a plan with facility-based services. After a plan is approved, documentation of progress and efforts toward integrated employment is required.¹⁴² This will limit the number of individuals using facilities-based services.

A nonprofit agency called “SRVS”¹⁴³ (pronounced serves) once ran the only sheltered workshop in Shelby County, Tennessee. SRVS is an example of a facility that has transformed its services model from segregated vocational services to Employment First.¹⁴⁴ After careful planning, this sheltered workshop successfully closed its doors in 2015 and transitioned into a community-integrated model. An important part of initiating the changeover was receiving technical assistance to understand individuals with disabilities working in the community.¹⁴⁵ SRVS is now an example to other facilities in the “Guide for Provider Transformation to an Employment Service Model.”¹⁴⁶ Steps taken by SRVS in making this change included:

- Developing a “Career Center” with community-based job exploration.
- Meetings with staff and families (both in groups and individually) to share information and to gauge barriers. These meetings and subsequent interactions helped to overcome fears and barriers in the move to Employment First.
- Changes in how staff were hired and trained.
- Maneuvered funding and rate structures to support Employment First changes.
- Instead of securing contracts for the facility, they focused on developing employment opportunities in the community and business partnerships.
- Part time vocational rehabilitation counselors were hired. Stabilization coaches were hired to support employed individuals.
- Collaboration with Tennessee’s vocational rehabilitation agency to implement a customized and supported employment model.¹⁴⁷

The “Guide for Provider Transformation to an Employment Service Model” uses the SRVS model and another example and provides a guide for other facilities to make the change to the Employment First model. This Guide can be used as a resource for South Carolina facilities.¹⁴⁸

Important Changes under WIOA

In 2014, the federal Workforce Innovation and Opportunity Act (WIOA) was signed into law in an effort to make the workforce system¹⁴⁹ better for all.¹⁵⁰ One important goal of WIOA is to improve opportunities for competitive, integrated work for individuals with disabilities.¹⁵¹ As discussed earlier, changes in law were made that will enhance services provided by SCVRD to youth with disabilities and individuals with significant disabilities. In addition, South Carolina submitted a WIOA Unified State Plan, which discusses its four-year strategy for the workforce system.¹⁵² This plan identifies a need to continue focus on barriers to work faced by individuals with disabilities. This plan also contains a discussion of how SCVRD will collaborate with SCDDSN, SCDHHS, and SC Department of Mental Health to develop opportunities for community-based integrated employment to the maximum extent possible.¹⁵³ In addition, SCVRD is required to enter into formal cooperative agreements with SCDHHS and SCDDSN, regarding vocational services and long term supports for individuals with significant disabilities eligible for services under a Medicaid waiver.¹⁵⁴

WIOA also added a new section to the Rehabilitation Act of 1973 effective on July 22, 2016, called Section 511. This places limitations on the use of subminimum wages by 14(c) certificate holders.¹⁵⁵ Individuals with disabilities age 24 or younger may not be hired at subminimum wages unless certain requirements have been met.¹⁵⁶ These are meant to improve access to integrated, competitive employment and include:

- Receipt of transition services and/or pre-employment transition services,
- Certain vocational rehabilitation services, and
- Appropriate career counseling.

In addition, there are also requirements for individuals already working and receiving subminimum wages meant to foster informed choice and independent decisions about employment. Under these requirements, subminimum wages cannot be paid unless participants receive career counselling, information and referral, and training opportunities at certain intervals.¹⁵⁷ This new section should benefit younger individuals who otherwise might have been channeled into the existing workshop system.

SUMMARY OF FINDINGS

South Carolina's current system of vocational services for individuals served by SCDDSN relies too much on segregated settings that deprive individuals from interacting in their community; fails to prepare most for integrated work; and often fails to identify and meet individualized wishes and needs. These services do not to comply with the ADA, the Rehabilitation Act of 1973,¹⁵⁸ nor with the Medicaid Final Rule for Home and Community Based Waivers. This system unjustifiably isolates individuals with disabilities based on unwarranted assumptions about individuals' capabilities.

Problems Identified with the Current SCDDSN System

SCDDSN, boards, and private providers have developed an extensive infrastructure with resources devoted to maintaining these operations, which will make it difficult to move away from the current way services are provided to comply with the ADA and the Final Rule. In addition, the current system is also familiar and comfortable to all involved—participants, family members, providers, agencies, and contractors. P&A's research and monitoring identified many issues preventing individuals with intellectual and related disabilities from having access to integrated, competitive employment:

- Most providers of employment services in the SCDDSN system hold 14(c) certificates that enable them to pay participants subminimum wages.
- Career Preparation Services have serious deficiencies:
 - Participants may receive subminimum wages doing rote work for years, no other individuals without disabilities are present outside of staff, work stations are similar to self-contained special education classrooms, regular schedules are followed without participant's input, and participants are transported together in identifiable vehicles. These observations are very similar to the facts of the Rhode Island investigation, which found unnecessary segregation, and the case in Oregon.¹⁵⁹
 - The stated goal of Career Preparation Services is to prepare participants for work, but in the 10 facilities monitored, of those interviewed 16 had been in the facility 1-4 years, 17 were there 5-10 years, 13 were there 11-15 years, and 12 were there so long they couldn't offer a number.
 - Current case management practices for vocational services may not comply with person centered planning under the Final Rule. Under SCDDSN's Employment First directive, integrated and competitive employment should be the preferred outcome. That large numbers of participants have stayed in Career Preparation Services for long periods of time doing rote work in segregated settings despite SCDDSN embracing Employment First since 2009 raises concerns of such a policy being implemented with fidelity, and leads to questions of how participant plans are prepared.
- Current SCDDSN standards for Career Preparation and Employment Services do not require any staff participating in these services to have qualifications of a vocational background and specific vocational training of staff is not specified.
- SCDDSN does not maintain data from service providers as to how many individuals actually obtain employment, and specifically competitive, integrated employment.
- The inclusion of enclave and mobile work crews within Employment Services raise issues about segregation. SCDDSN standards require that these services must depart from a SCDDSN licensed facility, limiting participant's choice. The jobs are usually in janitorial or landscaping services and participants may not have a real choice of work.
- Despite SCDDSN's Employment First policy, SCDHHS preliminary waiver data from 2015 shows that significantly more individuals on the ID/RD and Community Supports waivers are receiving Career Preparation Services and Group Employment Services than Individualized Employment Services.

- SCDDSN itself has acknowledged the shortage of integrated employment; the Legislative Audit Council has also expressed concern.
- SCDDSN's pilot project identified problems with current employment services, including funding schemes that hinder individualized employment services, waiting lists, and lack of providers.
- Many smaller providers traditionally have provided both services and case management (including the development of individual plans). These practices can violate the requirements of the Final Rule for conflict-free case management.
- Monitoring indicated that:
 - There are not enough job coaches to serve participants who may need these services. There is a widespread inconsistency among the facilities in the availability of job coaches. In some of the rural facilities, job coaches served different roles at the facility and did not have enough time to perform job coach functions.
 - Most of the facilities that P&A monitored did not have assistive technology or computers for participants to utilize for job training.
 - 73% of participants interviewed had a "dream job" or something they wished they could experience in the community, but they may not understand their own capabilities. Some individuals thought they couldn't work because of their disability.
 - Participants of career preparation services and participants of mobile work crews and enclaves are dependent on group transportation. Transportation to and from a job site can also pose significant challenges for individuals who desire individual employment. Transportation services for individual community placement under employment services in the waivers have not been adequately addressed.

Continued Need for Focusing on Transition Services for Special Education Students

Transition services are vital for students with IEPs to help prepare them for life after school. SCDDSN has made positive efforts to address this population through the "South Carolina Secondary Transition Capacity Building Consortium" and the work of the post-secondary transition coordinators.

Variations in the Relationship Between SCDDSN and SCVRD

P&A's monitoring showed inconsistencies in the relationship between SCDDSN and SCVRD. P&A's monitoring showed that while 90% of the facilities apparently had a relationship with their local SCVRD center; 10% reported no relationship. While 70% of facilities said they make referrals to VR, the other 30% do not. Additionally, based on monitoring, it is questionable if SCVRD services are being appropriately utilized by providers when 61% of participants reported not having an SCVRD counselor and 24% were unsure.

South Carolina Does Not Currently Have a Statewide Employment First Policy

Under Employment First policies, competitive and integrated employment should be the first and preferred option for employment of individuals with disabilities. Despite many states having developed or working on Employment First strategies, South Carolina has failed to develop a statewide policy. Having an effective statewide Employment First policy in South Carolina is critical to comply with Title II of the ADA and to ensure that our state continues to put appropriate employment practices at the forefront for its citizens with disabilities. SCDDSN has developed an Employment First directive consistent with Employment First Principals. It may be the only agency in South Carolina to have implemented such a directive at this time.

RECOMMENDATIONS

South Carolina's system of segregated workshops does not currently comply with the ADA/Section 504 or the Final Rule. Individuals with disabilities in South Carolina should have opportunities for meaningful employment in their community. These recommendations are designed to enable individuals receiving services from SCDDSN to participate in integrated, competitive employment.

- Recommendations for SCDDSN:
 - Develop a plan, in compliance with the Final Rule and the ADA, to implement its Employment First directive by phasing out segregated facilities, not renovating or opening new facilities, and providing vocational services in integrated, community settings appropriate to the needs of the participant. Include individuals with disabilities in the planning process.
 - Develop procedures to ensure that all boards and providers are consistently following the SCDDSN Employment First directive.
 - Conduct outreach to all participants in career preparation and employment services to ensure they are evaluated to determine what services can assist them to work in integrated employment based on informed choice, such as reasonable accommodations, assistive technology and job coach services. SCDDSN should make sure that these services are delivered, including ensuring that there are enough job coaches for all participants who need them.
 - Expedite implementation of conflict free case management and recruit more providers of Medicaid-funded career preparation and employment services.
- Recommendations for SCDDSN in conjunction with South Carolina Department of Health and Human Services (SCDHHS):
 - Review and evaluate funding streams for career preparation services and employment services and reallocate funding to support integrated, individualized employment services in the community.
 - Develop a plan to determine the training needs of staff providing vocational services, participants of services, and their families and to deliver those services. Areas to be addressed should include the concerns raised in this report. The planning process should include input from providers of services, participants of vocational services, families, SCVRD, South Carolina Department of Education (SCDE), and agencies serving individuals with ID/RD.
 - Establish a mechanism to determine and address barriers and concerns faced by participants in career preparation and employment services, including barriers and concerns raised by this report. Involve stakeholders, including participants in vocational services and their families, independent living centers, DSN Boards, private providers, other state agencies serving individuals with ID/RD, and outside organizations serving individuals with ID/RD.
 - Address barriers to transportation that impact individuals with disabilities that limit their ability to drive to work.

- Recommendation for SCDE:
 - Develop guidance for school districts emphasizing that, consistent with the ADA integration mandate and the WIOA provisions on segregated employment, students receiving transition services in school should not be guided or steered toward segregated employment settings like sheltered workshops as an employment outcome in their individualized education program (IEP). Students should receive robust transition services including community work experiences to ensure them the opportunity for integrated employment consistent with their wants, strengths, and desires.

GLOSSARY OF TERMS

14(c): Refers to the section of the “Fair Labor Standards Act [which] authorizes employers, after receiving a certificate from the Wage and Hour Division [U.S. Department of Labor], to pay special minimum wages - wages less than the Federal minimum wage - to workers who have disabilities for the work being performed.” http://www.dol.gov/whd/specialemloyment/workers_with_disabilities.htm

ADA: Americans with Disabilities Act

CMS: The Centers for Medicare and Medicaid Services

CS: Community Supports

CWIC: Community Work Incentive Coordinator

DOJ: Department of Justice

DOL: Department of Labor

Employment First: “a concept to facilitate the full inclusion of people with the most significant disabilities in the workplace and community. Under the Employment First approach, community-based, integrated employment is the first option for employment services for youth and adults with significant disabilities.” <http://www.dol.gov/odep/topics/EmploymentFirst.htm>

Enclave: Employment service where people with disabilities are brought off site to various locations in small groups to perform a work task and build soft skills.¹⁶⁰ Often includes after hours janitorial work or light assembly.

FLSA: Fair Labor Standards Act

FOIA: Freedom of Information Act

Final Rule: 2015 Medicaid regulations for Home and Community-Based Services waivers; referred to as the Final Rule because there were many prior versions. Includes requirements for giving participants choice and access to fully integrated services.

Facility-Based Service: A service which operates in an institution, by definition preventing integration or a more normative participant experience.

HCBS: Home and Community-Based Services

IDEA: Individuals with Disabilities Education Act

IEP: Individualized Educational Program

ID/RD: Intellectual Disability/Related Disability

Integrated Setting: An integrated setting is one that “enables individuals with disabilities to interact with nondisabled persons to the fullest extent possible.” http://www.ada.gov/olmstead/q&a_olmstead.htm

LAC: SC General Assembly Legislative Audit Council

Olmstead: Refers to U.S. Supreme Court decision in *Olmstead v. L.C.*, (527 U.S. 581 (1999)), which requires that services, programs, and activities provided by public entities, including States, be delivered in the most integrated setting appropriate to the needs of persons with disabilities.

P&A: Protection and Advocacy for People with Disabilities, Inc.

PCP: Person-Centered Plan

SCCB: South Carolina Commission for the Blind

SCDDSN: South Carolina Department of Disabilities and Special Needs

SCDHHS: South Carolina Department of Health and Human Services

SCVRD: South Carolina Vocational Rehabilitation Department

SFFA: State Funded Follow Along

SSDI: Social Security Disability Insurance

SSI: Supplemental Security Income

TAC: Technical Assistance Collaborative

WIOA: Workforce and Innovation Opportunity Act of 2014

ENDNOTES

¹ 42 U.S.C. § 12101, et seq. The ADA is discussed on page 21.

² The South Carolina Department of Disabilities and Special Needs (SCDDSN) is the state agency responsible for SC's services and programs for treating and training individuals with intellectual and related disabilities. S.C.Code Ann. § 44-20-240. This includes developing service standards and administering federal funds. S.C.Code Ann. §§ 44-20-250 & 270. Most services from DDSN are provided to eligible individuals by the disabilities and special needs boards that serve each county (and some non-profit contractors) created by S.C.Code Ann. § 44-20-375.

³ A full list of the sites is on page 16.

⁴ Fair Labor Standards Act of 1938, 29 U.S.C. § 214(c).

⁵ 79 Fed. Reg. 2947 (Jan. 16, 2014).

⁶ 42 U.S.C. §12132 and 28 C.F.R. § 35.130(d).

⁷ 79 Fed. Reg. 2947 (Jan. 26, 2014) <https://www.federalregister.gov/articles/2014/01/16/2014-00487/medicaid-program-state-plan-home-and-community-based-services-5-year-period-for-waivers-provider>.

⁸ For the purposes of this report, "SCDDSN" will also refer to all county boards and private providers.

⁹ In South Carolina, the SCCB is the vocational rehabilitation agency for individuals who are blind and meet their eligibility requirements. Throughout this report, any references for the SCVRD also include the SCCB.

¹⁰ 29 U.S.C. § 3101, et seq. (2015), http://www2.ed.gov/about/offices/list/osers/ras/wioa-final-rules.html?utm_content=&utm_medium=email&utm_name=&utm_source=govdelivery&utm_term.

¹¹ As discussed in more detail on page 10 of this report, employment services are offered through one of three models: enclave, mobile work crew, or individual community placement. Enclaves and mobile work crews are made up of only individuals with disabilities that go out in the community together.

¹² For the purposes of this report, "SCDDSN" includes the agency itself, local disability and special needs boards, and providers contracting with SCDDSN.

¹³ This report uses the terminology common in South Carolina, "sheltered workshop," for segregated facilities that provide most people with disabilities low wage employment generally consisting of simple and often repetitive tasks, while also offering some level of skills training and on-site support.

¹⁴ NATIONAL DISABILITY RIGHTS NETWORK, SEGREGATED & EXPLOITED: THE FAILURE OF THE DISABILITY SERVICE SYSTEM TO PROVIDE QUALITY WORK, at 11 (2011), available at <http://www.ndrn.org/images/Documents/Resources/Publications/Reports/Segregated-and-Exploited.pdf>.

¹⁵ NATIONAL DISABILITY RIGHTS NETWORK, SEGREGATED & EXPLOITED: THE FAILURE OF THE DISABILITY SERVICE SYSTEM TO PROVIDE QUALITY WORK, at 11 (2011), available at <http://www.ndrn.org/images/Documents/Resources/Publications/Reports/Segregated-and-Exploited.pdf>

- ¹⁶ NATIONAL COUNCIL ON DISABILITY REPORT ON SUBMINIMUM WAGE AND SUPPORTED EMPLOYMENT (2012), available at <http://www.ncd.gov/publications/2012/August232012/> (“Key findings include: Sheltered workshops are ineffective at transitioning individuals with disabilities to integrated employment.” at 11) citing 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, at 4, available at <http://www.gao.gov/new.items/d01886.pdf>. See also Robert Evert Cimera, *The Economics of Supported Employment: What New Data Tell Us*, 37 J. Vocational Rehabilitation, 110-111 (2012), available at http://www.worksupport.com/documents/economics_jvr.pdf.
- ¹⁷ NATIONAL DISABILITY RIGHTS NETWORK, SEGREGATED & EXPLOITED: THE FAILURE OF THE DISABILITY SERVICE SYSTEM TO PROVIDE QUALITY WORK, at 34 (2011), available at <http://www.ndrn.org/images/Documents/Resources/Publications/Reports/Segregated-and-Exploited.pdf>.
- ¹⁸ DISABILITY RIGHTS IOWA, STALLED ON THE ROAD TO OLMSTEAD COMPLIANCE, at 6 (2014), at 23, available at <http://disabilityrightsiowa.org/wp-content/uploads/2014/12/StalledFinalReport-12-13-14.pdf>.
- ¹⁹ Keith Storey and Robert H. Horner, *Social Interactions in Three Supported Employment Options: A Comparative Analysis*. J APPL BEHAV ANAL. 24.2 (SUMMER 1991), 349–360, available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1279578/pdf/jaba00020-0175.pdf>.
- ²⁰ NATIONAL DISABILITY RIGHTS NETWORK, SEGREGATED & EXPLOITED: THE FAILURE OF THE DISABILITY SERVICE SYSTEM TO PROVIDE QUALITY WORK, at 26 (2011), available at <http://www.ndrn.org/images/Documents/Resources/Publications/Reports/Segregated-and-Exploited.pdf>.
- ²¹ Chris Serres and Glenn Howatt, *Failing the Disabled, How Minnesota Isolates and Marginalizes Thousands of Adults with Disabilities* “Part 1 Dead-End Jobs, Low Pay”, StarTribune, November 8, 2015, <http://www.startribune.com/Sheltered:-How-Minnesota-is-failing-the-disabled/330695211/>.
- ²² NATIONAL DISABILITY RIGHTS NETWORK, SEGREGATED & EXPLOITED: THE FAILURE OF THE DISABILITY SERVICE SYSTEM TO PROVIDE QUALITY WORK, at 33 (2011), available at <http://www.ndrn.org/images/Documents/Resources/Publications/Reports/Segregated-and-Exploited.pdf>.
- ²³ Laura C. Hoffman, *An Employment Opportunity or a Discrimination Dilemma?: Sheltered Workshops and the Employment of the Disabled*, 16 U. Pa. J. L. & SOC. CHANGE 151, 166 (2014), available at <http://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1150&context=jlasc>; citing Alberto Migliore, *Sheltered Workshops*, in INTERNATIONAL ENCYCLOPEDIA OF REHABILITATION 1 (Ctr. Int’l Rehab. Research Info. & Exch. ed., 3-4 2010), available at http://cirrie.buffalo.edu/encyclopedia/en/pdf/sheltered_workshops.pdf.
- ²⁴ Susan Stefan, *Beyond Residential Segregation: The Application of Olmstead to Segregated Employment Settings*, GA. ST. U. L. REV. , 875, 896 (2010), available at <http://www.apse.org/wp-content/uploads/docs/Applying%20Olmstead%20to%20Sheltered%20Work%20.pdf>.
- ²⁵ Robert Evert Cimera, *The Economics of Supported Employment: What New Data Tell Us*, 37 J. VOCATIONAL REHABILITATION 109, 110-111 (2012), available at http://scholar.google.com/scholar?hl=en&q=Robert+Evert+Cimera%2C+The+Economics+of+Supported&btnG=&as_sdt=1%2C41&as_sdt. (“ . . . people with disabilities benefited more monetarily from working in their community than not working or working in sheltered workshops”).
- ²⁶ *Id.* at 111-113. (“ . . . supported employment was more cost-effective than sheltered workshops”).

²⁷ 29 U.S.C. § 3101, et seq.

²⁸ Employment First is “centered on the premise that all citizens, including individuals with significant disabilities, are capable of full participation in integrated employment and community life.” <http://www.dol.gov/odep/topics/EmploymentFirst.htm>. This provides that competitive and integrated employment should be the first and preferred option for employment of individuals with disabilities. <http://www.apse.org/wp-content/uploads/2014/01/activity.html>. See also the National Governors Association’s initiative, “A Better Bottom Line: Employing People with Disabilities” available at https://www.nga.org/files/live/sites/NGA/files/pdf/2013/NGA_2013BetterBottomLineWeb.pdf.

²⁹ 34 C.F.R. § 361.5(c)(9).

³⁰ <http://www.dol.gov/odep/topics/EmploymentFirst.htm>.

³¹ <http://apse.org/employment-first/map>.

³² http://www.nga.org/files/live/sites/NGA/files/pdf/2013/NGA_2013BetterBottomLineWeb.pdf.

³³ Id. at pgs. 9-10.

³⁴ This task force can also review what other states have done; for example reviewing Equip for Equality’s “*Illinois Employment First Blueprint*.” This document is based on research done on a state/national level and provides recommendations based on the practices of other states. This document and other information can be found at: <http://www.equipforequality.org/issues/employmentfirst/>.

³⁵ SCDDSN Employment First directive; found at [http://www.ddsn.sc.gov/about/directives-standards/Documents/currentdirectives/700-07-DD%20-%20NEW%20\(102815\).pdf](http://www.ddsn.sc.gov/about/directives-standards/Documents/currentdirectives/700-07-DD%20-%20NEW%20(102815).pdf).

³⁶ SCDDSN Employment First directive; found at [http://www.ddsn.sc.gov/about/directives-standards/Documents/currentdirectives/700-07-DD%20-%20NEW%20\(102815\).pdf](http://www.ddsn.sc.gov/about/directives-standards/Documents/currentdirectives/700-07-DD%20-%20NEW%20(102815).pdf), at page 3.

³⁷ Able South Carolina, AccessAbility, SCDDSN, SC Developmental Disabilities Council, SC Department of Education, SCDHHS, SCVRD, University of South Carolina Center for Disabilities Resources, Protection and Advocacy for People with Disabilities, Inc., Walton Options for Independent Living, and Family Connection of South Carolina have all signed the Memorandum of Understanding.

³⁸ HHA/ACL Partnership in Employment Systems grant.

³⁹ Fair Labor Standards Act of 1938, 29 U.S.C. § 214(c).

⁴⁰ For more information see: <https://www.dol.gov/whd/workerswithdisabilities/>

⁴¹ The regulations enacted under the FLSA set forth the precise way this must be done. 29 C.F.R. §§ 525.1-525.24.

⁴² S.C.Code Ann. §§ 44-20-10, et seq. and <http://www.ddsn.sc.gov/Pages/default.aspx>. SCDDSN issues directives and standards governing its operations – see <http://www.ddsn.sc.gov/about/directives-standards/Pages/CurrentDDSNStandards.aspx>. See also regulations at SC Regs. 88–405, et al.

⁴³ S.C.Code Ann. § 44-20-375.

⁴⁴ Medicaid is a program jointly funded by the federal government and the state to provide medical coverage to low income eligible individuals, including certain individuals with disabilities. <http://medicaid.gov/medicaid-chip-program-information/medicaid-and-chip-program-information.html>

⁴⁵ <https://www.scdhhs.gov/site-page/medicaid>.

⁴⁶ Each state Medicaid plan includes required services as well as optional services as determined by the state. However, states can also apply to “waive” certain Medicaid requirements, so individuals can receive services to live in the community rather than in a restrictive setting (Medicaid Waivers). Waivers typically last five years.

⁴⁷ <https://www.scdhhs.gov/service/waiver-management-field-management>.

⁴⁸ <http://www.ddsn.sc.gov/providers/medicaidwaiverservices/Pages/default.aspx>.

⁴⁹ <http://www.ddsn.sc.gov/providers/medicaidwaiverservices/Pages/default.aspx>; <https://www.scdhhs.gov/service/waiver-management-field-management>; SCDDSN also operates the Head and Spinal Cord Injury (HASCI) waiver, which can also provide career preparation and employment services. [http://www.ddsn.sc.gov/providers/medicaidwaiverservices/Documents/Head%20and%20Spinal%20Cord%20Injury%20\(HASCI\)%20Waiver%20Information%20Sheet%20\(091515\).pdf](http://www.ddsn.sc.gov/providers/medicaidwaiverservices/Documents/Head%20and%20Spinal%20Cord%20Injury%20(HASCI)%20Waiver%20Information%20Sheet%20(091515).pdf).

⁵⁰ CMS approved the addition of case management as a waiver service to the ID/RD, Community Supports and HASCI waivers in 2015. However, this service is yet to be implemented in these three waivers, and the State continues to rely of targeted case management as the means of service provision.

⁵¹ [http://www.ddsn.sc.gov/about/directives-standards/Documents/currentdirectives/700-07-DD%20-%20NEW%20\(102815\).pdf](http://www.ddsn.sc.gov/about/directives-standards/Documents/currentdirectives/700-07-DD%20-%20NEW%20(102815).pdf) at pg 3.

⁵² [http://www.ddsn.sc.gov/about/directives-standards/Documents/currentdirectives/700-07-DD%20-%20NEW%20\(102815\).pdf](http://www.ddsn.sc.gov/about/directives-standards/Documents/currentdirectives/700-07-DD%20-%20NEW%20(102815).pdf) at pg 4.

⁵³ SCDDSN Day Services Standards All Services, revised April 8, 2016 obtained from <http://www.ddsn.sc.gov/about/directives-standards/Pages/CurrentDDSNStandards.aspx>.

⁵⁴ SCDDSN Career Preparation Service Standards, revised April 7, 2016, obtained from [http://www.ddsn.sc.gov/about/directives-standards/Documents/currentstandards/Career%20Preparation%20Service%20Standards%20-%20Revised%20\(040716\).pdf](http://www.ddsn.sc.gov/about/directives-standards/Documents/currentstandards/Career%20Preparation%20Service%20Standards%20-%20Revised%20(040716).pdf) obtained from <http://www.ddsn.sc.gov/about/directives-standards/Pages/CurrentDDSNStandards.aspx>.

⁵⁵ SCDDSN Employment Services Standards, revised effective July 1, 2011; [http://www.ddsn.sc.gov/about/directives-standards/Documents/currentstandards/Employment%20Services%20Standards%20-%20Revised%20\(070111\).pdf](http://www.ddsn.sc.gov/about/directives-standards/Documents/currentstandards/Employment%20Services%20Standards%20-%20Revised%20(070111).pdf), obtained from <http://www.ddsn.sc.gov/about/directives-standards/Pages/CurrentDDSNStandards.aspx>.

⁵⁶ A proviso in the FY 2016-2017 Appropriations Act states: “(DDSN: Work Activity Programs) All revenues derived from production contracts earned by individuals served by the department in Work Activity Programs be retained by the South Carolina Department of Disabilities and Special Needs and carried forward as necessary into the following fiscal year to be used for other operating expenses and/or permanent improvements of these Work Activity Programs.” Part IB of the Appropriation Act, (R275, H5001), as ratified by the General Assembly on June 2, 2016 (Operation of State Government, Section 36-J160, Proviso 36.1) <http://www.scstatehouse.gov/query.php?search=DOC&searchtext=production%20>

[contracts&category=BUDGET&year=2016&version_id=7&return_page=&version_title=Appropriation%20Act&conid=8373754&result_pos=0&keyval=35187&numrows=10.](http://www.dds.sc.gov/about/directives-standards/Documents/currentstandards/Career%20Preparation%20Service%20Standards%20-%20Revised%20(040716).pdf)

⁵⁷ See page 9 that discusses subminimum wages.

⁵⁸ SCDDSN Career Preparation Service Standards, revised April 7, 2016; obtained from [http://www.dds.sc.gov/about/directives-standards/Documents/currentstandards/Career%20Preparation%20Service%20Standards%20-%20Revised%20\(040716\).pdf](http://www.dds.sc.gov/about/directives-standards/Documents/currentstandards/Career%20Preparation%20Service%20Standards%20-%20Revised%20(040716).pdf) obtained from <http://www.dds.sc.gov/about/directives-standards/Pages/CurrentDDSNStandards.aspx>; SCDDSN Employment Services Standards, revised effective July 1, 2011 [http://www.dds.sc.gov/about/directives-standards/Documents/currentstandards/Employment%20Services%20Standards%20-%20Revised%20\(070111\).pdf](http://www.dds.sc.gov/about/directives-standards/Documents/currentstandards/Employment%20Services%20Standards%20-%20Revised%20(070111).pdf), obtained from <http://www.dds.sc.gov/about/directives-standards/Pages/CurrentDDSNStandards.aspx>.

⁵⁹ SCDDSN Career Preparation Service Standards revised April 7, 2016; obtained from [http://www.dds.sc.gov/about/directives-standards/Documents/currentstandards/Career%20Preparation%20Service%20Standards%20-%20Revised%20\(040716\).pdf](http://www.dds.sc.gov/about/directives-standards/Documents/currentstandards/Career%20Preparation%20Service%20Standards%20-%20Revised%20(040716).pdf); SCDDSN Employment Services Standards, revised effective July 1, 2011; obtained from [http://www.dds.sc.gov/about/directives-standards/Documents/currentstandards/Employment%20Services%20Standards%20-%20Revised%20\(070111\).pdf](http://www.dds.sc.gov/about/directives-standards/Documents/currentstandards/Employment%20Services%20Standards%20-%20Revised%20(070111).pdf).

⁶⁰ The expenditure and recipient data contained in these charts were reported by SCDHHS on the annual CMS 372 Report filed with the federal government. The waiver recipient numbers for the 3 employment services represent duplicated counts. However, the total participant's number is a duplicated count. Due to the nature of these three waiver services, SCDHHS expects that the overlap between these three services to be minimal. Data provided to P&A was preliminary, dated 1/28/2016.

⁶¹ [http://www.dds.sc.gov/about/directives-standards/Documents/currentdirectives/700-07-DD%20-%20NEW%20\(102815\).pdf](http://www.dds.sc.gov/about/directives-standards/Documents/currentdirectives/700-07-DD%20-%20NEW%20(102815).pdf).

⁶² "Individual Employment Services Pilot" PowerPoint from December 19, 2013 SCDDSN Commission Meeting, <http://www.dds.sc.gov/DDSCommission/Documents/meeting%20minutes/12%20December%2019,%202013%20Commission%20Meeting%20Minutes.pdf>.

⁶³ "SCDDSN Individual Employment Services Pilot" page 1, dated 12/20/2013 found at: <http://www.dds.sc.gov/services/Documents/Individual%20Employment%20Services%20Pilot.pdf>

⁶⁴ Data from the pilot program is being collected.

⁶⁵ "Individual Employment Services Pilot," at pg. 4, Certified Public Manager Project Report, Jacob L. Chorey, South Carolina Department of Disabilities and Special Needs (SCDDSN), February 12, 2015. Available at: <http://dc.statelibrary.sc.gov/handle/10827/19805>.

⁶⁶ "Individual Employment Services Pilot," at pg. 4, Certified Public Manager Project Report, Jacob L. Chorey, South Carolina Department of Disabilities and Special Needs (SCDDSN), February 12, 2015. Available at: <http://dc.statelibrary.sc.gov/handle/10827/19805>.

⁶⁷ "Individual Employment Services Pilot," Certified Public Manager Project Report, Jacob L. Chorey, South Carolina Department of Disabilities and Special Needs (SCDDSN), February 12, 2015. Available at: <http://dc.statelibrary.sc.gov/handle/10827/19805>.

⁶⁸ http://dc.statelibrary.sc.gov/bitstream/handle/10827/19805/CPM_Individual_Employment_Services_Pilot_2015-02-12.pdf?sequence=1&isAllowed=y.

⁶⁹ <http://www.ddsn.sc.gov/about/directives-standards/Pages/CurrentDDSNDirectives.aspx>.

⁷⁰ <http://coladaily.com/2015/06/15/babcock-center-expands-workshop-space-in-irmo-and-batesburg-leesville/> ; <http://www.golaurens.com/news/item/16926-lcdsnb-gives-jane-jim-nelson-a-new-award-and-discussed-new-clinton-facility> ; <http://www.golaurens.com/news/item/20886-lcdsnb-cuts-ribbon-for-new-clinton-location>.

⁷¹ http://www.aikenstandard.com/news/tri-development-expanding-will-open-new-day-program-facility-near/article_0731ec96-47ab-5b80-8d58-0ffdfbf6c8cb.html.

⁷² The ADA integration mandate and Final rule are discussed on pages 21 and 24 of the report.

⁷³ SCDDSN State Funded Follow Along Manual, April 1, 2016: [http://www.ddsn.sc.gov/providers/manualsandguidelines/Documents/State%20Funded%20Follow%20Along%20Manual%20\(041216\).pdf](http://www.ddsn.sc.gov/providers/manualsandguidelines/Documents/State%20Funded%20Follow%20Along%20Manual%20(041216).pdf).

⁷⁴ <http://transitionalliancesc.org/our-mission/>; <http://www.scddc.state.sc.us/documents/DDC%20Sept%202014%20Newsletter.pdf>.

⁷⁵ For more information about transition services, see P&A Fact Sheet “School Transition Services” at <http://www.pandasc.org/wp-content/uploads/2016/07/School-Transition-Services-11-22-15.pdf>; see Wrightslaw: <http://www.wrightslaw.com/info/trans.index.htm>.

⁷⁶ S.C.Code Ann. § 43-31-10, et seq.; SCVRD receives funding from the U.S. Department of Education’s Office of Special Education and Rehabilitation Services (<https://rsa.ed.gov/programs.cfm?pc=basic-vr&sub=awards>).

⁷⁷ 81 Fed. Reg. 55631 (Aug. 19, 2016).

⁷⁸ 29 USC § 722(a)(1).

⁷⁹ 29 USC § 722(a)(2).

⁸⁰ 29 USC § 722(a)(3).

⁸¹ S.C.Code Ann. § 43-25-10; SCCB receives funding from the U.S. Department of Education’s Office of Special Education and Rehabilitation Services (<https://rsa.ed.gov/programs.cfm?pc=basic-vr&sub=awards>)

⁸² <http://www2.ed.gov/about/offices/list/osers/rsa/publications/wioa-changes-to-rehab-act.pdf>.

⁸³ 34 C.F.R. § 361.65(a)(3); 34 C.F.R. § 361.48.

⁸⁴ 34 C.F.R. § 361.48(a)(2).

⁸⁵ 34 C.F.R. § 361.5(c)(54).

⁸⁶ 34 C.F.R. § 361(c)(11).

⁸⁷ <https://www.dol.gov/odep/categories/workforce/CustomizedEmployment/what/>

⁸⁸ “*Vision for the State Vocational Rehabilitation Services Program as a Partner in the Workforce*”

Development System under the Workforce Innovation and Opportunity Act,” US Dept. of Ed., OSERS RSA, RSA-TAC-15-02, August 17, 2015, page 4. <http://www2.ed.gov/policy/speced/guid/rsa/tac/2015/tac-15-02.pdf>.

⁸⁹ See S.C.Code Ann. §§ 43-33-310, et seq.; 29 U.S.C. §§ 794e, et seq. (Protection and Advocacy of Individuals Rights Program of the Rehabilitation Act of 1973) See also 34 C.F.R. Part 381; 42 U.S.C. §§ 10801, et seq. (Protection and Advocacy for Individuals with Mental Illness Act) See also 42 C.F.R. Part 51; 42 U.S.C. §§ 15001, et seq. (Developmental Disabilities Assistance and Bill of Rights Act) See also 45 C.F.R. Part 1326.

⁹⁰ <http://www.pandasc.org/about/>.

⁹¹ Other entities have also looked into concerns regarding vocational services for individuals with disabilities. For example, NDRN: <http://www.ndrn.org/images/Documents/Resources/Publications/Reports/Segregated-and-Exploited.pdf>; Disability Rights Iowa: <http://disabilityrightsiowa.org/wp-content/uploads/2015/03/StalledFinalReport-12-13-14.pdf> ; Disability Rights North Carolina: http://nccdd.org/images/Public_Policy/Public_Policy_Topics/Sheltered_Workshop_Report_9-20-13.pdf; The Michigan Developmental Disabilities Network: <http://mpas.org/newsroom/michigan-developmental-disability-network-releases-report-employment-individuals>; Alabama Disabilities Advocacy Program: http://adap.ua.edu/uploads/5/7/8/9/57892141/2013_-_december_2013_-_its_my_job_its_my_life_employment_book.pdf; Disability Rights Texas: http://www.disabilityrightstx.org/uploads/Submin_Wage_Sheltered_Workshop_WHITE_PAPER_07_12_16_FINAL.pdf.

⁹² “NDRN is the nonprofit membership organization for the federally mandated Protection and Advocacy (P&A) Systems and the Client Assistance Programs (CAP) for individuals with disabilities. Collectively, the Network is the largest provider of legally based advocacy services to people with disabilities in the United States.” From: <http://www.ndrn.org/en/about>.

⁹³ A list of special minimum wage certificate holders issued under Section 14(c) of the Fair Labor Standards Act can be found at: <https://www.dol.gov/whd/specialemployment/>; the Community Rehabilitation Programs (CRPs) List can be found at: <https://www.dol.gov/whd/specialemployment/CRPlist.htm>.

⁹⁴ “Accommodation and Compliance Series: Job Coaching in the Workplace” Updated 06/18/2013, <https://askjan.org/topics/jobcoaching.htm>.

⁹⁵ Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI)

⁹⁶ These services are currently provided through Walton Options, see: <http://waltonoptions.wixsite.com/wipawaltonoptions>. Walton Options has contracted with Able South Carolina to provide these services in certain counties in South Carolina, see: <http://www.able-sc.org/wipa/>.

⁹⁷ United States’ Title II ADA Investigation of Employment, Vocational, and Day Services for Persons with Intellectual and Developmental Disabilities in Rhode Island, January 6, 2014 letter of findings at pg. 19. http://www.ada.gov/olmstead/documents/ri_lof.pdf.

⁹⁸ 42 U.S.C. § 12101(b)(1). The ADA built on the Rehabilitation Act of 1973, which applied only to the federal government and recipients of federal funds. See also Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination based on disability by any program or activity receiving Federal financial assistance. 29 U.S.C § 794(a). There is a similar integration mandate found at 28 C.F.R. § 41.51(d). In this report, when we refer to concerns about ADA we

are including Section 504 as well.

⁹⁹ 42 U.S.C. § 12101(a)(2).

¹⁰⁰ 42 U.S.C. §12131-12165; SCDDSN's ADA directive states that all providers must comply with the requirements of the ADA. A compliance coordinator has to be designated by each SCDDSN facility, DSN board, or other qualified provider to review compliance with the ADA, posting notices for clients to report concerns of compliance, and coordinating the complaint process. SCDDSN Directive 700-02-DD; last revised January 2, 2014. [http://www.ddsn.sc.gov/about/directives-standards/Documents/currentdirectives/700-02-DD%20-%20Revised%20\(010214\).pdf](http://www.ddsn.sc.gov/about/directives-standards/Documents/currentdirectives/700-02-DD%20-%20Revised%20(010214).pdf).

¹⁰¹ Appendix A describes an integrated setting as, "...in a setting that enables individuals with disabilities to interact with nondisabled persons to the fullest extent possible, and that persons with disabilities must be provided the option of declining to accept a particular accommodation." 28 C.F.R. Pt. 35 App. B (1991)(discussing paragraphs (d) and (e) of 28 C.F.R. § 35.130.

¹⁰² 42 U.S.C. § 12132 and 28 C.F.R. § 35.130(d); The landmark case decided by the Supreme Court of the United States regarding integration under the ADA is *Olmstead v. L.C.*, 527 U.S. 581 (1999). In this matter, two individuals with disabilities challenged their institutionalization. The court held that under Title II of the ADA and its regulations it can be discrimination to place an individual with a disability in a restrictive setting when a community setting is appropriate, is not opposed by the individual with a disability, and the community placement can be reasonably accommodated considering State resources and the needs of others receiving services.

¹⁰³ "Statement of the Department of Justice on Enforcement of the Integration Mandate of Title II of the Americans with Disabilities Act and *Olmstead v. L.C.*," Answer to Question 1, June 22, 2011 found at http://www.ada.gov/olmstead/q&a_olmstead.htm.

¹⁰⁴ Other entities have also looked into concerns regarding vocational services for individuals with disabilities. For example, NDRN: <http://www.ndrn.org/images/Documents/Resources/Publications/Reports/Segregated-and-Exploited.pdf>; Disability Rights Iowa: <http://disabilityrightsowa.org/wp-content/uploads/2015/03/StalledFinalReport-12-13-14.pdf> ; Disability Rights North Carolina: http://nccdd.org/images/Public_Policy/Public_Policy_Topics/Sheltered_Workshop_Report_9-20-13.pdf; The Michigan Developmental Disabilities Network: <http://mpas.org/newsroom/michigan-developmental-disability-network-releases-report-employment-individuals>; Alabama Disabilities Advocacy Program: http://adap.ua.edu/uploads/5/7/8/9/57892141/2013_-_december_2013_-_its_my_job_its_my_life_employment_book.pdf; Disability Rights Texas: http://www.disabilityrightstx.org/uploads/Submin_Wage_Sheltered_Workshop_WHITE_PAPER_07_12_16_FINAL.pdf.

¹⁰⁵ *Lane v. Brown* (formerly *Lane v. Kitzhaber*), 12-CV-00138, (D. Or. 2012); DOJ also conducted an investigation, which found Oregon unnecessarily segregated individuals with disabilities in employment services and programs. https://www.ada.gov/olmstead/olmstead_cases_list2.htm#lane.

¹⁰⁶ <http://www.centerforpublicrep.org/litigation-and-major-cases/litigation-major-cases>.

¹⁰⁷ https://www.ada.gov/olmstead/olmstead_cases_list2.htm#lane.

¹⁰⁸ <https://droregon.org/wp-content/uploads/Press-Release-09-08-151.pdf>; <https://droregon.org/wp-content/uploads/Oregon-9.8.15.pdf>; <http://tash.org/blog/2016/01/22/judge-approves-lane-v->

[brown-settlement-agreement/?platform=hootsuite.](#)

¹⁰⁹ They also investigated day activity service programs. http://www.ada.gov/olmstead/documents/ri_lof.pdf.

¹¹⁰ United States' Title II ADA Investigation of Employment, Vocational, and Day Services for Person's with Intellectual and Developmental Disabilities in Rhode Island, January 6, 2014 letter of findings at pg. 4. http://www.ada.gov/olmstead/documents/ri_lof.pdf.

¹¹¹ <http://www.justice.gov/opa/pr/departments-justice-reaches-landmark-americans-disabilities-act-settlement-agreement-rhode>; http://www.ada.gov/olmstead/olmstead_docs_list.htm#Settlements.

¹¹² United States' Title II ADA Investigation of Employment, Vocational, and Day Services for Persons with Intellectual and Developmental Disabilities in Rhode Island, January 6, 2014 letter of findings at pg. 5-6. http://www.ada.gov/olmstead/documents/ri_lof.pdf

¹¹³ https://www.ada.gov/olmstead/olmstead_guidance_employment.pdf.

¹¹⁴ https://www.ada.gov/olmstead/olmstead_guidance_employment.pdf at pg 3-4.

¹¹⁵ *Olmstead v. L.C.*, 527 U.S. 581, 583 (1999).

¹¹⁶ http://www.walgreens.com/topic/sr/disability_inclusion_workplace.jsp.

¹¹⁷ 2013 Walgreens Diversity & Inclusion Report, Pg. 9, found at <http://www.walgreens.com/pdf/diversityreport2013.pdf>.

¹¹⁸ *Id.* at Pg. 8.

¹¹⁹ 79 Fed.Reg. 2947 (Jan. 16, 2014) See also: <https://www.gpo.gov/fdsys/pkg/FR-2014-01-16/pdf/2014-00487.pdf> and 42 C.F.R. § 441.301(c)(4).

¹²⁰ Exploratory Questions to Assist States in Assessment of *Non-Residential* Home and Community-Based Service (HCBS) Settings, found at: <https://www.medicaid.gov/medicaid/hcbs/downloads/exploratory-questions-non-residential.pdf>.

¹²¹ The Home and Community-Based Settings Toolkit can be found at: <https://www.medicaid.gov/medicaid/hcbs/guidance/index.html>.

¹²² Exploratory Questions to Assist States in Assessment of *Non-Residential* Home and Community-Based Service (HCBS) Settings, found at: <https://www.medicaid.gov/medicaid/hcbs/downloads/exploratory-questions-non-residential.pdf>.

¹²³ An excellent guide prepared by a coalition of disability rights organizations, including the National Disability Rights Network, *The Medicaid Home and Community Based Settings Rule: What You Should Know*, is available at [http://www.ndrn.org/images/Documents/Issues/Community_integration/HCBS Rules QA by NDRN and National Disability Advocates December 2015.pdf](http://www.ndrn.org/images/Documents/Issues/Community_integration/HCBS_Rules_QA_by_NDRN_and_National_Disability_Advocates_December_2015.pdf).

¹²⁴ https://msp.scdhhs.gov/hcbs/sites/default/files/South_Carolina_STP_Initial_Approval_11-4-16.pdf.

¹²⁵ Home and Community-Based Services (HCBS) Statewide Transition Plan, pg 10, November 3, 2016, SCDHHS, <https://msp.scdhhs.gov/hcbs/sites/default/files/SC%20Statewide%20Transition%20Plan%20-%20CMS%20Submission%2011-3-2016.pdf>.

¹²⁶ Home and Community-Based Services (HCBS) Statewide Transition Plan, pg 36, November 3, 2016, SCDHHS, <https://msp.scdhhs.gov/hcbs/sites/default/files/SC%20Statewide%20Transition%20Plan%20-%20CMS%20Submission%2011-3-2016.pdf>.

¹²⁷ 2 C.F.R. § 441.301(c)(5)(v).

¹²⁸ Home and Community-Based Services (HCBS) Statewide Transition Plan, pg 53, November 3, 2016, SCDHHS, <https://msp.scdhhs.gov/hcbs/sites/default/files/SC%20Statewide%20Transition%20Plan%20-%20CMS%20Submission%2011-3-2016.pdf>.

¹²⁹ Home and Community-Based Services (HCBS) Statewide Transition Plan, pg 55, November 3, 2016, SCDHHS, <https://msp.scdhhs.gov/hcbs/sites/default/files/SC%20Statewide%20Transition%20Plan%20-%20CMS%20Submission%2011-3-2016.pdf>.

¹³⁰ Review and Feedback on the HCBS Final Rule Transition Plan and Process, Technical Assistance Collaborative, October 2015, found at: <https://msp.scdhhs.gov/hcbs/sites/default/files/Appendix%20I.pdf>.

¹³¹ Home and Community-Based Services (HCBS) Statewide Transition Plan, pg 1, November 3, 2016, SCDHHS, <https://msp.scdhhs.gov/hcbs/sites/default/files/SC%20Statewide%20Transition%20Plan%20-%20CMS%20Submission%2011-3-2016.pdf>; 42 C.F.R. § 441.301(c)(4) (iv).

¹³² 42 C.F.R. § 441.301(c)(6)(i).

¹³³ 42 C.F.R. § 441.301(c)(2).

¹³⁴ http://www.justiceinaging.org/wp-content/uploads/2014/10/RE_Conflict-Free-Case-Management-Issue-Brief1.pdf; <http://www.balancingincentiveprogram.org/resources/example-conflict-free-case-management-policies>.

¹³⁵ <https://www.medicaid.gov/medicaid/ltss/balancing/incentive/index.html>.

¹³⁶ <http://www.ddsn.sc.gov/about/directives-standards/Pages/CurrentDDSNStandards.aspx>. SCDDSN does have a general directive to comply with the ADA, but it does not address integrated employment services. See: [http://www.ddsn.sc.gov/about/directives-standards/Documents/currentdirectives/700-02-DD%20-%20Revised%20\(010214\).pdf](http://www.ddsn.sc.gov/about/directives-standards/Documents/currentdirectives/700-02-DD%20-%20Revised%20(010214).pdf)

¹³⁷ SCDDSN has also been audited by LAC in 1985 and 2008. See: <http://lac.sc.gov/Pages/ReportsByAgency.aspx#d> under “Disabilities and Special Needs, Department of”

¹³⁸ S.C. Department of Disabilities and Special Needs’ Process to Protect Consumers From Abuse, Neglect, and Exploitation, Administrative Issues, and a Follow Up to Our 2008 Audit (LAC/12-4), pg. 27, found at: http://lac.sc.gov/LAC_Reports/2014/Documents/DDSN.pdf.

¹³⁹ *Id.* at 28; Per SCDDSN’s Implementation Plan for the 2014 LAC Report Recommendations SCDDSN includes the participant’s desire to work in integrated settings in the annual assessments; however, SCDDSN indicated this would be more clearly documented. From 8/11/2014 SCDDSN LAC meeting.

¹⁴⁰ *Id.* at 29.

¹⁴¹ https://hcbsadvocacy.files.wordpress.com/2016/06/fbdays-joint-memo_6-20-16.pdf; <http://tn.gov/tenncare/topic/transition-plan-documents-for-new-federal-home-and-community-based-services>.

¹⁴² https://hcbsadvocacy.files.wordpress.com/2016/06/fbday-joint-memo_6-20-16.pdf.

¹⁴³ www.srvs.org.

¹⁴⁴ “*Guide for Provider Transformation to an Employment First Service Model*,” By Sarah Harvey, Lynnette Henderson, and Jordan Wilson, June 2016, pg. 14. <https://www.tn.gov/assets/entities/didd/attachments/Provider-Transformation-Manual.pdf>.

¹⁴⁵ “*From Workshop to Workforce: Tennessee’s Model for Reform*” ACL BLOG, By Annette Shea, Administration for Community Living Program Specialist: http://acl.gov/NewsRoom/blog/2016/2016_07_28.aspx.

¹⁴⁶ “*Guide for Provider Transformation to an Employment First Service Model*,” By Sarah Harvey, Lynnette Henderson, and Jordan Wilson, June 2016. <https://www.tn.gov/assets/entities/didd/attachments/Provider-Transformation-Manual.pdf>.

¹⁴⁷ “*From Workshop to Workforce: Tennessee’s Model for Reform*” ACL BLOG, By Annette Shea, Administration for Community Living Program Specialist: http://acl.gov/NewsRoom/blog/2016/2016_07_28.aspx. “*Guide for Provider Transformation to an Employment First Service Model*,” By Sarah Harvey, Lynnette Henderson, and Jordan Wilson, June 2016, pgs. 14-18. <https://www.tn.gov/assets/entities/didd/attachments/Provider-Transformation-Manual.pdf>.

¹⁴⁸ “*Guide for Provider Transformation to an Employment First Service Model*,” By Sarah Harvey, Lynnette Henderson, and Jordan Wilson, June 2016. <https://www.tn.gov/assets/entities/didd/attachments/Provider-Transformation-Manual.pdf>.

¹⁴⁹ <https://www.dol.gov/odep/topics/WorkforceSystem.htm>; <https://www.doleta.gov/business/pws.cfm>.

¹⁵⁰ 29 U.S.C. §§ 3101, et. seq.; Some parts of this law went into effect immediately and some went into effect later. Regulations have been publicized in the Federal Register: <https://www.federalregister.gov/documents/2016/08/19/2016-15977/workforce-innovation-and-opportunity-act-joint-rule-for-unified-and-combined-state-plans-performance>; more information about WIOA can be found at: <https://www.doleta.gov/wioa/>.

¹⁵¹ “*WIA is Now WIOA: What the New Bill Means For People with Disabilities*,” David Hoff, The Institute Brief, Issue 31, August 2014 at http://www.communityinclusion.org/pdf/IB31_F.pdf ; http://www.leadcenter.org/system/files/resource/downloadable_version/WIOA_POLICY_BRIEF_10.22.14.pdf; this brief goes into more detail regarding WIOA and the amendments it makes.

¹⁵² SC WIOA Unified State Plan https://www.scworks.org/media/WIOA/WIOA_United_State_Plan.pdf.

¹⁵³ SC WIOA Unified State Plan https://www.scworks.org/media/WIOA/WIOA_United_State_Plan.pdf, pg 169; 29 USC § 721(a)(11)(K).

¹⁵⁴ 29 USC § 721(a)(11)(G).

¹⁵⁵ 29 USC § 794g.

¹⁵⁶ This does not apply to an individual 24 or younger already working at subminimum wage as of July 22, 2016, these individuals are “grandfathered in.”

¹⁵⁷ 29 USC § 794g; “WHD Enforcement of WIOA Limitations on Payment of Subminimum Wages under FLSA Section 14(c),” Field Assistance Bulletin No. 2016-2, US. Dept. of Labor Wage and Hour Division. https://www.dol.gov/whd/FieldBulletins/fab2016_2.pdf; https://www.dol.gov/whd/specialemployment/14cLetter_July2016.pdf; <https://www.dol.gov/whd/regs/compliance/whdfs39h.pdf>.

¹⁵⁸ Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794.

¹⁵⁹ *Lane v. Brown* (formerly *Lane v. Kitzhaber*), 12-CV-00138, (D. Or. 2012); DOJ also conducted an investigation, which found Oregon unnecessarily segregated individuals with disabilities in employment services and programs. https://www.ada.gov/olmstead/olmstead_cases_list2.htm#lane.

¹⁶⁰ Personal skills that allow an individuals to interact and work with others.

