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## **Federal Policy Recommendations for Fostering Employment First Strategies**

1. **Systemic Development and Implementation of Employment-First policies** across all relevant federal and state agencies that fund services and programs related to employment should be the top priority.
2. **Consistent definitions** of employment, integrated employment, supported employment, and the underlying concepts around Employment First. Universal acknowledgement across all agencies of how these terms are defined.
3. **Create a National Systems Change Initiative that includes key components of an Employment First platform, the core goal of placing individuals into employer-paid jobs in typical integrated employment settings.** The initiative would be administered and funded by the Administration on Developmental Disabilities and in coordination with the Centers on Medicare & Medicaid Services, U.S. Department of Labor, U.S. Department of Education (specifically Vocational-Rehabilitation) and the Social Security Administration.
  - Provide \$100 million/annually beginning in FY 2010 to initiate a targeted grant program that stresses an “Employment First” approach. Emphasis would be placed on evaluating the impact of funded Employment First programs on individual employment outcomes. The grant program (modeled off of the CDC’s successful Arthritis Action Plan state grants) would be a three-phased initiative, beginning with 10 three-year capacity building grants.
    - At the end of the initial three years, the original 10 grantees would be evaluated to ensure that the state had drafted both a state-wide Employment First strategic plan, to include the completion of key Memoranda of Understanding between the Department of Education, Vocational Rehabilitation, Developmental Disabilities Agencies, Department of Labor, and Medicaid.
    - The second phase would include a significant increase in funding, to begin the implementation phase of the states’ Employment First strategic plans. The second phase would result in a multi-year grant for a period of 5 years, reflecting a full implementation of the Employment First plan.
    - The third phase would include ongoing funding, reviewed every three years, the level of which would be based on specific outcomes pertaining to the transition in employees with significant disabilities into integrated employment including but not limited to supported, customized, or self-employment. All agencies involved would be held accountable to meeting key objectives, and funding levels for phase three would be set based on the states meeting specific milestones.



- Funds would be used by states to build the infrastructure to help 14(c) certificate-holders transition out of subminimum wage and sheltered workshop models. A percentage of the grants will flow directly to State DD authorities to assure funding is available to manage a shift away from sheltered workshops and subminimum wage facilities to support people in the generic workforce as a top priority, and in adult integrated community activities (but only after all options for employment have been fully exhausted). This will assist states to avoid the consequence of people moving backwards into congregate day habilitation centers as occurred in Arizona following legislation of minimum wage standards. The funding could be used to meet a variety of objectives:
    - Provide technical assistance and support to help organizations and states move from a “subminimum wage” paradigm to more innovative approaches to employment.
    - Afford states opportunity under Section 1915(i) of Home & Community Based Option to help support transitional period of subminimum wage phase-out. Money can be used to incentivize certificate holders of 14(c) certificates to transition quickly and ensure continued employment for those individuals with significant disabilities currently being paid subminimum wages. Funds must also be used to assess at the state level the current use of subminimum wage certificates in order to better understand the scope of the issue in each state. The assessment should collect key data, including number of providers, number of individuals employed at subminimum wages, wage levels, types of employment/tasks completed.
    - Bring the stakeholders together, develop the infrastructure, rebalance the funding and ensure that ending the subminimum wage is not done in a vacuum or causes economic harm to individuals with disabilities.
    - Provide initial seed funding for the establishment of job development & coaching services and/or agencies that are independent and can be not-for-profit as well as profit-based in community programs as well as in industry.
4. **Establish, in concert with CMS, a consistent set of “Employment First” criterion, and embed Employment First principles in CMS Home & Community Based Waiver requirements:**
- Prioritize employment services & supports as primary criterion of interest in reviewing waiver applications submitted for any working age adult with significant disabilities.
  - Require outcome reports of employee status (such as location, wages and hours) on an individual level.



- Create a mechanism for direct Employee-to-Employer Services to allow and promote the use of Medicaid dollars to reimburse employers for on-the-job training and workplace support needs.
- Rebalance reimbursement rates for services that lead to meaningful and sustained employment.
- Change the Federal Financial Participation (FFP) matching rates to 90% for employment services for a period of five years so as to incentivize states to focus on employment first targets by increasing the federal financial participation (FFP) of home-based and community services so that they can make those conversions.
- Costs in the first year may be higher and then reduce in subsequent years as the individual remains employed because they will likely need less support and cost less over time. As the costs drop, the total CMS dollars also decrease, but the percentage of FFP could remain at the 90% for 60 months for an individual. In this case, if there is a job termination during the 60-month period, the state can immediately step in and subsequently seek reimbursement from CMS for any additional costs associated with replacing an individual into an alternative employment setting.

**5. Significantly improve the Social Security and SSI disability programs to enable work.**

- Establish a single substantial gainful activity (SGA) level for people with disabilities and people who are blind at the level used for people who are blind. (Title II and SSI)
- Raise the SSI asset limit to at least \$20,000 and index annually for inflation. (SSI)
- Establish earnings offset so that benefits gradually decline as earned income rises. (Title II)
- Allow ongoing presumptive re-entitlement for those able to work (that is not time-limited), but who have continuing disabilities (Continued Attachment, Title II and SSI)
- Significantly improve SSA's administrative functions to reduce the incidence of overpayments to working individuals with disabilities. Prohibit SSA from seeking repayment for any overpayments incurred longer than six months prior.

**6. Implement a Ten-Year Phase Out of the Subminimum Wage Payment Provisions under Section 14(c) by amending the FLSA to achieve the following:**

- Phase out the Issuance of the Subminimum Wage Certificates to Community Rehabilitation Providers.
  - Immediate elimination of the issuance of subminimum wage certificates for any new providers that have not previously applied for and received subminimum wage certificates, thus barring this practice by any entities considering the use of subminimum wage within their business model.
  - Prior to the next renewal of any subminimum wage certificate from the U.S. Department of Labor's Wage & Hour Division of the Employment Standards



Administration, all applications should be required to report the number of employees who will be paid at subminimum wage for the next two years under the new subminimum wage certificate. This will serve as the maximum number of individuals allowed to be employed under subminimum wage by the certificate-holder, and used for the baseline in calculating a phased-in reduction in future years.

- Implement a procedure that requires a 25% reduction in years 4-6-8-10 of the number of persons served in a baseline year as the maximum number of individuals that that could be in a program and paid on a subminimum wage certificate. Require that 75% of the total served in the base year would be eligible to remain paid at sub-minimum wage by the end of the fourth year after the “baseline” renewal period; 60% of the total baseline year by the end of the sixth year; 25% of the total baseline year by the end of the eighth year; and by the tenth year after the baseline was established, no individuals would be allowed to be paid at subminimum wage.
- In order to receive a renewal of the subminimum wage certificate at years 4, 6 and 8, employers must demonstrate that at least 50% of those individuals who were transitioned out of subminimum wage remained employed in a customized, supported or self-employment opportunity, and were elevated to minimum wage or higher.
- End the practice of placing youth under the age of 21 into subminimum wage employment environments immediately, and ensure appropriate individual transition plans that prepare youth with disabilities for meaningful employment opportunities through effective training, placement and ongoing supports.
- Limit use of the Board, Lodging & “Other Facilities” Wage Credit Section 3(m) of the Fair Labor Standards Act) that allows employers to deduct room and board from wages for people with disabilities.
- Mandate annual public reporting of data by all entities holding subminimum wage certificates to determine specific information on trends inemployment and the use of subminimum wage.
- Require the establishment of an Upward Mobility Employment Plan for all individuals with disabilities employed under minimum wage by their employers as part of the subminimum wage certificate renewal process.

## **7. Shift Focus from Prevocational Programs to Employment-Specific Programs.**

- Shift resources from prevocational to employment-specific programs.
- Redesign and modernize prevocational services/programs, habilitation services, community based non-work options.



- Develop a universal, interagency definition of prevocational services at both the state and federal levels of government.
- Develop and promote improved job assessment skills and job development skills in rehabilitation professionals to improve employment outcomes
- Redefine the role of employment expertise away from the Community Rehabilitation Programs (CRPs) model (approach) to employment agencies that specialize in meeting the needs of both the individual employee with a disability and the specific focal areas of interest to regional and local employers (ie. Job developers). The emphasis is on an approach that works within the generic labor market to effectively infuse disability into the culture.
- Significantly increase investment in existing employment agencies to ensure the implementation of strong business practices along with solid systems of supports for individuals with intellectual disabilities, including evaluating what the employer needs and how they can effectively match and support those needs to the individual.
- Prohibit organizations from using prevocational dollars provided by Medicaid to place people in segregated prevocational settings or non-work day programs.

#### **8. Incentivize the Transformation of the Sheltered Workshop Business Model**

- Require states applying for grants from national systems-change initiative to include as a component of their applications a strategic plan for the phasing out of sheltered workshops on their states, to include a systematic approach to providing support and training to current sheltered workshop entities during the transformation process.
- Allow only two additional license renewals.
- Decrease the number of employees currently allowed to be employed at one time in existing sheltered workshop facilities.
- Create and invest in transition plan to assist existing workshops to transform business practices into alternative supported & integrated employment models.
  - i. Provide training from UCEDDs for workshops who want to transition into alternative employment models.
  - ii. Fund alternative employment strategies/models through the Department of Labor (ETA/ODEP).

#### **9. Promoting Pragmatic Employer Incentives**

- **Direct Employee-to-Employer Financial Supports:** As discussed previously in #4, by allowing individuals to use Medicaid \$\$ to self-direct supports toward internal training, mentoring and additional coaching required by an individual in order to ensure a successful hiring and employment experience, employers will be more inclined to recruit, hire and work directly with employees with DD/ID.
- **Employer Payroll Tax Incentive Model:** Create a pilot public/private partnership to allow employers who engage in customized or supported employment to take



advantage of a reduced or eliminated payroll tax rate for each employee hired who possesses and intellectual or developmental disabilities.

- In order to dramatically expand employer demand for workers with significant disabilities, create a new Employer Payroll Tax Incentive that links employment of a specific percentage of persons with significant disabilities within the employer's workforce to a specific reduction of the employer's overall Federal payroll tax rate. Similar to the private insurance industry practice of "experience rating" premiums, this approach would create a *pay-as-you-go* model with very low administrative costs for employers and for the Federal government which is updated regularly as payrolls are met. Assurances must be provided that the workers with disabilities will receive their work credits.

- Provide **technical assistance to small and medium businesses**, enabling them to better interact with the system.

**10. Promote universal design and access within generic workforce development systems.**

- Reinstatement and expansion of funding for **Disability Program Navigator Initiative** to ensure proper DPN representation/coverage across all One Stop Career Centers.
- In alignment with national systems-change initiative, ensure universal general employment and training efforts through selected programs with DOL, CMS, and VocRehab offered at the local levels – bringing programs together to achieve a unified goal of supported and integrated employment.

**11. Resource Allocation** – Ensure that resource allocation procedures and rates of reimbursement for services reward desired employment outcomes achieved in the system.

- Flexible funding and resource allocation procedures that enable people to use dollars effectively to ensure employment development and continued support over the life span.

**12. Discretionary funds for Personnel Preparation, Development & Training within the Departments of Education, HHS, and Labor.**

**13. Enhance Performance Measurement:** Clearly identify and rectify disconnect between policy and practice toward achieving desired focus on employment outcomes.

- Require the development of common performance measures and metrics for effectively evaluating the performance of various agencies/entities in serving people with disabilities with the primary outcome focused on employment.
- Performance measures must be modified to account for a wider range of job seeker needs. Statutory language and regulations clearly reinforcing that discrimination against individuals based on performance measure concerns is not acceptable is of



paramount importance. For people with significant disabilities, it is critical to create measures that account for investments in individuals requiring more effort due to more significant disabilities. In other words, a performance measurement system must be tiered to capture and credit providers who invest in the most difficult cases, or rather, a system that evaluates performance based upon a number of factors to differentiate degrees of difficulty and effort required. Such a performance system will protect against “creaming” and incentivize providers to focus efforts on the hardest to serve.

- Part of the development of these performance measures needs to include much greater clarity regarding definitions and mechanisms for measurement, as it appears that the mechanisms for measuring disability are at best inconsistent making it difficult to have full confidence in the accuracy of the data. In conjunction with this, it is also recommended that unique annual benchmarks and targets be created for people with disabilities.
- Develop consistent data tracking systems for all state DD authorities to use in conjunction with federal agencies (including ADD, CMS, Voc-Rehab, and Department of Labor).