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Congressional Briefing: The Workforce Innovation and Opportunity Act (WIOA) of 2014 Advisory Committee Recommendations and Legislative Opportunities and Legislative Opportunities.

Testimony submitted by:

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Good afternoon.

I am David Mank, Ph.D., Professor Emeritus of Indiana University. I am formerly the Director of the Indiana Institute on Disability and Community and Professor in Special Education and Rehabilitation. Late in the year of 2014, I was appointed, by the Secretary of Labor, to the Advisory Committee on Increasing Competitive Integrated Employment for Individuals with Disabilities (ACICIEID). Subsequently, I was elected Chairperson by the Committee. In September 2016, this Committee completed its work and delivered its Final Report and Recommendations to the Secretary and to Congress. A summary of this report is available here today. This Committee was created in the Workforce Innovation and Opportunity Act of 2014 (WIOA).

I begin by thanking our sponsors: Senator Bob Casey, Senator Maggie Hassan, in cooperation with the House Bipartisan Disabilities Caucus Chairs Representative Gregg Harper and Representative Jim Langevin. I, along with so many, appreciate this opportunity to discuss the promise and possibilities for competitive integrated employment for citizens with disabilities across the United States.

WIOA established employment of people with disabilities as a national priority. The goal of WIOA is to increase employment of people with disabilities in competitive integrated employment (CIE) and significantly limit placements in subminimum wage sheltered workshops. WIOA defines CIE as a job that (1) pays people with disabilities at least the minimum wage and not less than the wage paid to people without disabilities for the same or similar work; (2) is performed in a location where the employee interacts with co-workers without disabilities; and (3)

provides workers with disabilities the same opportunities for career advancement as their non-disabled co-workers.

We know that people with disabilities want good jobs, in integrated settings, and with good wages. We know that people with disabilities want to pursue careers. We know that people with significant disabilities are fully capable of working productively in CIE when provided with supports individualized to each person's talents and needs. This has long been established in research and in emerging practice. In addition, in a research study in Indiana, when asked, two thirds of the adults in sheltered workshops are interested in CIE. Research shows that when people with disabilities leave day programs and sheltered work settings, they earn more money, are more fully integrated in communities, work in a greater variety of jobs, pay more taxes, and receive more employer sponsored benefits.

WIOA's major substantive provisions include:

- Significant limits on the use of subminimum wage sheltered workshops, particularly for transition age youth. WIOA requires that anyone under 24 explore and try CIE before they can be placed in a subminimum wage setting, prohibits schools from contracting with subminimum wage providers, and requires at least annual engagement of anyone in a subminimum wage setting to discuss CIE alternatives.
- Requires state agencies – including Medicaid, intellectual and developmental disabilities (I/DD), vocational rehabilitation, and education – to enter into cooperative agreements to prioritize CIE.
- Requires that at least 15% of vocational rehabilitation funding be used for pre-employment transition services.
- Extends post-employment services from 18 to 24 months.
- Requires that at least half of states' supported employment grant funds be used for youth (up to age 24) with the most significant disabilities.

In addition to WIOA's substantive provisions, the law also created a federal Advisory Committee on Increasing Competitive Integrated Employment for Individuals with Disabilities ("the Committee"). WIOA charged the Committee with developing findings, conclusions and recommendations for the U.S. Labor Secretary and Congress on: (1) ways to increase employment opportunities for people with intellectual or developmental disabilities (I/DD) and other individuals with significant disabilities in CIE; and (2) the use of subminimum wage certificates under 14(c) of the Fair Labor Standards Act (FLSA) for employing

people with I/DD and other significant disabilities, including ways to improve oversight of such certificates. The Committee was comprised of federal official members from key agencies representing four federal departments, representatives of national disability advocacy organizations, self-advocates, providers of employment services (both supported employment and sheltered workshop providers), employers, and academic experts.

The Committee issued its final report to the Labor Secretary and Congress on September 15, 2016. The report was issued following ten public meetings held between January 2015 and August 2016. Hundreds of people testified or submitted written comments to inform the Committee's work. The Committee received more than 2,000 letters, emails, and video messages about employment of people with disabilities and the work of the committee. The committee was attentive to the broad scope of the ideas and comments from the public through the course of its work.

In accordance with the rules governing federal advisory committees, the findings, conclusions and recommendations contained in the Final Report were developed by consensus of the Committee. This committee report is especially important in several ways. First, the committee was comprised of individuals outside and inside the federal government, representing a broad range of expertise and perspectives. As such, different, even conflicting perspectives were represented in the work of the committee. Second, as I indicated, the Final Report and Recommendations represent the consensus of the committee. All of the recommendations represent the consensus of the entire committee and were issued without objection. Third, the work of the committee was time limited. That is, as created by WIOA, the committee was tasked with developing and agreeing on recommendations in less than a two year time period.

This Congressional Briefing is about the committee's recommendations and entirely focused on furthering the national priority of increasing competitive integrated employment of people with disabilities. It stands as a rich line of national developments, the Rehabilitation Act, the 1998 Workforce Innovation Act and the Americans with Disabilities Act, and more, that establish employment and full integration of people with disabilities in all aspects of community life.

The Committee's report emphasizes the need to build the capacity, in communities and states across the country to deliver competitive integrated employment to individuals with intellectual or developmental disabilities and other individuals with significant disabilities.

I will draw your attention in particular to 6 key aspects of the committee's report focused specifically on what the federal government and Congress can do to increase the number of real jobs in integrated settings for people with disabilities.

- Align funding of employment services with competitive integrated employment outcomes.

This includes making adjustments in the ways employment services are funded to create incentives for employment outcomes. This can include changes in the Medicaid Waiver program, to increase the federal match for employment as well as creating milestone and outcome payment structures. There already exist, in CMS, methodologies (such as Money Follows the Person (MFP)), which focus on priorities and outcomes. And, CMS has already begun investigating payment based on employment milestones and outcomes.

- Create incentives to states to make CIE a priority and build capacity to deliver CIE.

This means creating state grants as incentives and to develop the capacity in local communities to develop and support organizations that assist people with disabilities to get and keep competitive and integrated jobs. This will need to include training and technical assistance to local organizations as well as investment in the infrastructure in states that provides employment services. This includes personnel preparation and development as well as assistance to organizations to transform from sheltered workshops and day programs to organizations that deliver CIE outcomes to people with significant disabilities. Examples already exist, that can be extended and replicated, of states working to develop increased capacity to deliver CIE. The federal government and Congress should invest in this capacity building in states across the country to deliver CIE outcomes.

- Address the issue of the payment of sub-minimum wages.

After considerable investigation and discussion, the committee crafted a recommendation specific to the issue of sub-minimum wages.

Congress should amend Section 14(c) of the FLSA to allow for a “well-designed, multi-year phase-out” that results in people with disabilities entering CIE. Along with this legislative change, there should be oversight of the phase-out through increased data collection. In addition, there should be the appointment of a federal interagency taskforce to develop and oversee a plan for phase out that considers the mandates of WIOA regarding 14(c), resources for technical assistance, measures to mitigate unintended consequences of phase out, and safeguards to ensure people currently under 14(c) certificates are engaged and equipped with information and the opportunities necessary for understanding options and making informed choices. The US Department of Labor should also engage in stronger enforcement of sub-minimum wage certificates.

- Establish an interagency commission or working group to establish guidance and technical assistance to states to deliver CIE.

Federal agencies should convene a cross-agency working group to develop policy guidance and technical assistance on integrated day services and other wraparound supports, with the goal of:

- Clarifying that integrated day and wraparound services are intended to maximize and not displace CIE
- Identify best practices in integrated day and funding strategies
- Clarifying that integrated day services should not be in a facility or require a program schedule
- Clarifying how federal funds can be used to promote CIE and natural supports in integrated workplaces.

This means establishing a working group to turn the recommendations of the committee into an implementation plan of national scope that includes specific tasks, roles, responsibilities, timelines and resources needed to expand CIE on a national scale.

- Provide assistance and incentives to the business community to employ people with significant disabilities.

This means creating a national campaign about the ability of people with significant disabilities to work productively in CIE and about the benefits of a diverse workforce and of hiring people with disabilities. In addition, the federal government and Congress should update and amend tax credits and other incentives to employers who hire and employ people with significant disabilities.

- Make changes in the AbilityOne Program so it aligns with modern disability and employment policy.

AbilityOne is a federal set-aside program that requires all federal agencies to purchase certain supplies and services from agencies that employ people with disabilities. In Fiscal Year 2014, AbilityOne awarded approximately \$2.8 billion in contracts. Agencies who are awarded AbilityOne contracts must ensure that at least 75 percent of the labor hours necessary to complete the contracts are completed by people with disabilities, and they may pay subminimum wages to people working on these contracts.

The Committee found that although the AbilityOne program could be powerful in creating opportunities for CIE for people with significant disabilities, the design of the current program actually inhibits increasing those opportunities. The barriers include: (1) potential conflicts of interest in determining who is eligible to participate in AbilityOne contracts because the agencies function as both the employer and service provider; (2) the 75 percent contract hour requirement in practice ends up segregating people with disabilities from the mainstream workforce; (3) the lack of a requirement or expectation that AbilityOne contract work offers a path to CIE with mainstream employers; and (4) that the AbilityOne Commission, which oversees the program, was not designed to ensure the program aligns with the goals of CIE in federal law.

To address these findings the Committee recommended that Congress amend the statute authorizing the AbilityOne Program, the Javits-Wagner-O'Day Act (JWOD), to align with modern disability laws by requiring CIE be a goal of participation in the AbilityOne program. This needs to include significant research and development of new and innovative strategies to align AbilityOne with the ADA and other modern disability policy, and doing so in ways that does not create unintended consequences.

In closing, these are a few of the recommendations from the committee's report. I encourage all of us to review the report closely in the interest of CIE for people with significant disabilities across this country.

The over-arching theme of our report is building the capacity to deliver competitive and integrated jobs to people with disabilities in communities, large and small, across the United States.

I will end my testimony where I began. We know that people with disabilities want good jobs, in integrated settings, and with good wages. We know that people with disabilities want to pursue careers. We know that people with significant disabilities are fully capable of working productively in CIE when provided with supports individualized to each person's talents and needs. We know that when people with disabilities leave day programs and sheltered work settings, they earn more money, are more fully integrated in communities, work in a greater variety of jobs, pay more taxes, and receive more employer sponsored benefits.

Thank you for this opportunity to testify at this briefing. I look forward to the testimony of others on today's panel.

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