



Equity, Opportunity, and Inclusion for People with Disabilities since 1975

TASH Testimony on Integrated Employment

Provided to the National Advisory Committee on Increasing Integrated Employment for Individuals with Disabilities – January 23, 2015

Good afternoon. My name is Barb Trader, and I'm here today as the Executive Director of TASH. Celebrating our 40th anniversary this year, TASH was founded by researchers working with people with severe disabilities who believed that *research* should drive advocacy, and that all people with disabilities should have access to a full life – at school, at work and in their communities. The vision of a full life includes a WORKING life, and TASH members have developed practices, supported by research, which make integrated employment a possibility for all people, regardless of the perceived severity of disability, the attributes of the communities people live in, or the economic pressures of the times.

TASH is a strong proponent of Employment First, a national movement adopted by 46 states, which calls for integrated employment to be the priority outcome of publicly-funded services for youth and adults with disabilities. A critical and related priority is full implementation of the Olmstead Decision, which mandates that publicly funded services, using local, state or federal public funds, for people with disabilities are delivered in the most integrated setting possible. The recent Medicaid Home and Community Based (HCBS) Waiver rule released in January of 2014 is consistent with the Olmstead Decision and mandates a national transition of the use of these funds from supporting “settings that isolate” to settings that provide meaningful access to a full community life.

TASH urges this committee to address two systemic barriers to achieve the important goal of increased integrated employment. These barriers are *inconsistent* with the goals of Employment First and the Olmstead Decision, and include:

- The proliferation of day habilitation programs and other non-work day services. These types of services assume that people with disabilities are unable to, or do not want to work, are not organized with the end-goal of work in mind, and command the highest percentage of Medicaid HCBS funds. A rebalancing initiative is needed to reprioritize funds spent in non-work day programs which could otherwise be used to provide employment supports. The federal government should unite around a powerful message to states to reprioritize Medicaid HCBS and other public funds to achieve integrated employment outcomes for working age adults consistent with the goals of Employment First.
- Section 14(c) of the Fair Labor Standards Act (FLSA), which allows public and private employers, and Medicaid-funded disability service providers to apply for and receive permission from the

Department of Labor (DOL) to pay individuals with disabilities at rates below the current federal minimum wage.

For decades, concerns regarding the implementation and effectiveness of 14c have been repeatedly expressed.¹ These include:

Implementation and enforcement. DOL oversight has failed to ensure people with disabilities are adequately protected from exploitation.

Effectiveness. The intent of section 14(c) has not been realized in 77 years of implementation. There is no evidence that these programs prepare people for the general workforce, while proven strategies now exist for enabling individuals with the most significant impact of disability to obtain and maintain integrated employment. For example, Customized Employment has played a critical role in employing people with significant disabilities and is a necessary bridge for people transitioning out of segregated, subminimum wage work. There is no longer a need, nor a justification for the continuation of section 14(c).

14c is a Barrier to expanding integrated employment. Some argue that people with disabilities should have the **choice** to work at less than minimum wage. Research suggests that, when offered an *informed* choice, individuals with intellectual disabilities overwhelmingly state that they would prefer to work in a community job (NLTS2, Migliore et al.). Despite this, only 12% of funds for day and employment supports are used for integrated employment. The argument for “choice” has no place in the public policy of our country, as it suggests that individuals with disabilities should have **the choice to be more reliant and dependent on publicly funded benefits and services than they otherwise need to be** and denies people with disabilities the benefits of realizing their full potential.

TASH supports the immediate need for federal actions that will result in a planned phase-out and elimination of section 14(c), conducted according to the following principles:

- A. The desired outcomes are achieved for the vast majority of people. Some unintended, negative consequences may occur, but most are predictable and therefore can be avoided.
- B. The desired outcomes are wage equality and integration. Any plan should support both of the desired outcomes.
- C. Results should include **no ultimate decline in the employment rate** among people impacted. This will require some states to modify their employment service funding infrastructure.

Because of these reasons, TASH urges this committee to develop and work toward the swift implementation of a carefully crafted *enforceable and measurable* plan to rebalance the way Medicaid HCBS Waiver funds are spent and end sub-minimum wage employment for all citizens in our country. THANK YOU!

¹ Morris, M., Ritchie, H., and Clay, L. (2002). *Section 14(c) of the Fair Labor Standards Act: Framing Policy Issues*. Des Moines, IA: Law, Health Policy & Disability Center, University of Iowa College of Law.