

# Competitive Integrated Employment for People with Disabilities

*Implementation Plan for HB 122, the Jamie Wolfe  
Employment Act*

Submitted by: The Delaware Employment  
First Oversight Commission

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## 1. EXECUTIVE SUMMARY

With a goal toward competitive integrated employment (CIE) for all — including individuals with disabilities — the Delaware General Assembly enacted HB 122, the Jamie Wolfe Employment Act on June 29, 2021. HB 122 mandated the phased elimination of subminimum wage employment by January 2024. The legislation anticipated the need for careful planning and charged the Delaware Employment 1<sup>st</sup> Oversight Commission (EFOC) with the development and implementation of a plan to phase out subminimum employment in the State. The legislation outlined components to address the resource and funding requirements and to ensure all individuals with disabilities, regardless of the nature or severity of the disability, could become employed in CIE. The scope of the plan was to be broad, focusing on people currently in or just phased out of 14c employment, but also on promoting opportunities for competitive employment for young adults as they transition from school, and adults who have not yet moved from other services into employment.

As per Delaware HB 122 Legislation, the EFOC worked in partnership with relevant state agencies: the State Council for Persons with Disabilities, the Division of Industrial Affairs, the Division of Vocational Rehabilitation, the Division for the Visually Impaired (DVI) , the Division of Developmental Disabilities Services (DDDS), the Developmental Disabilities Council (DDC), the Department of Education (DOE), family members and individuals currently being served by sheltered workshops, current sheltered workshop providers, and the Disabilities Law Program (DLP) of the Community Legal Aid Society, Inc. (CLASI).

Following passage of HB 122, the Jamie Wolfe Employment Act, the EFOC, as directed, established the Employment First Task Force (EFTF) charged with facilitating the development of an Implementation Plan.

The key priorities contained within this Competitive Integrated Employment for People with Disabilities *Implementation Plan for HB 122, the Jamie Wolfe Employment Act* (Section II) and as identified by both the EFOC and EFTF, are as follows:

1. Expand the pool of employers participating in supported employment programs:
  - a. Review DVR rates, including additional funding for job development, increased placement milestones, and/or increasing the job coaching rate.
  - b. Funding for capacity building/training and technical assistance for system providers.
2. Invest in strengthening and diversifying the provider network delivering employment support services:
  - a. Track and analyze employment outcomes and services data received for people who were employed using subminimum wages by Chimes and Elwyn.
  - b. Fund DDDS Supported Employment service at levels that cover provider costs and consider the additional support needs of those with more significant disabilities who desire to work.

- c. Assure more robust job exploration, discovery, and customized employment for individuals desiring to work.
  - d. Funding for capacity building/training and technical assistance for system providers.
  - e. Provide quick response within the provider community to the support needs of people previously supported by Elwyn DE through their sheltered employment and day habilitation programs.
3. Ensure cross-agency collaboration and support to maximize system capacity and employment outcomes.
- a. Revise DOE, DDDS and DVR memorandum of understanding, and establish data to be tracked by each agency.
  - b. Convene a work group to identify collaborations overlap and create partnerships to work together to support individuals to obtain CIE.
4. Focus on employment opportunities at an earlier age, incorporating employment into goal setting as early as possible in the transition process:
- a. Convene a work group to identify collaboration overlap and create partnerships to work together to support individuals to obtain CIE.
  - b. Provide more opportunities for collaboration between teachers and transition staff (DOE), DVR, DVI, and DDDS preparing transitioning youth/families.
  - c. Annual or bi-annual review DVR rates, including adding more funding for job development, increased placement milestones, and/or increasing the job coaching rate.
  - d. Where appropriate, expand educational opportunities for families with a focus on understanding the adult service system and the work incentives, and other financial tools such as ABLE act accounts, that allow continuation of government benefits.

The EFOC will report their findings and recommendations to the Governor and Delaware General Assembly, in accordance with HB 122, the Jamie Wolfe Employment Act, and submit the plan by (date) and provide progress updates on specific dates as required by the Delaware General Assembly.

## Status of CIE Employment Services

This snapshot is based on the National Report on Employment Outcomes compiled by the Institute of Community Inclusion and updated through 2018<sup>1</sup>.

The ten years since Delaware enacted its Employment First Act has seen expansion of CIE outcomes. Between 2012 and 2018, the numbers of people with cognitive disabilities served by the State Division of Developmental Disabilities (DDDS) in integrated employment services increased from 25% to 35%. While we do not have the exact percentage for 2019, it is probably close to or slightly under 35%. In the 2020 Employment First Oversight Report, DDDS reported that the number of people in CIE in 2019 was 805 people -- a slight decrease from the 842 reported in 2018. The numbers for 2021 are likely to show a significant but temporary decrease due to the COVID pandemic.

The 2018 percentage compares favorably with the national average of 18%, which is extremely low. States with higher percentages include Kentucky, Mississippi, Rhode Island, New Hampshire, Oklahoma, Washington State, Massachusetts, Connecticut, and Oregon.

The percentage of all working age adults with cognitive disabilities, not just those served by DDDS, is lower at 32%, compared with 38% of people with any disability, and 76% of people with no disability.

These numbers show that while meaningful progress has been made, the gap in employment between people with cognitive disabilities (and all disabilities) and people without disabilities is still significant. The percentage of people with cognitive disabilities employed in Delaware is above the average nationwide, 32% compared to 28% but still far below the level of employment for people without disabilities.

DDDS funding for employment services remains far below funding for other day services and the percentage has not increased significantly. Moreover, it appears that as funding for facility-based work decreased most of the funding moved into facility-based non-work funding. Between 2014 and 2018 the percentage of total Individuals with Developmental Disabilities (IDD) funding allocated to employment increased from 13.9% to 15.9%. In contrast, the percentage of total spending devoted to non-work day programs increased from 52% to 70%. All of this increase was in facility-based non-work funding. This is an 18% increase. The percentage of funding for facility-based work decreased from 33% to 19%. This is about a 24% decrease in funding, most of which moved to facility-based day programming. (It is important to note though that the funding per person for both employment and day services decreased during this time.)

The data also indicates that people with cognitive disabilities are underserved by the Delaware Division of Vocational Rehabilitation (DVR). While people with cognitive disabilities are 47% of

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<sup>1</sup> State Data: National Report on Employment Services and Outcomes through 2018: Institute of Community Inclusion, University of Massachusetts (2021)

adults with disabilities in Delaware, the percentage of DVR closures that are people with cognitive disabilities is 9.5%. The percentage of DVR employment closures is also about 9%.

## II. RESOURCES REQUIRED, RECOMMENDATIONS, AND PLAN ACTION STEPS

Many of the people who had been supported through the 14(c) certificates enjoyed and would prefer employment over traditional day habilitation programs. The EFTF recognized the need to accurately track the transition of people into other support programs and employment opportunities. The EFTF also identified a comprehensive list of resources that would be required to complete a successful transition from sheltered employment for the more than 400 people that would be impacted.

Critical to the success of the transition for individuals impacted and the Plan will be the collaboration between the individuals & families, Support Coordinator/Community Navigator, and the provider community in the development and updating of each person's Person-Centered Plan. Each plays a key role as part of the team to ensure a plan that reflects the supports, employment goals, and community-based activities based on the person's wants and needs. The guidelines that will be followed by members of the person's team are set forth in the Roles and Responsibilities for DDS Person-Centered Process (PCP) issued 6/24/2022.

Soon after the passage of HB122, the Delaware Division of Vocational Rehabilitation and the State Council for Persons with Disabilities proactively engaged Penn-Mar Human Services as consultants to provide technical assistance and support to both Chimes and Elwyn of Delaware in their transition away from using 14(c) wage certificates. The team from Penn-Mar has been providing the following supports, technical assistance, and training to both organizations:

- ❖ Employment 1st Organizational Change Best Practices Approach:
  - develop a coherent Employment 1st Plan,
  - provide training in Customized Employment approach,
  - Discovery process,
  - employer relationship management,
  - successful job seeker and career matching,
  - closing the deal, and
  - meaningful job coaching strategies.
- ❖ Leveraging Penn-Mar's transformational journey and experiences
- ❖ Support of service recipients and their families through conversations and planning:
  - Share overall best practices
  - Share communication strategies utilized
  - Facilitate family and advocate listening sessions
  - Development of Provider-specific meeting routines and communications with families, individuals, and advocates

- In collaboration with DVR team provide guidance and advice to the Department of Education – Special Education – early communication strategies and exercises, modification in messaging for families
- ❖ An Introduction to Customized Employment:
  - Getting to Know Your Job Seeker
  - Employer Prospecting & Outreach
  - Creating the Win-Win
  - Making the Ask & Closing the Deal
  - Systematic Instruction & Job Coaching Strategies
- ❖ Provide ACRE Certification Training to each Provider Organization as part of Transitional Process

Delaware was fortunate to secure the support of the national NEON Project to provide 40 hours of consultation and technical assistance in preparing for this historic transition across the State. Rachel Pollock was assigned as our SME and she quickly completed a comprehensive landscape assessment of the Delaware systems, providers, and outlined specific recommendations for the path forward.

The landscape analysis provided a baseline assessment of the State’s capacity to support adults in obtaining and maintaining CIE and the resources and funding now available to assist adults with Intellectual and Developmental Disabilities (I/DD), particularly those transitioning from school. As part of this analysis, we highlight strengths and gaps in systems, supports and funding, with recommendations for continued growth and progress. The landscape assessment provides a review of the following specific key areas and provides analysis and recommendations in each area, highlighting specific areas where more information is needed.

- Delaware’s Employment First history and achievements
- An overview of 14c, CIE and community-based day services for people with I/DD in Delaware
- Specific resources available to individuals who are currently phasing out of 14C
- System collaborations that support CIE
- Transition Supports, Services and Initiatives
- Supported Employment programming and funding
- Discovery, Customized Employment and Career Exploration and Planning Services
- Capacity building/training for system providers.
- Education for families

EFOC and EFTF members individually and together bring substantial knowledge and expertise about the interplay of Delaware services, systems, and funding. The landscape analysis provided was designed to capitalize on this knowledge, expertise, and data to create a snapshot of strengths, opportunities and challenges experienced and to offer some recommendations as a starting point for further discussion. Those recommendations have been organized and presented as a series of key objectives and action steps within the landscape subject areas below to present a

clear and organized development of the Competitive Integrated Employment for People with Disabilities *Implementation Plan for HB 122, the Jamie Wolfe Employment Act*. As a result, the recommendations of the landscape assessment have become the foundation of the Competitive Integrated Employment for People with Disabilities *Implementation Plan for HB 122, the Jamie Wolfe Employment Act*:

a) Data Collection

<b>1. Create data collection to help understand where to target efforts to increase employment outcomes.</b>		
<b>Action Steps</b>	<b>Person/Group Responsible</b>	<b>Completion Target Date</b>
1.1 Track and analyze employment outcomes and services data received by people who were employed in subminimum wage employment by Chimes and Elwyn.	DDDS/SCPD	Dec. 1, 2023
1.2 Track and analyze data on numbers of students with I/DD who are being referred to DVR and DVI.	DOE/DDDS?	Dec. 1, 2023
1.3 Track and analyze data on students or young adults referred to DVR and DVI are found eligible for employment services.	DOE/DVR/DVI	June 2023
1.4 Track and analyze data on services received from DDDS for students/young adults found ineligible.	DOE/DVR/DVI	June 2023
1.5 Revise DOE, DDDS, DVR, and DVI memorandum of understanding, and establish data to be tracked by each agency, data that can be shared, and a system for sharing data while maintaining confidentiality.	DOE, DDDS and DVR/DVI	In Process



b) System Collaboration

<b>2. Expand Collaboration Among Departments within the Delaware System</b>		
<b>Action Steps</b>	<b>Person/Group Responsible</b>	<b>Completion Target Date</b>
2.1 Revision of the MOU between DVR, DVI, DDDS and, DOE	DOE, DDDS and DVR/DVI	January 2023
2.2 Convene a work group to identify collaborations overlap and create partnerships to work together to support individuals obtain CIE	DVR/DVI/DDDS/Providers	Jan. 2023
2.3 Identify models where Early Start to Supported Employment (ESSE) program continues and what role it plays encouraging collaboration.	DDDS	Jan. 2023
2.4 Leverage how ESSE might connect with the Pathways to Employment program and other collaborations.	DDDS	Jan. 2023

c) Transition

<b>3. Enhance Funding and program structures for transitioning youth services to build further capacity for individualized student services.</b>		
<b>Action Steps</b>	<b>People/Group Responsible</b>	<b>Completion Target Date</b>
3.1 Review and assess referral data from DOE to DVR/DVI/DDDS and ongoing follow up tracking of referrals and outcomes.	DOE/DVR/DVI/DDDS	Jan. 2024
3.2 Evaluate allocating a portion of DVR pre-Ets funding to more individualized selection of service for individuals with more significant disabilities.	DVR	Sept. 2022
3.3 Promote job exploration and work experience connected to career pathways for individuals with more significant disabilities.	DDDS	Sept. 2023
3.4 Evaluate potential sources of state funding for Project Search.	DVR	TBD
3.5 Provide support for students from school districts who may not have the resources to contribute to tuition.	DOE/DVR/DVI	TBD
3.6 Create a work-based learning specialist position.	DOE	Oct. 2022

3.7 Create a pilot to assess providers developing individualized work-based learning experiences that match CTE curriculum and goals.	DOE/DVR/DVI/Providers	TBD
3.8 Evaluate possible expansion of the career exploration component of Pathways to guide employment for people with more significant disabilities.	DDDS/DOE	Jan 2024

d) Supported Employment

<b>4. Systematically increase revenues from DVR, DVI, and DDDS to cover the cost of supported employment programming.</b>		
<b>Action Steps</b>	<b>People/Group Responsible</b>	<b>Completion Target Date</b>
4.1 Establish a rate methodology approved by the Rehabilitation Services Administration on an annual or bi-annual basis to evaluate opportunities to increase funding for job development, increased placement milestones, and/or increasing the job coaching rate through the state and federal budgeting process.	DVR/DVI	Oct. 2022
4.2 Collect and track retention data for people in DDDS employment services.	DDDS	Jan 2024
4.3 Maximize DVR and DVI stabilization criteria flexibility to meet the needs of individuals with more significant disabilities.	DVR/DVI	
4.4 Legislative advocacy for increasing DDDS supported employment rates that cover provider costs.	Providers	Jan. 2023
4.5 Assess impact of unbillable time supported by provider time studies.	Providers/DDDS	Jan. 2024
4.6 Collect and analyze data on individuals found ineligible for DVR/DVI services to determine if there are individuals who could be served through DDDS intensive supported employment.	DVR/DVI/DDDS	June 2024

e) Discovery and Customized Employment

<b>5. Reduce the gap in available customized employment and/or discovery services across Delaware.</b>		
<b>Action Steps</b>	<b>People/Group Responsible</b>	<b>Completion Target Date</b>
5.1 Provide quick response within the provider community to the support needs of people previously supported by Elwyn DE through their sheltered employment and day habilitation programs.	DDDS/DVR/DVI/Providers	Aug. 2022
5.2 Prompt collaboration between the individuals & families, Support Coordinator/Community Navigator, and the provider community in the development and updating of each person's Person-Centered Plan.	DDDS/Providers	
5.3 Advocate for inclusion of funding to support customized employment within DVR/DVI services.	Providers/DVR/DVI	Oct. 2022
5.4 Expansion of DDDS funding to support discovery.	Providers/DDDS	Oct. 2022
5.5 Educate/train families and providers of providing customized job development within DDDS waiver services.	Families/Providers/DDDS	Dec. 2022

f) Training and Capacity Building

<b>6. Provide capacity building to teachers and providers in several ways through combinations of training and technical support.</b>		
<b>Action Steps</b>	<b>People/Group Responsible</b>	<b>Completion Target Date</b>
6.1 Provide technical assistance, training and, field work to Chimes and Elwyn of Delaware for a successful transition to community-based services and supports, including CIE.	DVR/DVI and Penn-Mar Human Services Consulting	June 2023
6.2 Provide in-service training for teachers on employment opportunities for	DOE/SME's	Sept. 2022

students with more significant disabilities: success stories and successful work-based learning experiences.		
6.3 Provide funding for individualized technical assistance to support agencies in capacity building efforts.	DDDS/DVR/DVI	October 2022
6.4 Provide Innovation RFP funding directly to providers who demonstrate they are poised to expand capacity for employment and community-based services.	DDDS/DVR/DVI	July 2023
6.5 Conduct annual review of quality and frequency of training provided to case managers around employment services and outcomes.	DDDS/DVR/DVI	Oct. 2023

g) Family Education

<b>7. Provider families with education about the adult service system and employment opportunities for their sons and daughters.</b>		
<b>Action Steps</b>	<b>People/Group Responsible</b>	<b>Completion Target Date</b>
7.1 Expand educational opportunities for families with a focus on understanding the adult service system.	DOE/DVR/DVI/DDDS/Providers	July 2023
7.1a relationship between DVR, DVI, and DDDS services.	DVR/DVI/DDDS	July 2023
7.1b what employment looks like for people with more significant disabilities	DVR/DVI/DDDS/Providers/ Family Advocates	July 2023
7.1c and other DDDS services can be used together to support a full and meaningful life in the community.	DDDS/Providers/Family Advocates	July 2023

### III. INTRODUCTION: FAIR LABOR STANDARDS ACT AND 14(c) CERTIFICATES (1938)

The term “14(c) certificate” derives from a provision in section 14(c) of the Fair Labor Standards Act or (FLSA) of 1938 and is the origin of HB 122, the Jamie Wolfe Employment Act.

FLSA is a historic federal piece of labor legislation and was an integral part of President Franklin Delano Roosevelt’s ‘New Deal’ to aid in recovery from the Great Depression. It standardized many workplace conditions we as Americans take for granted such as the eight-hour work day, overtime, child labor laws and a standard minimum wage.

A lesser-known provision in the FLSA is section 14(c) which specifically applies to employees with disabilities. Under section 14(c) the United States Department of Labor can issue certificates to employers to legally allow them to pay the employees less than the minimum wage if it is deemed their “earning or productive capacity is impaired by age, physical or mental deficiency, or injury”.

To determine the subminimum wage of the employees with disabilities, employers perform a time study measuring the productivity of employees with a disability with employees without a disability performing the same work.

#### a) Delaware 14(c) Certificates and the 2022 Legislative Session

The world for people with disabilities has changed dramatically since FLSA was enacted. Advancements in medical care, increased emphasis on community-based settings, and landmark civil rights legislation such as the Americans with Disabilities Act have enhanced the quality of life for people living with a disability today. In a parallel fashion, the employment opportunities for people with disabilities have also expanded as a result of better understanding of how the skills and abilities of individuals with a wide range of disabilities can translate into paid work, particularly with the right supports, new assistive technologies, and an economy shifting away from the more common factory-based employment of the time FLSA was implemented.

Since 2012, the Delaware General Assembly has introduced legislation to discontinue the use of 14(c) certificates. These previous attempts did not pass the State General Assembly.

State governments have been made aware of the concerns expressed by the disability community who view subminimum wages as a violation of their civil rights.

An increasing number of States have passed similar legislation to end the use of sub-minimum wages, in addition to the State of Delaware. California, Oregon, Texas, and Maryland, among others, have added legislation that protects the civil rights of people with disabilities.

In Delaware, there were many champions who took the lead for the legislation. These leaders included members of the General Assembly, the Delaware Developmental Disabilities Council, the State Council for Persons with Disabilities, the Disabilities Law Program, many advocates across the State, and the provider community. Many saw the passage of similar legislation in other states as a positive direction and strategy to put Delaware in the forefront of this historical decision. Members of the Delaware Developmental Disabilities Council looked to their neighboring state, Maryland, and took note of the successful passage and implementation as a guide. The desired employment outcome as articulated across federal agencies is individualized, integrated, competitive employment, meaning the individuals are paid at or above minimum wage, work alongside peers without disabilities and are paid and receive benefits commensurate with individuals without disabilities working for the same business in the same or similar jobs.

In the development of HB 122 Jamie Wolfe Employment Act, members of the General Assembly and advocates across Delaware were not only focused on the people who would be positively

impacted by this historic legislation in the current term. They were equally concentrated on those students who would be transitioning from special education in the subsequent years.

The Delaware General Assembly proposed and enacted HB 122 in the midst of the COVID epidemic, when all facility-based programs and services had been suspended. Currently, there are no individuals in subminimum wage employment in Delaware. The two remaining providers of 14c services, Chimes and Elwyn, had discontinued subminimum wage services by June 30, 2021, in part due to the pandemic. They have no intention of resuming sub-minimum wage employment before January 2024. There had been 406 people earning subminimum wage as of June 2020 before services were discontinued. On May 19, 2022, Elwyn of Delaware, announced their decision to not reopen its day habilitation and pre-vocational programs and remain closed indefinitely. The Elwyn Supported Employment programs would remain active.

#### b) Individuals with Disabilities – Minimum Wage and Community Integration, The Jamie Wolfe Employment Act

Delaware became an Employment First State in July 2012 with the signing of Delaware’s Employment First Act (H.B. 319) which promotes that all people with disabilities have the opportunity for CIE. The Act emphasizes that “competitive employment in an integrated setting shall be considered the State’s first and priority option for people who are of working age, including people with disabilities and that all State agencies that provide services and supports to people with disabilities shall follow this policy and ensure that it is effectively implemented in their programs and services.” The Act established the Employment First Oversight Commission (EFOC) whose membership now includes four people with disabilities appointed by the legislature, the leadership of key state agency divisions or departments, the statewide provider association, Ability Network of Delaware, and the Community Legal Aid Society.

As an Employment First State, Delaware has continued to develop and implement programs and funding to promote CIE. These programs have been designed to expand services and promote system coordination. As part of this work, Delaware was selected and participated in the Employment First State Leadership and Mentoring Program funded by the Office of Disability Employment Policy (ODEP) of the United States Department of Labor. It is also a member of the State Employment Leadership Network which supports State systems to offer new community-based employment options.

The main provision in HB 122 is the development and implementation of a phase-out plan of Delaware’s two (2) providers who were utilizing a 14c certificate. HB 122 was passed June 29, 2021. Commencing January 31, 2024, an employer who is authorized to employ an individual with a disability at a subminimum wage pursuant to a special certificate issued under 29 U.S.C. 214(c) or under regulations promulgated under § 905 of this title may not employ or agree to employ or otherwise remunerate or compensate an individual with a disability at an hourly rate lower than the effective rate payable under § 902 of this title.

### c) Legislative Components

Below are the required legislative components addressed in the following phase-out plan. Please note the order in which they are listed below is the order in the legislation and not the order they are listed in the plan.

This information will be updated on a yearly basis.

- (a) Benchmarks and expected outcomes for each year of the phase-out.
- (b) A list of the resources to assist each individual with a disability in receiving supports according to the needs and preferences of the individual in order to be employed in an integrated setting, or participate in a meaningful alternative program, regardless of the nature or severity of the individual's disability,
- (c) Federal and state funding programs are available to assist an individual with a disability to obtain competitive employment in an integrated setting, and assure adequate funding is available for more intensive services that may be necessary in the future.
- (d) Individualized person-centered planning for people currently participating in programs authorized under Section 14(c) of the federal Fair Labor Standards Act, 29 U.S. C. 214(c), during the phase out process designed to address individual wishes and service needs with respect to avoiding disruption of location and relationships with friends where feasible.
- (e) A means for tracking the effect of transitioning to integrated and meaningful employment on individuals with disabilities on the basis of the following factors:
  - (1) Wages.
  - (2) Unemployment rates.
  - (3) The number of individuals who move from positions paying subminimum wages to competitive employment in an integrated setting.
  - (4) The number of individuals who move from subminimum wage positions to non-compensated activities including those that may lose a job opportunity as a result of a minimum wage increase.
- (f) A means for tracking the effect of transitioning to meaningful alternative programming for those who do not engage in CIE. Meaningful alternative employment shall include the following services:
  - (1) Regular opportunities for community-based recreational, social, educational, cultural, and athletic activities, including community volunteer and training activities.
  - (2) Regularly occurring non-facility-based activities of a person's choosing provided in settings which allow individuals with disabilities to interact with individuals without disabilities in a community setting to the fullest extent possible for the individual.
- (g) The plan referred to in § 753(a)-(e) shall be provided to the State Council for Persons with Disabilities for inclusion in the annual report required by § 8210(b)(8) of Title 29.

#### d) Phase-Out Plan Development

The Employment First Oversight Commission established under § 745 of this title directed the development and implementation of a plan to phase out on or before January 31, 2024. Authorizations under § 905 of this title to pay an individual with a disability less than the minimum wage otherwise required under §902 of this title. The plan has been developed by a task force comprised of representatives appointed by the Commission consisting of representatives from the Delaware General Assembly, the Commission, the State Council for Persons with Disabilities, the Division of Industrial Affairs, the Division of Vocational Rehabilitation, Division for the Visually Impaired, the Division of Developmental Disabilities Services, the Developmental Disabilities Council, family members and individuals currently being served by sheltered workshops, service providers who have experience in transitioning from providing sheltered workshop services to providing competitive employment in integrated settings for persons with disabilities, current sheltered workshop providers, the Disabilities Law Program of the Community Legal Aid Society, Inc., and a range of national experts on the use of transitioning services out of 14(c) in order to determine what model of service might work best for Delaware.

The Delaware E 1st Task Force developed this draft 14(c) Transformation Implementation Plan. Prior to doing so, the Task Force engaged SME Rachel Pollock, DOL NEON Project to provide a landscape assessment.

As part of the phase-out plan development, the E 1st Task Force will conduct a series of public forums where families will have the opportunity to review and comment on the Plan. Those forums will be targeted toward families of individuals, and individuals who are, or will be transitioning, currently are supported through organizations providing various employment, day, and residential services and supports. Additionally, the Task Force will engage the Community Navigators and as a way to also conduct direct outreach to individuals and families as a way to review and gather feedback on the Plan.

#### IV. Benchmarks and Desired Outcomes

As mentioned previously, at the time when HB 122 Jamie Wolfe Employment Act was drafted and ultimately passed by the Delaware General Assembly, only two providers in Delaware were utilizing 14(c) Sub-Minimum Certificates: Elwyn and Chimes of Delaware.

At the drafting and release of this 14C Implementation Plan, both providers had chosen to discontinue the utilization of the Certificates in adherence to the legislation prior to the January 31, 2024, implementation date. However, on May 19, 2022, Elwyn of Delaware, announced their decision to not reopen its day habilitation and pre-vocational programs and remain closed indefinitely. The Elwyn Supported Employment programs would remain active.

All benchmarks and desired outcomes will be as outlined in the required legislative component and are captured in the implementation plan outlined in this document. This will include plans for



tracking wages, unemployment rates, CIE and meaningful day, non-work activities throughout the phase-out:

- (1) Benchmarks and desired outcomes for each year of the phase-out.
- (2) A list of the resources necessary to ensure that individuals with disabilities receive support according to the needs and preferences of the individuals and in an integrated setting, regardless of the nature or severity of the individuals' disabilities.
  - a. best practices and resources for accessing funding and resources, including for staffing, transportation, and other needed services and supports.
  - b. best practices and resources for decision making by the individual or the individual's representative, as appropriate.
  - c. best practices and resources for accessing medical or behavioral support needs; and
  - d. best practices and resources for addressing family members' concerns or opposition
- (3) Application for and use of all federal and state funding programs, including programs available under Medicaid waiver amendments and resources under the Workforce Innovation and Opportunities Act, to assist individuals with disabilities to obtain competitive, integrated employment; and
- (4) The tracking of outcomes of individuals with disabilities on the basis of:
  - a. Average wages
  - b. Average hourly rate
  - c. Average hours

At the beginning of the pandemic in March of 2020, all Delaware organizations providing services and support in facility based- programs suspended operations. A few initiated virtual supports during the 2-year shut down. Of the DDDS providers in Delaware providing sheltered work, pre-vocational, or day habilitation services, only 2 were actively utilizing 14(c) certificates to pay sub-minimum wages to people they supported in sheltered work programs in March of 2020.

Benchmark data collected by the EFTF from both organizations previously utilizing 14(c) certificates earlier this year (2022) has been summarized and included in Appendix A of the Implementation Plan. This data shows that both organizations provided no sheltered work services under their 14(c) certificates. Both organizations continued to provide a few supported employment and competitive employment supports during the shut-down.

It is important to note when both organizations discontinued the use of their 14(c) certificates, the people they supported were transitioned into one of several other services and supports provided in their facility-based programs; day habilitation, pre-vocational, or supported work services within their organizations.

The E 1st task force specifically identified transitioning youth from the DOE Special Education programs as being directly impacted by the discontinuation of 14(c) certificates and sheltered

work as an employment option. The EFOC is particularly interested in and concerned about the long-term adverse impacts upon transitioning youth and the options they will be able to select from upon graduation from post-secondary education. Creating the opportunities for additional pre-vocational, supported, and CIE is a priority of the EFOC and its partnerships with DOE, DDDS, and DVR.

During the pandemic, providers saw a reduction in the number of individuals who chose to continue with the organization after the pandemic. Both have seen a reduction in their enrollment numbers. Additionally, both organizations saw a significant reduction in staff retention. Many direct support professionals chose to remove themselves from the workforce for a variety of reasons. One of the providers saw a 100% reduction in their DSP work force during the pandemic.

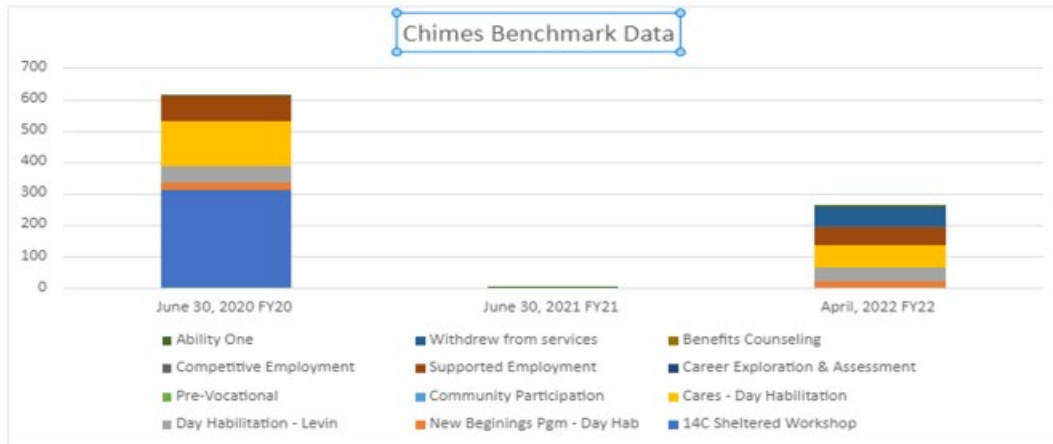
## V. Closing

The EFOC respectfully submits the Competitive Integrated Employment for People with Disabilities *Implementation Plan for HB 122, the Jamie Wolfe Employment Act* to the Delaware General Assembly pursuant to HB122, the Jamie Wolfe Employment Act, passed June 2022. We believe this comprehensive Plan outlines the supports needed to ensure that Delawareans with disabilities who want to work, can and will, and those who desire a life without limits will enjoy a meaningful life.

As an Employment First State, Delaware has continued to develop and implement programs and funding to promote CIE. This Competitive Integrated Employment for People with Disabilities *Implementation Plan for HB 122, the Jamie Wolfe Employment Act* clearly and reasonably outlines the funding, resource needs, and action steps required to achieve the transition away from use of 14(c) subminimum wage certificates in the State of Delaware. This Plan demonstrates the collaboration needed and already in place, across all Departments in the State. Successful implementation of the Plan will also provide the support necessary to achieve CIE for people with disabilities in the First State.

# APPENDIX

## Chimes 14C Benchmark Data



## Elwyn 14C Benchmark Data

