



STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES

MARGARET M. O'NEILL BUILDING
410 FEDERAL STREET, SUITE 1
DOVER, DE 19901

VOICE: (302) 739-3620
TTY/TDD: (302) 739-3699
FAX: (302) 739-6704

March 20, 2015

The Honorable Jack Markell
Office of the Governor
150 Martin Luther King Jr. Blvd.
Dover, DE 19901

Dear Governor Markell:

I write on behalf of the State Council for Persons with Disabilities (SCPD) regarding the Centers for Medicare & Medicaid Services' (CMS) final rule related to Home and Community Based-Services (HCBS) for Medicaid-funded long term services and supports provided in residential and non-residential home and community-based settings. In January 2014, CMS released the rules to provide opportunities for participants to engage in community life, have access to the community, control their personal resources, and seek employment and work in competitive settings. The purpose of the rule is to enhance the quality of HCBS, provide additional protections to HCBS program participants, and ensure that individuals receiving services through HCBS programs have full access to the benefits of community living. The final CMS rule was the result of multiple rulemaking efforts over five years and took into account thousands of public comments reflecting a wide range of perspectives.

The final rule provides states and providers time to implement the new requirements through a transition process that "supports continuity of services for Medicaid participants and minimizes disruptions in service systems during implementation." States have until March 17, 2019 to come into compliance with the rule. Delaware must develop and submit to CMS for approval a transition plan outlining how the State will come into compliance.

SCPD has already provided comments to the relevant State agencies regarding the Plan, but also wanted to provide you with our perspective on the Rule and its impact on individuals with disabilities. SCPD endorses the attached letter from the Developmental Disabilities Council (DDC) and believes it provides a great analysis of the legal intent and definitions regarding the Americans with Disabilities Act (ADA), Developmental Disabilities Act and the 1999 Olmstead decision. In addition, it accurately illustrates how these landmark laws and decisions support and promote self-determination, independence, productivity and integration in all aspects of community life. SCPD has the following supplemental observations.

First, SCPD endorses the CMS rule which was developed to ensure that individuals receiving federally funded HCBS have opportunities to access home and community-based services in the most integrated settings. Therefore, consistent with the CMS rule, SCPD cannot endorse the use of any state funds which support segregated living arrangements. Indeed, CMS has issued guidance (attached) which suggests that residential “gated communities” typically have the effect of isolating people receiving HCBS from the larger communities. Such residential settings are designed specifically for people with disabilities and often even for people with a certain type of disability. If CMS would not approve such a setting, Delaware would not receive the federal match money. Using state dollars on such settings as gated communities or “villages” would not be fiscally responsible and may also reduce current cross disability state-funded HCBS (e.g. personal attendant services).

Second, the CMS rule also has an impact on employment for people with disabilities and related settings and programs (e.g. “sheltered workshops”). The CMS rule suggests that sheltered workshops may also have the effect of isolating people with disabilities from the larger community. In addition, the Department of Justice joined a class-action lawsuit in Oregon and reached an agreement with Rhode Island to make changes to the sheltered workshop system in those states and provide people with disabilities employment opportunities in the broader community (articles attached). Historically, people with disabilities have had fewer choices in many areas, including productive employment opportunities. SCPD believes that all persons with disabilities should have the same opportunities, including competitive and integrated employment opportunities, as everyone else and certainly appreciates your efforts in this area. In addition, Council endorses building infrastructure and supports needed to phase out the issuance of subminimum wage certificates including putting in place transition services and safeguards to protect the interests of any people with disabilities affected by this shift. We support building infrastructure and creating incentives for employers or other solutions that will expand work opportunities for individuals with significant disabilities in integrated employment at competitive wages.

Finally, as Delaware moves forward in its efforts to comply with the CMS rule, SCPD encourages the State to strictly follow the Olmstead guidance on integrated v. segregated settings (attached) and the aforementioned CMS guidance on settings that have the effect of isolating individuals receiving HCBS from the broader community. SCPD looks forward to collaborating with the State to implement the requirements of the CMS rule and believes the intent is to create real community options for people with disabilities. In addition, during this time of transition, SCPD believes that the spirit of the rule is not to “leave people on the streets”, but rather it is designed to develop infrastructure, services and supports to ensure smooth transitions for all those impacted.....people with disabilities, families, providers and State agencies.

Thank you for your consideration and please contact SCPD if you have any questions or comments regarding our perspective on this most important issue.

Sincerely,

A handwritten signature in black ink that reads "Daniese McMullin-Powell". The signature is written in a cursive style with a large initial 'D'.

Daniese McMullin-Powell, Chairperson
State Council for Persons with Disabilities

cc: Ms. Rita Landgraf
Developmental Disabilities Council
Governor's Advisory Council for Exceptional Citizens
CMS Final Rule – Governor 3-15



12/5/2014

Margaret O'Neill Building,
2nd Floor
410 Federal Street, Suite 2
Dover, Delaware 19901

The Honorable Jack Markell
Governor
Tatnall Building
Dover, Delaware 19901

Office: 302.338.3313
Fax: 302.338.3315
www.ddc.state.de.us

Dear Governor,

In June 2009, The Centers for Medicare and Medicaid Services (CMS) issued an Advance Notice of Proposed Rulemaking (CMS-2296-ANPRM) soliciting comments on the most effective means of defining home and community. The noticed intention of CMS was to publish proposed amendments to the regulations for implementing the Medicaid Home and Community Based Services waivers under section 1915 (c) of the Social Security Act.

In January 2014, CMS has issued the Final Rule for the Medicaid Home and Community Based Services waivers (HCBS). The intent of the Final Rule is to ensure that individuals receiving long-term services and supports through home and community based service (HCBS) programs under the 1915(c), 1915(i), and 1915(k) Medicaid authorities have full access to benefits of community living and the opportunity to receive services in the most integrated setting appropriate, and to enhance the quality of the HCBS and provide protections to participants.

We, the Developmental Disabilities Council (DDC), applaud the efforts of CMS to more explicitly describe the expectations that individuals with developmental disabilities should be served in their homes and communities. We believe that the standards for community living articulated in the Final Rule that defines, describes, and aligns home and community-based setting requirements across three Medicaid authorities --*optimizing participant independence and community integration, promoting initiative and choice in daily living, and facilitating full access to community services*-- reflect the values and goals that many individuals with developmental disabilities, along with their families and advocates have struggled to achieve for over 40 years. Home and Community Based Waiver funding is the primary source of funding for individuals with developmental disabilities and families in achieving these goals.



While individuals with developmental disabilities have the right to choose where they live, it is the position of the DD Council that state and federal funds, including Developmental Disabilities Home and Community Based Waiver funds, should not support segregated living arrangements where all or nearly all of the residents are people with disabilities. Rather these funds should support living arrangements that “promote self-determination, independence, productivity, and integration and inclusion in all facets of community life” as set forth in the Developmental Disabilities Assistance and Bill of Rights Act (DD Act) and consistent with requirements of the Americans with Disabilities Act and other legal requirements

In defining home and community characteristics, it is important to understand the values and beliefs that are fundamental to the standards for community living that CMS has stated. The DD Act provides an excellent context for understanding the basis for the community integration, choice, control and independence principles set forth in the CMS standards. The purpose of this act is “to assure that individuals with developmental disabilities and their families participate in the design of and have access to needed community services, individualized supports and other forms of assistance that promote self-determination, independence, productivity and integration and inclusion in all facets of community life ..”¹ The first finding of the DD Act is that “disability is a natural part of the human experience that does not diminish the right of individuals with developmental disabilities to live independently, to exert control and choice over their own lives, and to fully participate in and contribute to their communities through full integration and inclusion in the economic, political, social, cultural, and educational mainstream of United States society.”²

When read in its entirety, the intent of the DD Act is to recognize the competencies, capabilities and personal goals of individuals with developmental disabilities and to contribute to a system where individuals with developmental disabilities have the ability and opportunity to make personal decisions, exert control over their lives and participate in the same community activities that are available to individuals without disabilities. Inclusion and integration of individuals with developmental disabilities in the communities of our society, as well as individual choice and control of life decisions and daily living activities, are core intents of the DD Act and of the Medicaid Home and Community Based Waiver services.

The DD Act provides excellent definitions of these principles that can be used to guide your consideration. All definitions are used with respect to individuals with developmental disabilities.

- Inclusion: The term “inclusion” means “the acceptance and encouragement of the presence and participation of individuals with developmental disabilities, by individuals without disabilities, in social, educational, work, and community activities, that enables individuals with developmental disabilities to-

¹ P.L. 106-402, section 101 (b)

² P.L. 106-402, section 101 (a)



- A. have friendships and relationships with individuals and families of their own choice;
 - B. live in homes close to community resources, with regular contact with individuals without disabilities in their communities;
 - C. enjoy full access to and active participation in the same community activities and types of enjoyment as individuals without disabilities; and
 - D. take full advantage of their integration into the same community resources as individuals without disabilities, living, learning, working, and enjoying life in regular contact with individuals without disabilities.”³
- **Integration:** The term “integration” means “exercising the equal right of individuals with developmental disabilities to access and use the same community resources as are used by and available to other individuals.”⁴
 - **Self-Determination Activities:** The term “self-determination activities” means “activities that result in individuals with developmental disabilities, with appropriate assistance, having-
 - A. the ability and opportunity to communicate and make personal decisions;
 - B. the ability and opportunity to communicate choices and exercise control over the type and intensity of services, supports, and other assistance the individuals receive;
 - C. the authority to control resources to obtain needed services, supports, and other assistance;
 - D. opportunities to participate in, and contribute to, their communities; and
 - E. support, including financial support, to advocate for themselves and others, to develop leadership skills, through training in self-advocacy, to participate in coalitions, to educate policymakers, and play a role in the development of public policies that affect individuals with developmental disabilities.”⁵
 - **Individualized Supports:** The term “individualized supports” means “supports that-
 - A. enable an individual with a developmental disability to exercise self- determination, be independent, be productive, and be integrated and included in all facets of community life;
 - B. are designed to-
 - i. enable such individual to control such individual’s environment, permitting the most independent life possible;
 - ii. prevent placement into a more restrictive living arrangement than is necessary; and

³ P.L. 106-402, section 102 (15)

⁴ P.L. 106-402, section 102 (17)

⁵ P.L. 106-402, section 102 (27)



- iii. enable such individual to live, learn, work, and enjoy life in the community; and
- C. include-
- i. early intervention services;
 - ii. respite care;
 - iii. personal assistance services;
 - iv. family support services;
 - v. supported employment services;
 - vi. support services for families headed by aging caregivers of individuals with developmental disabilities; and
 - vii. provision of rehabilitation technology and assistance technology, and assistive technology services.”⁶

While individuals with developmental disabilities have the right to choose where they live, public state and federal funds, including Developmental Disabilities Home and Community Based Waiver funds, should support living arrangements that “promote self-determination, independence, productivity, and integration and inclusion in all facets of community life” as set forth in the DD Act.

THE LEGAL OBLIGATION TO PROVIDE SERVICES IN THE LEAST RESTRICTIVE SETTING

CMS standards require that programs should optimize participant independence and community integration, promote initiative and choice in daily living, and facilitate full access to community services. Accordingly, public funds should be used to support living arrangements that are consistent with these values and beliefs.

The guiding principle of the U.S. Supreme Court’s landmark 1999 decision in *Olmstead v. L.C.*⁷ is the inherent right of an individual to be free from unnecessary segregation from the general public. The Court made the legal and social imperative for deinstitutionalization clear: unnecessary institutionalization is a form of discrimination under Title II of the Americans with Disabilities Act (ADA).⁸

The ADA expressly states that, “no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.”⁹ Through its *Olmstead* decision, the United States Supreme Court applied the ADA to state operated publicly-funded institutions and explained that, “segregation

⁶ P.L. 106-402, section 102 (16)

⁷ *Olmstead v. L.C.*, 527 U.S. 581, 119 S.Ct. 2176 (1999).

⁸ *Id.*, 527 U.S. at 597

⁹ 42 U.S.C. § 12132



perpetuates unwarranted assumptions that institutionalized people are incapable or unworthy of participating in community life.” The Justices also concluded that, “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.” The Court then reasoned that since people with disabilities should not have to give up the benefits of full participation in their communities in order to obtain needed medical services and supports, states should make reasonable accommodations under the ADA to ensure that Medicaid and other funds are used to provide the most integrated and inclusive settings appropriate for individuals with developmental disabilities.

In 2009, the U.S. District Court for the Eastern District of New York, also weighed in on the characteristics of a community based setting. In *Disability Advocates, Inc. v. Patterson*, the Judge was asked to determine whether adult care homes for individuals with mental illness in New York meet the definition of the “most integrated setting appropriate” as used in the Department of Justice (DOJ) regulations governing the ADA Title II 28 C.F.R. 35.130(d); 42 U.S.C. 12134; and the U.S. Supreme Court in *Olmstead*. The regulations define “most integrated setting appropriate” as “a setting that enables individuals with disabilities to interact with nondisabled persons to the fullest extent possible.” 28 C.F.R. Pt. 35, App. A at 452. New York argued that adult home residences for individuals with mental illness met this definition because they were: in the community; unlocked; and permitted residents the opportunity to interact with non-disabled people. The Judge rejected this argument, holding that the ADA does not require “an” opportunity for interaction with non-disabled people, but rather the maximum opportunity for such interactions. The Court considered the essential characteristics of institutions to be:

- the degree of control that people exercised over their own lives, for example: could they cook or plan their own meals, control their own budgets, decide when to eat and sleep, and host visitors in private at times of their choosing;
- the degree of individualization of the setting and services, for example, whether people could choose their own roommate and their own medical professionals; and
- whether residents had non-disabled friends, worked or volunteered with non-disabled people, and had opportunities for recreation with non-disabled people.¹⁰

The Rehabilitation Act mirrors the DD Act in its intent for inclusion and independence for individuals with disabilities. Specifically, the act states that “disability is a natural part of human experience and in no way diminishes the right of individuals to live independently; enjoy self-determination; make choices; contribute to society; pursue meaningful careers; and enjoy full inclusion and integration in the economic, political, social, cultural and educational mainstream of American society.”¹¹

¹⁰ *DAI v. Paterson*, 2009 U.S. Dist. LEXIS 80975 at 114-115

¹¹ P.L. 93-112, section 2 (a)



Consistent with all these precedents, CMS recently denied a request from the state of Missouri to amend its 1915(c) MR/DDR Comprehensive Home and Community-Based Services waiver for increased transition of individuals into residential units clustered on the grounds of a large state- operated institution. In the letter dated August 2, 2010, CMS stated that the proposed waiver amendment proposal is not consistent with both statute and regulations as Missouri would not be providing services that permit individuals to avoid institutionalization.

More recent Olmstead litigation concerning residential settings include:

- United States v. O'Toole et al., (2013) (DAI's "adult homes" case)
- United States v. Virginia, (2012) (developmental centers)
- United States v. North Carolina, (2012)
 - All Three settlement agreements included requirements to developed scattered-site supportive housing.

Recent Olmstead litigation concerning non-residential settings include:

- United States v. Rhode Island (settled 2014):
Consent decree requires phase-outs of sheltered workshops and increase in supported employment services.
- United States v. Virginia (2012): requires states to provide supported employment to people with ID/DD.
- Lane v. Kitzhaber (Oregon, pending):
Department of Justice issued findings letter stating that segregated employment services violate the ADA.

In closing, the Developmental Disabilities Council, and in collaboration with our national association, the National Association of Councils on Developmental Disabilities (NACDD), thanks you, Governor Markell, for your sincere consideration of these remarks. We are hopeful that in development of this year's state budget you will take advantage of our research and continue your commitment to support full inclusion of people with disabilities in our communities.

Should you need any further information or discussion on this topic, you are always welcome to contact our office at 302.739.3333 or pat.maichle@state.de.us. In addition, you can visit the national web site <http://www.HCBSadvocacy.org>.



Sincerely,
Diann Jones

Diann Jones, Chair
Delaware Developmental Disabilities Council

cc. The Honorable Rita Langraf, DHSS
The State Council for Persons with Disabilities
The Governor's Advisory Council for Exceptional Citizens
Donna Meltzer, NACDD

**GUIDANCE ON SETTINGS THAT HAVE THE EFFECT OF ISOLATING
INDIVIDUALS RECEIVING HCBS FROM THE BROADER COMMUNITY**

The purpose of this guidance is to provide more information to states and other stakeholders about settings that have the effect of isolating individuals receiving HCBS from the broader community.

The final rule identifies settings that are presumed to have institutional qualities and do not meet the rule's requirements for home and community-based settings. These settings include those in a publicly or privately-owned facility that provide inpatient treatment; on the grounds of, or immediately adjacent to, a public institution; or that have the effect of isolating individuals receiving Medicaid-funded HCBS from the broader community of individuals not receiving Medicaid-funded HCBS. A state may only include such a setting in its Medicaid HCBS programs if CMS determines through a heightened scrutiny process, based on information presented by the state and input from the public that the state has demonstrated that the setting meets the qualities for being home and community-based and does not have the qualities of an institution. (For more information about the heightened scrutiny process, see Section 441.301(c)(5)(v) Home and Community-Based Setting).

Settings that have the following two characteristics alone might, but will not necessarily, meet the criteria for having the effect of isolating individuals:

- The setting is designed specifically for people with disabilities, and often even for people with a certain type of disability.
- The individuals in the setting are primarily or exclusively people with disabilities and on-site staff provides many services to them.

Settings that isolate people receiving HCBS from the broader community may have any of the following characteristics:

- The setting is designed to provide people with disabilities multiple types of services and activities on-site, including housing, day services, medical, behavioral and therapeutic services, and/or social and recreational activities.
- People in the setting have limited, if any, interaction with the broader community.
- Settings that use/authorize interventions/restrictions that are used in institutional settings or are deemed unacceptable in Medicaid institutional settings (e.g. seclusion).

The following is a non-exhaustive list of examples of residential settings that typically have the effect of isolating people receiving HCBS from the broader community. CMS will be issuing separate guidance regarding non-residential settings.

- **Farmstead or disability-specific farm community:** These settings are often in rural areas on large parcels of land, with little ability to access the broader community outside the farm. Individuals who live at the farm typically interact primarily with people with disabilities and staff who work with those individuals. Individuals typically live in homes only with other people with disabilities and/or staff. Their neighbors are other individuals with disabilities or staff who work with those individuals. Daily activities are typically designed to take place on-site so that an individual generally does not leave the farm to access HCB services or participate in community activities. For example, these settings will often provide on-site a place to receive clinical (medical and/or behavioral health) services, day services, places to shop and attend church services, as well as social activities where individuals on the farm engage with others on the farm, all of whom are receiving Medicaid HCBS. While sometimes people from the broader community may come on-site, people from the farm do not go out into the broader community as part of their daily life. Thus, the setting does not facilitate individuals integrating into the greater community and has characteristics that isolate individuals receiving Medicaid HCBS from individuals not receiving Medicaid HCBS.
- **Gated/secured "community" for people with disabilities:** Gated communities typically consist primarily of people with disabilities and the staff that work with them. Often, these locations will provide residential, behavioral health, day services, social and recreational activities, and long term services and supports all within the gated community. Individuals receiving HCBS in this type of setting often do not leave the grounds of the gated community in order to access activities or services in the broader community. Thus, the setting typically does not afford individuals the opportunity to fully engage in community life and choose activities, services and providers that will optimize integration into the broader community.
- **Residential schools:** These settings incorporate both the educational program and the residential program in the same building or in buildings in close proximity to each other (e.g. two buildings side by side). Individuals do not travel into the broader community to live or to attend school. Individuals served in these settings typically interact only with other residents of the home and the residential and educational staff. Additional individuals with disabilities from the community at large may attend the educational program. Activities such as religious services may be held on-site as opposed to facilitating individuals attending places of worship in the community. These settings may be in urban areas as well as suburban and rural areas. Individuals experience in the broader community may be limited to large group activities on "bus field trips." The setting therefore compromises the individual's access to experience in the greater community at a level that isolates individuals receiving Medicaid HCBS from individuals not receiving Medicaid HCBS.

- Multiple settings co-located and operationally related (i.e., operated and controlled by the same provider) that congregate a large number of people with disabilities together and provide for significant shared programming and staff, such that people's ability to interact with the broader community is limited. Depending on the program design, this could include, for example, group homes on the grounds of a private ICF or numerous group homes co-located on a single site or close proximity (multiple units on the same street or a court, for example). In CMS' experience, most Continuing Care Retirement Communities (CCRCs), which are designed to allow aging couples with different levels of need to remain together or close by, do not raise the same concerns around isolation as the examples above, particularly since CCRCs typically include residents who live independently in addition to those who receive HCBS.

HUD Olmstead Guidance

- Integrated settings**
 - Provide individuals with disabilities opportunities to live, work and receive services in the greater community, like individuals without disabilities
 - Located in mainstream society
 - With housing, allow individuals with disabilities to live like individuals without disabilities without rules that limit activities or impede ability to interact with greater society
 - Examples: Scattered site apartments, tenant-based rental assistance in integrated developments
- Segregated settings**
 - Occupied exclusively or primarily by individuals with disabilities
 - Sometimes have qualities of institutional care including lack of privacy, regimented activities, limiting visitors, etc.

JUSTICE NEWS

Department of Justice

Office of Public Affairs

FOR IMMEDIATE RELEASE

Tuesday, April 8, 2014

Department of Justice Reaches Landmark Americans with Disabilities Act Settlement Agreement with Rhode Island

The Justice Department announced today that it has entered into a statewide settlement agreement that will resolve violations of the Americans with Disabilities Act (ADA) for approximately 3,250 Rhode Islanders with intellectual and developmental disabilities (I/DD). The landmark ten year agreement is the nation's first statewide settlement to address the rights of people with disabilities to receive state funded employment and daytime services in the broader community, rather than in segregated sheltered workshops and facility-based day programs. Approximately 450,000 people with I/DD across the country spend their days in segregated sheltered workshops or in segregated day programs. The agreement significantly advances the department's work to enforce the Supreme Court's decision in *Olmstead v. L.C.*, which requires persons with I/DD be served in the most integrated setting appropriate .

As a result of the settlement, 2,000 Rhode Islanders with I/DD who are currently being served by segregated programs will have opportunities to work in real jobs at competitive wages. Additionally, over the next ten years, 1,250 students with I/DD will receive services to help transition into the workforce.

"Today's agreement will make Rhode Island a national leader in the movement to bring people with disabilities out of segregated work settings and into typical jobs in the community at competitive pay," said Acting Assistant Attorney General Jocelyn Samuels for the Civil Rights Division. "As Rhode Island implements the agreement over the next ten years, it will make a dramatic difference in the lives of people with disabilities, businesses and communities across the state. We congratulate Governor Chafee and state officials for signing this agreement, as we believe that Rhode Island will be a model for the nation with respect to integrated employment for people with disabilities."

"The filing of today's consent decree is a critically important event in Rhode Island history," said U.S. Attorney Peter F. Neronha for the District of Rhode Island. "It ushers in a new day of opportunity – opportunity for Rhode Island residents with intellectual or developmental disabilities to live, work and spend their recreational time alongside their fellow Rhode Islanders. It is an opportunity for this State to move forward; to recognize, finally, that we are better, stronger, when all of us – all of us –are interwoven in the fabric that is Rhode Island."

Under the agreement, Rhode Island has agreed to provide:

- Supported employment placements that are individual, typical jobs in the community, that pay at least minimum wage, and that offer employment for the maximum number of hours consistent with the person's abilities and preferences, amounting to an average of at least 20 hours per week across the target population;
- Supports for integrated non-work activities for times when people are not at work including mainstream educational, leisure or volunteer activities that use the same community centers, libraries, recreational, sports and educational facilities that are available to everyone;
- Transition services for students with I/DD, to start at age 14, and to include internships, job site visits and mentoring, enabling students to leave school prepared for jobs in the community at competitive wages;
- Significant funding sustained over a ten year period that redirects funds currently used to support services in segregated settings to those that incentivize services in integrated settings.

The ten year agreement will allow the state to ensure that the services necessary to support individuals with I/DD in competitive, integrated jobs will not disappear with a change in administration or legislative leadership. As a result of this commitment, the business community has already stepped up to partner with the state. The U.S. Business Leadership Network (USBLN), a network of Fortune 500 companies, and Walgreens will co-host a regional business summit in Rhode Island in June 2014 to explore how to improve those partnerships.

The agreement is the result of an ADA investigation that began in January 2013 into Rhode Island's day activity service system for people with I/DD. The department, the state, and the City of Providence entered into an interim settlement agreement in June 2013. The interim settlement agreement focused on a single provider, which was one of the largest facility-based employment service providers in the state's system, and a school-based sheltered workshop at a Providence, R.I., high school, which was a point of origin for many people entering the provider's workshop.

The department continued its investigation of the statewide system, and in January 2014 issued findings determining that the statewide system over-relied on segregated services, to the exclusion of integrated alternatives, in violation of the ADA. The department found workers with I/DD in settings where they had little or no contact with persons without disabilities, and where they earned an average wage of \$2.21 per hour. The investigation found that workers typically remain in such settings for many years, and sometimes decades. The department also found that students in Rhode Island schools were often not presented with meaningful choices to participate in integrated alternatives, such as integrated transition work placements and work-based learning experiences, which put students at serious risk of unnecessary postsecondary placement in segregated sheltered workshops and facility-based day programs.

Since June 2013, the state and city have provided supported employment services to people with I/DD transitioning from the original two facilities covered by the interim settlement agreement. Many of these individuals have now accessed jobs in typical work settings where they can interact with non-disabled coworkers and customers, and enjoy the same employment benefits as their non-disabled peers. Individuals have secured jobs at both locally owned and national companies. Because of the interim settlement agreement, Pedro, an individual who transitioned from the in-school sheltered workshop to the adult workshop, where he earned just 48 cents an hour, is now making minimum wage working at a restaurant. Peter, another former sheltered workshop employee who was earning approximately \$1.50 per

hour, now has a job earning more than minimum wage working for the state as a custodian at a hospital. Louis has gone from earning sub-minimum wages performing rote tasks at the sheltered workshop to a full-time position at a state hospital, where he uses his strong computer skills and passion for mathematics to generate Excel reports, record time sheets, and complete other office tasks. For more information on these individuals and others, please visit the Department's Faces of Olmstead website .

Please visit www.ada.gov/olmstead to learn more about the Division's ADA Olmstead enforcement efforts, and www.justice.gov/crt to learn more about the laws enforced by the Justice Department's Civil Rights Division

14-350

Civil Rights Division

Updated September 15, 2014

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U.S. Department of Justice accuses Oregon of segregating disabled in sheltered workshops



<http://connect.oregonlive.com/staff/bdenson/index.html> By Bryan Denson | bdenson@oregonian.com | <http://connect.oregonlive.com/staff/bdenson/posts.html>
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on April 01, 2013 at 6:42 PM, updated April 01, 2013 at 6:54 PM



View full size (http://media.oregonlive.com/portland_impact/photo/amanda_marshall_and_bob_jeondaph_press_conference_040113.jpg)

Oregon U.S. Attorney Amanda Marshall, joined by Bob Joondaph, executive director of Disability Rights Oregon, announces that the U.S. Department of Justice has joined a federal lawsuit that accuses Oregon of violating the Americans with Disabilities Act.

Brent Wozan/The Oregonian

Oregon unlawfully segregates people with disabilities in sheltered workshops instead of providing them more work opportunities in the public midst, federal authorities allege.

In a news conference Monday, officials with the U.S. Justice Department said they have joined a class-action lawsuit filed by people with disabilities against Gov. John Kitzhaber and the state of Oregon last year, demanding changes to the sheltered workshop system.

As recently as the 1990s, Oregon was a national leader in providing workplace supports for citizens with significant developmental and intellectual disabilities, allowing them to join the general workforce. But the number of people toiling in the workshops has more than doubled since then to 2,600, according to the Justice Department.

Sixty-one percent of those disabled Oregonians now labor in sheltered workshops, often earning less than minimum wage, while just 16 percent are employed at businesses with integrated workforces, said Eve Hill, a senior counselor to the assistant U.S. attorney general for civil rights. The percentage of those employed outside workshops has dropped nearly in half in roughly a decade.

Justice Department officials began in October 2011 to investigate those disparities as evidence of violations of the Americans with Disabilities Act, better known as the ADA.

Then in January 2012, Disability Rights Oregon and the Center for Public Representation, along with two private law firms, brought suit

(http://www.oregonlive.com/politics/index.ssf/2012/01/oregonians_with_disabilities_f.html)

on behalf of eight people with disabilities and United Cerebral Palsy of Oregon and Southwest Washington.

"We know we can do much better," said Amanda Marshall, the U.S. attorney for Oregon, during an afternoon news conference

Read more

The Oregonian's groundbreaking [oregonians with disabilities](http://www.oregonlive.com/oregonianspecial/charity_series/index.html) f.html) on sheltered workshop programs in Oregon and nationally, published in 2006 and 2007.

in Portland to announce that the U.S. government was intervening as a plaintiff in *Laue v. Kitzhaber*.

Erinn Kelley-Siel, director of the Oregon Department of Human Services, noted the state's disappointment that the U.S. Department of Justice filed what amounts to a first-of-a-kind lawsuit.

"To the best of our knowledge, no other state has been sued on the grounds that sheltered workshops themselves are violations of the ADA," she wrote. "During the past year, Oregon has made significant and time-intensive efforts to settle this matter through numerous meetings and communications with (the Justice Department), and Oregon continues to believe that these issues should be resolved through negotiation and not in court."

Kelley-Siel noted that the state continues to work to ensure what she described as a "balanced and reasonable implementation of employment policies" for workers with intellectual and developmental disabilities, "while respecting consumer and family choice."

Charity officials who run sheltered workshops often say that workers and their families prefer them to labor in warehouses that provide a safe, nurturing environment.

The lawsuit challenges what it describes as Oregon's failure to give enough people with disabilities the chance to work in the general workforce, rather than relegating them to sheltered workshops. Those workshops, set up in warehouses across the state, most often amount to dead-end jobs that typically pay piece-rate wages that amount to less than the federal minimum wage, critics say.

Federal law allows employers to pay people with disabilities what is known as sub-minimum wage. Records show that many Americans who fall into that category earn less than \$1 an hour.

Laue v. Kitzhaber was so named because it pits Paula Lane, who earned as little as 40 cents an hour in a sheltered workshop in Beaverton, against Gov. John Kitzhaber as Oregon's chief executive. The lawsuit aims to provide workshop laborers such as Lane, who has multiple disabilities including autism, with job coaches and other professional supports so that they can work at regular jobs in the public midst, said Bob Joondeph, executive director of Disability Rights Oregon.

As it stands, he said, the majority of working Oregonians with serious disabilities find themselves segregated into workshop settings. They often toil in jobs for nonprofits that pay poorly and sometimes give participants practice work when there are no jobs for them to do.

Oregon has not developed adequate services to offer people a chance to work outside the workshops, Joondeph said.

"A person cannot choose to use a service," he said, "that is not made available to them."

-- Bryan Denson

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