

Complexity and Needs Subcommittee Chapter

Overview

Complexity and Needs Subcommittee Members

- **Alison Barkoff**, Subcommittee Chair, Director of Advocacy, Bazelon Center for Mental Health Law
- **Patrick Hendry**, Vice President, Consumer Advocacy, Mental Health America
- **Ruby Moore**, Executive Director of the Georgia Advocacy Office
- **Ari Ne'eman**, President, Autistic Self Advocacy Network
- **John O'Brien**, Senior Policy Advisor, Elderly Health Programs Group, Centers for Medicare and Medicaid Services
- **Fred Schroeder**, Executive Director, National Rehabilitation Association
- **Bob Williams**, Senior Advisor to the Deputy Commissioner, Office of Retirement and Disability Policy, Social Security Administration
- **Bryan Ballman**, Designated Federal Officer, Office of Disability Employment Policy, Department of Labor

The charge to the Complexity and Needs Subcommittee is broad in scope and impact. It includes financing, eligibility, group and individualized approaches, case management roles and structure, civil rights, employment and family support and incentives. It also includes exploration of 14(c) certificates, current use, and recommendations on how to address use of the certificates for the future. For the preliminary report due in September of 2015, the subcommittee identified three primary areas of focus: Funding, Data and Outcomes, and Section 14(c).

In its work on funding, the subcommittee considered available state and federal funding sources to increase competitive integrated employment and reduce reliance on segregated service models. The subcommittee explored the alignment between funding sources and federal rules and policies prioritizing employment of people with disabilities; the complexity of using multiple funding streams, eligibility for funding; and the expectations of funding systems for employment.

The subcommittee also considered the data and information available at state and federal levels regarding funding for, and the number of individuals with disabilities in, competitive integrated employment versus segregated day services (such as sheltered workshops, day habilitation, or day treatment). The subcommittee also discussed how to measure quality and the impact of

competitive integrated employment through outcome measures and fidelity to evidence-based and best practices for employing people with significant disabilities.

The subcommittee explored the use of 14(c) certificates. It studied the history of 14(c) and discussed its alignment with modern disability policy and federal law. It considered federal oversight and enforcement of 14(c), as well as state level activities around using subminimum wage. Finally, the subcommittee explored the future of 14(c). The work of the subcommittee on 14(c) is incorporated into a separate chapter with all subcommittees' work on this issue.

In addition, the subcommittee considered the AbilityOne program (operating pursuant to the Javits-Wagner O'Day (JWOD) Act) as part of its Funding and 14(c) work. Because the Marketplace subcommittee also studied the AbilityOne program, the two committees decided to work together to write a joint chapter.

Finally, the subcommittee identified several areas that it plans to explore during the next year for inclusion in the Final Report due in September 2016. These issues include: services and supports that support people with disabilities who are working and their families (including wraparound supports, family supports, transportation, and case management); the roles of the educational and workforce investment systems in helping people with significant disabilities achieve competitive, integrated employment; and unique issues facing people with different types of disabilities.

Findings and Conclusions

Funding

Federal Rule and Policy

The Workforce Innovation and Opportunity Act (WIOA), the Americans with Disabilities Act (ADA), the Individuals with Disabilities Education Act (IDEA), and guidance from the Centers for Medicare and Medicaid Services (CMS) make competitive integrated employment (CIE) a priority for people with significant disabilities.

WIOA requires a robust collaboration between Vocational Rehabilitation (VR) and high school transition programs. Collaboration should result in increased employment experiences while students with significant disabilities are in high school. Students with employment experiences are more likely to be successfully employed as adults.

The ADA's integration mandate, as interpreted by the Supreme Court's decision in *Olmstead v. L.C.*, requires states to prioritize and expand opportunities for CIE for people with significant disabilities. The Individuals with Disabilities Education Act (IDEA) requires post-school employment plans for students with disabilities; transition programs that focus on the goal of

employment; and follow-up one year after the student leaves transition to see the result in the student's life.

WIOA and the Achieving Better Life Experience (ABLE) Act provide powerful tools to increase economic opportunities for people with significant disabilities. These tools help job seekers with significant disabilities gain access to employment, education, training, and support services to succeed in the labor market. They match employers with the skilled workers they need to successfully compete in the global economy.

CMS has provided guidance to states about funding supported employment (a service for which, by definition, CIE is the expected outcome) for 1915(c) Waivers. New rules from CMS defining requirements for settings funded by Medicaid Home and Community Based Services (HCBS) create an opportunity for states to expand opportunities for CIE¹ and make it a priority.

All of these federal rules and policies are supported by studies that show that CIE promotes the health and welfare of people with significant disabilities. People with significant disabilities who work have improved health, fewer hospital stays, stronger connections to family and friends, and more confidence in daily activities and routines.

Multiple Funding Resources

There are several sources of federal funds to support CIE. The Centers for Medicare and Medicaid Services (CMS); the Social Security Administration (SSA); the Substance Abuse and Mental Health Services Administration (SAMHSA); the Department of Education, including the Office of Special Education and Rehabilitation Services (OSERS) and Rehabilitation Services Administration (RSA); Veterans Affairs (VA); and the Department of Labor (DOL) all offer funding that may affect CIE for people with significant disabilities.

The rules governing the funding from each agency differ from each other. Agencies do not offer clear guidelines on how to individually and collectively encourage CIE outcomes, including possible ways for states to braid or blend funds or to offer performance payments. Each state must independently learn the different rules in order to use the money effectively to achieve CIE.

CMS provides guidance to states in how to support CIE under 1915(c) Waivers. It does not provide similar guidance in how to use other authorities to provide services to support

¹ Also see the discussion on the HCBS settings rule in the 14(c) chapter.

employment. In particular, states lack clarity in how various Medicaid authorities (especially 1905(a)) can be used to fund supported employment for people with serious mental illness.²

The CMS rules governing HCBS settings that support people participating in CIE prohibit using HCBS funding to provide services (including supported employment) for people who do not live in residences that comply with the settings rule even if the residence is not HCBS-funded. The impact may have the unintended consequence of limiting peoples' ability to get jobs that may provide the resources for them to move.

The federal match rate for states' Medicaid programs (Federal Financial Participation or FFP) generally is the same for all services. As a result, there is no financial incentive for states to expand opportunities for CIE and reach out to people participating in other day programs. While there are a few programs (such as the Balancing Incentive Program or BIP) that states could use to increase FFP for supported employment services, those programs do not require a focus on employment and in the case of BIP are time-limited.

Although federal rules and policy initiatives may encourage and promote CIE, only a small portion of federal funding for day services is used for CIE. Most funding is actually used for non-work day programs that are either partially or fully segregated, such as day habilitation or day treatment. States may establish different reimbursement methodologies for day services. Yet, few states use them to encourage CIE over other day programs. Some states have developed strategies to address these complexities and have created employment programs that use best and proven practices to achieve CIE. For example, Maryland's state Vocational Rehabilitation (VR) and mental health agencies share an electronic integrated system for enrolling people into Individual Placement and Support (IPS) services an evidence-based practice. It ensures that VR applicants with mental health diagnoses are referred for IPS supported employment programs.

The complexity of funding sources, absence of clear guidelines and lack of collaboration on braiding and blending funding by federal partners combine to effectively counter the federal emphasis on encouraging and promoting CIE. In addition, states generally do not use the measures that are available to develop and increase CIE opportunities. The result is poor or no employment outcomes for people with significant disabilities.

Eligibility

Rules that govern eligibility for supports through Supplemental Security Income (SSI) and Social Security Disability Insurance (SSDI) present additional barriers to employment for people with

² Some consumers and disability advocates prefer the term psychiatric disability over serious mental illness (SMI). This Report uses SMI because it is the terminology typically used in state and federal systems.

significant disabilities. The Social Security Administration (SSA) applies a strict eligibility definition for SSI and SSDI benefits. To be eligible, people must prove that they are not able to earn over a limited amount due to a permanent disability that is expected to last 12 months or more. While they must prove they are unable to more than a small amount to get needed supports; when they receive benefits, they are encouraged to work by other federal initiatives.

There are various “work incentive” programs that allow disability beneficiaries to retain more of their earnings and under certain conditions save and/or keep Medicare or Medicaid benefits while employed. These work incentives, however, vary for SSDI and SSI; are complex and difficult to understand; and many beneficiaries believe they are too risky to use.

One of these “work incentive” programs is the Ticket to Work program, whose purpose is to enable employment providers to assist SSI recipients and SSDI beneficiaries to return to work. To date the program has had mixed results. One challenge the program faces is that by law Tickets are only available to adults aged 18 to 64 who have completed the disability determination process and proved they cannot earn over a limited amount, which often results in the belief that they are “unemployable.” This requirement poses a significant barrier to youth with disabilities who want access to employment experiences during their transition years that will increase their opportunities for work as adults.

Two recent landmark laws, the Affordable Care Act (ACA) and the ABLE Act, have provisions that expand options for people with significant disabilities to save money and keep healthcare benefits while working. In addition, SSA has initiated several demonstrations (including the SSDI Benefits Offset and Accelerated (health) Benefits and Youth Transition Demonstrations) to improve employment and economic prospects for people with significant disabilities.

Despite these work incentives and other state and federal efforts to provide accurate information about the importance of work and options to retain benefits or return to benefit status when needed, people with significant disabilities still regard SSDI and SSI rules as penalizing rather than encouraging employment. As a result, federal payouts in the aggregate are in the billions of dollars, yet people with significant disabilities relying on benefits live in poverty.

Finally there is no agreement among federal agencies or in federal law on how to define most significant disability. WIOA references “most significant disability” but does not define it. RSA requires states to use uniform criteria for making a determination of most significant disability, but in applying those criteria, states have discretion and vary widely in the definition they use.

Lack of Expectation

The last and crucial barrier to competitive integrated employment (CIE) for people with significant disabilities is lack of expectation. People with serious mental illness, intellectual,

developmental and other significant disabilities are stigmatized and experience widespread bias about their prospects for employment.

Often many employment professionals, educators and people in general have low expectations about employment. People with significant disabilities may internalize these low expectations. The result is delays, discouragement or denials of employment support.

Counselors and other professionals responsible for assisting people with significant disabilities in obtaining employment are hampered by a lack of knowledge about effective practices in achieving CIE, including Supported Employment, Individual Placement and Support (IPS), Customized Employment, and Discovery. According to data provided by RSA, 25.4% of the people who apply for services from VR are closed before services are initiated. Approximately 45% of all persons that sign an individual employment plan (IPE) (meaning they are eligible and have established a vocational goal based on their strengths, interests, choices and capabilities and have received services) exit the VR system without getting a job.

While the VR program no longer allows placement in segregated employment settings (including compensation at subminimum wages), far too many people with significant disabilities end up in segregated work because there is a determination made that the person is “too significantly disabled to benefit” from VR services. This determination, combined with lack of knowledge about services that would effectively secure CIE for people with the most significant disabilities, results in either no services or acceptance of segregated employment or other day services.

In employment programs funded by VR, the Community Rehabilitation Program (CRP) (often the “employer”) decides whether a person is capable of engaging in typical competitive employment. The same CRP determines the person's productivity level and how many hours the person works each week. There is a real or perceived conflict of interest in these decisions. There is also limited oversight over these determinations. If the CRP has low expectations, people with significant disabilities either do not get access to good jobs or end up in segregated settings working for subminimum wages.

Data and Outcomes

The numerous federal agencies that fund services for people with significant disabilities: (a) have different definitions for competitive integrated employment (CIE); (b) provide different levels of support for state data collection; and (c) have different expectations (if any) for the outcome measures to be collected. They generally do not track the number of people in, and spending on, CIE and other day services (such as day habilitation, day treatment, adult day care, and psychosocial rehabilitation), particularly across disability systems (for example, intellectual and developmental disability, mental health, physical disability and aging systems).

Federal and state governments have not identified and are not collecting consistent data for CIE (for example, wages and benefits paid, hours worked, occupational classification, group vs. individual or natural supports, or average wage increase over time.) They are not tracking outcomes on the impact of CIE (for example, income levels; decreased use of healthcare services; impact on homelessness; reductions in cash benefits; taxes paid; cost benefits including wages earned versus support funding expended; increased social capital; more time spent in the community; or increased independent living).

Most states lack robust data systems that collect information on the number of people in or spending on CIE or other day services, particularly across all the disability systems. To the extent states keep data on CIE, it usually does not include regularly obtaining and analyzing information on wages and benefits earned, hours worked, or occupational classification.

There is not a uniform set of outcomes to measure progress towards the goal of quality CIE for people with significant disabilities.

- The emphasis placed on CIE by federal agencies and many states is on enabling people with significant disabilities to become competitive wage earning workers. Reporting on outcome measures would emphasize this priority.
- Getting a job is not the only important outcome, however. There are factors associated with a job that are important to people with and without disabilities; including typical work schedules, opportunities to increase and learn new skills, and opportunities for career advancement that result in better wages and greater responsibility.
- Tracking all of these outcomes through collecting data at the state and federal levels, analyzing the results and widely disseminating progress toward competitive wages and benefits, work hours and career paths demonstrates the quality of the effort and what need to be changed to improve results.

While some people with significant disabilities have jobs, many others are on wait lists with no opportunities; in non-employment programs that do not recognize their work potential, skills and abilities; or in low, subminimum, or no wage jobs with few hours and no career path. Outcome measures must be designed and implemented in order to hold systems accountable to these people too.

There are a number of national initiatives on outcome measures that may be relevant to employment and other day services, including the National Quality Forum's work on Performance Measures in Home and Community Based Services that Support Community Living and the National Core Indicators.

Research and practice has shown that innovation combined with accurate data (fidelity) on what works and what does not work leads to better outcomes. For example, the Individual Placement and Support (IPS) model for CIE of people with mental illness requires gathering data and measuring outcomes as part of implementation.

Complexity and Needs Subcommittee Preliminary Recommendations

These recommendations represent the subcommittee's current work. All assigned topics will continue to be addressed through the Final Report in September of 2016.

Funding

Federal Rules and Policy

1. Federal agencies should collaborate on identifying and developing clear policies and practices that make competitive integrated employment (CIE) outcomes a priority and guide states in applying these policies and practices. The federal agencies participating in the Advisory Committee on Increasing Competitive Integrated Employment for Individuals with Disabilities (ACICIEID) should report on progress at each full Committee meeting.
2. Implementation of the Workforce Innovation and Opportunity Act (WIOA) should require:
 - a. Intervention for youth beginning prior to age 14;
 - b. Opportunities for integrated work experience for all youth with access to needed assistive technology, job coaching and other supports for a period of not less than 24 months; and
 - c. Presumed VR eligibility for any youth considering segregated employment.
3. Rehabilitation Services Administration (RSA) regulations that implement WIOA should clarify that youth with disabilities must first apply for Vocational Rehabilitation (VR) services and, if eligible, work toward a CIE goal which can include supported employment for a "reasonable" period of time. A "reasonable" period of time should be at least 24 months, regardless of whether the youth has a supported employment Individual Plan for Employment (IPE) or a regular IPE.
4. Rehabilitation Services Administration (RSA) regulations that implement WIOA should clarify that, consistent with the definition of Supported Employment Services in the Act, that the extension on the time limit on Supported Employment Services from 18 to 24 months is in relation to the *ongoing support services* provided *after* a person has been successfully placed in a job that meets the WIOA definition of Supported Employment.
5. To the extent that it has the authority, RSA should require, advise or strongly urge state VR agencies to define people with the "most significant disabilities" to include (a) people working in segregated settings and/or being paid below the minimum or prevailing wage; (b) people receiving SSDI or SSI or at substantial risk of receiving these benefits in the future; and (c) transition age youth who have or have had an IEP or Section 504 plan in school.

6. Given that SSI/SSDI recipients are presumed eligible for VR services, VR agencies should be required to establish specific practices for contacting and encouraging SSI and SSDI beneficiaries to use VR services.
7. The Office of Special Education and Rehabilitation Services (OSERS) should direct state education and vocational rehabilitation agencies to include blueprints for designing and implementing local working agreements in existing state inter-agency agreements. The local agreements should identify how much VR financial support and school support is available to implement best practice transition programs that include integrated work experience after age 18 through internships, apprenticeships and similar experiences. These strategies will help students to leave transition programs with a job, a solid portfolio of work and/or an effective plan for additional education leading to a job. State education and rehabilitation agencies should report results of state and local efforts to OSERS.

Multiple Funding Resources

8. Federal agencies should collaborate to issue guidance to states on how to use, braid and/or blend their respective funds to support best practices and/or evidence-based models that result in CIE. In the interim, information should be published about states that are successfully using federal funds to support best practice or evidence-based CIE.
9. Federal agencies should issue guidance on models and payment methodologies that result in CIE and increase the incentive to produce CIE outcomes.
10. The Center for Medicare & Medicaid Services (CMS) should issue guidance on how states can use Medicaid authorities to fund services resulting in and supporting CIE for people with significant disabilities, including use of 1905(a) state plan services to fund these services for people with serious mental illness.
11. Federal financial support and incentives should be made available to help people move from segregated day programs (such as sheltered workshops, day habilitation and day treatment) to CIE. Such support could be modeled after programs like the Medicaid Infrastructure Grants, Money Follows the Person or Balancing Incentive Programs. Such funds should help build capacity to transition people from segregated day programs to CIE or to provide for enhanced federal financial participation (FFP) to encourage expanding CIE. These efforts should be tied to specific, measurable outcomes in the reduction of the number of people in segregated day programs and increases in CIE outcomes.
12. CMS should provide technical assistance to states and managed care organizations (MCOs) on the importance of CIE and how to build the competency to support CIE for people with significant disabilities through their Medicaid programs.
13. CMS should mitigate the policy that prohibits individuals from receiving CIE services if they do not live in settings that meet the Home and Community-Based Service (HCBS) requirements.

14. Federal and state agencies should ensure technical assistance resources are available to increase competence and capacity to find and connect people to jobs and careers. Technical assistance is essential to build capacity in current and new programs and to improve the system's ability to deliver best practice and evidence based models of employment support.

Eligibility

15. SSA, HHS and other relevant federal agencies should collaborate to identify and carry out immediate and long term steps to eliminate beneficiaries' fear that they will lose needed benefits by working. These steps may include wide dissemination of information that has been reviewed for clarity by people with disabilities about work incentives; ready access to benefits counselors; and developing best practices for all counselors to present information and options in ways that are clear, simple, and feel safe to beneficiaries so they can make decisions regarding employment based on accurate information.
16. In developing recommendations for the Final Report (September, 2016) about the best strategies to alleviate concerns about loss of benefits, the Committee requests that SSA and other relevant federal agencies provide a report on best practices, including the results of the different SSA demonstration projects pertaining to employment and loss of benefits. The report should include recommendations made by people who participated in any of the projects.
17. Congress should authorize the expansion of the Ticket to Work program to the children's SSI program. While many youth receiving SSI go on to receive SSI as adults, access to the Ticket is not available until after an adult redetermination process has already taken place, resulting in lost time. Expansion will enable school districts and other organizations that support youth employment to become employment networks and increase the likelihood that young people will have access to employment experiences that are typical to young people without disabilities and will improve their likelihood of successful employment as an adult.

Lack of Expectation

18. Each federal agency should inform and educate agency personnel (including related state and regional agency personnel) about use of best practice and evidence-based employment programs to obtain jobs for people with significant disabilities. Knowledge of successful closures and access to best practices in CIE will improve the ability of employment professionals to link people to good jobs and improve employment outcomes.
19. OSERS should widely disseminate information about effective transition programs that assist students to leave school with jobs or have effective post-school employment plans that will lead to jobs.
20. RSA should review states or programs that are effectively moving people to CIE from segregated settings and/or who are being paid below the minimum or prevailing wage. Information about these states or programs should be widely disseminated.

21. RSA should analyze the data it collects on the individuals whose cases are closed before services are rendered and the reasons for closure. RSA should use its analysis of the data to determine how to reduce the number of eligible individuals that do not receive services.
22. Determining peoples' capacity for CIE should be made by an entity separate from the Community Rehabilitation Program (CRP) serving the person. There should be more oversight of these decisions to ensure CIE is available.
23. The business community should be engaged as a major stakeholder in the employment of persons with disabilities. As partners they can provide on-site resources such as options for employment and advice on best practice marketing of employment. They can provide business-to-business leadership in presenting the case for employing, retaining and promoting persons with significant disabilities.
24. Resources should be available to states to convey the message of why CIE is important to people with disabilities. They, their families and state level advocates should direct educational campaigns about employment and its importance.

Data and Outcomes

25. The federal government should develop and use a standard definition for competitive integrated employment (CIE) across federal agencies. The definition should be based on the Centers for Medicare & Medicaid Services (CMS) Home and Community Based Services (HCBS) definitions and the Workforce Innovation and Opportunity Act (WIOA) definition of CIE. The standard definition of CIE should be consistent with the goals of WIOA and the Americans with Disabilities Act (ADA).
26. There should be consistent CIE outcome measures used at the federal and state level, including spending on employment and other day services, number of workers, wages, benefits, hours worked, and occupational classification. These data should be based on the standard definition of CIE recommended above. Information from the national initiatives on outcome measures, other labor force surveys and WIOA implementation activities should inform this effort.
27. States should collect outcome data at a state, local and agency/provider level. These measures should include comparative hospitalizations, emergency room use, impact on homelessness, taxes paid, reduction in cash benefits, cost benefit (wages earned versus support funding expended),
28. Outcome data should be widely disseminated so that people with disabilities, their families and other stakeholders can make informed decisions about employment; where work may be available; and which agencies are most effective in supporting people to obtain CIE.
29. When states use Medicaid Authorities to deliver employment services, CMS should provide guidance and technical assistance in incorporating, implementing and tracking quality and outcome measures for CIE and other day services. Quality measures should be included as a state requirement in Home and Community Based Services (HCBS) programs or managed

care and other Waiver authorities. Quality and outcome measures for any employment service offered should be based on the consistent outcome measures recommended above.

30. States should collect information regarding spending and number of people in CIE and other day services and the outcomes from those services, as described above. States should report these data to the federal government on a regular basis. Recognizing that state data systems are expensive to create and vary in sophistication across states, the Advisory Committee on Increasing Competitive Integrated Employment for Individuals with Disabilities (ACICIEID) will attempt to explore best practice and cost effective models of employment data collection for the Final Report, September 15, 2016.
31. The federal government should make state and national spending and outcome data widely available. The data should include, at minimum, the number of people employed in competitive integrated employment at minimum wage or higher, the number of people employed at a subminimum wage, the number using other day services, and spending on employment versus other day services. The federal government should also collect and publish state outcome data (see recommendation above) as well as information regarding the benefits of employment and its positive impact on healthcare costs and social services for people with significant disabilities.
32. CIE programs should participate in fidelity processes to improve practice in connecting job seekers with good jobs that fit their abilities and interests and that result in good wages, benefits and working hours. The ACICIEID will review current practice with regard to fidelity in CIE and attempt to recommend best practice in the Final Report, September 15, 2016.