

CRITICAL INDUSTRY ISSUES:

A



DEEP
DIVE

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State Use Program
Empowerment Through Employment

Overview (The Dive)

1. Rhode Island Consent Decree
2. Workforce Investment and Opportunity Act
3. Wage and Hour
4. CMS Final Rule



...Setting the Precedent

RHODE ISLAND CONSENT DECREE



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Rhode Island Consent Decree

- DOJ investigated under Title II of the ADA
- Olmstead Decision

“An individual with a disability must be served in the most integrated setting appropriate to their needs”



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Rhode Island Findings by the DOJ

- Over-reliant on sheltered work
- Unnecessary segregation in facility-based settings
- Few opportunities to leave the setting
- Students at risk of segregation



Decree – Targeted Groups

- People currently in Facility-based Services
- People who recently left school
- Transition-aged students (14-21)



Decree - Actions

- Eliminates funding for new facility-based work enrollment
- Development of Career Development Plans and referral to VR:
 - Transitioning students (January, 2015)
 - Facility-based work consumers (January, 2016)



Decree – Actions (Cont.)

- 10 Year Rebalancing Plan; Impacting 3,250 Individuals
 - Development of Transition Programming, leading to community jobs
 - Integrated Employment Placements for those in Facility Setting

Target Group	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	Total
Transition	50	On-Going Effort									
Sheltered Workshop		50	50	50	50	100	100	100	100	100	700
Day Services		25	25	50	50	75	100	200	200	225	950



Decree Actions (cont.)

- The target Population will receive integrated (community based) day services whenever not working, rounding to a full 40 hour week
- The state will provide outreach, information, and funding to ensure a successful transition





The Rhode Island Consent Decree could potentially become the model For correcting over-reliance on facility-based services.

...5 Years in the Making

WORKFORCE INVESTMENT AND OPPORTUNITY ACT



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Changes that Impact You

- Clarifies priorities; New definitions
- Advisory Council
- Creates requirements for transitioning students
- Creates rules for entering sub-minimum wage employment



WIOA Priority

- The primary objective is to increase competitive integrated employment
- Competitive Integrated Employment:
 - Same wages as non-disabled workers
 - Located where there is interaction with non-disabled
 - Opportunities for Advancement



Advisory Committee and Transition

- Advisory Committee
 - Increasing Outcomes
 - Decreasing 14c Employment/Increasing Oversight
- Transition Services
 - States must set aside 15% of VR Funding
 - Requires career counseling toward CIE



Sub-Minimum Wage (Admission)

- Admission to a sub-minimum wage job is restricted, unless:
 - Grandfather Clause – Current employees
 - Age 24 or younger must go through VR
 - All ages must have career counseling
 - With recommendations for employment other than sub-minimum wage



Sub-Minimum Wage (Ongoing)

- All people working in a sub-minimum wage job must receive counseling:
 - From the State: Career options and referrals
 - From the employer: Self-advocacy, self-determination, peer training opportunities
- Every 6 months for first year, then annually
- Parent/Guardian participation, if applicable



Compliance



Documentation of
counseling, outcomes,
and pre-requisite
admission steps will be
critical!



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New information on an old topic

WAGE AND HOUR



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HR 831 – Fair Wages Act

- Full Name: Fair Wages for Workers with Disabilities Act of 2013 (yes, 2013)
- 90 co-sponsors, including 2 from Indiana
- Cites reason for bill is:
 - 14c is outdated
 - Advancements in VR
 - Potential for exploitation



HR 831 – Fair Wages Act

- Immediately discontinue issuing 14c certificates
- Revoke existing certificates
 - For-Profit: 1 year
 - Public/Governmental: 2 years
 - Non-Profit: 3 years
- Repeal 14c in 3 years



Executive Order 13658 – Minimum Wage

- Issued by President Obama on Feb. 12
- Establishes minimum wage for Federal Contractors
- Begins on January 1, 2015
- Comment Period is open
- Preliminary rules have been written



EO 13658 Provisions

- Requires that people who are employed by a contractor or subcontractor to the federal government be paid \$10.10 as a minimum wage
- Requires annual adjustments to that wage, as determined by the Consumer Price Index
- Applies to 14c certificate holders (specifically mentioned)
- Allows for enforcement of these wages



What we have all been talking about

CMS FINAL RULE



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Main Components

- Defines & Describes Home and Community Based settings
- Requirements for person-centered planning
- Allows States to combine waivers
- Allows a 5-year renewal cycle
- Permits payments to some 3rd parties



Community-Based Definition

- Is integrated and supports full access to the community, to the same degree as individuals not receiving HCBS;
- Ensures the individual receives services in the community to the same degree of access as individuals not receiving Medicaid home and community-based services



Community-Based Definition (cont.)

- Provides opportunities to seek employment and work in competitive integrated settings, engage in community life, and control personal resources
- Is selected by the individual from among setting options, including non-disability specific settings and an option for a private unit in a residential setting
- Ensures right to privacy, dignity and respect, and freedom from coercion and restraint;



Community-Based Definition (cont.)

- Person-centered service plans document the options based on the individual's needs, preferences; and for residential settings, the individual's resources
- Optimizes autonomy and independence in making life choices;
- Facilitates individual choice regarding services and supports, and who provides them.



Community-Based Definition (cont.)

And,

APPLIES TO ALL HCBS SERVICES,
INCLUDING DAY SERVICES



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Getting from here to there

- States must create a transition plan within 120 days of first waiver submission
- Must have 30 day comment period (going on now)
- Must identify areas of compliance/non-compliance
- “Heightened Scrutiny”
- Awaiting guidance for non-residential



CMS Transition Toolkit

Contains

- Q&A Document
- “Settings that Isolate” (Red Flags)
- Exploratory Questions
- Compliance Flowchart



Red Flags:

- Designed specifically for people with disabilities
- The individuals in the setting are primarily or exclusively people with disabilities and on-site staff provides many services to them.
- The setting is designed to provide people with disabilities multiple types of services and activities on-site.



Red Flags:

- 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.



Red Flags:

- 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.



Was the setting chosen by the individual?

- Choice offered of available options?
- Was individual given opportunities to visit other settings?
- Does the setting reflect the individual's needs and preferences?
- Can the individual identify other providers?
- Does the individual express satisfaction with their provider?
- Does the individual know how and whom to make a request for a new provider?



Full access to the community?

- Are HCBS recipients living/receiving services in a separate part of the setting than people not receiving HCBS services?
- Is the setting around other residences, retail businesses?
- Is the community traffic pattern consistent (people don't cross the street to avoid the setting)
- Are visitors present? Restricted to specific times? Posted visiting times?
- Evidence visitors are regularly there?
- Is there a restricted visitor's area?



New York's Transition Plan

- Released in April, 2014
- One of the first transition plans
- NY was already making moves, due to a significant fraud finding, but included this in the plan
- No new admissions to sheltered work
- Place 50% in competitive employment within 6 years.



Indiana Transition Plan

- Much more detailed and thought out (naturally)
- Uses NCI as a basis to determine compliance
- Five Phase Plan
- Comment period is open until August 7



5 Phases of Indiana Transition Plan

- NCI data utilized to identify potential areas of concern
- Survey sent to providers to gather information on areas that may be out of compliance with HCBS definition
- Compliance data will be shared with stakeholders and feedback obtained
- An inventory will be developed, listing areas of compliance and non-compliance
- Action plans will be developed to bring Indiana into compliance



Pre-Vocational Services

- No Official Guidance from CMS
- Very large number of people served in facility-based services
- CMS suggested reviewing the 2011 Bulletin as a first step.



From the 2011 CMS Bulletin

“Waiver funding is not available for the provision of vocational services delivered in facility based or sheltered work settings, where individuals are supervised for the primary purpose of producing goods or performing services. The distinction between vocational and pre-vocational services is that pre-vocational services, regardless of setting, are delivered for the purpose of furthering habilitation goals such as attendance, task completion, problem solving, interpersonal relations and safety, as outlined in the individual’s person-centered services and supports plan”



From the 2011 CMS Bulletin

“Services are expected to occur over a defined period of time and with specific outcomes to be achieved, as determined by the individual and his/her service and supports planning team through an ongoing person-centered planning process.”



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From the 2011 CMS Bulletin

“Prevocational services should be designed to create a path to integrated community based employment for which an individual is compensated at or above the minimum wage, but not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by individuals without disabilities”



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Coming up for air...

CONCLUDING REMARKS



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Common Themes

- Top priority is competitive integrated employment
- Transitioning Students
- Sub-minimum wage employment should never be an automatic placement
- New and innovative models will need to be developed



What Now?

- Facility-based Employment will require change
- Indiana has a track record of finding solutions
- There are opportunities to be had
- State Use Law is not Changing



Access, Options, and Choice

- Change is inevitable
- All employment options should continue to be made available
- Consumer choice must be protected
- The State Use Program results in jobs
- Questions? Call us!



Diving back in...

DISCUSSION GROUPS



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What do *you* think?

- We will provide groups with questions
- Assign a scribe and someone to share your conclusions with the larger group
- Please take about 30 minutes to discuss



Discussion Questions

1. What are some opportunities that these regulations present?
2. What are the biggest barriers to realizing these opportunities? To complying/implementing the new legislation?
3. What can INARF/Smart Partners Alliance do to assist?





Questions?

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