

# Beyond Segregation: Employment Works!!

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## After Institutionalization

- Before there were services, or programs, or supports, families came together to support each other in keeping children home and out of institutions, providing daycare and recreation, and play for kids who were not allowed in School.
- No one questioned the need for segregation at that time because there was an enormous misunderstanding of capability of people with disabilities [**“defective, slow of mind, misshapen, spastic”**]

# Recent History of Segregated Work

- Deinstitutionalization in the 70's the result of court decisions and new laws led to the development of day programs nationally:
- Rehabilitation Act of 1973
- Public Law 94-142 (1975)
- Americans with Disabilities Act - 1990

# The Start of New Thinking??

- “there are better ways – people with disabilities can learn and live and laugh and realize the worth of life”
- “extended employment programs” began to flourish also known as sheltered workshops, sheltered employment, facility-based programs and community rehabilitation programs
- people (with disabilities) will learn work and social skills in this environment to prepare them for the competitive labor market

## How long does it take?

Sheltered workshops say they prepare individuals for competitive employment. Yet many have been there for 10-15-20 or more years.

“I don’t know how long it takes but that seems a bit excessive.”

Segregated Employment – A Bridge to Nowhere...

# SEGREGATED & EXPLOITED

THE FAILURE OF THE DISABILITY SERVICE SYSTEM TO  
PROVIDE QUALITY WORK



***A Call to Action!***

NATIONAL  
**DISABILITY RIGHTS**  
NETWORK

Protection & Advocacy for Individuals with Disabilities



# Changing the conversation

“We have met the enemy and  
he is us”

**People with disabilities want to go to work !  
They have told us so**

*According to law public policy states -- Nations proper goals are to assure equality of opportunity, full participation, independent living, and **economic self-sufficiency** for such individuals;*

# National Community Integration Policy

➤ Rehab Act 1973 (most recently amended July 2014)

Presumes that all individuals, including those with the most significant disabilities **are capable of engaging in an employment outcome** if given the proper services and supports. Further it requires individuals with the most significant disabilities be given a priority for services

➤ DD Act (1984)

Addressed the changing needs and expectations of individuals with developmental disabilities to protect their civil and human rights; and to **promote their maximum potential** through increased independence, **productivity,** **and integration**





## Community Integration Policy continued

- ADA (1990) – ORIGINAL language
- society has tended to **isolate and segregate** individuals with disabilities and such **forms of discrimination** continue to be a serious and pervasive social problem
- have been faced with restrictions and limitations resulting from stereotypic assumptions not truly indicative of the individual ability

### ADAA (2008)

- census data, national polls, and other studies have documented that people with disabilities, as a group, occupy an inferior status in our society, and are **severely disadvantaged** socially, vocationally, **economically**, and educationally;

## Community Integration Policy

### ➤ Olmstead (1999)

the Supreme Court held that the unjustified institutional isolation of people with disabilities is a form of unlawful discrimination under the ADA

### ➤ TWWIIA (1999)

Provided healthcare and employment preparation and placement services to individuals to enable them to reduce their dependency on cash benefit programs. People with disabilities can work.

# Current Employment Statistics

- Seven of every ten individuals with disabilities who want to work remain unemployed and out of the workforce
- According to the American Community Survey, four out of five persons with disabilities requiring significant supports are not considered part of the labor force
- As of December 2018, 30.4% of individuals with disabilities were participating in the work force (74.1% for non-disabled)

# Governing Labor Law - FLSA

How has segregation and subminimum survived?

The Fair Labor Standards Act (FLSA) governs four major areas of the employer-employee relationship:

- Sets the federal minimum wage.
- Sets standards for when overtime compensation must be paid.
- Restricts child labor.
- Establishes requirements for equal pay for equal work between the sexes.

## FLSA exception and section 14 ©

- Special Minimum Wage for Individuals with Disabilities
  - Allows employers with a Section 14(c) Certificate from the Department of Labor to pay less than the prevailing wage for a job to individuals with disabilities, *even if the wage would fall below the federal minimum wage.*
  - The employee must have a disability which interferes with the earning or productive capacity of the individual, and the wage must be based on the individual's productivity.

• Meaningful employment is an essential piece in establishing and maintaining dignity and well being and well as allowing access to the same opportunities afforded all members of society **yet** the majority of individuals with significant disabilities continue to be served in segregated employment or non-work services provided by day programs known as “extended employment programs” also referred to as sheltered workshops, sheltered employment, facility-based employment, or community rehab program.



## Intent of section 14 ©

To *honor* employing workers with disabilities

Specifically wounded veterans returning from war

(It was during the industrial revolution)



# Work Segregation is Damaging

- Isolation hinders proper development of socialization skills, self-esteem, and work skills
- It denies ability to CHOOSE the type of work
- Individuals are placed in jobs that often require a skill set that they will never master
- Lack of skills misinterpreted as a non-compliant response to a particular work assignment
- there continues to be instances of exploitation, abuse and neglect



## Article in NY Times 10/2/16

- <http://www.nytimes.com/2016/10/01/us/bias-suit-disabled-workers-meat-plant.html?>
- several older men with intellectual disability were found living in virtual segregation in a seedy bunkhouse
- disability discrimination lawsuit against Work Services, Inc.
- failed to pay the men federal minimum wages and overtime.
- illegal and hostile work environment, “exploiting the trust of vulnerable workers”



# Contradicting National Policy

## Laws Conflicting with National Community Integration Policy

- Javitz-Wagner-O'Day Act (1971) now called Ability One/Source America
- FLSA Section 14(c)
- State “use” laws

## Enforcement

- Agencies Bungle Compliance and Quality Reviews
- DOL Did Not Properly Oversee 14(c) program
- No Implementation of IDEA Transition requirements
- School /VR Agencies Fail to Meet Their Transition Obligations

## Sub-minimum Wage Reinforces a Life of Poverty

- Multiple studies confirm that most employees in sheltered workshop earn less than \$2 per hour
- Congregate facilities do not utilize AT – or other productivity enhancers
- There are evidence based practices that support full inclusion in employment including person centered planning; supported employment, and customized employment to name a few
- Workshops that do pay the minimum wage often do not have enough work to employ individuals full time and still do not match interests to jobs.



# Sheltered Workshops Lead Nowhere

- While sheltered workshops say they offer pre-employment and pre-vocational skills, these programs most often only prepare people with disabilities for long term sheltered employment.
- \$1 was spent on supported employment compared to the \$4 utilized for segregated day programs
- Part time work with no opportunity for advancement with permanent reliance on public benefits and subsidies
- **Bigotry of Low Expectation**

## Sheltered Workshops Profit Greatly from the Status Quo

- According to a study by the GAO, sheltered workshops are largely funded as follows:

- 46% from State and County Agencies

- 35% from Production Contracts

- 9% from Retail Sales

- 2% from Donations

- 1% from Investment Income

- 7% from Other Sources

# Funding

## •Medicaid

- Home and Community-Based Services Waivers (HCBS)
- Medicaid Rehabilitation Option
- Targeted Case Management

## •Vocational Rehabilitation

## •Social Services Block Grants

## •Local Taxes

## Food for thought

- Is segregated employment and sub-minimum wage forms of discrimination?
- Is segregated employment institutionalization? Is Olmstead only about where people sleep?
- Should people with disabilities have to “earn” the right to employment related services?
- Is there a disability industrial complex that loses sight of it’s aim and focuses on perpetuating itself? (Dale Dileo)



# Persistent Job Killer Concepts

- Readiness (how many of us are ready for our first job?)
- Realistic (who are the reality police?)
- never – sets a low bar and lowers expectations



# Solutions are in changing the message

- Receiving benefits is not a barrier to employment
- Hours of work and earnings don't need to be limited
- You can go to work and necessary benefits can be maintained
- Resources & experts are available
- Your concerns are legitimate BUT  
“I believe you can work, and there is a job out there for you that's a good match for your skills and interests.”

## •Quote by Retired Senator Harkin

“the days of Students with disabilities leaving school, ***poorly educated*** without employment experience and ***no job prospects***, living lives of ***poverty*** and too often ending up in **segregated** day programs and **subminimum** wage employment **NEED** to come to an end1”

## Where are we now

- **Department of Justice (less now than last administration)**
- **Department of Labor – Wage and Hour enforcement**
- **Rehabilitation Services Administration /Office of Special Education Programs**
  - **Pre-employment transition services**
  - **Section 511**
- **Center for Medicare/Medicaid Services - HCBS rules - integrated day activities**



# Rooted in Rights

- <http://www.rootedinrights.org/videos/employment/bottom-dollars/>

• Do we want all people to have a shot at a job for fair pay in their own communities, or do we want some people to be separated, exploited and robbed of their chance to seize the American dream for themselves?

## Information

- Segregated and Exploited - A Call to Action

<http://www.ndrn.org/en/component/content/article/24-hompagestories/261-report-finds-exploitation-at-work.html>

- Real Jobs for Real Pay – The Riot: issue 29 July 2011 [www.theriotricks.org](http://www.theriotricks.org)

- SABE position statement on ending subminimum wage employment

<http://sabeusa.org/?catid=17>

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