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## Upcoming Changes to DDD's Policy on Funding of Sheltered Workshops

The Division of Developmental Disabilities (DDD) has begun to phase-out funding for services provided in sheltered workshop settings (also referred to as "extended employment" or "sheltered employment"). As part of the first phase of this reform, the Supports Program, a new program in development at DDD that is expected to begin in FY2014, will not provide funding for services in these settings. Additionally, funding for these services will be phased-out of DDD's Community Care Waiver (CCW) over the next twelve to eighteen months.

- 1. Rationale for the Policy Change:** There are several compelling arguments for ceasing DDD funding for workshops.
  - **Making "Employment First" Real:** New Jersey became an *Employment First* state in April of 2012, meaning that "competitive employment in the general workforce is the first and preferred post education outcome for people with any type of disability." The CRP community applauds this shift in focus for people with disabilities. We have advocated for the employment of people with disabilities for decades, and currently place nearly 3,000 people into employment in the State of New Jersey. Employment first, however, means that an individual should be given every opportunity to work in competitive employment first before being put into another type of program. Employment First does not mean community integrated Employment ONLY. This policy shift clearly aligns with the national movement toward improving employment outcomes for people with disabilities and is critical to the State's ability to make meaningful change in employment outcomes for people with developmental disabilities. A recent report published by the Institute for Community Inclusion (ICI) indicates that only 14% of individuals served by NJ's DDD are served in integrated community employment services. This figure is well below even the low national average of 20%. Washington State, which discontinued its public funding of sheltered employment in 2006 in favor of job placement expectations in the workforce for all individuals with disabilities, now has the highest percentage of individuals in integrated employment services – at 89%. According to the Community Employment Alliance the unemployment rates for people with disabilities in Washington State is 65 to 70%. Given the success being experienced in other states in terms of community employment services, it is clear by these figures that there is plenty of opportunity for New Jersey to reduce its reliance on facility-based employment programs, We agree that over reliance on facility based programs is a poor way to assist people with disabilities toward their goal of employment. and increase the number of individuals in community employment no other entity in the state produces as many placements as facility based programs in the state of New Jersey. Not allowing the use of sheltered workshops as part of pre-vocational services is a step towards shifting the figures in New Jersey towards becoming one of the national leaders in community employment services.
  - **Federal Guidelines & Funding Limitations:** In September 2011, the federal Centers for Medicare and Medicaid Services (CMS) issued guidance which stated that Medicaid waiver funding may not be used for vocational services delivered in facility based or sheltered work settings, where individuals are supervised for the primary purpose of producing goods or performing services. This statement is absolutely correct. It does not, however, address the reason that work is done in sheltered workshops. Per CMS Information Bulletin from Cindy Mann, JD, the director of CMCS, Pre-Vocational Services include activities that are not primarily directed at teaching skills to perform a particular job, but at underlying Habilitative goals. (pages 7- 8). The contracts that facility based programs have with DDD are called "Habilitation" for this very reason. Work is utilized as a tool to increase attention span, motor skills, interpersonal relations with co-workers, etc, as outlined in this bulletin.

In addition, they clarified that prevocational services must be time limited, the regulation does state they must be time limited, and each individual is assessed every six months as to their readiness. There is no specification for what the time limitation should be... conform to specific requirements regarding clear employment goals, and may not consist of vocational services in sheltered workshops and similar settings. Again, this is correct, but is a misapplication of the standard. Vocational services refer to work that is done for the production of goods and services. This work is done for the purpose of Habilitation. The U.S. Department of Justice (DOJ) has also recently stated its belief that Olmstead applies to employment and that placement in a sheltered workshop and similar facilities may be a violation of Olmstead. This statement is factually correct, but shows a misunderstanding of the Olmstead ruling. Yes, placement in a workshop MAY be a violation of Olmstead if the individual does not want to work in that setting and they are capable of working competitively. Olmstead addresses the expressed desires of the individual, it is not a net to be cast over every participant. Finally, the DOJ Civil Rights Division has been increasingly vocal regarding the obligation of states to support individuals to succeed in community employment and have come out with statements or taken some form of action on the subject in four states already. Again, this is true, however in the Department of Justice report it is clearly stated at the end of the report that the issue is with the OVER-RELIANCE on sheltered workshop settings that was the issue, and further states in the Oregon ruling, for example, that there is a place for sheltered workshops in the lives of people with disabilities.

- **The Voices of People with Developmental Disabilities:** The most prominent self-advocacy organization on the national level for people with developmental disabilities, Self-Advocates Becoming Empowered (SABE), has specifically called for the closure of sheltered workshops. They state clearly and unequivocally: **“We have been prepared enough. Get us real jobs. Close sheltered workshops.”** Sheltered workshops across the nation are not the same as workshops in the great State of New Jersey, which has been focused on the placement of individuals with disabilities into competitive jobs for more than 3 decades. Other states do not have the track record that New Jersey, which placed 3,000 people, last year, has. We have Self-Advocates here in New Jersey who will argue that Sheltered Workshops should remain open because that is where they choose to work.

2. **Misperceptions about this Policy Change:** The following are some common misperceptions about this upcoming change in DDD’s policy.

- *“People who are currently attending sheltered workshop programs will have no place to go and nothing to do once the funding for this service ends.”*
- No one, to our knowledge, has promulgated any such statement during this discussion, nor would we ever leave the people we serve without options. Our statement, plain and simple, has been that the workshop program, chosen by that individual and their family, is the optimum placement for that individual at that time.

**Fact:** People currently attending sheltered workshop programs will be able to access a wide array of other supports and services in lieu of sheltered workshops. In fact, DDD has begun to significantly expand its employment-related services. For example, Supported Employment, Prevocational Training, and Career Planning services will be available to assist individuals who are currently in the sheltered workshops to identify career paths and job matches and find and maintain employment. All of these services are already currently offered to participants of Sheltered Workshops as part of their program. In addition, CARF requires that on a bi-annual basis each individual’s status in their program is assessed and the offer for competitive placement is made. On a practical, day to day basis, any individual in most of the facilities can request that they receive job placement services. In addition Community-Based Supports, Community Inclusion Services, and Day Habilitation services are among the other supports and services that will be available for individuals who are currently in sheltered workshops. These additional day services and supports, which can be utilized to supplement gaps in supports and services during times when someone may not be working or is unable to pursue employment, can also assist in maintaining the social relationships that have been established at the workshops, provide support in accessing one’s neighborhood, and provide education and training to acquire skills and experience to increase participation in the community. Facilities believe that many of these skills are best learned through the value of productive work. The loss of the choice for paid work activities in most settings, and being forced with no informed choice or consent in community integration violates CMS and ADA rules regarding person centered planning and least restrictive environment appropriate.

- *“Providers who currently run sheltered workshops are going to go out of business without this funding.”*

**1. No one has made any such statement. In fact, the opposite is true, as we are all aware that there are many services that we could offer, and that some of the choices provide much higher reimbursement rates.**

**2. Sheltered workshops in the state of New Jersey are complex, multi-fund operations for whom the percentage of people served with Intellectual and Developmental Disabilities is much smaller than the percentage of individuals served through DVR, Prisoner Re-entry, CBVI, Veterans Administration, and local school systems.**

**Fact:** While sheltered workshop providers may have to “unbundle” their current services and/or adjust their service delivery model, many of the services and supports that will be funded through DDD are already being provided under the umbrella of a sheltered workshop. In fact, group placements and mobile work crews that provide services to businesses in the community can continue to be funded as Supported Employment (Small Group Employment Support) services; educational and work experiences geared toward the development of “soft” skills (i.e. following directions, communicating with supervisors/co-workers/customers, basic computer skills, etc.) can continue to be funded as Prevocational Training services; and the supports needed to assist someone in identifying a career direction and developing a plan to achieve competitive employment in the general workforce can continue to be funded as Career Planning services. **This “fact” is not universally true for two reasons: one, the new regulations written by DDD state that the aforementioned development of “soft skills” may not be funded in a sheltered workshop; and, two, many of the individuals who work in Mobile Crews and Enclaves work at commensurate wages under Section 14c of the Fair Labor Standards Act. DDD has stated that it will not fund programs in which people are paid through this method.**

- *“Sheltered workshops are going to shut down suddenly.”*
- **No one has made such a statement while this issue has been under discussion. Even if DDD does stop funding sheltered workshops in New Jersey, they will not shut down.**

**Fact:** DDD funding for sheltered workshops will end gradually and in three phases, beginning with people who are newly entering the DD system, continuing with individuals as they are rolled into the Supports Program during FY2014, and ending with individuals on the Community Care Waiver (CCW). This process will provide transition time for sheltered workshop providers to convert their business models. Additionally, DDD is not the only (or the primary) source of funding for sheltered workshops in the State. Providers can continue to access other resources to continue these services.

- *“Sheltered workshops prepare people with disabilities for competitive employment in the general workforce.*
- **Again, this information and the attendant statistics are taken from national information, and are not based on the placement rates in the state of New Jersey. 3,000 people placed into employment year in and year out represents a significant placement rate. As far back as the 1980’s DVR published a “newsletter” called “Facilities Facets”. If one were to read one of these newsletters one would see placement rates by the sheltered workshops of some 700 to 800 annually, and this in a time when no one paid for job placement. Sheltered workshops placed people into employment because it was the right thing to do. They continue to place people with disabilities.**

**Fact:** There is increasing evidence regarding the lack of efficacy of sheltered workshops in preparing individuals for employment in the community. In their 2012 report on Subminimum Wage and Supported Employment, the National Council on Disability noted that “according to the 2001 investigation by the Government Accountability Office (GAO)... only approximately 5% of sheltered workshop employees left to take a job in the community” and that “[r]esearch indicates that those who had previously been in sheltered workshops had higher support costs and lower wages than comparable individuals who had never been in sheltered workshop settings.”

- *“Workshops are a more cost-efficient way of providing transitional employment experiences for people with disabilities”*
- **The “Fact” below in no way addresses the “Myth” stated above. There is no question that workshops are a tremendously cost effective way of providing transitional employment services. The fact is they cost anywhere from \$5,000 to \$15,000 less than other services available.**

**Fact:** Although sheltered workshop providers are understandably worried about this reform, according to a 2001 national research study, “[r]esearch indicates that although the process is often difficult, successful conversion

results in people with disabilities being happier and receiving better services, agencies having better community and employment relations, increased staff satisfaction, and more cost efficient services.”