

FACT SHEET ON PROPOSED AGREEMENT OVER OREGON SUPPORTED EMPLOYMENT

BACKGROUND

The U.S. Justice Department announced on Sept. 8, 2015, that it has entered into a proposed settlement agreement with the state of Oregon that will resolve alleged violations of the Americans with Disabilities Act (ADA) and will provide relief that will impact approximately 7,000 Oregonians with intellectual and developmental disabilities (I/DD) who can and want to work in typical employment settings in the community. The proposed agreement resolves a class action lawsuit, filed in January 2012 by private plaintiffs, in which the department moved to intervene in March 2013. The parties' proposed settlement agreement must still be approved by U.S. Magistrate Judge Janice Stewart of the District of Oregon, who is presiding over the lawsuit.

FINDINGS ON EMPLOYMENT SERVICES IN OREGON

In Oregon, employment services for individuals with I/DD include facility-based sheltered workshops, integrated supported employment and related services, and group employment. Supported employment services are individualized services that assist a person with I/DD to work in integrated employment and related employment services are services provided in conjunction with or after the completion of supported employment services in order to enable an individual to maintain or advance in integrated employment. The state plans, funds and administers these services through provider agencies. A sheltered workshop is a segregated facility that exclusively or primarily employs persons with I/DD. Sheltered workshops are usually large, institutional facilities in which persons with I/DD have little or no contact with non-disabled persons besides paid staff. People with I/DD typically earn wages that are below minimum wage at sheltered workshops. By contrast, supported employment and related employment services allow people with disabilities to work in typical jobs in the community at competitive wages. These services enable individuals to access jobs in typical work settings where they can interact with non-disabled coworkers, customers and peers, and enjoy the same benefits of employment as their non-disabled peers, like competitive wages, employee benefits and the opportunity to advance.

Individuals with I/DD that Receive(d) Sheltered Workshop Services: In Oregon, approximately 3,900 persons with I/DD have received employment services in sheltered workshops since the initiation of the lawsuit. After placement, individuals with I/DD tend to remain in sheltered workshops for an average of between 11 and 12 years, and some individuals remain as long as 30 years. At the time of the department's complaint-in-intervention, in March 2013, the average hourly wage for sheltered workshop participants was \$3.72, and over 52 percent of participants earned less than \$3.00 per hour, while some individuals earned only a few cents per hour. In 2012, the department found that Oregon significantly over-relied on segregated employment service settings to the exclusion of integrated service options. For example, as of March 2012, only 16 percent of individuals with I/DD received any services in individual supported employment and only 10 percent of their total hours were in integrated employment settings.

Youth At-Risk of Entering Sheltered Workshops: Hundreds of youth with I/DD each year have left Oregon schools and entered sheltered workshops. The department found that those young people were not given timely or adequate services to allow them to make informed choices about transitioning to work in integrated settings and lacked access to the services and supports necessary to prepare them for integrated employment. In some instances, students with I/DD were instead prepared for the tasks typically performed in sheltered workshops, whether by performing mock-sheltered workshop activities in school classrooms or by participating in adult sheltered workshops as part of the school curriculum.

OREGON'S VOLUNTARY REMEDIAL EFFORTS

Following the plaintiffs' and department's lawsuit in *Lane v. Kitzhaber*, Oregon Governor John Kitzhaber issued Executive Order 13-04 on Apr. 10, 2013. Executive Order 13-04 was later revised and superseded by [Executive Order 15-01](#) on Feb. 2, 2015. Oregon issued an [Integrated Employment Plan](#) to implement Executive Order 13-04 on Nov. 1, 2013 and the plan was revised and reissued on July 6, 2015. Oregon also issued the Department of Human Services (DHS) Employment First Quality Assurance and Quality Improvement Plan, the DHS Employment First Communication, Outreach, and Awareness Plan, the Oregon Office of Developmental Disabilities Services' Training and Capacity Plan, and the DHS Provider Transformation Grant Program which together with the Executive Order and Integrated Employment Plan represent a commitment by the state of Oregon to reform its employment service system for individuals with I/DD. The proposed settlement agreement builds upon these plans and commitments, and incorporates many of their provisions. If the agreement is approved by the court, Oregon will substantially implement Executive Order 15-01 and the Integrated Employment Plan. The proposed agreement recognizes that Oregon has made substantial progress in providing integrated employment services to and improving competitive employment outcomes for individuals with I/DD since the signing of Oregon Executive Orders 13-04 and 15-01, including reducing the census of individuals with I/DD working in sheltered workshops.

PROVISIONS OF THE SETTLEMENT AGREEMENT

Individuals with I/DD that Receive(d) Sheltered Workshop Services: Under the proposed settlement agreement, the state has pledged a sustained commitment to transform its service system over the next seven years, impacting approximately 7,000 people. Oregon will provide supported employment services so that 1,115 working-age individuals that receive or have received sheltered workshop services can newly obtain competitive integrated employment, which means full-time or part-time competitive-wage

work (including self-employment) at a location where the employee interacts with persons without disabilities. The supported employment services must be individualized, evidence-based, flexible, offered in an integrated employment setting and based on an individual's capabilities, choices and strengths. Moreover, all persons who receive supported employment services in an integrated employment setting under the agreement will have a goal of working the maximum number of hours consistent with their abilities and preferences. By June 30, 2017, Oregon will reduce the current number of working age adults with I/DD in sheltered workshops from approximately 1,926 to no more than 1,530 and decrease the number of hours adults are working in sheltered workshops from approximately 93,530 hours to no more than 66,100 hours.

Youth At-Risk of Entering Sheltered Workshops: As of July 1, 2015, Oregon will no longer purchase or fund sheltered workshop placements for transition-age youth and working age adults who are newly eligible for state-funded employment services or already utilizing those services and are not already working in a sheltered workshop. Over the next seven years, Oregon will ensure that at least 4,900 youth ages 14 to 24 years of age are provided the employment services necessary for them to prepare for, choose, get, and keep integrated employment. Employment services will be individually planned and based on person-centered planning principles and evidence-based practices. At least half of the young people who receive employment services will receive an individual plan for employment. The goal of the proposed agreement is not to close sheltered workshops, but to achieve integration for individuals with I/DD in Oregon and ensure that those who want to work in integrated settings have a realistic opportunity to do so.

Enhancing Employment Outcomes: Oregon DHS will enhance employment outcomes by:

- issuing guidance to front line staff and third-party vendors that the recommended standard for planning and implementing supported employment services will be the opportunity to work at least 20 hours per week;
- developing and seeking approval from the Centers for Medicare and Medicaid Services for reimbursement rates for supported employment services for outcome payments and other financial incentives to providers for individuals with I/DD to obtain integrated employment at a monthly average of at least 20 hours per week;
- continuing to offer one-time performance-based payments to providers achieving employment at least 20 hours per week for individuals with I/DD;
- issuing guidance that its technical assistance provider(s) will train employment professionals and job developers that the recommended standard for planning and implementing supported employment services will be the opportunity to work at least 20 hours per week; and
- collecting and reporting twice each year the percentage of individuals with I/DD who receive supported employment services under the agreement and who are working in an integrated employment setting at least 20 hours per week.

Career Development Planning: All individuals in the target populations of the proposed agreement will receive a career development plan. DHS will use performance-based contracting metrics to impose financial penalties on responsible entities that fail to develop a career development plan for an eligible member of the target population. Eligible transition-age youth will receive a career development plan prior to school exit, and if a youth exits school unexpectedly, he or she will receive a career development plan within one year of his or her unexpected exit.

Transition Planning for Youth: The state will develop a broad-based professional development plan for transition services that includes targeted technical assistance, and will encourage and help facilitate Oregon school districts to continue and expand model(s) of evidence-based transition practices (e.g., the Seamless Transition Model, Project Search, Youth Transition Program) to promote and expand transition services so that youth can achieve competitive integrated employment. The Oregon Department of Education will improve employment-focused transition services by:

- allowing the transition planning process to begin as young as age 14, if deemed appropriate by a student's individualized education plan team;
- providing students with information about, and opportunities to experience, supported employment services in integrated settings;
- prohibiting schools from including sheltered workshops in the continuum of alternative placements and supplementary aides and services provided to students; and
- excluding mock sheltered workshop activities from school instructional curricula.

Training: Until June 30, 2019, the state will maintain a technical assistance provider(s) to offer competency-based training, ongoing assistance, and support to agencies that offer supported employment services, subject to the availability of funding.

Provider Capacity: Until at least June 30, 2019, Oregon will maintain grants for the transformation of existing sheltered workshop providers, the development of new supported employment services providers, or the expansion of existing providers to assist individuals to obtain integrated employment.

Data Collection and Monitoring: The state will collect data and report on a variety of data points that pertain to the requirements of the agreement. Compliance with the agreement will be overseen by a neutral independent reviewer acting as a subject matter expert and assessing compliance.