



Sheltered Workshops and the Subminimum Wage in North Carolina: Incentives and Accountability

Executive Summary

The debate over sheltered workshops and the subminimum wage is part of a larger issue of the employment needs of people with significant disabilities. Disability Rights North Carolina undertook a monitoring project to assess the sheltered workshops in our state in order to address the role sheltered workshops play in employment policy.

The historical role of the subminimum wage was to provide employment, often segregated, for workers with disabilities. However, people are not currently in segregated settings to access subminimum wage jobs. Rather, segregation is a function of the available billable services: what the state pays for and where it pays for it. The key to integration is putting the financial incentives in the right places: paying for the outcomes we want to promote.

These incentives must support meaningful choices: community-based services for those currently being served in, and those likely to be referred to, sheltered workshops; early emphasis on integrated employment in the transition from school to work; and, to the extent individuals currently served in segregated settings choose to remain after exposure to an array of real options, respect for individual choices.

State law and policy encourage inter-agency cooperation on issues like transitions and referrals. But there must be a more aggressive approach to ensure that every individual currently in, or at risk for placement in, a sheltered workshop is offered meaningful choices about work. Providers or others must be incentivized to conduct in-reach and identify individuals who want to move from sheltered to integrated settings. Transition services must be robust, with strategies and teams developed during middle school years, for youth with more significant disabilities to increase the chances of successful transition to integrated work that is consistent with the individual's gifts, talents, and interests.

With the availability and awareness of an adequate range of options, segregation would become less of an accepted norm and the subminimum wage debate would lose its significance.

The Sheltered Workshop Debate

Sheltered workshops were conceived as facilities where employment opportunities were set aside for employees with disabilities, usually at a subminimum wage,¹ and were “sheltered” from competition by individuals without disabilities. They also provided an opportunity for people with significant disabilities to pursue a life that included work, socializing, and a sense of belonging. Sheltered workshops were seen as progressive, and a means of employing those who could not compete for jobs in the community.

The current proponents of sheltered facilities point to the benefits of the social environment, feelings of productivity from earning wages, and the specter of life without a meaningful day. Those who advocate for abolition of the subminimum wage argue that it is exploitation, perpetuates poverty and dependency, and supplants the provision of services that lead to integrated, competitive employment.

These two positions equate the existence of sheltered workshops with the existence of the subminimum wage. As detailed below, however, in North Carolina, the subminimum wage is not a significant factor in the continued existence of segregation. Our focus, therefore, is on the factors that do drive segregation, rather than on the continued availability of a subminimum wage.

Project Background

In 2010, the National Disability Rights Network (NDRN) issued a report entitled “Segregated and Exploited.” The report detailed the use of subminimum wage workers with disabilities, and the segregation of employees with disabilities in sheltered workshops. The report focused on the exploitation and mistreatment of workers with disabilities. In answer to NDRN’s call to action, Disability Rights North Carolina undertook an assessment of subminimum wage employment and sheltered workshops in our state.

Our process for assessing subminimum wage employment and sheltered work in North Carolina began with public records requests and research to determine the exact nature of the facilities in the state that pay subminimum wages. From there, we gathered information directly from the facilities and conducted onsite visits. Our visits

¹ Section 14(c) of the Fair Labor Standards Act allows employers to pay a “special” minimum wage to workers whose age or physical or mental impairment reduces productivity. Employers must obtain permission from the US Department of Labor, in the form of a subminimum wage certificate, in order to pay a subminimum wage. Employers set each employee’s wage rate based on in-house assessments of the employee’s productivity as compared to workers without disabilities in similar jobs. For example, if an individual is deemed to be 50% as productive, that employee will be paid 50% of the prevailing wage for that job. 29 USC § 214(c).

included interviews with program participants and discussions with staff about their products, programs, facilities, methods of operation, and time studies data.

The North Carolina Picture

At the time of our surveys, there were about 90 subminimum wage certificate holders in North Carolina. As of the date of this report, that number is 84. Several 14(c) operators had multiple locations covered under their certificates, expanding the number of facilities covered to about 120. Most were run as non-profit organizations. Approximately 5,000 individuals were being paid a subminimum wage by these entities for the time period covered under the certificate holder's most recent application, based on records obtained from the U.S Department of Labor. More than 80% of individuals paid under subminimum wage certificates were categorized as having intellectual or developmental disabilities; the next largest group were those with mental illness (less than 10%).

Adult Developmental Vocational Programs

Most of the subminimum wage certificate holders were licensed as Adult Developmental Vocational Programs (ADVPs). ADVPs are licensed through the Department of Health and Human Services Division of Health Services Regulation (DHSR). ADVPs were designed to provide prevocational training. 10A NCAC 27B.0201. This prevocational training was meant to enable participants to learn skills needed for employment. Nothing in the regulations provides for any oversight by DHSR with regard to the quality or efficacy of the services provided; there is no mechanism for holding ADVPs accountable for actually providing training in employment-related skills.

Today in North Carolina, what we call "sheltered workshops" are usually ADVPs, many of which have become more like day programs, where state-funded services are provided during the bulk of the day, and paid work time is fairly limited. Some ADVPs are being used as day programs – places for individuals with disabilities to go where it is "safe," and where there may be an opportunity to interact with others, usually restricted to others with disabilities and staff. Some provide outings in the community. Many are fundamentally not programs aimed at vocational goals. There is a culture of low expectations. North Carolina spent about \$20 million on ADVP services for about 3,100 people in 2011.

Vocational Rehabilitation

Fewer than half of the entities paying a subminimum wage had contracts with Vocational Rehabilitation (VR) to provide employment services. Through contracts with VR, providers may be paid a set amount for a specific service or may be paid based on outcomes produced. In either event, VR monitors the performance of its contractors and must track the success or failure of employment efforts. In our experience in monitoring at facilities that had contracts with VR, there was little overlap between the

ADVP and VR programs; although both were operated in the same facility, individuals tended to be on one track or the other.

Defining "Work"

There are differing views in the disability community as to what is considered "employment." The work being performed in some facilities we visited was make-work. In other places, the facility had originally operated on manufacturing or other contracts, but there was no paid contract work available. Many people were idle much of the time. Where subminimum work was being performed on a contract or in a facility, the operators indicated that they were actually losing money on the contracts or having to supplement in order to meet wages. For many facilities, paying an individual is seen as a "service" provided to the individual, based on the idea that the receipt of wages helps promote a feeling of accomplishment and encourages work; it is a loss-leader "service."

Clarifying and defining what "work" means affects how we view the use of the subminimum wage in non-productive contexts.

Participant Feedback

Individuals we talked with had been at their respective facilities anywhere from one month to 38 years, with most having been at the same facility for more than five years. Many of the individuals we interviewed said they liked working at their particular facility, citing such things as the fact that their friends were there, they liked being productive, and that staff treated them well. Those who did not like working in their particular facility cited reasons such as the low pay, boredom, lack of real job training, and wanting to be in the community.

Some talked about hopes they had or may have had in the past about doing other things, such as working with animals, doing yard work, housekeeping, working at a thrift store, driving a school bus, or working as a secretary. Many did not have any frame of reference for what an outside job would look like.

Barriers to outside employment included transportation, not knowing what jobs were possible, loss of benefits, and getting nervous at jobs in the community.

Following the Money: Disincentives to Integration

Segregation is a function of the services that the state chooses to fund and where those services are funded. Providers have offered an evolving array of services based on what services are billable or otherwise sustain their organizations. Programmatically the ADVPs have "followed the money" to become what they are today, lacking accountability to provide meaningful employment services and to transition participants to outside employment; while some do so, many more do not, leaving many individuals warehoused for decades in segregated settings.

There is a lack of meaningful involvement between VR and sheltered workshop participants. If a client applies for services directly with VR, placement in sheltered work is considered an unsuccessful case closure. This creates a disincentive for VR to place individuals in sheltered work. Where VR does make such a placement, there must be follow-up assessments once a year for two years for VR to determine if the individual may benefit from VR services. 34 C.F.R. §361.55. However, in all other cases, there is no legal requirement that VR attempt to assess individuals in sheltered workshops for eligibility for VR services.

VR policy provides that ADVPs are to make referrals to VR if the ADVP has a client who is eligible for VR services. (VR Manual, Section 8-2-2.) However, there is nothing in the ADVP regulations requiring such referrals. Indeed, there are financial incentives for providers to retain people in the ADVP setting since the ADVP provider can continue to bill for those services indefinitely.

An individual is not eligible for ADVP if he or she is making more than 60% of the prevailing wage for 90 days. 10A NCAC 27G.2306. Therefore, there is also a disincentive to facilitate greater earnings for those who might be able to earn enough to lose eligibility, and cause a resulting loss of payment to the facility for providing the ADVP service. In some facilities we monitored, some participants had time studies indicating their productivity exceeded 60% of workers engaged in competitive employment. With consistent productive work to do, these individuals may have earned too much to remain in the facility.

Other Developments Affecting Sheltered Workshops

During the period of our monitoring work, there have been other key developments that should affect employment policy as it relates to sheltered workshops in North Carolina.

The DOJ Settlement

Disability Rights NC filed a complaint with the U.S. Department of Justice (DOJ) in 2010 regarding the inappropriate placement of people with mental illness in adult care homes and lack of appropriate community-based services. As a result, the DOJ investigated and ultimately entered into a settlement agreement with the state. The settlement provides for, among other things, funding for supported employment services for individuals with mental illness.

There is a great deal of energy and hope around the service definitions and other infrastructure surrounding the supported employment services for individuals with mental illness. Unfortunately the service definitions and rates for reimbursement for I/DD populations have remained the same as before the DOJ settlement. Most individuals in sheltered workshops are identified as I/DD. Thus, the DOJ settlement

serves as a model but does not address the problem of employment services for the great majority of individuals currently in sheltered workshops.

Employment First and CAET

As a result of NDRN's expose "Segregated and Exploited," Disability Rights North Carolina helped initiate and facilitate a group whose focus was enhancing employment services for people with disabilities, which led to an Employment First Initiative and Resolution. The Employment First philosophy is now being embraced by NC DHHS as a strategy for allocating resources with employment as the first option considered. (See NC DHHS Individual Supportive Employment (YP630) with Long Term Vocational Supports (YM645) IPRS State-Funded Billable Service Service Definition and Required Components).

Moreover, there are examples in our state of creative, community-based initiatives such as the Community Activity and Employment Transitions (CAET) model in Mecklenburg County that is non-facility based and emphasizes community life and employment.

Conclusion and Recommendations

The subminimum wage and sheltered workshops have been hotly debated topics in the disability community since well before the publication of "Segregated and Exploited." That publication, however, has brought new focus to the issues. Notwithstanding the philosophical divide over these issues, there are concrete steps that the State of North Carolina can take to increase integrated employment. Our observation is that the services will follow the money. Therefore, Disability Rights North Carolina recommends the following:

1. Conduct annual assessments of, and in-reach to, individuals in ADVPs in order to foster interest in integrated employment. This process should be complemented with incentives to ADVPs to graduate participants to integrated employment.
2. Make I/DD Supported Employment options and reimbursements consistent with Supported Employment options for those with mental illness.
3. Expand supported employment funding and redirect funding from segregated settings to community-based employment services. Utilize grant funding to entice new creative models of job creation and job coaching.
4. Close the front door to the sheltered workshops. By ending new admissions, the state can send a strong signal that segregation is not an acceptable outcome, and that meaningful, competitive work is the expectation for all individuals receiving employment services. To accomplish this, transition from school to work planning and services will need to start much earlier for young

people with significant disabilities. We recommend that NCDVR and Local Education Authorities start planning with young people, their families, and other significantly related individuals, forming teams and strategies during middle school years to enhance the likelihood of successful transition to employment.

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