



Office for People With Developmental Disabilities



Work Settings Plan

February 2016



A Plan for Workshop Transition to Integrated Community Work Settings

Executive Summary

In March of 2014, the federal Centers for Medicare and Medicaid Services (CMS) issued regulations requiring all Home and Community-Based Services (HCBS) under the Medicaid Program to be delivered in settings that are integrated and support full access to the greater community. This move toward community inclusion by providing supports and services in the most integrated setting is consistent with, and a core component of OPWDD's mission, vision, and values and is required by the federal Americans with Disabilities Act and U.S. Supreme Court's Olmstead decision. These values were reinforced in 2014 when Governor Cuomo issued Executive Order 136 creating an Employment First Policy for New York, which makes competitive, integrated employment the first option when considering supports and services for people with disabilities.

New York State began a system-wide transformation of services for individuals with developmental disabilities several years ago. The goal has been to provide supports that are fully integrated into every person's community, are person-centered, and are focused on each individual's needs and preferences. Offering more opportunities for community living, employment and self-direction are at the heart of what the Office for People With Developmental Disabilities (OPWDD) is doing to accomplish those goals.

OPWDD created the "Plan to Increase Competitive Employment Opportunities for People with Developmental Disabilities" in May 2014 as part of the Transformation Agreement with CMS. The plan included a variety of strategies designed to: improve the quality of supportive employment services delivered by voluntary agencies; create increased opportunities for job readiness and career exploration for individuals interested in employment; increase the number of individuals with developmental disabilities employed in integrated settings, earning minimum wage; and begin the transition of employment services from segregated workshops to integrated community work settings.

Chapter 58 of the Laws of 2015 directed OPWDD to develop a plan to assist individuals currently working in segregated sheltered workshops to transition to integrated community work settings. In developing the plan OPWDD is required to solicit and analyze input from stakeholders. The plan must include: an analysis of options available to meet the needs and goals of individuals who choose not to pursue integrated community employment; strategies to maximize opportunities to participate in meaningful community-based activities; and, efforts for ongoing review of employment goals for each individual as part of the person-centered planning process. (Appendix A contains the statutory requirements.)

Stakeholder Outreach and Education

So many of us are defined by the work we do each day. Through work, we are able to experience pride of accomplishment, pursue our goals and passions, and to challenge ourselves.

OPWDD made a commitment to help people with disabilities to find work in community-based settings and as part of that commitment, we have been working with sheltered workshop providers on guidance to help workshops become integrated community businesses.

OPWDD has spent almost three years engaging families, providers and individuals receiving OPWDD services in dialogue regarding the future of workshops. A provider workgroup has been meeting since 2013 to explore various strategies that other states are using; OPWDD staff have visited numerous workshops to meet with families, individuals and provider agency staff to hear and respond to their concerns; and in May 2015, OPWDD convened a day-long meeting with every workshop provider in the state. Each provider invited an individual employed in the workshop and a parent to participate in the meeting. Numerous Senators and Assembly members were invited and also sent representatives bringing the attendance to approximately 600 people. This meeting was an opportunity for OPWDD to share all of the feedback that was gathered from stakeholders across the state and to explain how that input was used to develop strategies for individuals employed in workshops to keep their jobs and salaries. A draft proposal related to the creation of provider owned integrated businesses was shared at the May meeting. The feedback from this meeting was used to make revisions to the draft integrated business proposal.

The revised proposal was released for public comment in September 2015. Ten regional forums were convened across the state during October and November 2015 to solicit additional input from individuals receiving OPWDD services, their family members, and providers. A summary of feedback, comments and questions raised by individuals, families and providers who attended the regional forums convened between October 9 and November 9, 2015 is as follows:

General Concerns

1. Individuals and families like the current option of choosing to be employed in a workshop and have concerns about converting workshops into integrated businesses.
2. What will happen to individuals if a workshop provider decides not to convert into an integrated business?

Design and Structure of Integrated Businesses

1. What type of technical assistance is available from the state to assist providers in creating the appropriate corporate structure for the new integrated businesses?
2. Concerns were raised about any requirements that would prohibit the integrated businesses from being co-located with OPWDD certified programs.
3. Concerns were raised about the ability of the integrated businesses to be profitable enough to sustain employees that earn subminimum wage and minimum wage.
4. Concerns were raised about the increased business cost associated with hiring new employees earning minimum wage and potentially receiving health benefits.
5. Will there be tax incentives for businesses that subcontract with the new integrated businesses.
6. What happens to the employees with disabilities if the integrated business is not profitable and can't be sustained?

Integrated Business Workforce

1. Will providers be able to recruit workers without disabilities to work alongside individuals who have disabilities?



2. Will the new businesses be limited to only employing individuals who are enrolled in the HCBS waiver?
3. Will the new businesses be able to terminate employees with disabilities who engage in inappropriate behaviors?
4. How will the percentages in the integrated business models be measured?
5. Will the integrated businesses continue to qualify for federal and state preferred source contracts?
6. Will providers that don't receive Medicaid funding be required to meet the integrated setting standard?

Personal Care and Health and Safety of Employees with Developmental Disabilities

1. Will an individual's behavioral plan be accommodated in the integrated business?
2. Safety concerns were raised about whether individuals with disabilities would be safe working with co-workers who do not have disabilities.
3. Will non-disabled employees be required to have background checks?
4. What type of job coaching supports will be available to individuals with disabilities employed in the integrated businesses?
5. How will personal care, nursing and medication administration be handled in the integrated businesses?

Transportation

1. Concerns were raised about access to transportation in rural communities where public transportation is neither readily available nor accessible
2. Will funding be available for transportation to and from work?

Additional revisions were subsequently made to the workshop transformation guidance that incorporated concerns raised by attendees of the Regional Employment Forums. Issues of particular concern included: limits on a provider's ability to use existing workshop space to house the new integrated businesses and the need for technical assistance to help providers as they create new businesses. Both of these issues were addressed in the final guidance that was issued in December 2015. Limitations on the space that can be used to house the new businesses was removed from the final guidance and OPWDD will be creating opportunities to share business development resources and tools developed as part of the Balancing Incentives Program (BIP) employment grants with all workshop providers.

OPWDD is utilizing \$3.3 million in federal BIP funding to support workshop providers who want to change their business models or transition individuals from workshops to competitive employment. Some of the BIP employment proposals have focused on small business creation, identification of legal structures to create the integrated businesses, self-employment for individuals who want to create their own business and benefits planning so individuals receiving OPWDD services understand the impact of working on their benefits.

The revisions to the final workshop guidance will ensure that individuals currently employed in workshops continue to have the option of keeping the job they like, earning the wages and staying with their friends as long as service providers create an employment option that enables them to maintain government funding. OPWDD will be sharing the draft guidance with the Centers for

Medicare and Medicaid Services (CMS) to ensure that New York State continues to receive federal Medicaid funding.

Workshop Transformation Guidance

In December of 2015, OPWDD used the input received by stakeholders to craft and issue guidance to workshop providers seeking to integrate their business models. The guidance can be found in Appendix B.

Options for Individuals Who Do Not Transition to Competitive Employment

Competitive employment is a job in an integrated setting where an individual earns at least minimum wage. Providers that change their workshops into integrated businesses, employing both individuals with and without disabilities who earn at least minimum wage, will be creating competitive employment opportunities. Employment in these settings will be an option for individuals who want to keep their current jobs instead of transitioning to jobs with private business. Self-employment will also be an option for individuals interested in starting their own businesses. Pathway to Employment and Supported Employment services will be available to assist individuals in identifying potential business opportunities, developing a business plan and identifying ongoing supports and assistance as needed once the business has been created.

Individuals who are not interesting in working in a provider-owned businesses (former workshop) or private business in the community will have the option of receiving other OPWDD services, including Pathway to Employment and Community Prevocational services that focus on:

- Assessment of the individual's "soft" skills (e.g. social behavior, ability to handle stress, willingness to work with others, etc.), job performance (attendance, punctuality, hygiene/grooming, etc.), communication skills, work ethic (motivation, initiative, focus, etc.), interests (likes, wants, dislikes, dreams, etc.).
- Assessment of the individual's situation: transportation needs, family supports, physical and mental health, safety, etc.
- Creation of opportunities to explore different community and volunteer experiences to obtain information that will be used to create a person-centered transition plan.

There is no one-size fits all solution and for people who do not choose community employment, OPWDD is working with each person receiving services, their families and providers to explore volunteer, community service and other activities that will offer them the chance to be engaged in their community.

Day habilitation, community habilitation and self-direction will also be available to assist individuals interested in participating in volunteer, retirement and other meaningful community activities.

For people who are older and interested in retirement, current resources will be used to connect them to retirement related activities. Providers have the option of using day habilitation or community habilitation funding to support individuals who are interested in participating in senior centers, community centers and other local activities for retirees. There are several providers currently exploring these integrated retirement options. OPWDD will be working with these providers to build their capacity to support more retirees and will also be identifying promising



practices in the area of retirement options for individuals with developmental disabilities that can be shared with providers, individuals and families across the state.

Person-Centered Planning

OPWDD issued regulations that took effect November 1, 2015 related to Person-Centered Planning. The final regulations require a person-centered planning process and a person-centered service plan for each individual who receives Medicaid services through the Home and Community-Based Services (HCBS) Waiver. The regulations identify the elements that must be included in both the person-centered planning process and the plan. The regulations are applicable to OPWDD funded HCBS Waiver services and OPWDD funded service coordination. The regulations are also applicable to the service planning process for all HCBS waiver services funded by OPWDD. The person-centered planning process and plan will be utilized as part of the workshop transition process.

The final regulations define the person-centered planning process as a process in which, to the maximum extent possible, an individual directs the planning of his or her services and makes informed choices about the services and supports that he or she receives. The planning process guides the delivery of services and supports to an individual in a way that leads to the individual's desired outcomes or results in areas of life that are most important to him or her (e.g., health, relationships, work, and home).

The person-centered planning process must involve parties chosen by the individual, often known as the individual's circle of support. The parties chosen by the individual participate in the process as needed, and as defined by the individual, except to the extent that decision-making authority is conferred on another by state law. Parties chosen by the individual assist the individual in decision-making by, among other things, explaining issues to be decided, answering the individual's questions, encouraging the individual to actively participate in decision-making and, where necessary, assisting the individual to communicate his or her preferences. A person-centered planning process is a collaborative and recurring process between the individual and the service provider. The planning process is used at the time of initial plan development and during reviews of the plan.

The final regulations define the person-centered service plan as a plan that is created using the person-centered planning process. The person-centered service plan may also be known as the individualized service plan (ISP). The service coordinator must develop the person-centered service plan together with the individual, his or circle of support, and HCBS service providers. At a minimum, for the written plan to be understandable, it must be written in plain language and in a manner that is accessible to the individual, to the extent possible, and parties chosen by the individual. The plan must be finalized and agreed to with the individual's written informed consent and signed by the provider(s) responsible for implementing the plan. The service coordinator must distribute the plan to the individual and parties involved in its implementation.

Ongoing Review of Employment Goals

As part of the person-centered planning process and plan there will be annual reviews of each individual's workshop transition plan to assess whether the individual is receiving the appropriate services to support his/her employment and meaningful community activities goals.

Conclusion

OPWDD values its partnership with individuals receiving services, their families and provider agencies. Throughout the workshop transition process, OPWDD has been eager to engage stakeholders in dialogue to obtain feedback that has been incorporated into plans for the future of workshops. Stakeholder feedback was instrumental in developing the option of provider-owned businesses which address concerns about the transition to competitive employment while also ensuring that providers receive government funding. As providers develop and implement their workshop transition proposals, OPWDD will continue to partner with stakeholders to ensure that a person-centered planning process is used to make sure that individuals are aware of all of their choices for employment and meaningful community activities.

To carry forward the recommendations of the Transformation Panel convened by the OPWDD Acting Commissioner in 2015, OPWDD will begin an implementation plan in 2016 to target areas identified as needing improvement. Some of these areas include further developing the school transition process by helping students identify employment opportunities and skills earlier in the process, working with outside groups and organizations to encourage businesses to employ people with developmental disabilities, highlighting success stories, forging more community relationships to help increase volunteer opportunities, increasing and exploring new transportation options and ensuring continuity of employment for people in sheltered workshops by assisting providers through the transition to integrated businesses and focusing on employment supports to help people succeed in integrated settings.



Appendix A NYS Chapter 58 of 2015

Work Settings Plan

§ 2. Development of a plan to provide choice of work settings for individuals with developmental disabilities. (a) The office for people with developmental disabilities shall develop a plan to assist individuals currently working in sheltered workshop programs to transition to integrated community work settings, which must be submitted to the governor, the temporary president of the senate, and the speaker of the assembly by February 15, 2016. (b) Such plan shall solicit and analyze input from stakeholders of sheltered workshops, including, but not limited to, individuals currently working in sheltered workshops, providers of workshops, families, and guardians. The plan shall:

- (1) include outreach and education to individuals with developmental disabilities and their families or guardians throughout the transition process;
- (2) set forth a detailed analysis of options available to meet the needs and goals of those individuals who currently cannot or choose not to transition to integrate community work settings;
- (3) maximize the ability of an individual to participate in meaningful community-based activities as part of the individual's person-centered plan; and
- (4) provide for ongoing review of employment goals for each individual as part of the person-centered planning process.

Instructions for Submission of Workshop Transformation Proposals

All workshop providers must submit a proposal to OPWDD for how they will continue to support the employment and meaningful community activities of individuals with developmental disabilities currently receiving workshop services.

A. Timeline

- December 2015 OPWDD released Instructions for Workshop Transformation Proposals (pending CMS approval)
- January 15, 2016 10am-1pm Statewide Video Conference with Workshop Providers to Address Questions related to the Proposal Requirements
- February 1, 2016 10am-3:30pm Statewide Video Conference with Workshop Providers on Integrated Business Technical Assistance

B. Proposal Due Date

1. Proposals are due no later than January 6, 2017. Proposals will be accepted and reviewed earlier than this date. Proposals must be emailed to Workshop.Transition@opwdd.ny.gov.
2. All proposals will be reviewed by the DDRO and Central Office Employment Unit. Proposals will be reviewed in the order received. Approved proposals may be implemented immediately. All proposals will be reviewed and responded to by July 1, 2017.

C. Proposal Requirements

All proposals must include the following:

1. A description of how person-centered planning will be used to create transition plans for every individual currently employed in workshops.
2. A description of how OPWDD services (Pathway to Employment, Prevocational Services, Supported Employment, Community Habilitation, Day Habilitation, etc.) will be used to meet the job readiness, employment, volunteering, retirement and other community inclusion needs of individuals currently receiving workshop services;
3. A description of the strategies that will be used to retrain, cross train or realign various habilitative program staff in an effort to support individuals as they transition to competitive employment and/or other meaningful community activities;
4. A description of how peer supports and mentoring will be developed and made available to current workshop participants as they transition to competitive employment and other meaningful community activities;
5. A description of how benefits planning and work incentives will be incorporated into each individual's transition process;
6. A description of how transportation and/or travel training will be incorporated into each individual's transition process;



7. A description of how Medicaid Service Coordinators, circles of support and other providers of OPWDD services (residential, respite, day habilitation, community habilitation, etc.) will work together in assisting individuals in identifying and achieving their employment and meaningful community activity goals;
8. A description of how families and individuals receiving OPWDD services will be educated about and included in the planning associated with the creation of the provider's proposal;
9. A description of how individuals transitioning from workshops will continue to have opportunities to socialize with friends of their choice, including those friends from the workshop, and
10. A description of how annual reviews of individual employment placements will be done to ensure that the placement meets the individual's person-centered goals.

D. Creation of Integrated Businesses

New integrated businesses must comply with all applicable Federal and State labor and employment regulations. Such considerations include, but are not limited to, wage and hours standards, and occupational health and safety provisions. For providers interested in creating integrated businesses that will create jobs for individuals currently employed in workshops and other community members, the following additional information must be included in the proposal:

1. Strategies to transition the workshop into an integrated business;
 - a. A description of the type of business that will be created, the number of employees that will be hired, staff positions that will be created and wages that will be paid to employees,
 - b. A description of efforts that will be utilized to hire, train and maintain a diverse workforce that includes employees with and without disabilities,
 - c. A description of the personnel and human resource policies that will be used by the new integrated business. Examples of such policies could include: fingerprinting, background checks, trainings, disciplinary actions, etc. Please clarify which policies apply to all employees, only supervisors and/or other designated employees;
 - d. A description of the corporate structure of the new integrated business and its relationship to the provider agency,
 - e. A description of how individuals, families and staff will be involved in the creation and sustainability of the new integrated business, and
 - f. A description of how the local community (including local government, funders, economic development agencies, etc.) will be engaged in the creation and sustainability of the new integrated business;
2. Strategies to prepare individuals, families and staff for the transition from the workshop to the new integrated business;
3. Strategies to provide a variety of employment options to workshop participants and their families including the option to work in the new integrated business, transition to other types of competitive employment and/or transition to other meaningful community activities;
4. A description of how prevocational and supported employment services will be provided in the new integrated business; and
5. A timeline for when the workshop will transition into a new integrated business.

E. Integrated Business Model

Assisting individuals with developmental disabilities in achieving their employment goals is a priority for OPWDD. A person-centered planning process must be used to assist individuals with developmental disabilities in developing their job readiness skills, discovering potential employment interests, identifying work opportunities and annually reviewing job placements. OPWDD supports provider agency efforts to redesign segregated employment settings into businesses that meet Home and Community Based Setting (HCBS) requirements related to community integration.

Employment settings must meet HCBS requirements in order to deliver prevocational and supported employment services. Employment settings that are presumed institutional and/or isolate individuals receiving OPWDD services from the broader community, will trigger the Heightened Scrutiny Review Process. Additional information regarding the HCBS settings rule and Heightened Scrutiny can be found on OPWDD's website at (HCBS Settings Toolkit- http://www.opwdd.ny.gov/opwdd_services_supports/HCBS/hcbs-settings-toolkit).

A provider interested in creating an integrated business may use one of the following models:

Integrated Business Model 1

1. Forty percent or fewer of the annual FTEs in the workforce consist of employees who receive OPWDD services funded by the Home and Community Based Services (HCBS) Waiver and by the State (providers can "round up or down" to calculate workforce percentages for example 40.5% would be considered 41% and 40.4% would be considered 40%);
2. Employees with disabilities interact with individuals who do not have disabilities (co-workers, customers, the general public);
3. Co-workers include employees who do not have disabilities. Staff providing habilitative supports are not co-workers;
4. Employees with disabilities have the same work schedules, breaks, lunch times, time off and benefits (if provided) as employees without disabilities;
5. Employees with disabilities are not isolated from the public and are not restricted to one room or area within the business;

Integrated Business Model 2

1. Forty-one percent to 75% of the annual FTEs in the workforce consist of individuals who receive OPWDD services funded by the Home and Community Based Services (HCBS) Waiver and by the State (providers can "round up or down" to calculate workforce percentages for example 40.5% would be considered 41% and 40.4% would be considered 40%);
2. Employees with disabilities interact with individuals who do not have disabilities (co-workers, customers, the general public);
3. Co-workers include employees who do not have disabilities. Staff providing habilitative supports are not co-workers;



4. The business has recruitment, hiring and training policies designed to maintain a diversified workforce comprised of employees with and without disabilities;
5. The business has the same job titles, duties, descriptions and promotional opportunities for employees with and without disabilities;
6. Employees with disabilities have the same work schedules, breaks, lunch times, time off and benefits (if provided) as employees without disabilities;
7. Employees with disabilities are not isolated from the public and are not restricted to one room or area within the business;
8. The business is in a location that is accessible to other businesses, residences, restaurants, etc., to facilitate interaction with the public (to the same degree of access that individuals without disabilities have to the local community);
9. To the extent possible, the business should be accessible by public transportation, para transit and other forms of transportation. Individuals with disabilities are provided training and access to information about transportation options; and,
10. The business is integrated in the community to the extent that a person without disabilities in the same community would consider it a part of their community and would not associate the business with the provision of services to individuals with disabilities.

Note: If the business is co-located or clustered with other settings in which OPWDD services are delivered, a Heightened Scrutiny Review may be triggered.