HOURS THAT COUNT:
Making Employment Supports Work for Washingtonians with Developmental Disabilities

Disability Rights Washington
Washington’s protection and advocacy system
HOURS THAT COUNT: Making Employment Supports Work for Washingtonians with Developmental Disabilities

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I. INTRODUCTION

Congress finds that … disability is a natural part of the human experience that does not diminish the right of individuals with developmental disabilities to live independently, to exert control and choice over their own lives, and to fully participate in and contribute to their communities through full integration and inclusion in the economic, political, social, cultural, and educational mainstream of United States society....

In the Developmental Disabilities Assistance and Bill of Rights Act of 2000, Congress made this sweeping acknowledgment of an individual’s right to “fully participate” in all aspects of mainstream society.¹ Congress had long recognized that people with disabilities face persistent discrimination in critical areas of life, including employment.² Today, barriers to employment and the high unemployment rates of people with disabilities remain largely unchanged.³

Employment discrimination has several faces. It can be the denial of opportunity, the lack of reasonable accommodations, exploitation, or segregation from co-workers and customers without disabilities. All of these forms of discrimination are painfully disempowering to the individuals forced to endure unfair treatment because of their disabilities. Discrimination, no matter the source or motivation, results in less financial autonomy, less dignity, and less ability to form personal connections with others.

Disability Rights Washington (DRW) shares this report and recommendations to highlight the ways in which individuals with developmental disabilities in our state are still systematically excluded from the social and economic mainstream. Washington State is often held out as a leader in programs that help people with developmental disabilities find and retain employment. The innovative policy proclamations and data collection systems that have led to the perception of Washington as a national employment leader are important to understanding our employment support system. However, they do not tell the whole story. We found that far too many participants continue to lead largely isolated lives, work in environments that sequester them from

² See 42 U.S.C. § 12101(a)(3) (section of the Americans with Disabilities Act stating “discrimination against individuals with disabilities persists in such critical areas as employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting, and access to public services”).
³ See Melia Preedy, Subminimum or Subpar? A Note in Favor of Repealing the Fair Labor Standards Act’s Subminimum Wage Program, 37 Seattle U. L. Rev. 1097, 1103 (2014) (noting that “the employment rate of Americans with disabilities remains dramatically lower than the employment rate of people without disabilities”).
the general public, and receive little assistance to advance vocationally to more integrated and higher paying jobs.

To fully understand the reality for people with developmental disabilities seeking employment and to actually achieve meaningful outcomes for those Washingtonians, the state must pay careful attention to whether the data, lived experiences, and policy objectives are lining up. Ultimately, people who participate in employment support programs should be better off than they would be without the services; they should experience more opportunities to meet others in their communities, discover new potential, develop useful skills, and acquire more resources to be as independent as possible.

To deliver on the promise of “full integration and inclusion,” Washington’s employment support system cannot continue glossing over its shortcomings. To “fully participate and contribute to their communities,” people with developmental disabilities need employment supports that provide meaningful training opportunities in typical and integrated work environments, day supports to engage in other meaningful activities throughout each week, and access to services focused solely on finding ways to promote greater economic and employment autonomy. Washington’s status as a national leader demands we do better to ensure these things are actually happening.

We deeply appreciate the time people shared with us, as well as their candor, to help us better understand the ways in which the employment support system can and must improve in order to work as intended. We hope the stories of workers with developmental disabilities help to illuminate how various policies and practices directly affect their opportunities and daily lives. We offer this report to help document these experiences and suggest concrete recommendations to ensure Washington delivers services consistently with federal law, and more importantly, to ensure it delivers effective services for its participants.
II. EXECUTIVE SUMMARY

A. Observations

1. Washington’s Employment Support Services often have an isolating effect.

- In policy and practice, Prevocational services are segregated. Prevocational services cannot continue to be funded with federal Medicaid Home and Community-Based Services (HCBS) waiver funding, and significant planning to implement the elimination of Prevocational services is necessary to avoid employment loss or underemployment for current participants.

- Individual Supported Employment often does not lead to meaningful days over the course of each week. With low or no working hours and no access to supplemental day supports, many participants spend their days secluded in their homes, or participate in segregated activities they must personally fund.

- Group Supported Services are inconsistently delivered across the state under Washington’s loose definition of “integrated.” Few models provide meaningful opportunities for participants to work alongside coworkers without disabilities or interact with consumers as equal members of their work and commerce communities.

2. Washington’s pathway to gainful integrated employment remains unpaved.

- Prevocational and Group Supported Employment vendors have competing interests as an “employer” needing to satisfy a labor need and a “service provider” seeking to teach employment skills. Where work opportunities are generated by private contracts or vendors’ subsidiary businesses, some participants with limited skills receive minimal training when staff are preoccupied with encroaching deadlines, while more capable participants linger on segregated crews or enclaves where their skills are in demand.

- Washington’s employment service authorization rules and practices do not promote or easily support career advancement. Rather than helping people to move from Group Supported Employment and Prevocational services to more integrated or higher paying jobs, the current system requires participants to make hard choices between types of services or plead for discretionary “add-on” or “exception to rule” hours.
B. Recommendations

1. **Now is the time to transition services to be integrated and person-centered.**
   - Washington’s HCBS Waiver Transition Plan must include steps for phasing out Prevocational services and transitioning participants to integrated employment supports.
   - Washington’s 2015 HCBS waiver applications and group supported employment rules should define Group Supported Employment services to require services be delivered during times and in areas where participants can work alongside coworkers without disabilities and/or engage with the general public.
   - Washington employment support vendors should be held accountable and rewarded through performance-based contracting for producing person-centered outcomes.

2. **Amend State Law and policy to allow Community Access to supplement Employment.**
   - Washington’s rules requiring individuals to choose between Community Access and employment supports should be eliminated in order to provide integrated opportunities for individuals to have meaningful days and the choice to lead active lives.
   - Individual support plans should incorporate sufficient hours of Community Access services in combination with employment and residential habilitation services to support a full schedule of meaningful and integrated activities.

3. **Prioritize education about employment rights and Social Security work incentives.**
   - Employment Support vendors should receive training about Social Security work incentives and should be required to develop strategies to empower participants to take advantage of these incentives in each individual employment support plan.
   - The Washington State Human Rights Commission should work collaboratively with DDA, the governor’s Disability Employment Task Force, and advocacy agencies to educate employment support vendors and the general public about employment discrimination against individuals with developmental disabilities.
III. BACKGROUND

A. Types of DDA Day and Employment Support Services

Washington’s Developmental Disabilities Administration (DDA) of the Department of Social and Health Services (DSHS) provides day and employment services for thousands of Washingtonians with developmental disabilities. The vast majority of DDA clients receive these services funded by Home and Community-Based Services (HCBS) Waivers approved by the federal Centers for Medicaid and Medicaid Services (CMS) under the federal Medicaid Act. In general, DDA can authorize one of three categories of day or employment services: 1) Community Access, 2) Supported Employment or 3) Prevocational.

**Community Access**

Community Access is a service provided to an individual that helps that person build skills to be more independent and included in the community and helps the individual build relationships with people in the community who are not paid service providers.

**Supported Employment**

Supported Employment includes two different services, Individual Supported Employment and Group Supported Employment.

The goal of Individual Supported Employment is to help an individual secure and maintain a job in a regular business environment working alongside people who do not have disabilities where he or she is earning at least minimum wage. To achieve this goal, Individual Supported Employment services include finding employers who are

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4 In Fiscal Year 2013, Washington spent over $50 Million on DDA day and employment services for a total of 7,869 clients. See Washington State Department of Social & Health Services, DSHS Client Services, http://clientdata.rda.dshs.wa.gov/ReportServer/Pages/ReportViewer.aspx?%2fICSDBA%2fAnyYear%2fLandscape_StateClientSvcsByAge (last visited Nov. 19, 2014) (searched by Adults Ages (18-64)).

5 DDA provides employment services through the Basic Plus, Core, and Community Protection waivers. WAC 388-845-0015, -2100. For employment data by waiver, see Appendix A.

6 Individuals with Core and Basic Plus waivers, Roads to Community Living, or State-only funds can access one of these three services. WAC 388-845-0210, -0215. Community Protection waiver participants may access either Supported Employment or Prevocational services. WAC 388-845-0220.

7 See WAC 388-845-0600 (defining community access as “an individualized service that provides clients with opportunities to engage in community based activities that support socialization, education, recreation and personal development for the purpose of: (1) Building and strengthening relationships with others in the local community who are not paid to be with the person. (2) Learning, practicing and applying skills that promote greater independence and inclusion in their community.”). See also DDA Core Waiver Renewal Request 51 (Sept. 1, 2012), available at http://www.dshs.wa.gov/pdf/adsa/ddd/Core%20Waiver%20Renewal%20Request.pdf [hereinafter DDA Core Waiver]; DDA Basic Plus Waiver Renewal Request 52 (Sept. 1, 2012), available at http://www.dshs.wa.gov/pdf/adsa/ddd/Basic%20Plus%20Waiver%20Renewal%20Request.pdf [hereinafter DDA Basic Plus Waiver].
interested in hiring people with developmental disabilities, provision of job training, training of coworkers and supervisors about how to best work with the individual with a disability, modifications of tasks, follow-up supports, and support for career development and promotions.⁸

Group Supported Employment is intended to be a step along the way to the integrated, well-paying type of job an individual would have in Individual Supported Employment. This service includes the same services delivered in Individual Supported Employment, but instead of working predominately with people who do not have disabilities, the person works in a group of up to eight people with developmental disabilities supervised by someone paid to provide employment supports.⁹

State rules require Group Supported Employment services to include supports and paid training in an integrated business setting.¹⁰ The rules define “integrated settings” as “typical community settings not designed specifically for individuals with disabilities in which the majority of persons employed and participating are individuals without disabilities.”¹¹

**Prevocational Services**

Prevocational services are designed to be short term, skill-building services. These services are provided to groups of nine or more people with developmental disabilities in a segregated setting and must include monthly time in the community to pursue employment opportunities.¹²

DDA delivers Community Access, Supported Employment, and Prevocational services to DDA enrollees by contracting with counties, which in turn subcontract with private vendors who deliver the actual services.¹³ DDA authorizes funding for a maximum number of service hours for each individual per month based on an algorithm that scores individuals’ employment support needs.¹⁴ The number of service hours

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⁹ See DDA Core Waiver, supra note 7, at 55; DDA Basic Plus Waiver, supra note 7, at 56; DDA Community Protection Waiver, supra note 8, at 52.

¹⁰ WAC 388-845-2100(2)(a).

¹¹ WAC 388-845-0001.

¹² See DDA Core Waiver, supra note 7, at 64; Basic Plus Waiver, supra note 7, at 65; Community Protection Waiver, supra note 8, at 56; WAC 388-845-1400.

¹³ See RCW 71A.14.080—.090 (authorizing counties to receive state funding and to participate in federal programs to provide services to people with developmental disabilities); WAC 388-850-035.

¹⁴ See WAC 388-828-9200 to -9360.
authorized ranges from zero to 12 hours per month, with the possibility of increasing hours with five to 14 “add-on” hours. If DDA agrees even more hours are necessary, DDA may authorize an Exception to Rule. DDA may authorize only one of these services at a time for each individual, and these services are only available if a person cannot access employment services federally funded under the Rehabilitation Act of 1973.

B. DDA’s Employment and Community Access Policy

DDA’s “Working Age Adult” Policy requires that “[s]upports to pursue and maintain gainful employment in integrated settings in the community shall be the first service option for working age adults.” According to the policy, “Counties will work with service providers to ensure that individuals are gainfully employed or have an employment plan, which reflects the goals needed to pursue or maintain gainful employment. Each individual shall receive supports needed to implement and maintain their individualized plan.”

This policy prevents “working age adults,” those between 21 and 61 years old, from receiving Community Access services, unless they have already tried Supported Employment or Prevocational services. After being enrolled in employment services for nine months, state law provides employment and prevocational participants with the option to terminate employment support services and transition to Community Access services. State law and policy prohibit individuals from accessing both employment and Community Access services, no matter how few hours an individual works.

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15 See WAC 388-828-9325 to -9355.
16 See WAC 388-440-0001.
17 See DDA Core Waiver, supra note 7, at 55; DDA Basic Plus Waiver, supra note 7, at 51.
19 Id. at 5. DDA defines “gainful employment” as “employment that reflects achievement of or progress towards a living wage.” Id. at 3. A “living wage” is “the amount of earned wages needed to enable an individual to meet or exceed his or her living expenses.” Id.
20 See id. at 2, 3.
21 RCW 71A.12.290.
22 See RCW 71A.12.290(3); WAC 388-845-2110(4); DDA Policy 4.11, supra note 18, at 2.
IV. DRW’S MONITORING PROCESS

A. Site Visits

As the designated protection and advocacy system for the State of Washington, one of DRW’s activities is to meet with individuals with developmental disabilities where they are receiving “services, supports and other assistance” in order to share information about DRW’s services and other programs and conduct monitoring regarding the individuals’ “rights and safety.”

During June and July of 2014, DRW conducted onsite visits at fourteen employment support or prevocational programs in Pierce, Kitsap, Walla Walla, Benton, Franklin, and Yakima counties. Thirteen of the programs visited subcontract with the counties as DDA-funded employment support and prevocational vendors. DRW talked to or observed over 120 participants receiving supports at their job sites and provided materials to participants and staff about DRW’s services, employment rights, and Social Security work incentives. DRW spoke with individuals about their work, their work histories, their employment goals, and their lives outside of work. DRW also interviewed employment support administrators, supervisors, and staff about their observations. Many administrators also participated in a voluntary informal survey to share information and opinions.

B. Public Records and Data

DRW collected statewide information about DDA-funded employment supports from the WA-DDD Employment Supports Information System, a publically available website developed for DSHS by the Institute for Community Inclusion of the University of Massachusetts Boston. DRW reviewed data regarding the number of participants receiving services from various vendors and in various regions, the types of services they were receiving, how much money they were earning on average, their average support need acuities, and their number of paid hours.

DRW also reviewed the current DDA HCBS waivers, Washington regulations and statutes about employment supports, and DDA policies. In addition, DRW reviewed and obtained county contracts with vendors and DSHS, county service plans, and public records from the Department of Labor and Industries.


25 See Appendices A–D for copies of outcome reports.
V. OBSERVATIONS

Washington's Working Age Adult Policy has been nationally acclaimed as a model for other states. However, although the Working Age Adult Policy has resulted in more people receiving publically-funded Individual Supported Employment services, DRW's monitoring observations told a different story about how Washington's service delivery system for people with developmental disabilities tolerates, and in many ways perpetuates, disability-based discrimination.

DRW observed enough examples of individuals successfully maintaining meaningful jobs in their communities to know that the goal of integrated employment is realistic and achievable with adequate supports. Unfortunately, the services many people are receiving are actually isolating, stigmatizing, and driven by fiscal considerations instead of individual need. As a result, DRW found far too many people with developmental disabilities who are continuing to face significant barriers to gainful employment and community integration.

A. Washington's Employment Support Services Foster Isolation and Segregation

The Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act prohibit public and federally-funded entities from administering services that unnecessarily isolate people with disabilities. This “integration mandate” protects individuals from unnecessary segregation in institution-like settings for both residential and non-residential services. The United States Department of Justice (DOJ) asserts that public entities must have a plan to implement the integration mandate, which “should include commitments for each group of persons who are unnecessarily segregated, such as individuals...spending their days in sheltered workshops or segregated day programs.”

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27 See Olmstead v. L.C., 527 U.S. 581, 597 (1999) (holding unjustified isolation of people with disabilities is discrimination based on disability under the ADA); 28 C.F.R. § 35.130(d) (regulation under Section 504 stating “A public entity shall administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.”).

Newly-issued federal regulations further require states to develop transition plans to ensure they provide HCBS services in settings that support full access to the community, including “opportunities to seek employment and work in competitive integrated settings.”29 According to a recent letter from the federal agency issuing the new regulations, state transition plans must “include both residential and non-residential settings.”30 These new federal regulations state that any setting that has the “effect of isolating” an individual from the community is presumed to be a setting that has the qualities of an institution and is not considered a home and community-based setting.31

An effective plan to transition a population of institutionalized individuals takes more than a policy proclamation and termination of a certain type of segregated service.32 As an example, on April 8, 2014, DOJ and the state of Rhode Island announced a comprehensive plan for reforming the state’s employment support services to settle a lawsuit filed in 2013 over the state’s overreliance on sheltered workshops and day programs.33 Under the agreement, Rhode Island has agreed to provide:

- “Supported employment placements that are individual, typical jobs in the community, that pay at least minimum wage, and that offer employment for the maximum number of hours consistent with the person's abilities and preferences, amounting to an average of at least 20 hours per week across the target population;” and
- “Supports for integrated non-work activities for times when people are not at work including mainstream educational, leisure or volunteer activities that use the same community centers, libraries, recreational, sports and educational facilities that are available to everyone....”34

29 42 C.F.R. § 441.301(c)(4)(i), (6).
30 Letter from Marilyn Tavenner, Centers for Medicare & Medicaid Services to The Honorable Kitty Rhoades, Secretary of Department of Health Services, Wisconsin (Oct. 7, 2014) (attached as Appendix E).
31 42 C.F.R. § 441.301(c)(5)(v).
As the Rhode Island settlement illustrates, if transition planning is not thoughtful and comprehensive, individuals will be at risk of having even less support than they were receiving in a segregated setting. Deinstitutionalized vocational program participants could become further isolated in their homes with nothing to do, while others may find employment alternatives that are nearly as segregating as the facility-based work they had been doing. As discussed in this section, DRW found that even the allegedly integrated employment supports that Washington provides as an alternative to sheltered workshop employment are furthering many individuals’ isolation and segregation.

1. Prevocational Services: “Integrated with their Televisions”

All services funded with a Medicaid HCBS waiver must have the qualities of a home and community-based setting. Almost all individuals receiving prevocational services (345 of 354) are funded with Medicaid HCBS waivers.

By definition, Washington’s Prevocational services “typically occur in a specialized or segregated setting.” Therefore, these services must be considered institution-like and not home and community-based settings. DRW’s observations of Prevocational sites support the finding that these programs are in fact segregated and isolated from the broader community. All of the Prevocational sites DRW visited were located in facilities closed to the general public and did not provide employment to workers without disabilities, other than the hired support staff. Only one Prevocational program told DRW that its services included supports to go out into community once a month. On paper and in practice, Washington’s Prevocational services have “the effect of isolating

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35 See 42 C.F.R. § 441.301(c)(4).
36 See Appendices A and B.
37 WAC 388-845-1400.
individuals receiving [Prevocational services] from the broader community…."  

They cannot, therefore, be funded with HCBS waivers.

During DRW’s monitoring, Prevocational support staff adamantly expressed their concerns to DRW that if their programs were terminated, the participants would be left with no other meaningful alternatives throughout the day and without a source of earned income. One program administrator argued he fully supported the idea of integrated employment, but feared that well-intentioned attempts to deinstitutionalize Prevocational participants would simply result in many participants having no day activities. He questioned whether closing segregated employment would only result in people being “integrated with their televisions.”

These kinds of concerns were based on a widely-held belief that leaving Prevocational services would mean no or very few employment hours for a large percentage of current Prevocational participants, many of whom had been working three to five days a week at the same job site for many years. Concerns about the higher risk of unemployment or underemployment are consistent with state data demonstrating Prevocational participants have a greater likelihood of paid employment and of working more than 20 hours each week. In June of 2014:

- 88 percent of Prevocational participants (313 of 354) worked for pay, compared to 61 percent of Individual Supported Employment participants (3352 of 5495). They cannot, therefore, be funded with HCBS waivers.

Fig. 2 - Percentage of Participants Earning Paid Wages – All Support Levels

- 19 percent of Prevocational participants worked over 20 paid hours each week (67 of 354), compared to 11 percent of Group Supported Employment participants (106 of 971) and Individual Supported Employment participants (600 of 5495).  

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38 42 C.F.R. § 441.301(c)(5)(v).
39 See Appendix B.
40 See id.
For individuals with high-level support needs the discrepancy in outcomes is even greater:

- 86 percent of prevocational participants needing a high level of employment supports still reported having paid hours (192 of 223), compared to 36 percent of the individual employment participants (564 of 1580).\(^{41}\)

\[\text{Fig. 4 - Percentage of Participants Earning Paid Wages – High Support Levels}\]

- 11.6 percent of prevocational participants needing a high level of employment supports reported working over 20 paid hours each week (26 of 223), compared to just under 5 percent of group supported employment participants (15 of 310) and less than 0.4 percent of individual employment participants (6 of 1580).\(^{42}\)

\(^{41}\) See Appendix C.

\(^{42}\) See id.
Washington is ahead of other states in its shift away from segregated employment because it is already determined to decrease its reliance on Prevocational programs, unlike other states that continue to rely heavily on sheltered workshops. Already, Washington has reduced the number of Prevocational participants from over 800 in 2007 to fewer than 400 today. As of June 2014, less than 5 percent of all day service participants were receiving prevocational services, compared to 11 percent in 2007.

See Appendix B.

However, because this type of segregated and facility-based service should no longer be federally-funded under the new federal regulations, Washington needs to develop a plan to completely eliminate Prevocational services as a federally-funded option.

As Washington eliminates Prevocational services, it should not ignore the statistics outlined above. The DDA support system needs to be able to address the reality that in many instances, people may need additional supports to supplement their employment in order to do meaningful and integrated activities throughout each week. As discussed in the remaining portions of this section, “deinstitutionalization” does not necessarily lead to “integration” if there are insufficient alternative supports. Eliminating or reducing a service based on funding requirements should involve careful planning to ensure the supports offered to replace segregated services do not have an equally, if not more, isolating effect.

2. **Individual Supported Employment Services: “The other 36”**

Individuals receiving employment services outside of a sheltered workshop or other segregated environment can still experience isolation and segregation. For instance, in a federal lawsuit in New York, the judge described the employment opportunities of adult family home residents:

…[O]nly a few residents had jobs or volunteer positions, and many of those jobs were short-lived. For example, a service provider testified that she could only recall one resident of Queens Adult Care becoming employed. One resident at Parkview testified that only he and two other residents hold jobs. A Seaview resident testified that a social worker had helped him obtain a part-time job as a messenger, but that he was fired after seven weeks. A resident of Surf Manor testified that he had held a job at a newsstand since prior to his admission to the adult home, but that the job occupies about three or four hours per week and no longer involved interacting with customers.45

Similar to these findings, DRW observed that many Washington State DDA clients receiving Supported Employment services were isolated from their communities due to lack of work, low work hours, lack of education and accurate information about how work can impact Social Security benefits, and lack of education about or protection from employment discrimination. One administrator coined a phrase “the other 36” as a shorthand reference to the fact that so many people with four or five hours of work each

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week still had another 36 hours to fill in order to have a week that is analogous to the
typical 40-hour work week.46

DRW talked to many Supported Employment participants frustrated about not having
any or enough paid work. One individual had been receiving Individual Employment
supports for over two years before she landed her first job. Until then, she met with her
job coach once a week and for some periods volunteered for a couple of hours once or
twice a week. DRW also met several Individual Supported Employment clients who,
like the Surf Manor resident in New York mentioned above, worked low hours – about
three to five hours per week. Only a few participants had employment support vendors
who were actively working to help them expand their shifts or increase the number of
days they were working. For instance, one individual was working to increase his
strength, endurance, and attention span to steadily increase his shifts by 10 or 15-
minute increments. However, many others reported little to no increase in their working
hours, and several individuals expressed frustration about this lack of progress.

Unless they choose to give up completely on achieving employment goals, individuals
who have few or no paid work hours cannot utilize Community Access services, which
DRW heard frequently referenced as DDA’s “retirement program” because those
services are only available to seniors and those who give up their right to receive any
employment supports from DDA. The impact of this policy varied among the individuals
DRW met, but it was clear that DDA clients with few or no working hours are at a higher
risk of isolation or segregation. Some individuals reported having a robust social life
outside of work supported by family and friends, as well as residential staff in a few
cases. Conversely, others stated they spent their time off work doing isolated activities
such as watching TV and movies or playing video games.

To provide activities for the “other 36” unoccupied hours of the standard work week, two
of the programs DRW visited had started adult daycare programs funded by fees paid
with the participants’ or family members’ personal resources. Administrators from both
programs explained that these programs were in demand because there are so many
individuals working very limited hours, or not working at all. Without Community Access
services to support individuals in engaging in other non-work activities, they explained
there are no other respite options for caregivers or activities to keep individuals
occupied most days of the week. In these programs, DRW observed clients coloring,
playing games, listening to music, and exercising. Some individuals explained they
came to these sites on their days off, or during the hours of the day they did not work.
For others, this was their only or primary activity out of the house. Although these

46 The Washington State Auditor’s Office has also noted “the hours clients actually work are low.” See
(July 31, 2013) available at
programs offered social opportunities for individuals who might otherwise be even more isolated in their homes, DRW observed both programs to be completely segregated and providing no interactions with persons without disabilities, other than paid support staff.

When asked to identify the barriers for Individual Supported employment participants to work more hours, several vendors rated concerns about loss of Social Security benefits as being a somewhat to highly significant barrier. Several staff and managers talked about families and/or guardians who had specifically requested fewer paid hours for various participants so as not to place Social Security benefits at risk, but it was unclear whether these concerns were actually warranted. Only a handful of vendors or individuals were familiar with Social Security work incentives, and most vendors did not claim to have a firm understanding of how these work incentives could help people earn more money without losing benefits. At least one vendor reported unsuccessful attempts in the past to get Social Security Work Incentives Planning Assistance, and identified this as a significant gap in needed supports. DRW provided materials with information about Social Security benefits and work incentives, but more resources are needed for individual planning and consultation.  

Fear of losing benefits was not the only barrier to community employment hours discussed with DRW. Some Individual Supported Employment vendors discussed the need for “educating” employers about their participants’ capabilities, and described problems with new managers cutting back hours or even terminating employment because these managers were not as “understanding” as their predecessors were. However, no Individual Employment support staff or administrator identified these issues as raising any question of possible discrimination. Only one client indicated to us that he was aware of his rights to be free from employment discrimination based on his disability and his right to reasonable accommodations. During our visits, DRW provided staff and clients with packets containing information about identifying employment discrimination and reasonable accommodations, but these are complex questions that typically require detailed fact analysis and education to know when discrimination may be occurring and more importantly, what can be done to stop and prevent it. Therefore, it is important that employment support vendors be well versed in disability discrimination protections and advocacy strategies to help the people they serve enjoy equal access to employment opportunities.

The individuals who were working three to five days a week for 15 to 20 or more hours per week stated they enjoyed their paychecks as well as opportunities to learn new

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skills. In addition, they also shared how much they enjoyed opportunities to get to know coworkers and customers. For instance, one employee working at a movie theatre enjoyed the interactions he had with the theatre patrons as well as the other theatre employees. Another employee at a mail shop stated she knew most of the “regulars” by name and enjoyed socializing with them when they came to pick up packages or mail from their post office boxes. By contrast, employees with few working hours have limited opportunities to form and enjoy these connections through their jobs. Ultimately, with limited support hours authorized, vendors have only so much ability to help increase their program participants’ working hours. If an individual is unable to get more than a few hours of work per week, that individual could and should still be supported with additional services providing meaningful opportunities for engaging in his or her community.

3. **Group Supported Employment: Separate and Not Equal**

While the majority of individuals served by DDA’s employment support system receive Individual Employment supports aimed toward obtaining and maintaining jobs in the community at competitive wages, almost 1,000 individuals across the state still rely on Group Supported Employment services, which are mostly segregated.\(^{49}\)

\(^{49}\) See Appendix A.

Fig. 7 - Percentage of Group Supported Employment by Region
DRW chose to conduct its onsite monitoring in counties falling within DDA Region 1 South (Walla Walla, Benton, Franklin, and Yakima Counties) and Region 3 North (Pierce and Kitsap Counties) in part because state data from these regions showed disproportionately higher usage of Group Supported Employment services than other DDA Regions.⁵⁰

Like Prevocational services, almost all individuals receiving Group Supported Employment services (952 of 971) are funded with HCBS Medicaid waivers.⁵¹

Therefore, in visiting these sites, DRW assessed whether Group Supported Employment services in Washington appear to be “home and community-based” as required by federal regulations, or are just another form of unjustified segregation.

Although Group Supported Employment services should be providing work opportunities in “integrated settings,” where “the majority of persons employed and participating are individuals without disabilities,”⁵² DRW observed that most examples of Group Supported Employment services have the effect of isolating clients by virtue of how, when, and where on the business premises the work activities are occurring. Some Group Supported work sites bore close resemblance to the Prevocational sites DRW visited, only with slightly fewer clients in the groups. In one example, DRW saw participants working on an assembly project in a closed shop connected to the

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⁵⁰ See Appendix D.
⁵¹ See Appendices A and B.
⁵² WAC 388-845-0001.
provider’s administrative office, although the participants explained that their program also provided opportunities throughout the week to work on one of the “crews” at various locations in the community.

Services are technically occurring on open business sites, but are delivered like a self-contained special education class. At other programs, the services are technically occurring on open business sites, but are delivered like a self-contained special education class. In one retail site, the participants were all working in the back of the store in an area that is not open to the public. At another site, group supported employees could interact with other employees during breaks and as they entered and left the building, but all of their work activities take place in a sequestered room with only their support staff. These employees with disabilities were isolated from other employees without disabilities who were completing similar tasks upstairs in the same building.

Similarly, DRW observed “mobile crews” working in settings with limited access to the broader community. One crew DRW interviewed completes landscaping for various schools where they sometimes “see” the attending schoolchildren, but answered “never” when DRW asked how often they speak to faculty or students. DRW observed another crew doing janitorial work at a church, but the church was almost completely empty of any church staff or congregation members while DRW observed them working.
As noted by the United States Supreme Court, “institutional placement of persons who can handle and benefit from community settings perpetuates unwarranted assumptions that persons so isolated are incapable or unworthy of participating in community life.” Conversely, supporting workers with disabilities to work alongside their counterparts without disabilities can help to reduce and eliminate preexisting perceptions that workers with disabilities are less capable, less reliable, and less worthy than other workers who do the same or similar work. When delivered in non-isolating ways, DRW saw how Group Supported Employment could provide integrated work opportunities in environments that are not stigmatizing. One of the more integrated models DRW observed provided supports for a group of individuals to work at provider-operated thrift stores. Rather than being confined to the back of the facility, these Group Supported employees were working all over the stores, interacting with customers and completing tasks alongside non-supported co-workers. In not separating Group Supported employees from other workers or customers, these programs were empowering participants to be gainfully employed without differentiating them based on their needs for support.

B. An Unpaved Pathway to Gainful Integrated Employment

DDA’s policies, Medicaid waivers, and contracts with each county clearly do not contemplate Prevocational and Group Supported Employment services as the final step in an employee’s career development. Instead, these services are described as “short term” and a “step

53 Olmstead, 527 U.S. at 600. See also Lane v. Kitzhaber, 841 F. Supp. 2d 1199, 1206 (D. Or. 2012) (stating there is “no statutory or regulatory basis for concluding that the integration mandate to provide services in the most integrated setting appropriate applies only where the plaintiff faces a risk of institutionalization in a residential setting.”).
on the pathway" to gainful and integrated employment. Accordingly, employment supports should help each participant acquire skills and experience necessary to progress toward the goal of working as independently as possible in a typical job at typical wages.

To assist in the goal of integrated competitive employment, the recently issued federal regulations contain a new requirement to deliver services in accordance with "person-centered" plans. A person-centered service employment plan must "reflect the services and supports that are important for the individual to meet the needs identified through an assessment of functional need, as well as what is important to the individual with regard to preferences for the delivery of such services and supports." The DDA Working Age Adult policy similarly requires counties and vendors to work cooperatively "to ensure that individuals are gainfully employed or have an employment plan, which reflects the goals needed to pursue or maintain gainful employment" and requires individuals to "receive supports needed to implement and maintain their individualized plan."

During its monitoring, DRW found two systemic design flaws in Washington's system. First, there are financial incentives for employment support vendors that compete with individuals' employment goals. Second, there are limitations on the flexibility and authorizations of employment support services that place business and bureaucratic interests above individual goals of integrated and gainful employment. Because of these two flaws, Washington's employment support services infrastructure prevents many individuals from receiving the services necessary to implement "person-centered" support plans. Ultimately, these flaws stop employment support participants from becoming more financially independent, gaining marketable experience and job skills, and being able to contribute to and connect with mainstream society.

1. The tale of two hats: Employer or Provider

By their definitions, Prevocational and Group Supported Employment services are designed to help individuals with developmental disabilities develop the skills needed for gainful employment by offering a combination of work and training opportunities. All the vendors DRW met had business contracts with other individuals or entities for landscaping jobs, janitorial work, shredding projects, parts assembly, packaging, and sorting – all of which supplied opportunities for the participants to obtain work experience. Although Individual Supported Employment vendors are discouraged or

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54 See DDA Core Waiver, supra note 7, at 55, 57, 64, 66; DDA Basic Plus Waiver, supra note 7, at 56, 57, 65, 66; DDA Community Protection Waiver, supra note 8 at 52, 54, 56, 58.

55 See 42 C.F.R. § 441.301(c)(2).

56 Id.

57 DDA policy 4.11, supra note 18, at 5.
prohibited from hiring their own participants due to a “potential conflict of interest,” this hiring practice is routine in Prevocational and Group Supported programs. These Group Supported and Prevocational vendors are thus permitted to accept a dual set of obligations: one to the county and state for providing employment support services to people with developmental disabilities, and another to the private entities that hire them to provide goods or services on a specific contractual deadline. Although these dual sets of obligations are not necessarily mutually exclusive to one another, DRW saw numerous examples of how the goals did compete with one another. Unfortunately, DRW found that when this happened, the goals of teaching job skills or supporting career advancement often came second.

Particularly at the Prevocational sites, DRW noted instances where the “support staff,” referred to as such for their role in supporting people with disabilities to gain employment skills, focused on ensuring fulfillment of the provider’s labor contracts over helping the people they serve gain employment skills. At one Prevocational site, support staff were working alongside participants to compete a shrink-wrapping project that had an upcoming deadline, but were not teaching new skills or working with participants struggling to stay on task. At a different site, the support staff were working at a table to assemble booklets they explained were imminently due to ship out, while most of the Prevocational program participants were sitting at other tables sorting patches and bolts without any active supports to improve their vocational skills. In these instances, staff appeared more concerned about meeting deadlines than working with individuals to stay focused, implementing individualized behavior support plans that would teach each individual to work with others, or working with participants to expand their skillsets and interests.

In other examples, DRW observed vendors with an interest in retaining highly trained and skilled workers, just like any other employer. As a result, employees otherwise ready and willing to find more integrated, better paying, individualized employment have little to no active support for advancing. At one site, a worker DRW interviewed said he was good at his job, but it was “mundane and tedious.” He explained he had no supports from his employment provider or his guardian to seek an integrated, more competitive, and higher paying position. At another Group Supported worksite, one of the supported employees shook his head “no” when DRW asked him if he enjoyed his job. His job on the crew involved an activity requiring him to have basic literacy skills that most of the other workers on the crew lacked. His support staff disagreed with him.
about his feelings towards his job and pointed out that she needed him too much for him to quit. She also believed his job skills were such that he had the skills necessary to work “upstairs” with the nondisabled employees if there were an open position. DRW heard similar comments from other crew supervisors complimenting the skills of their workers, but admitting that these skills were essential for the crews to complete their jobs and therefore there was no plan to help them find better jobs.

DRW would expect little controversy over a proposition that employment support vendors’ primary objective ought to be providing job skills training and finding integrated job opportunities for all qualified participants. However, the contract incentives for Prevocational and Group Supported vendors do not reflect this prioritization. If the vendors fail to finish projects on time, ensure correct assembly or packaging, or otherwise fail to satisfy the concrete terms of their contracts for goods and services, their business model would crumble. Business reputations and long-standing business partnerships would inevitably suffer from such failures to produce concrete outcomes. By contrast, the objective of Group Supported Employment or Prevocational services is treated as an aspirational goal rather than an expected deliverable. While county contracts include a requirement to complete six-month reviews if the participant has not been placed in an integrated job that pays minimum wage or more, some vendor contracts do not even contain this comparatively minor expectation. None of the contracts provides penalties for ongoing failure in this area or additional incentives for Group Supported Employment or Prevocational service vendors to actually meet objective milestones, let alone achieve the primary purpose of the services.

DRW found at least one example of Prevocational services where the staff used their creativity to find ways for participants to effectively and efficiently complete the assembly and manufacturing jobs demanded by the vendor’s private contracts. In this example, the vendor demonstrated how participants, rather than support staff, could complete each step with refashioned equipment or simplified complex tasks. However, many of these participants were long-term workers who had long mastered the tasks and basic job skills. A more person-centered approach would have

The objective of Group Supported Employment or Prevocational services is treated as an aspirational goal rather than an expected deliverable.

Many participants and their guardians/family members are unwilling to give up a current paid position and a schedule of daily activities for the chance of getting a job in the community that may only provide work for a few hours a week.
been to assist them in exploring other job options in the community and educating private employers about how low-cost job modifications could enable these employees to contribute their skills in integrated business settings. Instead, the system is perpetuating a business model with financial incentives to maintain a segregated and lower paid workforce.

2. Red Tape or a Leap of Faith

Even if vendors are properly motivated to help their participants move out of Group Supported or Prevocational programs into integrated positions, some vendors stated that this was a significant challenge for participants, even if they were consistently demonstrating acquisition of necessary job skills. Prevocational participants who wish to transition into integrated employment face a particularly severe choice in that Washington does not authorize Prevocational services concurrently with Group or Individual Supported Employment services. DRW learned about one Prevocational participant who struggled to move into an individually supported job because her family was not supportive of her working fewer hours. Supplementing her community job with her Prevocational services was not an option. Similarly, DRW observed no instances where a Group Supported Employment participant could supplement an individual job in an integrated setting with his or her Group Supported Employment services. Understandably, many participants and their guardians/family members are unwilling to give up a current paid position and a schedule of daily activities for the chance of getting a job in the community that may only provide work for a few hours a week.

The formal description of Group Supported Employment services includes the services offered through Individual Supported Employment, which includes job and career development. However, in practice, DRW’s monitoring did not find this requirement to mean that Group Supported Employment participants generally receive help to find a competitive job with a private employer. Instead, DRW learned that most vendors provide Group Supported Employment participants with assistance in developing or accessing integrated employment only if DDA agrees to authorize additional support hours for this purpose. In some regions, vendors expressed concerns that if a person’s support hours authorized under DDA’s employment support algorithm were not sufficient to expand or maintain their employment options, it took months for DDA to approve requests for exceptions.

Group Supported Employment vendors in some counties explained that they refer their participants to the Division of Vocational Rehabilitation (DVR) to obtain assistance in finding integrated employment. One vendor introduced DRW to an individual on a janitorial crew who was working with a DVR counselor to apply for jobs at retail and grocery stores. DRW did not inquire whether this individual’s Group Supported Employment services were funded by state-only or Medicaid waiver funding, but individuals are legally ineligible to use Medicaid waiver funding for DDA employment
supports if they are accessing DVR services that utilize federal funds authorized by the Rehabilitation Act.\textsuperscript{58} Since almost all DDA employment supports are funded with Medicaid, using DVR as the primary vehicle for moving out of Group Supported Employment services is not a widely usable or sustainable model.\textsuperscript{59}

Some vendors reported having success in obtaining “add-on” hours that DDA would authorize for the express purpose of supporting a transition out of Group Supported Employment into a more integrated or higher paying position. They stated that in their areas, DDA is “good about” authorizing add-on hours explicitly for this purpose, which ensured the hours would not be dedicated to further the person’s subminimum wage or segregated job, absent exceptional circumstances. However, although this would be an allowable use for add-on hours under state rules, this particular procedure is not established in rule or policy.

Based on DRW’s monitoring, add-on hours did not appear consistently used across the state as a way to bridge Group and Individual Employment supports along a “pathway.” DDA rules instead appear to generally cap hours, which limits the ability to blend service components to meet individual support needs. As a result, the majority of participants DRW observed in Prevocational and Group Supported Employment services had to either navigate through bureaucratic red tape to get more hours or agree to take a leap of faith into an uncertain job market.

\textbf{C. Conclusion}

State data, public data and records, and in-person observations of Washington’s employment support services for individuals with developmental disabilities all illustrate systemic needs for improvement. While many individuals have been able to achieve employment goals with the help of DDA-funded supports, a significant number of DDA Prevocational and Supported Employment participants remain trapped in segregated work and isolated home settings due to a lack of adequate employment and day services.

\textsuperscript{58} See DDA Core Waiver, \textit{supra} note 7, at 55; DDA Basic Plus Waiver, \textit{supra} note 7, at 51.

\textsuperscript{59} See Appendix A.
VI. RECOMMENDATIONS

A. Plan transition of employment and day services to provide each individual with integrated employment opportunities.

Washington, like every other state in the union, is currently in the process of creating a transition plan to bring its Medicaid waiver services into compliance with the new federal regulations. The transition plan provides an opportunity and challenge for Washington to fully deinstitutionalize DDA employment services in a way that does not simply shift participants to programs that result in further and ongoing isolation, boredom, or segregation.

At a minimum, this transition plan must address the needs of the nearly 400 individuals in Washington who still rely on Prevocational services, a program that by definition occurs in a segregated setting. While this is a only a portion of the individuals receiving employment supports, Washington cannot ignore the fact that continuing to fund Prevocational services with federal Medicaid waiver funding will violate the new regulations as well as the integration mandate of the ADA.

DDA’s current Group Supported Employment definitions, while intended to result in integrated employment services, must also be altered to end the isolating effect of the current services. If the state continues to rely upon Group Supported Employment, the transition plan must ensure the Core, Basic Plus, and Community Protection waiver renewal applications, as well as Washington’s service rules and contracts, explicitly require that Group Supported Employment services be delivered during times and in areas where participants work alongside co-workers without disabilities and/or engage with the general public. Otherwise, Group Supported Employment services will continue to allow segregated work that provides only for nominal and marginalized contact with other individuals without disabilities, which is neither consistent with the new regulations or previous federal guidance.

Finally, Washington’s transition plan must include methods for ensuring employment support vendors produce person-centered outcomes with the public funding they receive. Washington should use the transition planning period to address the lack of adequate incentives for achieving person-centered objectives, as well as the inability to

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seamlessly blend different categories of services to meet individual needs. For example, performance-based contracts could be used as a way to incentivize home and community-based service vendors to produce milestones and outcomes. In the employment support context, these milestones could include things such as measurably successful job placements, increased hours, and higher wages. In addition, Washington should establish standard statewide procedures for authorizing sufficient supports dedicated to exploring and creating opportunities for advanced job placements without having to completely give up or risk losing a support that may be meeting some of the individuals’ needs. Washington should eliminate restrictions on simultaneously accessing Supported Employment and Prevocational services to allow individuals to achieve higher employment goals. Similarly, individuals should have career development supports, either as a separate service or required as a component of Group Supported Employment services, which are strictly dedicated to helping them enter the general workforce. Making these changes will ensure tax dollars are not spent on services that perpetuate dependence on dead-end “training” opportunities that promote endless reliance on the employment support vendor and do not help each participant attain the highest level of integration and independence possible.

B. Amend State Law and policy to support integration and meaningful days throughout the week.

In 2012, the legislature enacted a law requiring DDA to soften its Working Age Adult policy that disallowed working age individuals, those between the ages of 21 and 64, to access non-work day supports, absent a specially-authorized exception by DDA. Intended to reduce reliance on day services that were veiling individuals’ work potential, DDA’s nationally hailed “Employment-First” policy eventually became locally despised by many who felt the policy inappropriately limited individual choice by dogmatically dictating pursuit of unattainable goals. The 2012 legislation eliminated the policy’s mandate by providing the choice for working age individuals to opt out of employment services, and receive Community Access services as an alternative. However, in doing so, the legislation also codified DDA’s service restrictions that preclude individuals from

64 Federal regulations do not prohibit two or more non-residential habilitation services for one individual. See CMCS Bulletin, supra note 61, at 9.
65 See id. at 14.
66 See RCW 71A.12.290; DDA Policy 4.11, supra note 18, at 2.
combining work and non-work supports to provide meaningful days over the course of each week.

The legislature should repeal this service restriction that, instead of empowering individuals, forces them to make a choice between two services they may need and want to access concurrently. Nearly 4,500 Washingtonians with developmental disabilities are earning wages with DDA-funded supports, and close to 3,300 of these individuals are working with individual employment supports for integrated typical job settings. These statistics show that finding employment opportunities to productively contribute and earn fair wages is a realistic and personally gratifying goal for most individuals who receive employment supports. However, this does not diminish the experiences of so many of those 3,330 who work four or five hours a week and have no option for integrated activities “the other 36” hours of each work week, which according the examples reported to DRW and state data, is a common scenario.

The settlement between the DOJ and Rhode Island recognizes this reality, and requires supplemental day services to guarantee at least 20 hours of integrated activities through a combination of work and non-work supports. Washington’s law does the exact opposite. Instead of requiring complimentary services to meet each individual’s current needs for day supports, Washington’s law expressly prohibits this. But for this legislation, Washington could use federal funding to support individuals with both work and non-work supports as a better middle ground between the strict Working Age Adult policy and the legislature’s employment opt-out solution. The policy in Washington should also be amended to establish a commitment to using both employment and Community Access to ensure people can enjoy more than one or two meaningful days each week. These changes will better protect against individuals being isolated in their homes or segregated in adult daycare programs that do not facilitate their participation in their broader communities.

C. Prioritize education of service vendors, employers, participants, and families about employee rights.

Ultimately, employment supports should be about empowering individuals to exercise their economic independence and to make choices about their personal finances. Knowledge about individual rights is the key to individual empowerment. People should not feel they have no real employment choices based on a misplaced fear of being penalized for earning too much money or unwarranted toleration of discrimination. Accordingly, Washington should take proactive and concrete measures to ensure individuals receiving employment supports are also educated about their rights as Social Security beneficiaries and employees with disabilities.

67 Non-employment day habilitation services can be authorized for individuals also receiving employment services. See CMCS Bulletin, supra note 61. at 7.
Most, if not almost all, of the individuals receiving DDA employment supports are also Social Security beneficiaries. The Social Security Administration has a variety of work incentives that individuals could utilize to work towards financial independence. Determining how these various incentives could be applied in individual circumstances can be an extremely complex and daunting task. While some individuals may have professional guardians who are knowledgeable and responsible for assisting them to maximize resources, many do not have guardians or family members with this level of expertise. Given the purpose of employment support services and the current lack of knowledge of work incentives by these providers, DRW recommends that a basic work incentive training be developed and required for all employment support vendors serving Social Security beneficiaries. Each person’s individual employment support plan should include a statement about which work incentives the person could use or consider using as they reach their employment goals, as well as a plan for supporting the person in accessing individualized Work Incentive Planning and Assistance services from Certified Work Incentive Counselors.

Similarly, identifying and addressing potential employment discrimination is complicated. Determining whether a person using employment supports is a “qualified individual with a disability” can be confusing, as is determining what constitutes a “reasonable accommodation.” Each situation is different depending on the individual, the type of job, and the employer’s circumstances. Unfortunately, in addition to being confused, people who have not been empowered with information about their rights may also be afraid of retaliation.

Washington has established a Human Rights Commission that has broad powers not just to enforce state protections against discrimination, but also to issue publications, collaborate with other state entities, and conduct seminars, conferences, and educational programs that will help carry out the purpose of Washington’s Law Against Discrimination.68 The Human Rights Commission should work with DDA to provide employment support vendors with basic training and education about the components of employment discrimination as well as effective strategies for addressing it. In addition, the Commission should work with other stakeholders and advocates, such as Governor Jay Inslee’s Disability Employment Task Force, People First of Washington, Self Advocates of Washington, Self Advocates in Leadership, and the Washington Initiative for Supported Employment to initiate broad public awareness campaigns targeting stereotypes, prejudice, and myths about workers with intellectual disabilities.

68 See RCW 49.60.120.
### Appendix A – Waiver Funded Employment Service

#### Hours Paid per Activity for June 2014 – Core

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(last visited Nov. 17, 2014).
Appendix A – Waiver Funded Employment Service (Continued)

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**APPENDIX B – Statewide Data**

### Hours Paid per Activity for June 2014

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### Appendix C – High Support Needs Data

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<td><strong>Total (unduplicated)</strong></td>
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</table>

**Filter Settings**


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Appendix D – Regional Data

### Hours Paid per Activity for June 2014 - Region 1 North

<table>
<thead>
<tr>
<th>Activity</th>
<th># Served</th>
<th># Served w/ Paid Hours</th>
<th>Avg. Hours Paid</th>
<th># &gt; 20 hours/week</th>
</tr>
</thead>
<tbody>
<tr>
<td>Community Access</td>
<td>314</td>
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<td></td>
<td>0</td>
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<tr>
<td>Group Supported Employment</td>
<td>157</td>
<td>153</td>
<td>54.40</td>
<td>8</td>
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<td>Individual Employment</td>
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<td>344</td>
<td>51.64</td>
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<tr>
<td>Pre-Vocational Employment</td>
<td>81</td>
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<td>19.33</td>
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<tr>
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<td><strong>Total (unduplicated)</strong></td>
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</table>

**Filter Settings**


### Hours Paid per Activity for June 2014 – Region 1 South

<table>
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<tr>
<th>Activity</th>
<th># Served</th>
<th># Served w/ Paid Hours</th>
<th>Avg. Hours Paid</th>
<th># &gt; 20 hours/week</th>
</tr>
</thead>
<tbody>
<tr>
<td>Community Access</td>
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<td>GroupSupported Employment</td>
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<tr>
<td>Individual Employment</td>
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<td>Pre-Vocational Employment</td>
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**Filter Settings**


Appendix D – Regional Data (Continued)

### Hours Paid per Activity for June 2014 – Region 2 North

<table>
<thead>
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<th>Activity</th>
<th># Served</th>
<th># Served w/ Paid Hours</th>
<th>Avg. Hours Paid</th>
<th># &gt; 20 hours/week</th>
</tr>
</thead>
<tbody>
<tr>
<td>Community Access</td>
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<td>Individual Employment</td>
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<td>Pre-Vocational Employment</td>
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<td>51</td>
<td>32.06</td>
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<tr>
<td>Individualized Technical Assistance</td>
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<td><strong>Total (unduplicated)</strong></td>
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**Filter Settings**


### Hours Paid per Activity for June 2014 – Region 2 South

<table>
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<th>Activity</th>
<th># Served</th>
<th># Served w/ Paid Hours</th>
<th>Avg. Hours Paid</th>
<th># &gt; 20 hours/week</th>
</tr>
</thead>
<tbody>
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<td>Community Access</td>
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</tr>
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<td>Group Supported Employment</td>
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<td>Individual Employment</td>
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</tr>
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<td><strong>Total (unduplicated)</strong></td>
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<td><strong>57.40</strong></td>
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**Filter Settings**


## Hours Paid per Activity for June 2014 – Region 3 North

<table>
<thead>
<tr>
<th>Activity</th>
<th># Served</th>
<th># Served w/ Paid Hours</th>
<th>Avg. Hours Paid</th>
<th># &gt; 20 hours/week</th>
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</thead>
<tbody>
<tr>
<td>Adult Day Care</td>
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<tr>
<td>Community Access</td>
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<td>Group Supported Employment</td>
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<td>Individual Employment</td>
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<td>Pre-Vocational Employment</td>
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<td><strong>Total (unduplicated)</strong></td>
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### Filter Settings


## Hours Paid per Activity for June 2014 – Region 3 South

<table>
<thead>
<tr>
<th>Activity</th>
<th># Served</th>
<th># Served w/ Paid Hours</th>
<th>Avg. Hours Paid</th>
<th># &gt; 20 hours/week</th>
</tr>
</thead>
<tbody>
<tr>
<td>Community Access</td>
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<td></td>
<td>0</td>
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<td>Group Supported Employment</td>
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<td>Individual Employment</td>
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<td>Individualized Technical Assistance</td>
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</tr>
<tr>
<td><strong>Total (unduplicated)</strong></td>
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<td>752</td>
<td><strong>43.09</strong></td>
<td><strong>92</strong></td>
</tr>
</tbody>
</table>

### Filter Settings

The Honorable Kitty Rhoades  
Secretary of the Department of Health Services  
State of Wisconsin  
1 West Wilson Street  
Madison, WI 53707  

Dear Madam Secretary:

Thank you for your letter concerning the Centers for Medicare & Medicaid Services (CMS) Home and Community-Based Services (HCBS) final rule. Your letter expressed concern that future guidance from CMS regarding the final rule might limit choice and options for individuals receiving HCBS that are provided in non-residential settings. Specifically, you urge CMS to take into account your position that a “one-size fits all” approach is not consistent with person-centered planning as we develop guidance for states around pre-vocational and day program settings.

The important objective of the final rule, Medicaid Home and Community-Based Services (HCBS) Waiver Final Rule, which was published on January 16, 2014, and went into effect on March 17, 2014, is to ensure that individuals with disabilities have access to the services and supports needed to live and work in the community in settings that provide opportunities for full integration with their community. The rule applies to all settings in which Medicaid HCBS are provided, including non-residential settings for employment-related services. Any additional guidance that CMS provides will be in line with the requirements of the final rule. We agree that an individual’s person-centered planning process is a vital tenet of HCBS and its importance is emphasized in the final rule. States are required to work with individuals to facilitate their choice to participate in or receive services in settings that have the characteristics of home and community-based settings.

As you are aware, over the next year, each state will complete an assessment of current Home and Community-Based (HCB) settings and develop a proposed transition plan to assure full compliance with the provisions of the regulation. We have been working with states to provide feedback regarding the transition plans being proposed. We are preparing to post additional information on our website to assist states in the preparation of state-wide transition plans that include both residential and non-residential settings (https://www.medicaid.gov/HCBS).
We want to assure you that we are committed to providing additional information and technical assistance that will assist states with implementing the requirements outlined within the regulations. Again, thank you for your interest in this very important issue. If you have additional questions, please do not hesitate to contact Ralph F. Lollar, Director, Division of Long Term Services and Supports at: ralph.lollar@cms.hhs.gov. Please do not hesitate to contact me with any further thoughts or concerns.

Sincerely,

Marilyn Taverner