

ORA POSITION PAPER ON EMPLOYMENT POLICY

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Preface/Purpose:

Oregon Rehabilitation Association (ORA), a statewide association of community service providers, is about far more than a single issue. It is about our collective strength, historical wisdom and ability to innovate. Our intent is to articulate a vision for employment services that represents the whole of ORA, allows for diversity, for members being at different points on the change timeline and in different geographic areas with variable resources at their disposal. It is a position that leaves no one behind, does not value one choice over another, and allows for informed and unobstructed choice. One size does not fit all in regard to employment policy or in the needs of individuals supported in their unique, local communities.

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Our intent is to support the change at hand but in an inclusive and balanced way. The provider community that ORA represents is deeply and personally invested in supporting individuals with intellectual/developmental disabilities and those with co-occurring disorders and can bring much to the table in redefining services and supports for the future. We simply ask to be valued partners in the process focused on a positive vision for the future of supports in Oregon.

Providers of all kinds, whether they provide comprehensive services or more specialized supports are, for the most part, the ones charged with implementing or assisting families to implement the change at hand.

This position and the action ORA will take is not without risk for a member-driven organization; however, leadership is not sitting on the sidelines waiting for others to respond. It requires standing up for what you believe and taking the risk. We believe choice is protected by the law of the land and is a right of every American. As John F. Kennedy said:



***“The rights of every man are diminished
when the rights of one man are threatened.”***

As we commemorate the 50th anniversary of his death, his wisdom is remembered, as is the Kennedy family’s ardent support of disability rights.

The Environment:

We are in a time of monumental change. Again, the wisdom of JFK rings true;

***“Change is the law of life. And those who
look only to the past or present are certain to
miss the future.”***

The issue of employment is a highly charged, emotional, polarized and personal issue. This is not a surprise nor is it new. We often introduce ourselves by describing how we have chosen to spend our days and where we invest our time and our emotional energy. We define value in our own way, from the corporate executive, to the bus driver, to the artist, to the volunteer.

In Oregon much of the intensity is due to pending litigation. Even without the lawsuit, changes in emphasis at the federal level, around the nation, and the demands of today’s families are driving change. The Governor’s Executive Order, in response to the lawsuit, added more energy to the discussion and drew a line in the sand; however, this ORA document is about more than either of these high profile issues. It encompasses a statement about the broader issue of personal choice and human rights. These issues are inextricably woven together in the larger debate in which we are all engaged.

In this context we have developed a list of guiding principles. These are intended to be inclusive and conscious of the need for significant change and allocation of resources to enhance and expand the capacity to provide community-supported employment to everyone who chooses it.

Guiding Principles/Recommended Action Steps

1. The Right to Choose:

Every individual has the right to make an informed choice and define their own supports/employment options. It is understood that full implementation of this right is subject to resources appropriated by the State of Oregon. To fully realize the broadest array of options available to every individual ORA supports the position taken by the Governor's Executive Order that states:

"...the state can and should consistently work to continue to improve its provision of employment services to provide the best possible opportunities for success and choice for individuals receiving those services."

Every individual has the right to make an informed choice and define their own supports/employment options.

Action necessary to support the Right to Choose:

Sustainable resources to expand the capacity to serve greater numbers of individuals with ID/DD who choose supported employment that allows for the unique needs of various locations, both metro and rural. This will require significant resources sustained over time to change the current system.

- Leadership;
- Technical and business support for providers seeking to transition facility-based supports to supported employment;
- Value the input from all parties when developing policy;
- Synchronize the efforts of VR and ODDS to eliminate existing bureaucratic and regulatory barriers to employment choices;

- Peer-to-peer mentoring among providers to share best practices and successful models of support;
- A reasonable timeline to allow for new models of support to be developed, funding to support that development and to ensure that individual choice is respected and no one is left behind.

The right to individual choice is included in the CMS guidance to states regarding employment and employment-related services.

Consistent with the Olmstead decision and with person-centered planning principles, an individual’s plan of care regarding employment services should be constructed in a manner that reflects individual choice and goals relating to employment and ensures provision of services in the most integrated setting appropriate. (CMS Informational Bulletin, September 16, 2011)

CMS goes on to define in that same guidance document their perspective on work. It, too, includes the element of choice for those who “want to work”:

We contend that the definition of meaningful work or a meaningful day should be inclusive of the broadest possible spectrum of options for people

Work is a fundamental part of adult life for people with and without disabilities. It provides a sense of purpose, shaping who we are and how we fit into our community. Meaningful work has also been associated with positive physical and mental health benefits and is a part of building a healthy lifestyle as a contributing member of society. Because it is so essential to people’s economic self-sufficiency, as well as self-esteem and wellbeing, people with disabilities and older adults with chronic conditions who want to work should be provided the opportunity and support to work competitively within the general workforce in their pursuit of health, wealth and happiness. (CMS Informational Bulletin, September 16, 2011)

We contend that the definition of meaningful work or a meaningful day should be inclusive of the broadest possible spectrum of options for people

who make an informed choice based upon their individual strengths and interests.

2. Lead by Example – Challenge the State to Set Employment Targets:

If Oregon’s intention is to commit to the fullest extent integrated employment options, the state itself, being the largest employer in Oregon, should commit itself to reserving a percentage of state jobs for people experiencing an intellectual/developmental disability.

The draft Employment Implementation Plan includes the following language under Major Activities, “Work with State agencies to develop government sponsored supported employment and as a model employer.” We challenge Oregon to match the effort under way in Washington and to include in that target persons with an intellectual/developmental disability.

If choices are limited to only one definition of success people will be left behind, have few options and experience the loss of supports of their choice.

Washington committed in a recent Executive Order that by June 30, 2017, 5% of the state work force shall be comprised of persons living with a disability. The Office of Financial Management shall establish new goals at that time until parity is reached with the available workforce.

3. No One Left Behind or Subject to Isolation:

If choices are limited to only one definition of success people will be left behind, have few options and experience the loss of supports of their choice.

Isolation is the ultimate segregation.

A common refrain when the case is made for the right to choose facility based or group employment supports with more than eight individuals is that we are “stuck in the past” or invoking the same language used to support keeping Fairview open, when nothing could be further from the truth. The community providers are the ones who fought alongside other advocates to close Fairview, opened new programs to serve those former residents, and remain the ones called at 5:00 pm on a Friday when the

State is presented with an individual in crisis or who is without other supports and needs help. Many of those former Fairview residents have evolved in their support needs to be more independent with the help of community providers, at a pace uniquely their own. Others, even those supported by the same provider, still require the highest level of support. Does that make one level of support better than the other?

The Olmstead Decision of 1999 is clear in its direction and does not appear to limit choice, but allow for appropriate supports - based on choice that can be reasonably accommodated.

On June 22, 1999, the United States Supreme Court held in *Olmstead v. L.C.* that unjustified segregation of persons with disabilities constitutes

Isolation in any form, whether that be in a facility based setting that is not the individual's choice, or if that be isolation in their own home due to the lack of choice offered in support services, is unacceptable.

discrimination in violation of title II of the Americans with Disabilities Act. The Court held that public entities must provide community-based services to persons with disabilities when (1) such services are appropriate; (2) the affected persons do not oppose community-based treatment; and (3) community-based services can be reasonably accommodated, taking into account the resources available to the public entity and the needs of others who are receiving disability services from the entity.

We contend that point 2 in the above Olmstead language gives the individual supported the right to opt out of integrated community-based services if they so choose. The Olmstead Decision goes on to state:

The Supreme Court explained that its holding "reflects two evident judgments." First, "institutional placement of persons who can handle and benefit from community settings perpetuates unwarranted assumptions that persons so isolated are incapable of or unworthy of participating in community life." Second, "confinement in an institution severely diminishes the everyday life activities of individuals, including family relations, social contacts, work options, economic independence, educational advancement, and cultural enrichment." (Department of Justice, http://www.ada.gov/olmstead/olmstead_about.htm)



The above statement also supports our contention that isolation in any form, whether that be in a facility-based setting that is not the individual's choice, or if that be isolation in their own home due to the lack of choice offered in support services, is unacceptable.

4. A Living Wage Commensurate with Productivity:

We can... with sufficient resources expand the capacity and increase the numbers of individuals who can succeed at minimum wage or higher jobs.

Work with people to ensure that they are earning the highest level of wages that they can achieve and constantly seek to further their capacity to reach higher goals.

To limit an individual to a few hours a week of minimum wage instead of a full week of engaged participation with co-workers of their choosing at a prevailing wage, based on their productivity, in effect negates choice. We do not have the right to make that decision for every individual if we truly support individual choice, individual determination and operating on the basis of person centeredness.

We can, however, with sufficient resources expand the capacity and increase the numbers of individuals who can succeed at minimum wage or higher jobs. ORA fully supports this maximized effort and stands ready to support the State in this effort while retaining individual options as the system evolves.

5. Eliminate Arbitrary Limits on How Many Individuals Can Work Together In One Place:

It is hard to imagine in the non-disabled world being told how many people could work together. Many of us work in teams of larger than eight whether the goal is to convene a conference, build a house, or operate a business. The limit is arbitrary and holds no significance for persons with or without disabilities, yet it limits options - often for integrated community work.

Other Recommendations:

- Use “discovery” for other day supports as well as supported employment;
- Encourage providers in specific geographical areas to work together to create opportunities/options;
- Be creative in funding models to maximize State funded options with an emphasis on expanding employment opportunities (Waiver, K Plan);
- Partner with providers to seek transition funding concepts, grants, large and small technical assistance, and incentives to the business community;
- Recognize an increased risk providers undertake when supporting individuals with high behavioral needs in the community;
- Develop specific guidelines for job developers.

State Agency Considerations:

Now that we’ve laid out our guiding principles we must consider the State position in context.

Oregon is deeply invested in expanding its capacity to provide supported community employment. ORA members would like to help the State reap the maximum return on its investment.

In April 2012, Oregon was one of three states awarded a contract from the US Department of Labor, Office of Disability Employment Policy (ODEP) to help implement its Employment First Initiative. This contract is also referred to as the Employment First State Leadership Mentoring Project (EFSLMP). Each state received funding to assist with the development and implementation of its strategic plan and have access to onsite, customized technical assistance from national subject-matter experts (SMEs) to help them achieve their goals.

“Oregon plans to build on its 2008 Employment First Policy to increase the number of high school age youth who transition to integrated employment and decrease the number of adults currently served in facility based employment services. It will focus on improving its strategic plan to align state policies and funding mechanisms that support these goals. It will also increase service provider and general community capacity to develop, provide, and support integrated supported employment. The Department of Human Services, Office of Developmental Disabilities (ODDS) will be the lead agency for this grant.” (ODEP website)

While we would have preferred a more balanced goal of information, education and the expansion of opportunities, we stand ready to support increased employment of youth graduating from high school in keeping with the Olmstead decision.

Here again, without commensurate funding, this is an empty promise.

In May 2012, ODDS issued an RFP for Technical Assistance and Training. The Washington Initiative on Supported Employment (WISE) won that bid and will be rolling out training/technical assistance to build community capacity (defined as training, technical assistance and adequate resource support), develop Core Competencies and develop the Oregon Leadership Network, etc.

ORA has offered our assistance and collaboration to WISE in any way that will enhance the community’s capacity to increase employment options for those we support.

The Employment First Policy makes the following policy statement:

In order to achieve the intent outlined in the framework of this policy, employment opportunities in fully integrated work settings shall be the first and priority option explored in the service planning for working age adults with intellectual and developmental disabilities. While all employment service options are important and valued,

integrated employment is more valued than non employment, segregated employment, facility based employment or day habilitation in terms of employment outcomes for individuals with intellectual or other developmental disabilities.

While employment in other than a competitive/integrated setting is seen as a secondary choice, we contend that it is and should remain a choice until such time as the individual supported chooses differently.

For those who successfully achieve the goal of employment in an integrated setting, future service planning must focus on maintaining employment, as well as the consideration of additional career or advancement opportunities. For those not yet achieving employment, annual service planning must include and reflect employment opportunities as the first and priority service option explored.

We fully agree that re-evaluation of an individual's desire and ability to work in a competitive setting is a reasonable expectation. We do not, however, think it appropriate for an individual to be pressured to meet anyone else's expectations.

We also want to weigh in on already established ODDS Procedures and Principles regarding employment. According to the DHS/Employment First website, they are as follows:

Key Procedures and Principles:

Implementation of this policy shall be based on the following procedures and principles:

1. Employment services shall be specifically addressed in the Individual Support Plan;
2. Employment services shall be considered and provided using person-centered planning concepts, based on informed choice, and consistent with the philosophy of self-determination;
3. Minimum or competitive wages and benefits shall be the goal of integrated employment;



4. All natural, as well as paid, supports will be considered in service planning; and
5. Employment supports will be provided outside of the individual's living environment unless necessary for a self-employment plan or for the individual's medical or safety needs.

We can support all five of these principles in the context of the Olmstead decision and on their intent.

Conclusion:

It is our opinion that the ORA provider community has much in common with the State of Oregon's goals for employment for persons with intellectual/developmental disabilities. Where we may differ is in the interpretation of how to do it in a way that allows individuals to choose from an array of choices.

We also believe our mutual goals can be achieved through targeted action, a commitment to leave no one behind (ensure a viable safety net while the new infrastructure is developed), sufficient and sustainable funding for the transition to new models of support, and assistance to providers that recognizes them as local business entities essential to the wellbeing of their communities. Success will depend on ensuring that such support is also made available to rural and/or high unemployment areas.

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