



REVIEW OF EMPLOYMENT SUPPORT SERVICES PROGRAMS

Report to;

Governor Terence R. McAuliffe

Senator Walter A. Stosch, Co-Chair, Senate Finance Committee

Senator Charles J. Colgan, Co-Chair, Senate Finance Committee

Delegate S. Chris Jones, Chair, House Appropriations Committee

Virginia Department for Aging and Rehabilitative Services

Commonwealth of Virginia

Richmond

November 1, 2015



COMMONWEALTH OF VIRGINIA
DEPARTMENT FOR AGING AND REHABILITATIVE SERVICES

JAMES A. ROTHROCK
Commissioner

8004 Franklin Farms Drive
Henrico, VA 23229

Office (804) 662-7000
Toll free (800) 552-5019
TTY Toll free (800) 464-9950
Fax (804) 662-9532

November 18, 2015

MEMORANDUM

To: The Honorable Terence R. McAuliffe
Governor of Virginia

The Honorable Charles J. Colgan
Co-Chairman, Senate Finance Committee

The Honorable Walter A. Stosch
Co-Chairman, Senate Finance Committee

The Honorable S. Chris Jones
Chairman, House Appropriations Committee

From: James A. Rothrock

A handwritten signature in blue ink that reads "James A. Rothrock".

Subject: Review of Employment Support Services Programs

It is my pleasure as Commissioner of the Virginia Department for Aging and Rehabilitative Services (DARS) to present this report in response to the Virginia Acts of Assembly, approved March 26, 2015 – Chapter 665, item 325 O that required DARS to:

“undertake a review of employment support services programs and make recommendations on options that would advance the Commonwealth’s progress toward facilitating the inclusion of people with the most significant disabilities in the workplace through community-based and integrated employment opportunities. As part of the review the department shall conduct stakeholder meetings and incorporate the feedback from those meetings into the process. The department shall report its recommendations to the Governor and the Chairmen of the House Appropriations and Senate Finance Committees by November 1, 2015.”

Should you have any questions or need additional information, please do not hesitate to contact me at (804) 662-7010.

JAR/db

Table of Contents

Study Directive	4
Virginia’s Employment Support Services Programs	4
Individual Supported Employment	4
Group Supported Employment	5
Sheltered Workshops	5
Employment Service Organizations.....	6
DARS Employment Support Services Programs.....	6
Vocational Rehabilitation Services – Supported Employment Services	6
Long Term Follow Along Services.....	6
Funding of Employment Support Services	7
Extended Employment Services (EES).....	7
Long Term Employment Support Services (LTESS):	8
Vocational Rehabilitation Services.....	9
DBHDS Employment Support Services	10
Analytic Literature Review	11
Federal Legislation.....	11
Federal Court Rulings	12
Virginia Department of Justice Settlement Agreement	13
Rhode Island Department of Justice Settlement Agreement.....	13
Oregon Department of Justice Proposed Settlement Agreement.....	14
Other Assessments and Initiatives	14
The Virginia Board for People with Disabilities 2014 Assessment of the Disability Services System	16
National Data on employment trends for people with disabilities	16
The National Core Indicators (NCI) program.....	16
United Cerebral Palsy (UCP).....	17
Stakeholder Input	17
Regional meetings.....	17
Public Comment:	19
Research and current federal legislation	19
Summary of Findings.....	21
Recommendations.....	22

Study Directive

The Virginia General Assembly, in the State Budget Bill enacted March 26, 2015,¹ directed the Department for Aging and Rehabilitative Services (DARS) to

“undertake a review of employment support services programs and make recommendations on options that would advance the Commonwealth’s progress toward facilitating the inclusion of people with the most significant disabilities in the workplace through community-based and integrated employment opportunities. As part of the review the department shall conduct stakeholder meetings and incorporate the feedback from those meetings into the process. The department shall report its recommendations to the Governor and the Chairmen of the House Appropriations and Senate Finance Committees by November 1, 2015.”

The review conducted by DARS included four major components:

1. An overview of the employment support services programs currently administered by DARS and the Department of Behavioral Health and Developmental Services (DBHDS) and the individuals served by these programs;
2. An analytic review of the literature surrounding employment support services, including relevant data, research, laws, regulations and court actions;
3. Regional meetings to obtain input from a wide range of stakeholders; and
4. Public comment on the draft of this report.

These components of the review form the basis for the Department’s recommendations, which are provided in the final section of this report.

Virginia’s Employment Support Services Programs

In Virginia, employment support services programs provide individuals with the most significant disabilities (MSD) individualized supports they need to become and remain employed. In order for an individual to be considered most significantly disabled the Vocational Rehabilitation (VR) counselor must determine that the individual: a. has a significant disability, b. the disability seriously limits the individual’s ability in three or more area of functional capabilities and c. will require multiple VR services for 6 months or longer. Most individuals will require ongoing long term supports to be successful in employment

There are three models of Employment Support Programs in Virginia:

Individual Supported Employment

In this model, an individual is employed in an integrated work setting in the community and is an employee of a business. A job coach employed by an Employment Service Organization (ESO) typically provides the individual with initial job skill training on an intensive one-to-one basis for the entire workday or less based on the needs of the individual. The job coach gradually

¹ 2015 SESSION, VIRGINIA ACTS OF ASSEMBLY, approved March 26, 2015 -- CHAPTER 665, item 325 O

decreases supports as the individual becomes more proficient in their job. Optimally, a system of “natural supports” is developed within the workplace and community. Natural supports occur when individuals other than the job coach (for example, co-workers, supervisors, parents, or significant others) provide needed and appropriate supports. Natural supports may reduce reliance on supported employment services.

Individuals supported in this model earn at or above minimum wage. The individual placement model is the most prevalent and widely utilized in Virginia, and offers the following advantages:

- ◆ Flexibility in tailoring employment support services to the specific needs of the employee and the employer;
- ◆ Maximum integration of the employee in the work setting and community with coworkers and other individuals without disabilities;
- ◆ Facilitating the development of a system of natural supports for the employee in the workplace and community; and/or
- ◆ Gradual reduction in support costs and higher wages.

Individual Supported Employment also offers the option of self-employment.

Group Supported Employment

In this model, a small group of individuals is placed at a job site in the community where they work together or are dispersed within a business. The individuals may be employed by the business, but typically are employed by the ESO. An Employment Specialist, employed by the ESO, functions as the full-time supervisor for the group. Individuals with disabilities employed as part of the group may be paid below minimum wage as long as the employer holds a subminimum wage certificate from the U.S. Department of Labor (see discussion of subminimum wage certificates on page 8 below). The group model of supported employment offers an opportunity for those persons who may require a greater degree of supervision and structured support in order to be successful in employment.

Group Supported employment also includes a model know as an Entrepreneurial Model. In this model, a small group of supported employees produces goods or services either on a sub-contract basis or as a prime manufacturer. The individuals in the group, along with the managers and other employees actually comprise the business. Support services are provided by managers and other employees without disabilities who are employed by the business. Supported employees interact with the general public and other employees.

Sheltered Workshops

With this model, (now commonly referred to as center or facility based employment) jobseekers with disabilities work in a non-integrated setting. These programs may offer skills training, special certificate subminimum wage work, prevocational services, and group work placements. In addition, they may offer alternative activities including educational programs and leisure activities. Individuals are generally paid based on their level of production. Wages are typically below minimum wage, although some have developed skills such that they are earning at or above minimum wage. The individual may or may not transition from the sheltered workshop to competitive employment in the community.

Employment Service Organizations

Individuals receive supports from Employment Service Organizations (ESOs) to find employment, learn skills on the job, and maintain employment once they have learned the required tasks and skills through long term follow along. ESOs are private or public for profit or non-profit organizations located throughout the Commonwealth. To provide supported employment services, the ESO must have an approved vendor agreement with DARS for the specific services provided and maintain CARF accreditation. CARF founded in 1966, is an international accrediting body of Health and Human Service Agencies. There are approximately 80 ESOs in Virginia who have approved vendor agreements. ESOs provide varying degrees of support to individuals as long as they are employed.

DARS Employment Support Services Programs

Vocational Rehabilitation Services – Supported Employment Services

DARS vocational rehabilitation (VR) program provides services to individuals who have a physical or mental impairment that result in a substantial impediment to employment, who can benefit from VR services for employment, and who require VR services. Supported employment services may be provided to an eligible individual with a most significant disability who requires the service to achieve successful employment. This is a time-limited service, provided by the 80 ESOs with DARS vendor agreements, that ends when the individual becomes successfully employed. It is funded through the VR Federal Formula Grant, which is matched by 22% state funds.

The Rehabilitative Services Administration (RSA), the federal agency that oversees Vocational rehabilitation services, requires that VR agencies that do not have the resources to serve all eligible consumers operate under an order of selection (OOS), a federally sanctioned waiting list by which eligible clients with the most significant disabilities receive services first. DARS has operated under an order of selection since 2001. Beginning November 1, 2014 all clients determined eligible for services are being placed on a waiting list. As resources become available the clients with the most significant disabilities are brought off the waiting list and offered services. Currently there are 2684 people waiting for services as of October 5, 2015.

Long Term Follow Along Services

DARS also administers the State funded Extended Employment Services and Long Term Employment Support Services programs, which support individuals who require these services to maintain employment. Individuals are only eligible for funded services through these programs if they do not have funding from another source such as Medicaid Waiver. A description of each of these programs follows.

Funding of Employment Support Services

DARS and the Department of Behavioral Health and Developmental Services (DBHDS) administer the employment support services programs. Each department has separate guidelines and policies governed by state and federal laws, regulations and guidelines.

Extended Employment Services (EES)

The EES fund was established in the 1980s to fund long-term supports for significantly disabled individuals working in sheltered workshops. State funds for EES have been appropriated since Fiscal Year (FY) 1983, identified under Rehabilitation Assistance Services (Program 454-03) in the Appropriations Act. These services had previously been supported by Federal funding authorized under Title XX of the Social Security Act and administered by the Virginia Department of Social Services (DSS). However, late in FY 1980 and in FY 1981, the existing ESOs that provided EES incurred significant losses of support revenue due to an over allocation of Title XX funds at the state level and reductions in Title XX appropriations at the federal level (JLARC, 1981). As a result, the financial base for sheltered workshops was inadequate to support existing consumers and several facilities were at risk of closing and significant numbers of consumers were laid off or had their work hours reduced.

To respond to this funding shortfall, short-term state supplemental funding for EES was authorized in the 1982 General Assembly Session. These funds formed the base for state appropriations and were earmarked to those areas of the State that were experiencing the Title XX reductions and to the 40 ESOs that operated sheltered workshops at the time. In January, 1982, the General Assembly provided \$1.2 million to fund the ESOs in FY 1983 and split the funding between DARS and DSS. The following year, the General Assembly authorized DARS solely to be the distributing agency of the funds. Funding for EES increased to a high of \$3.3 million in 1989 and remained fairly stable through 2008. The annual appropriation has declined in the following years to a low of \$2.47 million in 2015.

Historically EES funds were used to support sheltered employment only. When group supported employment began to increase in Virginia the fund was also used to support those in group employment. In 2012, several ESOs advocated to allow the option to provide individual supported employment using EES dollars. Since 2012 the fund is used to support individual supported employment also.

Table 1 Total EES funding spent and number served in each service type in FY 2015			
Type of Service	Total Spent FY 2015	Number Served	Average cost per person
Sheltered	\$1,769,245.08	365	\$4,847
Group	\$398,264.63	68	\$5,856
Individual	\$56,523.98	46	\$1,228
Transportation	\$239,395.36	103	\$2324
Total Served*	\$2,463,429.05	479	

*Total Served does not include Transportation as these individual are included in numbers served in the other services. Transportation services are provided to individuals receiving services in Sheltered and Group employment only.

Long Term Employment Support Services (LTESS):

The LTESS fund supports services to persons with significant disabilities to maintain their employment after VR services end. Through LTESS, 69 participating ESOs provide ongoing supervision, and other interventions and supports necessary for these individuals to maintain employment. (The remaining 11 ESOs do not have any funds allocated to them because their programs do not meet guideline for LTESS participation) The various work environments include individual supported employment, sheltered employment, and group employment. As a cooperative program with the ESOs, DARS VR counselors are involved in the approval of consumers for LTESS to ensure they are eligible (Most Significantly Disabled) for the program. Most often, LTESS funds follow the time-limited VR services.

The LTESS program began in 1995 with \$375,000 in State funding and served 201 individuals. By FY 2003, the fund was at \$3.8 million and served 1,846 consumers. LTESS funding reached a high of \$5.34 million in 2007, and has declined slightly since then to \$4.99 million in 2015. In FY 2015, the annual per person cost dropped to a low of \$847 per year (see table 2).

The LTESS/EES programs are not a “money follows the person” program. Funds are allocated organizationally rather than for each person served. ESOs receive an annual allocation from the fund based on a formula developed when the LTESS program was established in 1995. Therefore, ESOs are required to provide long term services to all individuals that require supported employment services for whom they accept as a referral from DARS, without additional funding per person. Each year funds that are not spent within one organization are reallocated to other organizations that served more individuals than their annual allocation allows. While the annual per person cost has decreased, the need for the services has increased. Fiscal Year 2015 ended with a \$793,308 shortfall in the program. Employment First efforts in the Commonwealth have resulted in an increase in referrals for supported employment services.

Table 2 Total LTESS funding and number served in each service type in FY 2015

Type of Service	Total Spent FY 2015	Number Served	Average Cost Per person
Sheltered	\$1,534,605.51	335	\$4581
Group	\$753,480.80	133	\$5665
Individual	\$2,509,274.46	2962	\$847
Transportation	\$190,396.64	72	\$2644
Total Served*	\$4,987,757.41	3430	

*Total Served does not include Transportation as these individual are included in numbers served in the other services. Transportation services are provided to individuals receiving services in Sheltered and Group employment only.

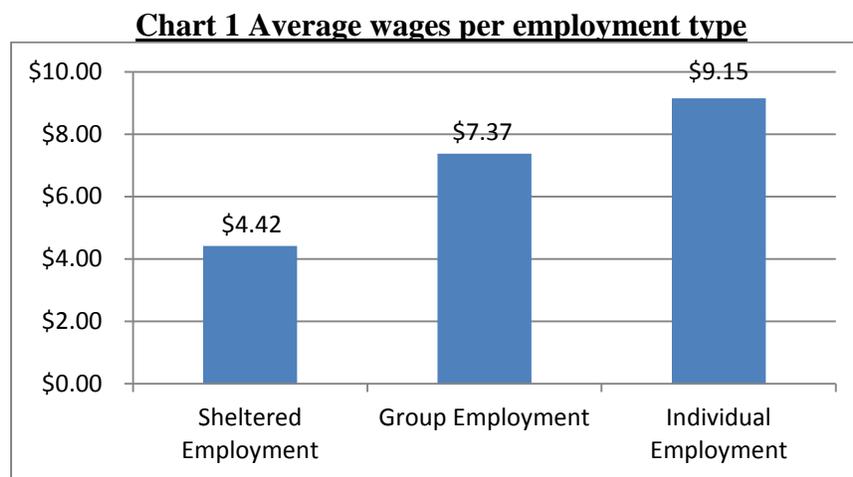
While the LTESS and EES funds remain separate they essentially operate the same in that any individual eligible for long term follow along supports after receiving supported employment services can be provided the services using either fund. The difference exists in how the funds are allocated to organizations. Only organizations that were part of the original 40 ESOs to receive an allocation when the fund began are eligible to continue to receive appropriated funds each year.

Vocational Rehabilitation Services

DARS Vocational Rehabilitation program provides initial time limited services to assist individuals with finding a job and learning job skills. These dollars, by law, can only be used to support people in securing integrated, competitive employment. This funding continues until a person is considered stable in their job meaning they no longer require training in their job to be successful. However, they may require other supports to maintain their success. The services that begin after DARS considers a person stable are called Long Term Follow Along (LTFA) services. These LTFA services can be provided using either Medicaid Waiver Dollars or LTESS/EES dollars if the individual does not have Medicaid waiver. Some localities across the Commonwealth offer local funding to support LTFA when no other funding exists.

Hourly Wages

Hourly wages for people funded through the LTESS/EES program range from less than a dollar an hour to a high in the mid-teens. As shown in Chart 3, those receiving individual SE through the LTESS program earned an average of \$9.15 per hour in SFY 2015. In contrast, hourly wages for people funded through the Medicaid waiver program ranged from a low of \$0.16 per hour to a high of \$14.88 per hour in SFY 2015. (Data for previous years was not available because of limitations in existing reporting systems for Medicaid waiver services).



Labor economists at the University of Richmond have conducted two studies of the earnings impacts of LTESS and EES. The first (Dean & Schmidt, 2010a) examined employment and earnings over 10 years for individuals who first applied for VR services in SFY 2000 and subsequently received LTESS or EES following the closure of their VR cases. Individuals who received LTESS-funded long term follow along supported employment (typically Individual and group employment services) earned \$3.50, on average, for every LTESS dollar spent. In contrast, individuals who received Extended Employment Services (typically sheltered workshop services) earned only \$.68, on average, for every dollar spent on EES. The second study (Dean & Schmidt, 2010b), which examined employment and earnings over four years for individuals whose VR cases were closed in SFY 2006 and subsequently received LTESS or EES, found similar results. Individuals who received LTESS-funded long term follow along supported employment (typically Individual and group employment services) earned \$5.59, on average, for

every LTESS dollar spent. In contrast, individuals who received Extended Employment Services (typically sheltered workshop services) earned only \$.71, on average, for every dollar spent on EES.

DBHDS Employment Support Services

DBHDS supports the provision of employment support services through the Medicaid Waiver. Waivers provide access to Medicaid funding for eligible individuals for whom states may “waive” certain Medicaid requirements. A waiver is a means of joining federal and state Medicaid funds to provide long-term supports for individuals who are elderly or have disabilities. Although there is a waiting list to enroll in some waivers, their overall goal is to present an opportunity to redirect and/or transition individuals from institutions. As a result, waivers allow people to be active in and live in their own community and achieve greater independence and flexibility in their lives.

Virginia began operating its waivers for persons with intellectual and developmental disabilities (I/DD) in 1991. The Commonwealth’s Home and Community Based Services (HCBS) waivers are not intended to replace supports that exist in an individual’s home or larger community. Instead, the waivers are a means of allowing states to offer a variety of standard medical and non-medical services for individuals who are Medicaid-eligible without the requirement that an individual live in a long-term care facility. Currently, 20 ESOs provide individual supported employment services to 232 individuals and 29 ESOs provide group supported employment services to 688 individuals using Medicaid Waiver funding. In State FY 2015, the total Medicaid waiver expenditures for employment services were \$12,603,499 (see Table 6 below). Average wages for people funded through the Medicaid waiver program ranged from a low of \$0.16 per hour to a high of \$14.88 per hour in SFY 2015. Data for previous years is not available due to lack of reporting systems for Medicaid Waiver Services.

Table 3 Fiscal Year 2015 Virginia Medicaid Waiver Expenditures for SE Services by Quarter							
Model of Service	Q1	Q2	Q3	Q4	Total FY 2015	Number Served	Average Cost per person
Individual	\$595,755	\$589,415	\$657,810	\$752,733	\$2,595,713	232	\$12,914
Group	\$2,785,528	\$2,413,540	\$2,309,766	\$2,498,594	\$10,007,428	688	\$14,546

DBHDS is unable to calculate the amount spent for LTFA due to an inability to differentiate between different service types: the figures above include job development, placement & training and LTFA services.

The average cost in SFY2015 to serve an individual through the DARS VR program for consumers receiving Individual Supported Employment Services, which is comparable to the Waiver services identified above, was \$8,559.

DBHDS is unable to determine the number of individuals who are being served in sheltered workshops or the total expenditures for sheltered workshop services through the Medicaid Waiver system as they do not currently have a vendor reporting system that is able to differentiate between day support services and sheltered workshops. DBHDS estimates that 950+ people were employed in sheltered environments in SFY 2015.

Analytic Literature Review

The analytical review of the literature surrounding employment support services identifies current barriers and opportunities in achieving integrated competitive employment outcomes for individuals with significant disabilities. The review included examination of:

1. relevant Federal legislation and court rulings;
2. published articles and reports on employment trends and challenges for people with disabilities, including employment of people with disabilities in integrated competitive jobs and integrated employment outcomes for transitioning students with significant disabilities; and
3. available national and state level information on the Employment First systems change initiatives to increase community-based, integrated employment opportunities for individuals with significant disabilities.

The review highlighted legislative and programmatic trends toward increasing competitive integrated employment, while noting that national data suggests much work still needs to be done. The results of this review are described in the following sections.

Federal Legislation

Workforce Innovation and Opportunity Act

Among the substantial changes resulting from amendments to the Federal Rehabilitation Act, as contained in the Workforce Innovation and Opportunity Act (WIOA) of 2014, is the significant emphasis on competitive integrated employment for individuals with disabilities served through the VR program. Specifically, VR programs are directed to maximize the ability of individuals with disabilities, including individuals with the most significant disabilities, to achieve competitive integrated employment through customized employment, supported employment, and other individualized services. Only competitive integrated employment is considered to be a successful employment outcome. “Competitive integrated employment is defined as full or part-time work at minimum wage or higher, with wages and benefits similar to those without disabilities performing the same work, and fully integrated with co-workers without disabilities. The Notice of Proposed Rulemaking (NPRM) for operationalizing the regulations implementing the amendments to the Rehabilitation Act provides two clarifications with respect to the criteria for integrated work locations. First, the employment location must be in “a setting typically found in the community”, and second, that the employee with a disability's interaction with other employees and others must be to the same extent that employees without disabilities in similar positions interact. It further explains that settings established by community rehabilitation programs (known in Virginia as ESOs) specifically for the purpose of employing individuals with disabilities (e.g., sheltered workshops) do not constitute integrated settings because these settings are not typically found in the competitive labor market.

WIOA also established a Federal Advisory Committee on Increasing Competitive Integrated Employment for Individuals with Disabilities to develop strategies for improving opportunities for competitive integrated employment for individuals with disabilities. The Committee is charged to prepare findings, conclusions and recommendations on ways to increase competitive integrated employment, and specifically the use of the certificate program carried out under

Section 14(c) of the Fair Labor Standards Act (FLSA) for the employment of individuals with significant disabilities, and ways to improve oversight of the use of such certificates.

Section 14 (c) of the FLSA authorizes employers, through a certificate from the U.S. Department of Labor, to pay special minimum wages less than the Federal minimum wage (referred to as “commensurate wage rates”²) to workers who have disabilities if their disabilities directly affect their ability to perform the work. The certificate also allows payment of wages less than the prevailing wage to workers who have disabilities for the work being performed on contracts subject to the McNamara-O’Hara Service Contract Act and the Walsh-Healey Public Contracts Act. Overall, the 14(c) sub-minimum wage program is utilized primarily by non-profit or state-operated social services providers, specifically, sheltered workshops, rather than private, for-profit businesses. According to the GAO (2001), 95% of all workers with disabilities being paid less than minimum wage under the 14(c) program were employed by sheltered workshops.

Section 511 of Title IV of WIOA imposes requirements on employers who hold 14(c) sub-minimum wage certificates that must be satisfied before the employers may hire youth with disabilities at subminimum wage or continue to employ individuals with disabilities of any age at the subminimum wage level. Section 511 also establishes the roles and responsibilities of the VR program, as well as state and local education agencies, in assisting individuals with disabilities, including youth with disabilities, to maximize opportunities to achieve competitive integrated employment through services provided by VR and the education agencies.

It is worth noting that the state of Vermont eliminated sheltered workshops and subminimum wage by making heavy investments in supported employment infrastructure and capacity. A three-year phase out period to close existing sheltered workshops was utilized. Within one year the last sheltered workshop in the state closed and people with disabilities moved into integrated employment. Today, Vermont’s integrated employment rate for people with developmental disabilities is twice the national average. Also, on May 7, 2015, the Governor of New Hampshire signed a measure banning employers from paying subminimum wages to individuals with disabilities, making New Hampshire the first state in the Nation to do so. The law includes an exception for some training programs and for family owned businesses, and took effect sixty days after it was signed into law.

Federal Court Rulings

The U.S. Supreme Court’s 1999 decision in *Olmstead v. L.C.* found that unjustified segregation of persons with disabilities constitutes discrimination in violation of Title II of the Americans with Disabilities Act and requires states to eliminate unnecessary segregation of persons with disabilities and to ensure that persons with disabilities receive services in the most integrated setting appropriate to their needs. 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.

² A “commensurate wage rate” is based on the individual worker’s productivity, no matter how limited, in proportion to the wage and productivity of experienced workers who do not have disabilities that impact their productivity when performing essentially the same type, quality, and quantity of work

Building on the Supreme Court's decision in *Olmstead*, the U.S. Department of Justice (DOJ) launched a number of investigations into state practices. According to DOJ, approximately 450,000 individuals with intellectual and developmental disabilities (I/DD) nationally are in segregated sheltered workshops or in segregated day programs (GAO, 2001). Also, research (Cimera, 2008) indicated that employees with disabilities receiving supported employment services generate lower cumulative costs than those employees with disabilities receiving sheltered workshop services. While the cost trend of supported employees shifts downward over time, the costs for individuals in sheltered employment trend upward.

Virginia Department of Justice Settlement Agreement

The Virginia DOJ settlement agreement requires that, to the greatest extent possible, the Commonwealth provide individuals in the target populations with competitive, integrated employment activities, including supported employment. The settlement also requires the Commonwealth to:

1. Establish a state policy on the Employment First Initiative, which prioritizes employment at minimum or competitive wages in integrated work settings for individuals with I/DD.
 - a. The Employment First policy shall, at a minimum, be based on the following principles:
 - i. individual supported employment in integrated work settings is the first and priority service option for individuals with intellectual or developmental disabilities receiving day program or employment services from or funded by the Commonwealth;
 - ii. the goal of employment services is to support individuals in integrated work settings where they are paid minimum or competitive wages; and
 - iii. employment services and goals must be developed and discussed at least annually through a person-centered planning process and included in ISPs.
2. Maintain its membership in the State Employment Leadership Network (SELN), a joint program of the Institute for Community Inclusion and the National Association of State Directors of Developmental Disabilities Services.

Rhode Island Department of Justice Settlement Agreement

DOJ Settlement agreement in Rhode Island included the following recommendations:

- Individualized supported employment placements that are typical jobs in the community, pay at least minimum wage, and offer employment for the maximum number of hours consistent with the person's abilities and preferences.
- Supports for integrated non-work activities including mainstream educational, leisure or volunteer activities that use the same community centers, libraries, recreational, sports and educational facilities that are available to everyone.
- Transition services for students with I/DD, to start at age 14, and to include internships, job site visits and mentoring, enabling students to leave school prepared for jobs in the community at competitive wages.
- Funds currently used to support services in segregated settings should be redirected to those that incentivize services in integrated settings.

Oregon Department of Justice Proposed Settlement Agreement

On September 8, 2015, the United States entered into a proposed settlement agreement with the State of Oregon to vindicate the civil rights of individuals with intellectual and developmental disabilities (I/DD) who are unnecessarily segregated in sheltered workshops, or at risk of such unnecessary segregation. The settlement agreement with Oregon resolves a class action lawsuit by private plaintiffs in which the Department moved to intervene in May 2013. The lawsuit alleged that the State's employment service system over-relied on segregated sheltered workshops to the exclusion of integrated alternatives, such as supported employment services, and placed individuals, including youth, at risk of entering sheltered workshops.

As a result of the proposed settlement, over the next seven years, 1,115 working-age individuals with I/DD who are currently being served in segregated sheltered workshops will have opportunities to work in real jobs at competitive wages. Additionally, at least 4,900 youth ages 14 - 24 years old, will receive supported employment services designed to assist them to choose, prepare for, get, and keep work in a typical work setting. Half of the youth served will receive, at a minimum, an Individual Plan for Employment through the State's Office of Vocational Rehabilitation Services. Correspondingly, the State will reduce its reliance on sheltered workshops and implement policies and capacity-building strategies to improve the employment system to increase access to competitive integrated employment and the opportunity for people with I/DD to work the maximum number of hours consistent with their abilities and preferences.

The most salient outcome to this settlement as it relates to Virginia's service delivery system is that Oregon will no longer purchase or fund sheltered workshop placements for transition-age youth and working age adults who are newly eligible for state-funded employment services or already utilizing those services and are not already working in a sheltered workshop.

Other Assessments and Initiatives

The State Employment Leadership Network (SELN) brings together state developmental disability agencies for sharing, educating and providing guidance on practices and policies around employment to its members. Virginia has been a longstanding member of SELN. The Commonwealth agreed in the settlement to maintain membership with this organization and produced a strategic plan for Employment First (SELN Accomplishment Report, 2012-2013) that outlines a realistic process to increase integrated employment opportunities for individuals receiving disability services. The Virginia Employment First Advisory Group (previously the VA SELN AG), made up of advocates, providers, and state agencies, identifies roadblocks and disincentives in the current system of employment programs for people with disabilities. The Advisory Group's 2013 report noted a trend that states continue to fund an increase in overall day and employment services more rapidly than integrated employment services, citing the increasing number of individuals who participate in any employment or day supports from the 1980s through 2011. The Report also indicated that participation in integrated employment has not grown at the same rate, and beginning in 2001, national growth of integrated employment participation began to level off or decrease.

The Commonwealth's policy on Employment First, adopted by the State Board of Behavioral Health and Developmental Services in December 2012, requires DBHDS and local Community

Services Boards (CSBs) to ensure that “community-based individual supported employment in integrated work settings is presented as the first and priority service option among available day service options offered to individuals receiving mental health, developmental, or substance abuse day support or employment services”. The policy also requires DBHDS and the CSBs to “expand access to integrated, community-based employment opportunities for individuals with mental health or substance use disorders, intellectual disability, or co-occurring disabilities”. DBHDS adopted the following principles in the provision of employment services and supports to individuals with disabilities, which are incorporated into the contracts between DBHDS and CSBs:

- Employment services will support individuals in integrated work settings where they are paid minimum or competitive wages. Individuals are active participants in developing their person-centered plans annually, including discussion of integrated, community-based employment services at least annually and inclusion of employment-related goals in individualized services plans.
- Individuals should contribute to their own support to the extent they are able to do so, for example through becoming employed in integrated, community-based employment services.
- Day services should be flexible enough to allow even individuals with the most severe disabilities to choose integrated, community-based employment among other day habilitation or rehabilitation services they may need.
- While full-time employment is the optimal goal for many individuals, their services and support providers should work with individuals to decide the number of hours they want to work and are capable of working.

CSBs are required to report employment outcomes for individuals receiving case management services and to document ongoing discussions by the case manager. With the assistance of DARS, ESOs are surveyed twice a year by DBHDS to report how many people with developmental disabilities are working, along with number of hours worked and compensation data.

New service definitions, targeted to be implemented in the amended waivers, provide more opportunity for integrated activities that support individuals’ discovery of their employment interests and abilities. Transportation is proposed as a non-medical option to assist individuals receiving waiver services, which may be used for commuting to and from work, using a variety of options. The services proposed in the amended waivers allow individuals to determine not only when they will access services but also how many hours a week they will work. National data indicate that individuals who enrolled in Medicaid who work as few as two hours per week utilize fewer Medicaid services. The service definitions and proposed rates are designed to support employment, regardless of the number of hours per day or week, including working non-traditional hours, even if an individual lives in a congregate setting.

In its biennial assessment of disability services in Virginia, the Virginia Board for People with Disabilities recommended that DBHDS and the Department of Medical Assistance Services, work together to modify the existing Medicaid waiver programs that provide home and community based services to individuals with intellectual and developmental disabilities, so that these programs could fully support and incentivize integrated, competitive employment rather than prevocational services, day support, and facility based employment for eligible individuals.

They noted that changes should include removing the rate differential that is a disincentive to competitive employment and placing a time limit on the use of prevocational services so that individuals who are able and wish to move into employment do not languish in prevocational services. The recommendations of the Virginia Board are incorporated into the amended waivers, as a result; prevocational services will no longer be supported with Medicaid funds.

The Virginia Board for People with Disabilities 2014 Assessment of the Disability Services System included the following recommendations:

1. Develop and implement a data system that will provide **meaningful employment outcome data** (not just service utilization) on a statewide and local level. Meaningful data is critically needed to establish current performance, to identify future benchmarks for employment of individuals with disabilities, and to drive effective decision-making.
2. Develop and conduct **ongoing staff training and technical assistance** for state and local agency staff that serve individuals with disabilities, particularly local social service agencies and public school transition personnel who may be the first point of contact regarding employment options for many individuals with disabilities.
3. Provide sufficient funding to **eliminate waiting lists for vocational rehabilitation**. When there are insufficient funds available, vocational rehabilitation agencies implement a federally authorized “Order of Selection,” limiting the number of individuals who can be served through the programs and prioritizing service based on severity of disability.
4. Provide funding to support replication and expansion of **innovative employment programs**, including but not limited to Project SEARCH. This will enable more individuals with ID/DD to become gainfully employed and less reliant on social security and other benefits. Programs that are developed or funded should be inclusive of individuals with significant disabilities.
5. In collaboration with the Department for Aging and Rehabilitative Services, the Virginia Commonwealth University Center for Transition Innovation, and other organizations focused on transition, the VDOE should support the development and **expansion of innovative approaches to transition**. Braided funding from multiple sources engaged in ensuring that youth with disabilities enter the workforce should be explored and implemented.

National Data on employment trends for people with disabilities

The National Core Indicators (NCI) program, coordinated by the Human Services Research Institute and the National Association of State Directors of Developmental Disabilities Services, is a voluntary effort by state developmental disability agencies to gauge their performance on outcome indicators such as employment, rights, service planning, community inclusion, choice, health, and safety. In reviewing the most recent data (2013-14), NCI outcomes for Virginia were generally consistent with the national data for states participating in the NCI program. Outcomes included:

1. Respondents without a paid job in the community, 44% from Virginia and 49% across NCI states reported they'd like a paid job in the community.
2. 17% of respondents from Virginia and 25% across NCI states reported to have integrated employment as a goal in their service plan.

3. 12% of respondents from Virginia and 16% across NCI states were reported to have a paid job in the community.

According to the State Data national report on employment services and outcomes, a project of the Institute for Community Inclusion at the University of Massachusetts, trends in outcomes of the VR program for adults with intellectual disabilities during Federal Fiscal Years 2002-2010 included declining percentages of closures for people who received substantial VR services, reduced rates of successful closures in employment, stagnation in weekly wages for those who were employed at the time of case closure, and increasing amounts of time spent in VR in order to gain employment. The Report concluded that more individuals were supported in facility-based employment during the ten-year period studied, typically earning sub-minimum wage, than in integrated employment. Additionally, the available data indicated that, although the percentage of individuals receiving facility-based work services declined slightly, there was not a corresponding increase in integrated employment. According to this report, growth in community-based non-work services continues to be reported and may challenge employment as a priority outcome in many states.

United Cerebral Palsy (UCP) released its annual report Case for Inclusion 2015 earlier this summer. This is an annual ranking of state Medicaid programs related to how well they serve citizens with Intellectual disabilities and their families. Five major categories were considered when determining rankings; Promoting Independence; Tracking Health, Safety & Quality of Life; Keeping Families Together; Promoting Productivity and Reaching Those in Need. Overall Virginia ranked 41st when considering all five factors, however when looking at individual factors Virginia ranked 46 for Promoting Independence; 48 for Reaching Those in Need; 39 for Promoting Productivity, 23 Tracking Health, Safety & Quality of Life, 30 Keeping Families Together

Summary Regulatory and systems change examples illustrated in Vermont and New Hampshire, recent legislation such as WIOA, and the DOJ settlement agreements are creating opportunities for all entities providing services to individuals with disabilities to collaborate and improve competitive integrated employment outcomes for our Nation's most vulnerable citizens. Virginia's settlement agreement and the adoption of policies like Employment First have laid the groundwork for ensuring that all individuals within the Commonwealth are afforded the opportunity for competitive integrated employment as the first option.

Stakeholder Input

Regional meetings - In order to obtain input from a broad range of stakeholders, DARS held four regional stakeholder meetings during May and June 2015 in Fairfax, Portsmouth, Richmond, and Roanoke. Forty-three participants attended one of the regional meetings. Five broad themes emerged from the meeting discussions:

1. Avoid unanticipated negative outcomes.
 - a. Stakeholders expressed significant concerns that rapidly implementing the systems change required by passage of WIOA, including establishment of the Advisory

Committee on Increasing Competitive Integrated Employment for Individuals with Disabilities, could lead to unfunded mandates. Comments like, “If we truly mean Employment First, we have to be able to make that a realistic option by providing the correct level of employment supports, and that will require a great deal more funding” reflect the sentiment expressed many times in the regional meetings.

- b. Concerns also were expressed that the unintended consequences of rapid change may include significant increases in use of day support services rather than employment placements, and decreases in employment options for individuals with the most significant disabilities.

2. Funding issues.

- a. There was substantial discussion regarding the need for additional funding to provide the intensive work supports required in order for individuals with the most significant disabilities to be successful in integrated work settings. While the Virginia Medicaid program has an Intellectual Disabilities (ID) Waiver for some employment supports, the vast majority of individuals with the most significant disabilities do not qualify for this program. Also, the ID Waiver has “slots” funded by the Virginia General Assembly and individuals who qualify must have a funded slot in order to participate. There currently is a waiting list for this program.
- b. In addition, there are operational barriers in place that lead to delays in accessing the ID Waiver in a timely manner. Documentation that DARS funding is not available is required to access ID Waiver funding. Some stakeholders indicated that the timeline and requirements for obtaining this documentation vary by region, with some individuals reporting that their receipt of the documentation was almost immediate, while others reported as much as a five-month delay.
- c. Specific to the discussion in several stakeholder meetings was the issue that funding is lacking for employment supports for individuals with psychiatric disabilities. Overall, stakeholders expressed positive attitudes toward the Employment First initiative for increasing integrated, competitive employment opportunities for individuals with the most significant disabilities, but there was great concern about the ability of the various systems within Virginia to meet the needs of this population with current levels of funding.

3. Avoid mismatches between policy and real-world implementation.

- a. Current timeframes for providing employment support services, the operational definition of employability and outcomes measurement procedures, need to be reevaluated to effectively meet the employment related needs of people with disabilities and to expand employment options for individuals with the most significant disabilities. In order to increase opportunities for integrated employment for this population, greater resources will need to be dedicated to serving each individual. Additionally, by providing that greater level of effort, the operational definition of who can be successful in terms of competitive, integrated employment will be expanded. Current measurement of successful employment outcomes will need to be reevaluated to more appropriately describe how services are delivered to different populations of consumers

4. Overall systemic collaboration.

- a. In three of the four stakeholder meetings, participants expressed concern about differing interpretations of regulations, different levels of customer service, and a lack of consistency in service delivery among DARS, DBHDS and DMAS.
- b. Additionally, participants noted ongoing increases in documentation requirements from state agencies. Service provider stakeholders indicated that these increases in documentation and measurement requirements decrease available staff time for providing employment related direct services. Some expressed concern that, in order to provide effective employment services for individuals with the most significant disabilities, the exact opposite trend – i.e., increased time for direct service provision – is needed.

5. Professional development.

- a. In order to expand the provision of employment support services for individuals with the most significant disabilities, service providers throughout the Commonwealth’s employment services network (including DARS, DBHDS, ESOs, etc.) will need additional training and professional development on evidence-based practices for maximizing competitive integrated employment. Information and training on disability-specific medical, psychosocial, and employment-related needs of individuals with the most significant disabilities, as well as effective communication techniques for non-verbal consumers will also be needed.

Public Comment:

Public Comment was received from 14 individuals/organizations. The initial public comment period was extended after request from several individuals for an extension. The public comment can be categorized into three themes:

1. Comment that offered additional information and recommendations that were incorporated into this report.
2. Comment that offered support for the report and recommendations.
3. Comment opposed to the recommendation to end new admission into sheltered workshops.

All public comment will be made available at www.vadars.org on November 1, 2015.

Research and current federal legislation indicates that:

1. WIOA directs VR programs to maximize the ability of individuals with disabilities, including individuals with the most significant disabilities, to achieve competitive integrated employment through customized employment, SE, and other individualized services.
2. “Competitive integrated employment”, is defined in WIOA as full or part-time work at minimum wage or higher, with wages and benefits similar to those without disabilities performing the same work, and fully integrated with co-workers without disabilities.

3. WIOA clarifies that settings established by community rehabilitation programs (known in Virginia as ESOs) specifically for the purpose of employing individuals with disabilities (e.g., sheltered workshops) do not constitute integrated settings because these settings are not typically found in the competitive labor market.
4. Section 511 of WIOA limits the conditions of subminimum wage work for youth under the age of 24 only upon the completion of the following activities.
 - a. Has received pre-employment transition services;
 - b. Has applied for and been rejected by VR as ineligible for services;
 - c. Has been provided career counseling and information and referrals to other public programs that allow the experience of competitive, integrated employment; and
 - d. Has been working toward an employment outcome for a reasonable period of time without success
 - e. Section 511 also puts the following conditions on the continued participation of organizations to pay individuals currently engaging in work at sub minimum wages:
 - i. Reassessment every 6 months of appropriateness of placement
 - ii. Requirement for ESOs to provide work readiness and job training services to individuals earning below minimum wage and
 - iii. Prohibit schools from contracting with providers who pay subminimum wages. Most often used for work experiences for students.
5. The Virginia DOJ settlement requires that to the greatest extent possible, the Commonwealth provide individuals in the target populations with competitive, integrated employment activities, including Supported Employment.
6. NCI outcomes for Virginia were generally consistent with the national data for states participating in the NCI program. Outcomes included:
 - a. In Virginia respondents without a paid job in the community, 44% reported they'd like a paid job in the community.
 - b. Only 17% of respondents from Virginia reported having integrated employment as a goal in their service plan. Whereas 25% of respondents in NCI states reported having integrated employment as a goal in their service plan
 - c. 12% of respondents from Virginia and 16% across NCI states were reported to have a paid job in the community.
 - d. 16% of respondents in Virginia and 33% NCI states are employed in individually-supported positions,
 - e. 17% of respondents in Virginia and 34% NCI states are employed in competitive positions,
 - f. and 67% of respondents in Virginia and 34% NCI states are employed in group-supported positions.
7. UCP data suggests that Virginia is a poor performer when looking at inclusion of people with disabilities.

Summary of Findings

When reviewing data for the LTESS/EES/Medicaid Waiver ESS programs it was noted that:

1. Services for Individuals being served in sheltered employment cost significantly more than services for people being served in Individual Supported Employment: \$5,018 vs \$847 per year. (see table 1 page 6 & table 2 page 7)
2. Wages for individuals working in a community based integrated jobs were, on average, higher than for those individuals employed in sheltered workshops: \$9.15 per hour vs \$4.42 per hour. (see chart 1 page 8)
3. 37% of all LTESS & EES funds are spent providing Individual Supported Employment services to 77% (3008) of the total number of individuals receiving services. The remaining 63% of funds are spent supporting 23% (901) of recipients in a group or in sheltered employment (see table 4 and table 5 below). The highest percent (47%) of funds is spent on sheltered workshop services.

Table 4 Total LTESS & EES combined funding spent on each service type in SFY 2015

Type of Service	Total Spent FY 2015	Percentage of total spent
Sheltered	\$3,304,294.59	47%
Group	\$1,151,745.43	16%
Individual	\$2,565,798.44	37%
Total*	\$7,021,838.46	

Table 5 Number of people Served LTESS & EES combined SFY 2015

Type of Service	Total Served	Percentage
Sheltered	700	18%
Group	201	5%
Individual	3008	77%
Total	3909	

4. There is not a data reporting system or statistically valid process for calculating the number of individuals receiving supports, wages paid or hours worked in sheltered workshops under the Medicaid Waiver program. Additionally, there is no reporting system to aggregate wages, hours worked or number of months employed for individuals receiving supported employment services through the Medicaid Waiver program.
5. The organizational structures of EES and LTESS offer a valuable opportunity to increase the amount of funds directed toward competitive integrated employment and decrease the amount of funding to subminimum wage and non-integrated settings.

Recommendations:

to increase competitive integrated employment opportunities for Virginians with the most significant disabilities:

Recommendation 1: End all new admissions to sheltered employment settings supported by public funds as of July 1, 2016. Require service plans identifying barriers for all persons currently served in sheltered non-integrated employment and how such barriers are being addressed to assist the individual to obtain integrated, competitive employment.

Ending new admissions to Sheltered workshops would strengthen Virginia's commitment to the Olmstead Act, WIOA and the current Department of Justice Settlement Agreement with Virginia.

This is particularly urgent regarding youth with disabilities. WIOA limits the ability of youth with disabilities to work in non-integrated sub minimum wage jobs. WIOA requires VR agencies to invest 15% of VR funds to provide pre-employment transition services to prepare youth for post-secondary education and employment.

WIOA also prohibits schools from utilizing Sheltered workshops/non-integrated settings for work experiences and training.

Lastly WIOA clarifies integrated work settings. First, the employment location must be in "a setting typically found in the community", and second, that the employee with a disability's interaction with other employees and others must be to the same extent that employees without disabilities in similar positions interact. It further explains that settings established by community rehabilitation programs (known in Virginia as ESOs) specifically for the purpose of employing individuals with disabilities (e.g., sheltered workshops) do not constitute integrated settings because these settings are not typically found in the competitive labor market.

Recommendation 2: Shift LTESS funding away from segregated, sub minimum wage employment offered in sheltered workshops toward integrated, community-based employment, thereby making additional funding available to support larger numbers of individuals to receive individual supported employment services by June 30, 2019.

Shifting funding away from segregated; sub minimum wage employment will allow individuals who are receiving services in segregated employment the option to move into integrated competitive employment. The current high cost of sheltered employment can be used to provide more intensive services that might be required for individuals who have been in segregated settings for a long period of time. Over time the intensity of services should decrease provided appropriate supports and the job match is in place, therefore, freeing up dollars for more people to utilize the funds for employment.

The recommendation is that the shift takes place over the course of three years. As funds become available they should be reinvested toward provider development. This will allow existing providers of sheltered employment services time to develop new programs to offer

integrated competitive individual supported employment services to persons currently receiving services in sheltered workshops.

A Return on Investment study conducted by the University of Richmond Individuals who received LTESS-funded long term follow along supported employment (typically Individual and group employment services) earned \$5.59, on average, for every LTESS dollar spent. In contrast, individuals who received Extended Employment Services (typically sheltered workshop services) earned only \$.71, on average, for every dollar spent on EES.

Recommendation 3: Increase the capacity of the Commonwealth's provider community to provide Individual Supported Employment services to persons with intellectual and developmental disabilities by providing technical assistance and training to existing and potential new providers.

Currently, there is no funding available for technical assistance/training/consultation to providers to assist them in increasing capacity to serve individuals in community based integrated employment. Investing funds in the existing provider community to increase their capacity to offer supported employment services is critical in increasing the Commonwealth's ability to provide individual supported employment services. There are a number of providers in the Commonwealth that only offer sheltered, segregated employment. Investing resources to help current providers add capacity to provide integrated competitive individual supported employment will advance the Commonwealth's interests.

Recommendation 4: Increase capacity in underserved parts of the Commonwealth where choice of providers and employment options are limited.

A gap exists in parts of the Commonwealth for choice of providers for individual competitive employment. Investing startup funds to help existing and potential new employment service organizations shift or expand their services will help fill the gap that exists in the southwest and southern parts of Virginia where options of providers are limited.

Recommendation 5: Conduct an analysis to determine the potential cost to eliminate the waiting list for Vocational Rehabilitation Individual Supported Employment services.

Due to limited funding all persons referred to DARS services are being placed on a waiting list. As of 10/5/2015 there are 2684 people waiting for services through DARS. The number of people on the waiting list continues to grow due to limited resources.

Recommendation 6: State agencies, DARS, DBVI, VDOE, DMAS, join with DBHDS to adopt Employment First policies and review/revise all programmatic and fiscal policies that may be a barrier for individuals in need of services to attain integrated, competitive employment.

While all state agencies listed above have some type of Employment 1st related policies, at times those policies may be in conflict with each other further creating barriers to employment. Reviewing existing state policies that may be presenting a barrier to employment will help to

ensure that each agency is working together to advance the Commonwealth's goal of increasing integrated competitive employment options.

Executive Order 46 further supports state agencies' participation in expanding existing efforts to recruit, accommodate, retain and advance Virginians with disabilities in the Commonwealth's workforce.

Furthermore, state agencies that support the provision of employment services should develop consistent processes for reporting requirements to reduce redundancy and unnecessary mandates.

Recommendation 7: DBHDS should identify a way to efficiently gather data that allows them to demonstrate who is receiving what services (Job Discovery Skills, Job Development, Job Training, Long term Supports, Group Supported Employment) at what amounts, for how long and to what outcome (including rate of pay, hours worked, time employed)

This recommendation is aligned with the Virginia Board for People with Disabilities 2014 Assessment of the Disability Services System recommendation to "Develop and implement a data system that will provide **meaningful employment outcome data** (not just service utilization) on a statewide and local level. Meaningful data is critically needed to establish current performance, to identify future benchmarks for employment of individuals with disabilities, and to drive effective decision-making."

Recommendation 8: Continue with the current efforts to redesign the Medicaid Waiver structure to allow more people the opportunity to achieve competitive integrated employment decreasing the need and preference for sheltered employment.

As of 10/1/2015, only 39 of 76 Employment Services Organizations are providers of Supported Employment Services using Medicaid Waiver dollars. Twenty provide Individual Supported Employment Services and twenty-nine provide Group Supported Employment. The lack of Medicaid Waiver providers creates a gap in both service and availability of options for individuals seeking community-based employment. Redesigning the Medicaid waiver system as well as streamlining documentation requirements among funding sources and state agencies may, among other things, incentivize providers to begin offering supported employment services.

Recommendation #9: Invest in the development of transition programs for youth with disabilities.

WIOA has a heavy emphasis on youth with disabilities and building systems that promote integrated, competitive employment as well as opportunities for post-secondary education. Building capacity for effective transition programs including programs such as Start on Success, Project SEARCH, ACE-It in College, Career Pathways as well as such programs as Governor McAuliffe's apprenticeship program established under Executive Order 49 and other programs would strengthen the Commonwealth's commitment to ensuring that all youth of Virginia have the opportunity for successful career development.

