

Ohio Department of Developmental Disabilities

Employment First

Funding System Redesign
Forums



HIGH IMPACT Mission-
Based Consulting

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Ohio Governor's Executive Order

- Signed, March 19, 2012
- Establishment of the Employment First Policy and Taskforce to Expand Community Employment Opportunities for Working-Age Ohioans with Developmental Disabilities

Ohio Governor's Executive Order

- Whereas...Ohio's DD system currently spends less than 6% of available adult service funding on placing and supporting individuals with DD in the general workforce, and...

Ohio Executive Order, cont.

- Whereas individuals with DD have the right to make informed decisions about where they work, and to have opportunities to obtain community jobs that may result in greater earnings, better benefits, improved health and increased quality of life....Now, Therefore, I direct...

Ohio Executive Order, cont.

- Community employment shall be the priority and the preferred outcome for working age Ohioans with disabilities.

Ohio Executive Order, cont.

- Creates an Employment Task Force (ETF) to collaborate, coordinate and improve employment outcomes; &, in first 6 months
- Review & align policies, procedures, eligibility & enrollment & planning for services to increase opportunities for community employment

Ohio Executive Order, cont.

- Identify best practices, effective partnerships, sources of funds, etc...
- Establish **interagency agreements** to improve coordination of services & to allow for data sharing

Ohio Executive Order, cont.

- **Set benchmarks** for improving community employment outcomes/services
- DODD has the authority to establish an **Advisory Committee** made up of business stakeholders, self-advocates and other stakeholders...to provide the ETF with needed information & recommendations

Ohio DODD Implementation

- Statute amended to clarify that employment services shall be directed to community employment, which means competitive employment in an integrated setting
- Statute also amended to state that **all people with developmental disabilities are presumed capable of community employment**

Ohio DODD Implementation

- Rule adopted to implement **Employment First policy** in spring 2014
- **Data system** created to track outcomes
- Provider transformation TA project

Is Ohio Alone?

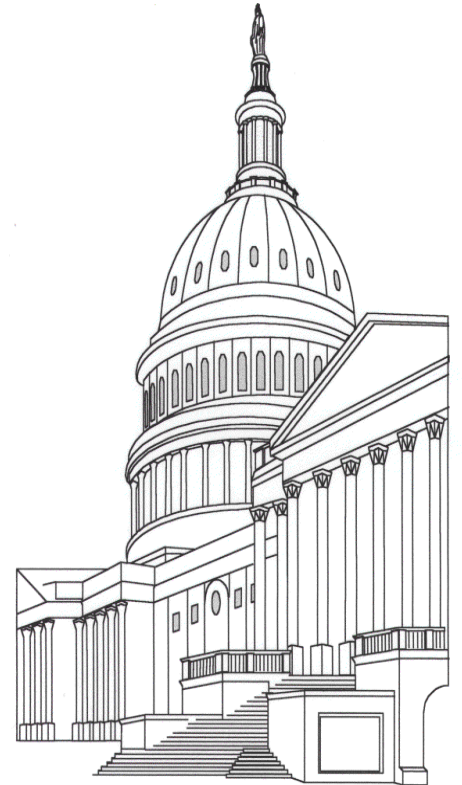
- 32 states have formal Employment First policies
- 44 states have Employment First initiatives underway





What's Driving Employment 1st?

Overview of Federal and State Policies and Actions Supporting Employment First and Full Community Integration



Findings of Congress in the Americans with Disabilities Act

- “physical or mental disabilities in no way diminish a person’s right to fully participate in all aspects of society, yet many people with physical or mental disabilities have been **precluded from doing so because of discrimination** others who have a record of a disability or are regarded as having a disability also have been subjected to discrimination.”
- Signed into law July 26, 1990 (24 yrs. ago)

ADA Findings, cont.

- **“Historically, society has tended to isolate and segregate individuals with disabilities,** and, despite some improvements, **such forms of discrimination** against individuals with disabilities continue to be a serious and pervasive social problem.

ADA Findings, cont.

- “Individuals with disabilities continually encounter various forms of discrimination, including outright intentional exclusion... overprotective rules and policies, failure to make modifications to existing facilities and practices, exclusionary qualification standards and criteria, segregation, and relegation to lesser services, programs, activities, jobs.....

Goals of the Americans with Disabilities Act of 1990

- The nation's proper goals regarding individuals with disabilities are to assure:
 - Equality of Opportunity
 - **Full Participation**
 - Independent Living
 - **Economic Self Sufficiency**

ADA INTEGRATION MANDATE

- “A public entity shall administer services, programs and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.”

28CFR section 35.130(D)

Olmstead v. L.C.

11th Circuit (1999)

- "...the state (Georgia) **discriminated** against L.C. and E.W. by **confining** them in a **segregated institution** rather than providing them services in **integrated community settings**
- ...the state's actions in this case constituted **discrimination...**
- ...the state has **violated the core principle underlying the ADA's integration mandate...**"

OLMSTEAD vs. L.C. & E.W.:

Supreme Court Decision (June, 1999)

1. What Did the Supreme Court Say?

A. **The ADA is a fundamental civil rights statute!**

B. The Court acknowledged that Congress found that **discrimination against people with disabilities includes segregation, isolation & institutionalization**

OLMSTEAD vs. L.C. & E.W.:

C. Under ADA, **a legal right to be served in the most integrated setting. Not open to state's discretion.**

D. Unnecessary isolation and institutionalization is **discrimination**

OLMSTEAD vs. L.C. & E.W.:

E. “Unjustified institutional isolation...is a form of discrimination”

“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.**”

OLMSTEAD vs. L.C. & E.W.:

“Confinement in an institution severely diminishes the everyday life activities of individuals, including family relations, social contacts, work options, economic independence, education advancement, and cultural enrichment.”

Conclusions from Olmstead:

- The ADA is a **Civil Rights Law** that applies to all people with disabilities across the age span
- The Integration Mandate is not only for Medicaid beneficiaries and Medicaid services
- **The Integration Mandate is really about how states and counties organize services and supports**
- Olmstead is about planning & systems change

The Role of the ADA and Olmstead

- Cannot be ignored
- **June 22, 2011** was 12th anniversary of the Olmstead Supreme Court Decision
- DOJ issued:
Statement of the Department of Justice on Enforcement of the Integration Mandate of Title II of the Americans with Disabilities Act and the Olmstead v. L.C.

DOJ on the ADA, June 22, 2011

- **Integrated settings are located in mainstream society**; offer access to community activities and opportunities at times, frequencies, and with person's of an individual's choosing; afford individuals choice in their daily life and activities; and, provide individuals the opportunities.....

DOJ on the ADA, June 22, 2011

- The “most integrated setting” is defined as “a setting that enables individuals with disabilities to interact with non-disabled persons to the fullest extent possible.”

DOJ, June 22, 2011, cont.

- Segregated settings include, but are not limited to:
 - (1) **congregate settings populated exclusively or primarily with individuals with disabilities;**

DOJ, June 22, 2011, cont.

- Segregated settings include, but are not limited to:
 - (2) congregate settings characterized by **regimentation in daily activities, lack of privacy or autonomy**, policies limiting visitors, or **limits on individuals ability to engage freely in community activities** and to manage their own activities of daily living

DOJ, June 22, 2011, cont.

Segregated settings include, but are not limited to:

(3) settings that provide for daytime activities primarily with other individuals with disabilities

DOJ, June 22, 2011, cont.

- When is the ADA's integration mandate implicated?

...when **a public entity administers its programs in a manner that results in unjustified segregation of persons with disabilities.**

DOJ, June 22, 2011, cont.

- A public entity may violate the ADA if it **promotes or relies upon the segregation of individuals with disabilities** through its:
 - Planning
 - Service system design
 - Funding choices, or
 - Service implementation practices

DOJ, June 22, 2011, cont.

- **Public entities are required to have:**
 - **“a comprehensive, effectively working Olmstead plan...that must contain concrete and reliable commitments to expand integrated opportunities.**

DOJ, June 22, 2011, cont.

- The plan **must have specific and reasonable timeframes and measurable goals**... the public entity may be **held accountable**, and there must be funding to support the plan, which may come from reallocating existing service dollars

DOJ, June 22, 2011, cont.

- The plan **should include commitments** for each group unnecessarily segregated such as individuals with developmental disabilities **spending their days in sheltered workshops and segregated day programs.**
- The plan must demonstrate **success by moving individuals to integrated settings in accordance with the plan.”**

DOJ Intervenes in Oregon Lawsuit Lane, et.al. v. Kitzhaber (March, 2013)

- “The United States alleges that Defendant, the State of Oregon (“State”), **discriminates** against individuals with intellectual or developmental disabilities by **unnecessarily segregating them in sheltered workshops** and by placing them at risk of such segregation in violation of Title II of the ADA and Section 504 of the Rehabilitation Act.”

DOJ-OREGON Complaint, cont.

- **“A sheltered workshop is a segregated facility** that exclusively or primarily employs persons with I/DD. Sheltered workshops are usually, large, institutional facilities in which persons with I/DD have **little to no contact with non-disabled persons besides paid staff.** Persons with I/DD typically earn **wages that are well below minimum wage.”**

DOJ-OREGON Complaint, cont.

- “...Oregon’s system has so ingrained the expectation that all individuals with I/DD will work in such sheltered workshops, that students from local high schools receive scholarships/stipends to participate in the workshop provider’s programs while still in school. Some other high schools “life skills” programs operate sheltered workshops in school or have students with I/DD perform workshop tasks.”

DOJ-OREGON Complaint, cont.

- “...Because the State does not make available adequate and effective supported employment services for people with I/DD who qualify for and do not oppose such services, such persons are at risk of entering into sheltered workshops and are required to remain in sheltered workshops in order to receive employment services. Oregon provides supported employment services to a limited number of persons with I/DD.”

Statement of Eve Hill, Sr. Counsel to Asst. Attorney General for Civil Rights

“ The Supreme Court made clear over a decade ago that **unnecessary segregation of PWD is discriminatory**. Such segregation is impermissible in **any state or local government program** whether it be residential services, employment services or other programs. Unfortunately the type of segregation and exploitation we found [in Rhode Island] is all too **common when states allow low expectations to shape their disability programs.**”

U.S. v. State of Rhode Island Consent Decree

- April 2014 to resolve complaint filed January 2013
- Does not impact interim settlement of June 2013 re: Providence
- Ten year plan to transform entire system from segregated day and sheltered work
- Annual targets and benchmarks
- Many service definitions including Customized Employment and Discovery

US DOJ-Rhode Island Consent Decree

- Central theme is **increasing integration**; ensuring that PWD have **same access to community (employment, leisure and daily life) as peers without disabilities**
- People in R.I. in supported employment are also **entitled to community-based integrated day services and supports as a “wrap around” for up to 40 hours per week.**

US DOJ-Rhode Island Consent Decree

- **Individuals can seek a variance to remain in a segregated setting only if they try integrated employment first,** including a community-based supported employment assessment, work incentives benefits counseling and a trial work experience in the community.
- This constitutes “informed choice”.

US DOJ-Rhode Island Consent Decree

- Transition finding: about 5% of youth with ID/DD leaving school between 2010-2012 transitioned into integrated employment
- R.I. Dept. of Ed. will adopt an Employment First policy, making integrated employment a priority service for youth
- State agencies will promote the implementation of school to work transition planning process with specific timelines and benchmarks for all youth 14 - 21

U.S. v. Rhode Island, cont.

- Youth in transition will receive
 - Integrated vocational and situational assessments, including Discovery
 - Trial work experiences
 - An array of other services to ensure that they have meaningful opportunities to work in the community after exit school
- Work will average 20 hours/week
- Integrated work & non-work hours will total 40 hours/week.

CMS Issues Updates on Employment Services under to Medicaid Waivers

September 16, 2011

“We hope that by emphasizing the importance of employment in the lives of people with disabilities, updating some of our core service definitions, and adding several new core service definitions to better reflect best and promising practices that it will **support States’ efforts to increase employment opportunities and meaningful community integration for waiver participants.**”

Key Updates to CMS Waiver Guidance

- Emphasizes the **critical role of person centered planning in achieving employment outcomes**
- Clarifies that “**pre-vocational services are not an end point, but a time limited (although no specific limit is given) service for the purpose of helping someone obtain competitive employment.**”

Key Updates to CMS Waiver Guidance

continued

- Splits supported employment into two core service definitions- **individual and small group**
- Adds a **new core service definition for career planning**, that is currently used by several States

CMS Issues Final Rules on HCBS and the Definition of Community: Jan. 16, 2014

- Applies to 1915(c) HCBS waivers; 1915(i) state plan amendments for HCBS; and, 1915(k) Community First Choice state plan amendments
- Extensive criteria for the development of a “person centered plan”
- “Informed choice”

CMS Issues Final Rules on HCBS and the Definition of Community: Jan. 16, 2014

- “Providers of HCBS for the individual, or those who have an interest in or are employed by a provider of HCBS for the individual **must not provide case management or develop the Person Centered Service Plan.....**
- ...except when the State demonstrates that the only willing and qualified entity to provide case management and/or develop person-centered service plans in a geographic area also provides HCBS.”

CMS Final Rules on HCBS

continued

- Home & Community-Based Settings –
“**must have** all of the following qualities,
and such other qualities that the Secretary
determines to be appropriate, **based on
the needs of the individual as indicated in
their person-centered service plan:.....**”

CMS Final Rules on HCBS

continued

#1. "The **setting is integrated** in and supports **full access** of individuals receiving Medicaid HCBS **to the greater community**, including opportunities to:

- seek **employment** and **work in competitive integrated settings**,
- engage in community life,
- control personal resources, and
- receive services in the community, **to the same degree of access as individuals not receiving Medicaid HCBS.**"

CMS Final Rules on HCBS

continued

#2. "The setting is selected by the individual from among setting options including.... **non-disability specific settings** & an option for a private unit in a residential setting.

The setting options are identified & documented in the person-centered service plan and are based on the individual's needs, preferences and, for residential settings, resources available for room and board."

CMS Final Rules on HCBS

continued

#3. “Optimizes, but **does not regiment individual initiative, autonomy, and independence in making life choices,** including, but not limited to, daily activities, physical environment, & with whom to interact.”

Implications for Day/Employment

- Expect facility-based day service settings and sheltered work centers will be considered "settings that isolate".
- If states wish to continue to allow HCBS to be delivered in these settings, they will need to show how the settings will:

“Support **full access** of individuals receiving HCBS **to the greater community, including opportunities to seek employment and work in competitive integrated settings**, engage in community life, control personal resources and receive services in the community to the same degree of access as individuals not receiving HCBS.”

CMS Imposes Special Terms & Conditions on New York State's OPWDD

- “The receipt of expenditure authority for *transformation* for 4/1/13 – 3/31/14, is contingent on state's compliance and CMS' receipt of the following deliverables:”
 - Baseline # of people receiving supported employment services & in competitive employment for 5/1/12 – 4/30/13
 - Increase that number by 700 people with no exception for attrition, and
 - Increase by 250 persons by 10/1/13

CMS & N.Y. OPWDD, cont.

- Effective July 1, 2013, New York will **no longer permit new admissions to sheltered workshops** and must report quarterly enrollment in sheltered workshops
- On 10/1/13, submit a draft plan for review and final plan by 1,1/2014 on **transformation to competitive employment**
- To include detailed work plan (sic) for number of **students exiting educational system moving directly into competitive employment**

CMS & N.Y. OPWDD, cont.

- Plan must include a **timeline for closing sheltered workshops**, and a description of the **collaborative work with the New York educational system** for training/education to key stakeholders on the availability and importance of competitive employment.

Individuals with Disabilities Education Act (IDEA)

“to ensure that **all children with disabilities** have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs **and prepare them for further education, employment, and independent living.**”

20 U.S.C. 1400(d)(1)(A)

IDEA Transition Amendments of 2004

- “The term ‘transition services’ means a coordinated set of activities for a child with a disability that:
- Is designed to be within a **results-oriented process**, that is focused on improving the **academic and functional** achievement of the child with a disability to facilitate the child’s movement from school to post-school activities, including.....

IDEA Transition Amendments of 2004

continued

...postsecondary education, **vocational education, integrated employment (including supported employment)** continuing and adult education, adult services, **independent living, or community participation;**

- Is based on the individual child's needs, taking into account the child's **strengths, preferences and interests;** and

IDEA Transition Amendments of 2004

continued

- Includes instruction, related services, **community experiences**, the development of **employment and other post-school adult living objectives**, and, if appropriate, **acquisition of daily living and functional vocational evaluation.**”

US Dept. of Education: Response to Disability Rights WI

- January 2012 informal guidance from Office of Special Education Programs on the **application of Least Restrictive Environment to transition IEPs**
- **Work placement can be an appropriate transition service** and, if determined appropriate by team, it must be in the IEP
- All placement decisions, including transition services and work placements, **must be based on LRE principles** and made by the IEP team

Federal Vocational Rehabilitation Policy

“(3) It is the policy of the United States that such a program shall be carried out in a manner consistent with the following principles:

“(A) Individuals with disabilities, including individuals with the **most severe disabilities**, are generally **presumed to be capable of engaging in gainful employment** and the provision of individualized vocational rehabilitation services can improve their ability to become gainfully employed.

“(B) Individuals with disabilities **must be provided** the opportunities to obtain gainful employment in **integrated settings**.

Rehabilitation Act, 1992

Rehab Act's Presumption of Benefit

“(2) Presumption of benefit

(A) Demonstration: For purposes of this section, an individual shall be presumed to be an individual that can benefit in terms of an employment outcome from V.R. services, ...unless the designated State unit involved **can demonstrate by clear and convincing evidence** that such individual is incapable of benefiting in terms of an employment outcome from V.R. service due to the severity of the disability of the individual.

Rehab Act's Presumption of Benefit

(B) Methods: In making the demonstration required above, ...shall explore the individual's abilities, capabilities, and capacity to perform in work situations, through the use of trial work experiences...with appropriate supports provided, except when an individual cannot take advantage of such experiences. Such experiences shall be of sufficient variety and over a sufficient period of time to determine eligibility of the individual or to determine the existence of clear and compelling evidence..

V.R. Employment Outcome, 2001

“Employment outcome means, with respect to an individual, entering or retaining full-time or, if appropriate, part –time competitive employment as defined in 361.5(b) (11), in the integrated labor market, supported employment, or **any other type of employment in an integrated setting**, including self-employment, telecommuting or business ownership, that is **consistent with an individual’s strengths, resources, priorities, concerns, abilities, capabilities, interests & informed choice**
34CFR361.5(b)1

Additional Federal V.R. Policy

- January 22, 2001: RSA implemented the principle of integrated employment in a regulation that:

Prohibits placement in sheltered workshops or other segregated settings for “extended employment” from being counted as a successful employment outcome for the V.R. program.

Rehabilitation Services Administration Technical Assistance Circular 14-03

- May 6 2014
- Carol Dobak, Chief, VR Program Unit
- Transition Planning & Services Provided Through the State VR Services Program

Rehabilitation Services Administration Technical Assistance Circular 14-03

- “...all students with disabilities, including those with significant and the most significant disabilities, are presumed to be eligible for VR services, unless the VR agency concludes, based on clear and convincing evidence.....an employment outcome (integrated employment)”

R.S.A. TAC 14-03, cont.

- “ ‘Clear and convincing evidence’ is defined, in part, as the highest standard in our civil system of law whereby VR agencies must have a high degree of certainty before concluding that an individual is incapable of benefiting from services in terms of an employment outcome. The term ‘clear’ means unequivocal.”

Workforce Innovation & Opportunity Act

- Bipartisan-bicameral negotiated bill passed by Congress, July 9, 2014
- Reauthorizes Workforce Investment Act and Rehabilitation Act (V.R.)
- **15% of V.R. funds must** be spent on students with disabilities transitioning from school to work/postsecondary education

Workforce Innovation & Opportunity Act

- Section 511 prohibits PWD under the age of 24 from working for less than minimum wage unless they first try V.R. services among other requirements.
- Sen. Tom Harkin & Rep. Pete Sessions ++

Blueprint for Success: Employing Individuals with ID in Mass. Nov. 2013

- Developed collaboratively by:
 - Mass. Dept. of Developmental Services
 - Association of DD Providers
 - The Arc of Massachusetts
- “A plan to redesign day & employment services that will not only better respond to changing demands of individuals with ID & their families, but also expand principles of the Olmstead decision to day and employment services”

Mass. Blueprint, Key Milestones

- Close “front door” to Sheltered Workshops by Jan. 2014
- Close Sheltered Workshops by June 30, 2015
- Transition participants in Sheltered Work during FY’15 to options: integrated individual or group employment @ minimum wage or above and/or community-based day services

Mass. Blueprint, Key Milestones

- DDS remains committed to providing individuals with needed day services in a manner that maintains stability for families & residential providers during non-work hours
- Strengthen partnerships – Education, Labor and Rehabilitation

Mass. Blueprint, cont.

- Continue to transition individuals from community-based day services to integrated work opportunities that pay minimum wage or higher based on person-centered career plans
- Gradually phase out group employment settings that pay less than minimum wage

Mass. Blueprint, cont.

- To successfully meet goals, DDS is committed to funding an 18 month capacity building initiative beginning in November 2013 to expand existing strengths of its provider agencies.

Mass. Provider Capacity Building

- Extensive **staff training** opportunities
- Supporting **organizational change with mgmt.. consultation/business planning**
- Expanding an employment collaborative model to better coordinate identification of job opportunities in business community

Mass. Capacity Building

- Providing T.A. on vocational assessment & person-centered career planning to provider staff & DDS service coordinators
- Supporting regional forums for individuals and families; Arc, Families Organizing for Change, Advocates Standing Strong
- Leadership roundtables-peer/peer learning

Mass. Investment in Capacity Building to Support Successful Transformation

- Staff development & training aligned with credentialing and certifications for
 - Benefits planning
 - Career exploration; Discovery
 - Customized employment
 - Systematic instruction
 - Technology on the job
- Data collection on employment outcomes

Mass. Fiscal Analysis

- Need for estimated investment of \$26.7 million over four fiscal years; 50% from Federal Medicaid match
- FY'15 - \$11.1 M; FY'16 -\$6.3 M; FY'17 - \$8.3 M; FY'18 - \$1.0 M
- Creating a robust employment provider network and system of supports

Maryland Works State Use Program

- Board issued decision July 7, 2014
- “In light of the changing nature of what constitutes appropriate and acceptable employment services for people with disabilities, Maryland Works is phasing out assignment of Employment Works Program (EWP) contracts for completion in sheltered workshops.”

Maryland Works State Use Program

- Any new EWP contract which will be completed in a sheltered workshop will have an end-date of June 30, 2015
- All current EWP contracts tied to sheltered workshops will be discontinued on June 30, 2015.

Maryland Works State Use Program

- “As you know, there has been a flurry of activity undertaken, by a wide range of private and public entities, aimed at ending sheltered workshop services. Chief among these activities has been the Department of Justice...”

Maryland Works State Use Program

- “Actions by the DOJ have resulted in greater clarity as to what is and is not acceptable in services provided for people with disabilities. It is abundantly clear that, when it comes to employment related services, sheltered workshop services are no longer acceptable as anything other than a last resort; and, even that use of sheltered workshop services is highly questionable and out of favor.”

Can Ohio Sit Still?

- Reality of over-reliance on segregated day and employment settings (DOJ)
- Disability Rights Ohio letter
- CMS HCBS settings regulations
- Unpredictable future for 14c
- Better outcomes possible for \$\$\$ invested

The Choice At Hand

**Does Ohio want to design
its own way forward?**

**Or risk someone else dictating
change to the state and counties?**

This Effort

- Facilitate a minimum of **six community forum meetings throughout Ohio** to engage stakeholders and seek input on the funding system change recommendations (July-August, 2014)

Employment First is
not just about
“best practice”.

It is about
clear public policies
that employment is
the priority

**A critical focus of
Employment
First must be on
shifting public
resources to be
in alignment
with our values...**

REVIEW AND DISCUSSION OF PRINCIPLES FOR FUNDING SYSTEM RE-DESIGN IN OHIO

REVIEW OF FUNDING APPROACHES FROM OTHER STATES

Determining Cost of Providing A Service

- Historical cost approach
- Prospective payment approach

Determining Cost of Providing A Service

- "Building a rate"
- Determining all cost elements to include
- Adjustments for geographic variations

Paying for Individual Supported Employment

- Fee for service
 - 15 minute or hourly units
 - Monthly payments
- Outcome-based
 - Payment for milestones
 - Payment for hours worked
 - Payment based on wages earned
- Some combination of these options

After the Forums

- Facilitate a minimum of **six workgroup meetings to develop service definitions, provider qualifications, and rate methodologies.** (Sept-Nov, 2014)
- Work with DODD staff and workgroup to **review and revise employment service definitions and billable activities to clearly define expectations.**

After the Forums

- Work with DODD staff to **revise Ohio's Medicaid HCBS Waiver application, as needed**
- Conclude effort: **June, 2015**

Presumption of Competency

**“ Everybody is a genius.
But if you judge a fish by
its ability to climb a tree, it
will live its whole life
believing that it is stupid.”**

Albert Einstein

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