

Final Rule Stakeholder Call

Topic: Employment

4/5/2017

Noon call (99 participants on the line)

State Staff in Attendance: Carrie Proffitt, Paula Morgan, Cindy Wichman

Due to data corruption when retrieving the recording of the noon call – some questions from the noon call are not included. WSU apologizes for the inconvenience.

1. Earlier you referenced the expectation that people had the opportunity that people be employed or consider at a fair wage. Define, is that a legal wage? What are the parameters around that?
 - a. My parameter, based on what I read, based on independent research, is similar to people without disabilities would earn. Minimum wage or above minimum wage. Similar to what those without disability would earn for the same work.
2. I want to reiterate the difficulties with families, guardians, and the folks we serve. We pay minimum wage; we don't use a sub-minimum wage certificate. When we had folks do our preliminary review for final rule, we were told under no uncertain circumstances that community activities had to be offered daily and people were supposed to be given a choice to work, to go do an activity at a site, or go out to a community activity. But we continue to hear that people are not sending their ward to play around. They're sending them here to earn a paycheck. Some of them need to go to some activity in park, whatever it happens to be. My concern is the importance placed on them to be productive. They have chosen not to pursue community employment for various reasons. A number of people here who do work independently and do community work have been upset when they were off doing things and then their paychecks went down. They learned a lesson. They don't want us offering other activities. Many are on a path to getting jobs in the community. This is causing a lot of discontent. We have pushed work so much, and people are expected to work. Now we are expected to offer things other than work and people not happy about it. I just want to throw it out there in case others are getting that kind of feedback.
3. I was wondering, the state asked for workgroup that worked through the fall to make recommendations on final rule. The document is posted. They had some good recommendations and the group worked hard. Now take me back to when you said pre-vocation. The recommendation was as long as they are making progress, it wasn't time limited, where they were as far as implementing and doing them as long as they would support employment in the community.
 - a. The recommendations have not been forgotten. They are in the process of being woven into the statewide transition plan. I know I have been working on it and talking about it for several calls. It's under the final series of internal reviews. The workgroup recommendations are contained in that document. What I continue to hope for is that we can get initial approval from CMS so that it opens the door for Kansas to have an indication that we're moving in the right direction. Then we can begin to move on those recommendations and many others that so many stakeholders have been so diligently

involved in getting us to where we are in the process right now. I see those recommendations being considered and developed once we have approval from CMS.

4. Do you see a definition of integrated? A percentage of workforce? Jobs open to anyone? What constitutes a work setting?
 - a. There are a number of different definitions. The Department of Justice integration mandate document has a definition of competitive integrated employment defined on page 4.
5. Is the job paying minimum wage or higher, with some employees not disabled. Is it integrated?
 - a. We've seen this example in other presentations that talk about reverse integration where others are brought into an environment that basically has the characteristics of isolation. This is not integrated. I will follow-up on this.
 - b. **Added after the stakeholder call: The Kansas State Employment First Statute states, "Integrated setting" means with respect to an employment outcome, a setting typically found in the community in which applicants or eligible individuals interact with non-disabled individuals, other than non-disabled individuals who are providing services to those applicants or eligible individuals, to the same extent that non-disabled individuals in comparable positions interact with other persons."**
6. I feel like we're getting tidbits of decisions that are being shared and are missing the comprehensive plan or something that weaves all of this together. In our room, we feel like things have been sped up. This is "new information". Where is the comprehensive plan, training, or whatever?
 - a. There are many who share the same sentiment. I think that I mentioned it earlier, and I don't want to make it sound like with the statewide transition plan approval from CMS that the gates will open and all answers will be illuminated and will be clear, but I think it will be a turning point. I think it will help us move forward with the structure we've talked about conceptually. I think it's a pivotal piece in the process.
7. Is it appropriate for an agency to be told they have to do things a certain way? They were told they have to have someone integrated and they're having parents pushing back and this happened on their assessment. Did I mishear that?
 - a. This was a very specific situation from one provider. HCBS Director Cindy Wichman will do some additional investigation into what occurred.
8. Once the proposal is submitted to CMS, will that be posted to the website for review?
 - a. Absolutely. It MUST be. Once we get a submission in to CMS and they get us guidance of changes need to be made it will be posted. There's different marks in time that it may be posted including when changes will need to be, additional opportunities for feedback, when we revisit the plan and after public comments.
9. I'm confused. Cindy, have you submitted the plan or not?
 - a. Here's a quick refresher. The initial plan was submitted back in August, maybe September (2016). It was a first draft. It has been awaiting additional action by CMS. We received some additional clarification and modifications that needed to be made for initial approval. We removed it from the consideration process, sought public comment and stakeholder feedback through the different workgroups. We have revised the version and have submitted it to CMS. There is a team assigned to Kansas who will look at the updated document. We have not received initial approval yet. If you watch the

CMS.gov website, you can track all the statewide transition plans across the country and see Kansas' with a link to our transition plan website. There you can also see we're in the stage where we need to make clarifications and modifications for initial approval.

10. The revised plan has not been submitted yet?
 - a. Yes, one version. The last one submitted. We're now submitting an updated version with the clarifications and modifications we needed to provide.

Evening Call (14 participants on the line)

State Staff in Attendance: Cindy Wichman

1. Title II of the ADA covers state and local governments, to be absolutely clear, the language applies to governments and to private entities. Just because I run a private not for profit independent living center doesn't mean that I don't have the same duty to meet the integration mandate.
2. Did I hear you say that 2,500 people are in segregated, non-competitive employment settings and are under heightened scrutiny with a request to establish that they are community based?
 - a. The state's systemic assessment showed day supports to have a medium risk and an estimated 4,500 participants in that setting. Day supports provides a variety of services under the same category including congregate work centers and sheltered workshops. A lot of the services we've done systemic assessments for are home based and don't present as much risk as does the supports that are facility based. We know that we need to be looking at the wages that are being paid to individuals who work. They need to be earning a fair wage. They need to be in an integrated setting, described as, *"a setting typically found in the community in which applicants or eligible individuals interact with non-disabled individuals, other than non-disabled individuals who are providing services to those applicants or eligible individuals, to the same extent that non-disabled individuals in comparable positions interact with other persons."*
3. It's good to know the deadline for compliance will possibly be pushed back, and in the longer run we could extend our thinking out. There's no limit. It's a process. I think there's a lack of imagination that all 4,500 can't be as community based and competitive as they could be. Longer term processes and being imaginative could help that instead of just trying to satisfy standards and accepting that the status quo is fine. We have to continue onward on our journey.
4. How is the statewide transition plan going to align the final settings rule and the employment first initiative and philosophy as a state?
 - a. There are many different groups, including the subcabinet workgroup focusing on the employment of people with disabilities. There are many different groups, many different rules and regulations, and they all remain individual. In that subcabinet and workgroups, they're trying to build a cohesive vision and wrap all the initiatives and strategies that feed into one another. They're all important pieces and it's an important task, but we there are a lot of capable people who have been working the last couple of years, if not for decades in Kansas. So that's the challenge that lies before us. How do

we bring them into alignment in a cohesive way and with the right approach? That's what Kansas is trying to do.

5. Have you been able to gather any trend data? Up? Down? Flat? On the employment of people with disabilities and their subgroups (i.e. working age, IDD, PD, TBI, etc.)? Do we have any numbers, trends?
 - a. One discovery in the assessments is that one of the areas that scored the lowest amongst persons served is opportunities for employment. One area we would like to see reversed was consumer feeling like they had good opportunities for employment. 31.4% agreed that they were able to see community employment and job opportunities based on the survey conducted last summer. That's a very low percentages and right now we have a marker we can start from and move the needle on that.
6. I think for a lot of good reasons, there's been a lot of focus on IDD providers and people with that particular or range of disabilities. Another is the PD world. We need to get people thinking about working. I know it's just another idea in the list of things to do. However, it's also a contradiction. Now the process still starts with you qualify for Medicaid, social security (and prove you're unable to work at any job ever). Then on the other end you're saying you can work it doesn't make sense. We have to get on entry level with doctors and short circuit it. We train people to think they can never work. We do have opportunities. We have the best Medicaid buy-ins in anywhere in the country. We have tools. Small employers have opportunities. We can do a better job on that but I don't know where to begin on that.
 - a. It is a reiterative process. We take a few steps, reevaluate, then take a few more steps. Despite all the efforts downstream, if the real source is upstream it may require some more work.
7. Finally, it does remind me Loyola and the work at Kansas Rehabilitation Services. If we're engaging in actively the pre-employment, we need to be starting with younger people. We've had a summer intern program at our center at catch them at 15-16 as opposed to at 18-21. When we do we can help shape some thinking and put some ideas out there that take root in the younger minds. And there's a stream of funding that help agencies, including centers for independent living so they can do more role modeling and show a different vision of the world. That way we change this idea that when you turn 18, you apply for SSI, and so on, and so on, and away you go. Hopefully, by working more closely with schools, guidance counselors, and engaging younger people that will start paying off and helps people with disabilities see their older people that are working and doing things. It puts a better vision for the future in their heads.