

A Facilitated Discussion with Providers

The Developmental Disabilities Administration (DDA)

July, 25 2018



MARYLAND
Department of Health

Let's find out who is here today?

- Name
- Organization
- 14c holder?
- What types and sizes of contracts does your organization have? (Source America, State, other individual or local contracts)

Opening Remarks

Deputy Secretary, Bernie Simons



Welcome



Rie Kennedy-Lizotte

*Director of Employment Policy
National Association of State
Directors of Developmental
Disabilities Services (NASDDDS)*

*Co/Manager of the State
Employment Leadership Network
(SELN)*

David Hoff

*Program Director, Institute for
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SELN Staff



Today's Goal

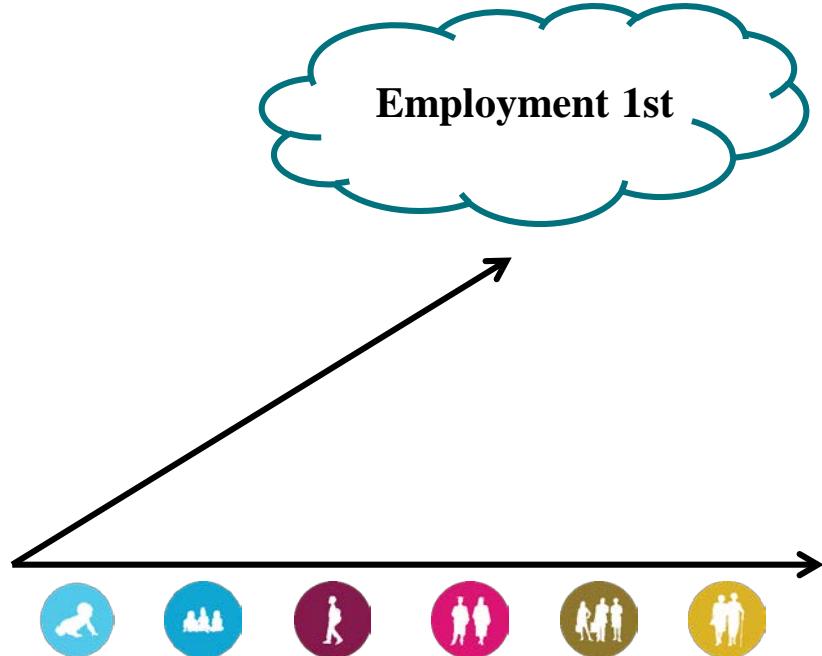
Defining:

1. Qualities of integration in employment.
2. Role of AbilityOne and Maryland Employment Works Programs for Maryland citizens with intellectual and developmental disabilities.

Ground Rules

- ◆ Be Here Now
- ◆ Silence or Absence is Agreement
- ◆ Consensus means “I can live with it”
- ◆ Make your thinking visible
- One person at a time speaks
- All voices matter
- Being polite and respectful

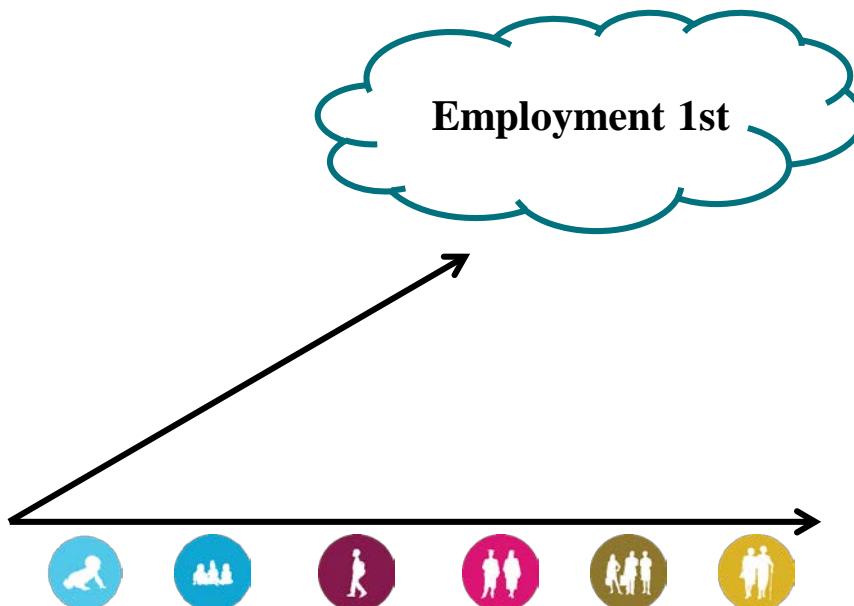
DDA's Context for Today's Conversation



Aligning our system:

- ★ Employment is the first and preferred outcome and choice of service
- ★ Employment First Strategic Plan
- ★ DDA collaborates with other state agencies and stakeholders
- ★ DDA realigning service system to support Employment
- ★ DDA building capacity among service providers to better support employment outcomes

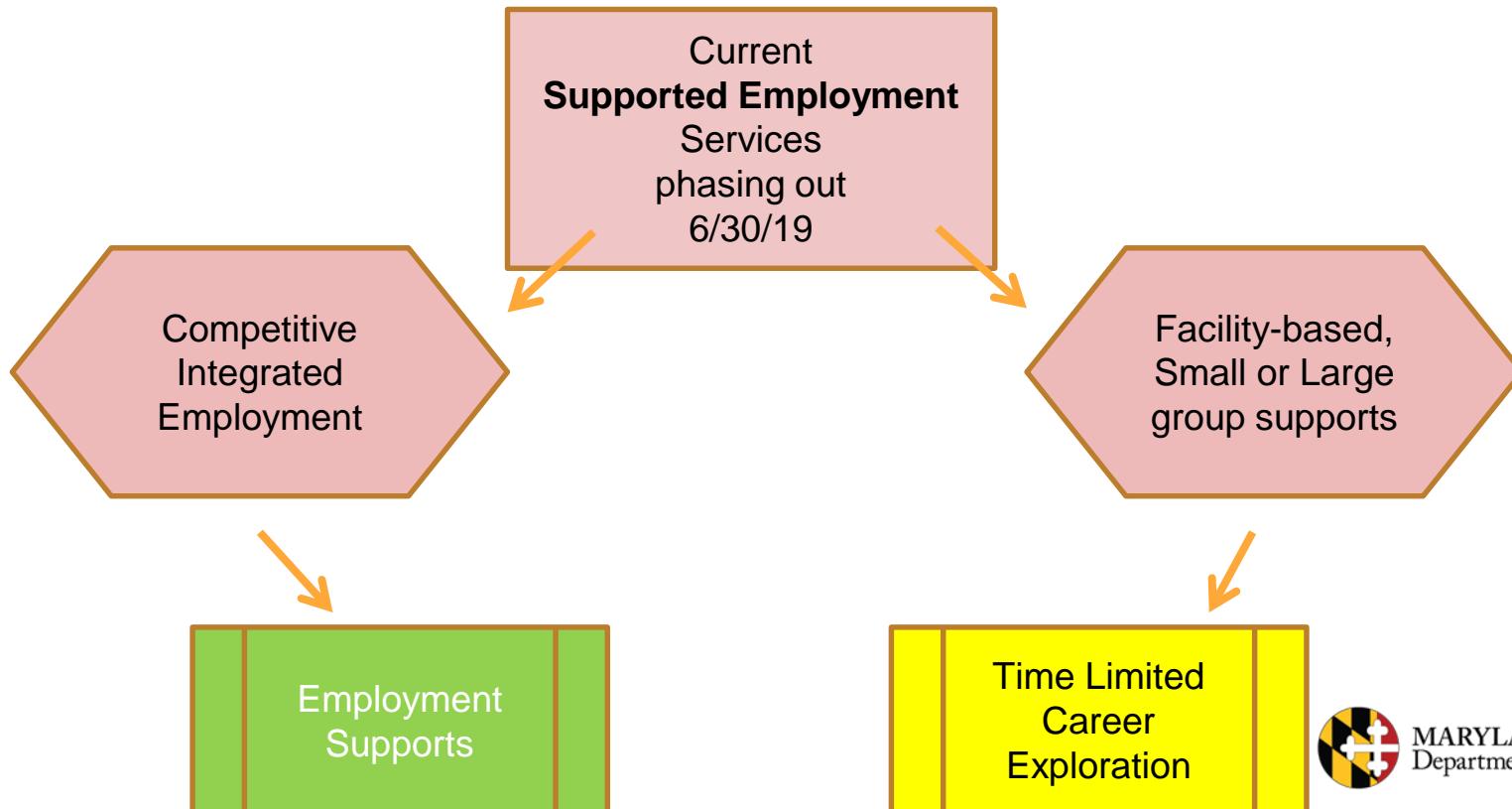
DDA's Context for Today's Conversation



Collaborating w/ and Supporting Providers :

- ★ End of 14c certificate (sub-min wage) use by 2020 in Maryland
- ★ Rate setting study
- ★ Employment Data Initiative
- ★ Site validation to be sure providers are in compliance with Final Rule
- ★ Technical Assistance to providers to engage in Organizational Transformation
- ★ Employment First Resources (website, newsletter, webinars, etc.)
- ★ New menu of Meaningful Day services that align with best practices

Realignment of Employment and Pre-Voc



Conversation about Integration

ADA and Olmstead Enforcement

The integration mandate of the Americans with Disabilities Act, as interpreted by the Supreme Court in its *Olmstead* decision, prohibits the unnecessary segregation of people with disabilities and requires public entities to provide opportunities for people with disabilities to live, work and receive services in the “most integrated setting”.

Olmstead enforcement has expanded over time from segregation in traditional institutions to other types of residential and non-residential segregation, *including settings that are funded by HCBS funding streams*.

Characteristics of Home and Community Based Settings

An outcome oriented definition that focuses on the nature and quality of individuals' experiences, including that the setting:

1. Is integrated in and supports access to the greater community
2. Provides opportunities to seek employment and work in competitive integrated settings, engage in community life, and control personal resources
3. Is selected by the individual from among setting options, including non-disability specific settings

HCBS Setting Characteristics (cont'd)

4. Ensures the individual receives services in the community to the **same degree of access** as individuals not receiving Medicaid HCBS
5. Ensures an individual's rights of **privacy, dignity, respect, and freedom from coercion and restraint**
6. Optimizes **individual initiative, autonomy, and independence** in making life choices
7. Facilitates **individual choice** regarding services and supports, and who provides them

WIOA emphasis on CIE

The Rehabilitation Act of 1973, as amended by the Workforce Innovation and Opportunity Act (WIOA), places emphasis on the achievement of competitive integrated employment (CIE) for individuals with disabilities. Definition outlines CIE as having the following qualities:

- (1) competitive earnings,
- (2) integrated location, and
- (3) opportunities for advancement.

Competitive Integrated Employment

Competitive Earnings

- Earnings are equal to or greater than the Federal, State, or local minimum wage rate, whichever is higher, where the place of employment is located; and
- Comparable to the customary rate paid by the employer to employees without disabilities in similar positions with comparable skills, experience, and training.

Integrated Location

- Employment is in a setting typically found in the community (a setting in the competitive labor market), and
- The employee with the disability will interact with both 1) employees without disabilities in the work unit and the entire employment site while performing his or her job duties, and 2) other persons (e.g., vendors and customers) without disabilities, to the same extent that employees without disabilities in similar positions interact with these persons.

Opportunities for Advancement

- The employee with the disability must be eligible for the same opportunities for advancement that are available to employees without disabilities in similar positions.



Open Discussion

Concerns and Issues

Open Discussion

Maryland qualities of integration in employment?

Conversation about Ability One and Maryland Employment Works Program

National Context and Considerations

- JWOD / AbilityOne
- MD Employment Works
- 2013 GAO report
- WIOA Advisory Committee
- WIOA Regulations & FAQ

AbilityOne Program

- Authorized by Javits-Wagner-O'Day Act (JWOD)
- Allows non-profit agencies to get contracts from federal government to provide specific products and services
- 75% of direct labor hours in organizations must be performed by individuals who are severely disabled or blind
- Employs 47,000 individuals nationally



JWOD Oversight and Coordination

- Overseen by **Committee for Purchase from People Who Are Blind or Severely Disabled**
 - *Representatives from 11 federal agencies and four additional individuals representing disability community*
- Central Nonprofit Agencies that coordinate contract distribution: **SourceAmerica** ■



“Severely Disabled” under JWOD

- Physical or mental disability other than blindness
- Constitutes a substantial handicap to employment and prevents individual from currently engaging in **competitive employment**
 - *Criteria defined by Committee for Purchase*

AbilityOne Criteria for Competitive Employment

- Capable of working 40 hours per work
- Can complete application and participate in interview independently
- Receives same pay and benefits as any other worker performing comparable work
- Only requires accommodations considered “reasonable” under ADA
- Can maintain job for extended period of time
- Can maintain job without intervention or supports from outside sources
- Individuals evaluated upon intake and annually by service provider

WIOA Definition: Competitive Integrated Employment

- Full-time or part-time
- Minimum wage or higher, with similar compensation as individuals without disabilities
- Location typically found in community
- Within work unit and work site as a whole, fully integrated with individuals without disabilities
- Similar opportunities for advancement as those without disabilities

WIOA Competitive Integrated Employment Definition

- Within WIOA law and regulations, **no mention** of AbilityOne
- RSA sub-regulatory guidance (FAQ):

" Employment settings that are "typically found in the community" are those in the competitive labor market (81 FR at 55642). Settings established by community rehabilitation programs 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--the first of two criteria that must be satisfied if a VR agency is to determine that a work setting is an integrated location under 34 CFR §361.5(c)(9).

The Department has long considered several factors that **generally** would result in a business being considered "not typically found in the community," which include: (1) the funding of positions through Javits-Wagner-O'Day (JWOD) Act contracts or State purchase programs; (2) allowances under the Fair Labor Standards Act for compensatory subminimum wages; and (3) compliance with a mandated direct labor-hour ratio of persons with disabilities. *It is the responsibility of the VR agency to take these factors into account when determining if a position in a particular work location is an integrated setting.*"

Issue

- Lack of alignment between
 - AbilityOne definition of **competitive employment**
 - WIOA definition of **competitive integrated employment**



Maryland Employment Works: Qualified Providers

- Community service provider accredited by Division of Rehabilitation Services of State Department of Education for participation in Employment Works Program
- Operated in interest of individuals who have a mental or physical disability, including blindness, that:
 - *constitutes a substantial barrier to employment; and*
 - *prevents individual from engaging in competitive employment*
- Employment Works overseen by Maryland Works, Inc.



2013 GAO Report - AbilityOne Program

Examined how the AbilityOne Commission meets their obligations

Findings:

- Commission has limited authority over how the two non-profit organizations perform and operate
- Limited written pricing review policies and procedures
- Insufficient internal controls monitoring of pricing

Recommendation:

- Congressional consideration to establish inspector general
- Enhancement of program oversight

WIOA Advisory Committee

1. Amend JWOD/AbilityOne to align with modern federal disability law and policy goals
2. Congressional direction and facilitation through funding and research on current use of AbilityOne to identify if serving intended populations, compliance methods, establish new participation thresholds , etc.
3. Congressional authorization of a third party evaluation tasked with studying the implementation in meeting recommendations to modernize the program.

Open Discussion

Concerns and Issues

Open Discussion

Role of Ability One and Maryland Employment Works Programs for Maryland citizens with intellectual and developmental disabilities

Wrap up and Next Steps

Questions



Contact

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