

Appendix III. Protection & Advocacy Systems

Administration on Disabilities (AoD) Disability Employment Technical Assistance (TA) Center Landscape Assessment Appendices

May 2021

As described in the methodology within the main section of the landscape assessment, the Center's project team conducted quantitative and qualitative analysis to identify current Protection and Advocacy Systems (P&A) initiatives and areas of further development. Appendix III details findings from the quantitative data reviewed as well the qualitative interviews conducted with P&A staff and self-advocates.

Trends in Provision of Employment and Economic Advancement Supports and Systems-Change Efforts

The Protection and Advocacy (P&A) System and Client Assistance Program (CAP) includes the nationwide network of congressionally-mandated, legally-based disability rights agencies. Under federal and state laws, P&A agencies have the authority to provide legal representation and other advocacy services to all individuals with disabilities based on a system of priorities for services. All P&As regularly monitor, investigate, and attempt to remedy adverse conditions identified in facilities that support individuals with disabilities. These agencies also



devote resources to ensure that individuals with disabilities have full access to inclusive educational programs, financial entitlements, healthcare, accessible housing, and productive employment opportunities. CAP agencies, of which many are housed within P&A offices, provide information and assistance to individuals seeking or receiving vocational rehabilitation (VR) services under the Rehabilitation Act of 1973, including assistance in pursuing administrative, legal, and other appropriate remedies. Each state has a designated federally-funded and mandated P&A agency. In some states, P&A agencies are part of governmental entities; however, typically P&A agencies are independent not-for-profit organizations.

Overview of Findings

One long-term P&A leader observed that prior to the landmark federal civil rights case *Olmstead v. L.C.*, employment cases were largely specific to employer discrimination issues and Americans with Disabilities Act (ADA) job accommodation denials. Since that case, however, P&As have considered how they can ensure that state entities are complying with the aims of ADA to support

individuals in the most integrated setting appropriate. Subsequent cases that have applied the *Olmstead* mandate to employment and day settings have further reinforced the need for P&As to identify areas where systemic change is necessary. Several P&As interviewed had engaged in at least one significant systems-level case related to *Olmstead* enforcement, often with respect to employment service provision, or the lack thereof, for individuals with intellectual and developmental disabilities (I/DD) and other significant disabilities.

Core Strengths of P&As in Effectuating Improved CIE Outcomes and Socioeconomic Advancement of Individuals with Disabilities

Providing Information Referrals and Self-Advocacy Assistance

Like other types of Administration on Disabilities (AoD) grantees interviewed, numerous P&A representatives reported that most individuals who complete an initial intake with their organization express interest in pursuing employment. At the same time, many self-advocates and their families raise concerns related to a fear of losing benefits. P&As often have a pivotal role in providing individuals with disabilities information about their civil rights related to employment, referrals to publicly-funded systems of services that can support job-seekers with disabilities pursue and secure competitive, integrated employment (CIE), and trainings and coaching on effective self-advocacy with employers and colleagues in the workplace. These informational resources and referrals are often highly individualized and targeted in nature.

Leveraging Legal Expertise to Influence and Inform Public Policy Reform

Several P&As have become well-known in their state for developing, drafting, and advocating for changes in regulatory and statutory policies that lead to a more equitable set of opportunities for individuals with disabilities to achieve CIE employment outcomes. For example, some P&As interviewed described their leadership in state coalitions advocating for legislation eliminating the payment of subminimum wages to workers with disabilities. In these scenarios, P&As had unique roles working “behind the scenes” with the sponsors of the legislation to craft detailed language, engage other members of the DD network in the state, and help to drive unified messaging and advocacy activities within the state legislature. In other states where there is a lack of support for legislation around this issue, a few P&As have worked with state government officials to develop policy guidance that restricted the ability of entities holding 14(c) special wage certificates from paying subminimum wages to workers with disabilities. As part of Workforce Innovation and Opportunity Act (WIOA) Section 511 implementation activities,¹ state VR agency have engaged many P&As in conducting annual interviews with individuals with disabilities under age 26 who are currently working in sheltered workshops. During these interviews, P&A staff gauge whether these workers are interested in transitioning to CIE and in some instances, these activities lead to the opening of active investigations.

P&A interviewees cited other examples where they have used their legal expertise and knowledge of federal civil rights law to advance other systems-level policy change. For example, P&As have initiated and drafted cross-agency memoranda of understanding (MOU) across various systems which outline the leveraging of resources and collaborative activities to improve CIE outcomes for

¹ More information about the WIOA Section 511 implementation requirements can be found at: <http://www.wintac.org/topic-areas/implementation-of-requirements>.



individuals with disabilities. P&As have also leveraged the [WIOA regulations](#)² and the [Medicaid Home and Community-Based Services \(HCBS\) Settings Rule](#)³ to influence policy reforms at a state level and ensure that youth and adults with disabilities have access to services that support CIE.

Success Story Theme: Collaborations
Disability Rights Louisiana

In recognizing that Louisianans with mental health disabilities should be offered opportunities to advance in CIE and independence, Disability Rights Louisiana facilitated a partnership with the Louisiana Workforce Commission, and the Louisiana Department of Health, Office of Behavioral Health Services that led to an MOU between the two entities to prioritize employment and independent living for individuals with mental health disabilities. This new partnership has fostered the connectivity of serving individuals with mental health disabilities through the Louisiana Workforce Commission and prioritizes serving this underserved population.

Key Challenges and Considerations for P&As

Dual Roles with State Entities and Employers

P&A interviewees noted needing to “strike a careful balance” in developing strategic partnerships with state government agencies that may align with the opposing side of legal cases from P&As in the future. Some P&A interviewees expressed frustrations in previous attempts to engage and collaborate with state VR agencies, school districts, or Medicaid HCBS authorities on systems change efforts. Interviewees described multiple challenges due to a perceived threat that their role as a legal entity puts these disability systems at risk when engaging with their state P&A. In other situations, P&As shared difficulties in negotiating reforms within specific disability system under investigation when multiple disability systems may have some level of responsibility for impeding the success of job-seekers or employees with disabilities.

For example, under WIOA, VR systems are required to spend 15% of their annual budgets on supporting the provision of pre-employment transition services (pre-ETS) for youth and young adults with disabilities. A few interviewees reported that they had engaged in negotiations in their states to ensure that VR met this federal requirement. Upon doing so, the interviewees learned that pre-ETS was not a focus of VR and there was limited knowledge or active engagement of local education agencies (LEAs), a vital partner and conduit to reaching students with disabilities in transition.

P&A interviewees noted similar challenges in with respect to engaging with employers. While the importance of providing education and technical resources to support employers in building equitable employment practices and inclusive work environments, P&A representatives were adamant that this cannot be their role give the potential of an employer being identified in future employment discrimination cases.

² The Department of Labor (DOL) webpage on WIOA regulations can be found at: <https://www.dol.gov/agencies/eta/wioa/regulations>.

³ The Medicaid page on the HCBS Settings Rule can be found at: <https://www.medicaid.gov/medicaid/home-community-based-services/guidance/home-community-based-services-final-regulation/index.html>.



Capacity, Resource, and Bandwidth Challenges

Several interviewees cited capacity challenges and lack of resources as a barrier to P&As doing more work focused on employment. A national technical assistance (TA) partner stated, “All P&As have had exposure, TA, and pressure at the national level to concentrate on employment, but where they fall short is in having the bandwidth or resources to appropriately fund P&A work on employment.” Several P&A leaders concurred, and a few interviewees added that due to the more complex nature of individual employment discrimination complaints, P&As are often discouraged from taking on many cases due to projected investment in resources and time.

“Unless there are more people out there that bring the kind of complaints that could lead to a class action or group of similar cases that could advance systems-change, we are only able to take on a couple of employment cases annually. Individual employment cases are expensive and resource-intensive, and it’s hard to choose them over other priority cases or areas of concentration.”

– Executive Director, State P&A

Stakeholder Biases and Low Expectations Impede Systems Change Efforts

While *Olmstead* created an opportunity for additional work within systems like VR, special education programs within school districts, Medicaid HCBS, and Workforce Investment systems, several P&A representatives discussed that this has not spurred the type of system infrastructural change necessary to reduce states’ heavy reliance on sheltered workshops and other large facility-based congregate day settings. Several interviewees expressed that a consistent reason for this lack of progress is the “uphill battle of changing the hearts and minds of families, providers, and state agencies.” P&A representatives interviewed with previous experience filing an *Olmstead* complaint against a state VR or Medicaid HCBS program shared experiences related to receiving negative responses against the P&As’ proposed changes often based on the low expectations of the potential of individuals with disabilities to successfully access, gain, and sustain CIE. The groups providing negative feedback included family members dependent on sheltered workshops and day habilitation programs to provide day-filling activities for their loved ones, county boards representing facility-based congregate day providers, and even VR counselors and Medicaid HCBS case managers.

The Implications of Attitudinal Barriers among Key Stakeholders to Increasing CIE Outcomes

Several P&As expressed significant concerns regarding the influence of families and guardians on the options **to which** individuals with disabilities are exposed.

- As one P&A Executive Director stated, “Both parents and guardians have tremendous influence over whether an individual with significant disabilities gets an opportunity to pursue CIE and optimal self-sufficiency or not.”
- Another P&A leader stated, “We have a historical system of dependency that parents and guardians are afraid to give up. Their loved ones get picked up by bus every day, goes to a sheltered workshop or day habilitation program where they are safe for 6 hours a day, and then are returned home. We often hear, ‘If the sheltered workshop closes down, they’ll have nowhere to go during the day. They’ll just end up sitting on the couch all day at home.’”
- Another P&A mentioned a conversation with a state VR official who told **the P&A** that individuals with disabilities and their families should have ability to choose facility-based congregate day services, because “people with disabilities want to spend time during their day with ‘their friends’ (i.e., other individuals with significant disabilities) where they are ‘comfortable and accepted’ (as opposed to being isolated and taken advantage of in the real world).”



Emerging Themes and Strategic Opportunities

The Role of P&As in Educating Stakeholders to Shift Cultural Norms and Increase Support for CIE

Momentum for state-level systems change to prioritize CIE outcomes and economic advancement of individuals with disabilities is predicated by the cultural norms and attitudes of various stakeholders engaged in supporting individuals with disabilities, including families, providers of disability services, state agencies funding disability services, and employers. Based on the feedback provided by members of the P&A community as well as the self-advocates who participated in the Center’s qualitative research efforts, P&As could have a significant role partnering with these various stakeholders and other AoD grantees to further educational, marketing, and communications efforts around the following topics:

- Educating prospective employers about the value of individuals with disabilities as employees, particularly individuals with significant disabilities.
- Strategies include: Educational training programs for employers, management, and human resource personnel, consulting with employers on ADA requirements to identify low-tech and high-impact strategies for making job accommodations available and building inclusive work environments, and connecting employers with one another to share success stories and innovative approaches to incorporating employees with disabilities into their business models.
- Exposing families to alternative strategies and options to support their loved ones with promoting economic advancement and optimal self-sufficiency without creating unintended consequences.
- Strategies include collaborating with other AoD grantees as well as self-advocates and family advocates to create peer-to-peer mentoring and coaching opportunities, connecting families of individuals currently participating in sheltered work or congregate day habilitation with families of individuals who have pursued and secured CIE opportunities in their community, providing benefits planning and financial literacy education to help families plan for and understand the impact of employment on their loved one’s benefits status.
- Helping state VR, special education, Medicaid HCBS, and Workforce Investment personnel and providers increase their expectations of individuals with disabilities to attain CIE, as well as introduce and test out promising practices and models to improve their systems’ capacity to support individuals with disabilities pursue and achieve CIE.

Success Story Theme: Innovation
Disability Rights Center of the Virgin Islands

When it comes to educating the local community about the inclusion of individuals with disabilities, The Disability Rights Center of the Virgin Islands (DRCVI) tackles the issue by working with the local Public Broadcasting Station (PBS) to create a series of shows documenting how individuals with disabilities navigate life independently. The relationship was developed through the 30th anniversary ceremony of the Americans with Disabilities Act. DRCVI works with PBS to educate families about setting high expectations of employment for their family members regardless of disability. Although the videos target families they are impactful to other audiences such as employers and the community in general thus, raising awareness in a multitude of strategic approaches.



- Strategies could include developing competencies for system personnel about adopting and implementing promising practices related to CIE and creating CIE educational materials in partnership with state systems to support self-advocates and their families during the assessment and intake processes.

Education for P&As Lacking Strong Knowledge Base on the Role of Various Disability Service Systems in Impacting Employment Options for Individuals with Disabilities

For both P&As that are small and have not had the resources previously to focus on employment systems change as well as P&As that do not have a CAP, there is a gap in deep knowledge of various publicly-funded disability service systems and how they impact CIE options for individuals with disabilities. As such, the Center will offer targeted curriculum and e-learning communities for these two types of P&As that may want to build their staff's subject matter expertise around the work of special education, VR, state Developmental Disabilities Services (DDS), Medicaid HCBS, and Workforce Investment systems. The training will also include a focus on helping P&As forge strategic partnerships with these systems and other partners to help advance systems change related to improving CIE and economic advancement outcomes of individuals with disabilities.

Increased Focus on Systems-level Cases and Reform Efforts

Given the notable systems-level successes that the Center's project team heard from P&A interviewees as well as the sizable amount of work that is still required to achieve significant results, the Center will work with P&As interested in strengthening their roles and progress in advancing policies and systems change efforts related to improving CIE outcomes and economic advancement of individuals with disabilities. P&A interviewees recommended the following areas of focus for future TA activities:

- Advance Olmstead principles through education and TA to policy makers that lead to employment systems change, empower individuals with disabilities to advocate for disability system policy reforms and program implementation, and pursue legal action when all other options have been exhausted and have proven unsuccessful.
- Provide strategies for working with disability systems partners (e.g., leaders, legislators) to transform how people receive employment supports and help states develop new contractual relationships to advance capacity building efforts around promising practices related to CIE while simultaneously reduce the number and scope of contractual relationships with sheltered workshops and congregate day habilitation.
- Assist state agencies in developing a cross-agency state desegregation plan, focused on redirecting multiple funding streams currently perpetuating segregated services into streamlined investments in services that result in CIE and financial capability outcomes.
- Develop amicus briefs⁴ on employment cases as an opportunity to clarify the law or move it forward by supporting a person with a disability access CIE.

⁴ An "amicus brief" refers to briefs from a third party related to a court case. Amicus briefs have the intent of impacting the court's decision with additional information or opinions.

