

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE
NORTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES,
DISABILITY RIGHTS NORTH CAROLINA, AND THE CENTER FOR
PUBLIC REPRESENTATION**

This Memorandum of Understanding is made and entered into by and between the North Carolina Department of Health and Human Services (“NCDHHS” or the “Department”), Disability Rights North Carolina (“DRNC”), and the Center for Public Representation (“CPR”), together collectively referred to as the “parties.”

With the specific and mutual goals of advancing competitive integrated employment for persons with disabilities served by NCDHHS, the parties agree to enter into this Memorandum of Understanding (“MOU”) effective as of October 6, 2021 (“Effective Date”).

THEREFORE, IT IS MUTUALLY AGREED THAT:

1. Purpose

The parties recognize the value of building upon their collaborative relationship to promote compliance with the integration mandate of the Americans with Disabilities Act (“ADA”) and *Olmstead v. L.C.*, 527 U.S. 521 (1999), the Rehabilitation Act, the Workforce Innovation and Opportunity Act (“WIOA”), and other applicable laws intended to protect the rights of individuals with disabilities. The parties enter this MOU to effectively and efficiently implement reforms to expand supported employment services, to improve and increase competitive integrated employment outcomes, and to communicate and share information relevant to each party’s respective areas of administrative and enforcement authority.

2. Background

The parties acknowledge and agree that NCDHHS has made substantial progress in recent years in providing supported employment services to, and improving employment outcomes for, individuals with disabilities. The requirements of this MOU reflect and take into account this progress.

The parties acknowledge and agree that the unprecedented circumstances of the COVID-19 pandemic prompted substantial changes in the delivery of supported employment services in North Carolina beginning on March 10, 2020 when the Governor of North Carolina declared a State of Emergency to coordinate a response and implement protective measures to prevent the spread of COVID-19. The parties further acknowledge and agree that the COVID-19 State of Emergency which remains in place in North Carolina as of the effective date of this MOU, while critical to protect the public health, has substantially impacted the delivery of supported employment services in North Carolina, and the State of Emergency will likely continue to have an impact on the delivery of supported employment services throughout the time it remains in effect and for several months following its conclusion as individuals receiving services and service providers transition to more standard operations.

3. Definitions

Adult Developmental Vocational Program Service (“ADVP”) is a day/night service which provides organized developmental activities for individuals with intellectual or developmental disabilities (“IDD”) to prepare the individual to live and work as independently as possible. ADVP Service is provided in segregated, non-residential settings.

Competitive Integrated Employment (CIE) means work that is performed on a full-time or part-time basis (including self-employment) and for which an individual: (a) is compensated at a rate that is not less than applicable minimum wage for the place of employment; (b) is eligible for the level of benefits provided to other employees; (c) is at a location where the individual interacts with other persons who are not individuals with disabilities to the same extent that individuals who are not individuals with disabilities and who are in comparable positions interact with these persons; and (d) present opportunities for advancement that are

similar to those for other employees who are not individuals with disabilities, as defined in 34 CFR 361.5(c)(9).

“Day Components of ICF IID In Lieu of Service In ADVP Setting” as used in this MOU, means the day components of ICF IID In Lieu of Service which have been developed and implemented by local management entity/managed care organizations (“LME/MCOs”), that are provided in an ADVP setting.

4. Parties

NCDHHS is the Department responsible for administering the Vocational Rehabilitation program in the State of North Carolina in accordance with Title I of the Rehabilitation Act of 1973, as amended, and for managing and supporting the delivery of services for individuals with disabilities to facilitate their exploration and pursuit of competitive integrated employment and related support services. DRNC is North Carolina’s congressionally mandated Protection and Advocacy agency whose responsibilities include monitoring of locations at which individuals with disabilities receive services, supports, or other assistance, and pursuing legal, administrative, and other appropriate remedies to protect and advocate for the rights of individuals with disabilities. CPR is a non-profit, public interest law firm which provides legal services focused on enforcing and expanding the rights of individuals with disabilities who are in segregated settings.

5. NCDHHS’s Plan to Modernize Competitive Integrated Employment Services and Supports for Individuals with IDD

NCDHHS agrees that its Division of Mental Health Developmental Disabilities, Substance Abuse Services (“DMHDDSAS”), Division of Vocational Rehabilitation Services (“DVRS”), and Division of Health Benefits (“NC Medicaid”), will update and reform its policies, procedures, and practices to transition all funding for ADVP Services and Day Components of ICF IID In Lieu Of Services In ADVP Settings to support only competitive employment and integrated settings by July 1, 2026. NCDHHS will cease funding of these two segregated services by July 1, 2026.

In consideration of this commitment, DRNC and CPR agree not to pursue any legal or administrative remedies to challenge NCDHHS’s provision of ADVP Services and Day Components of ICF IID In Lieu of Services In ADVP Settings and to work cooperatively with NCDHHS to support the Department’s development and implementation of its CIE Plan (as defined below) in accordance with this MOU, so long as NCDHHS substantially implements the below reforms by July 1, 2028. During the period between the Effective Date of this MOU and July 1, 2028, DRNC and CPR may, in its discretion and after following the dispute resolution process in Section 12, rescind its covenant not to sue where it has a reasonable and articulable basis for concluding that NCDHHS is unlikely to meet its commitments under this MOU.

- a. Prohibition on Admissions. NCDHHS will no longer allow admissions to ADVP Services or any Day Components of ICF IID In Lieu of Services In ADVP Settings after June 30, 2022.
- b. Individuals Receiving ADVP Service and/or Day Components of ICF IID In Lieu of Service In ADVP Setting. By October 15, 2021, NCDHHS will identify and report to DRNC and CPR individuals who received ADVP Services and/or Day Components of ICF IID In Lieu of Services In ADVP Settings between January 1, 2021 and September 30, 2021 and who are not currently engaged in Competitive Integrated Employment (CIE). By August 15, 2022, DHHS will subsequently identify and report to DRNC and CPR any additional individuals who received ADVP Services and/or Day Components of ICF IID In Lieu of Services In ADVP Settings between October 1, 2021 and June 30, 2022.
- c. Progress Benchmarks. NCDHHS will facilitate and support the provision of individualized supported employment services and related support services so that a total of 987 distinct individuals who received ADVP Services and/or Day Components of ICF IID In Lieu of Services In ADVP Settings on or after January 1, 2021 obtain CIE, based upon individual informed choice and person-centered planning. The Department is currently aware of 987 persons receiving ADVP Services. The parties will work cooperatively to develop a preliminary schedule of yearly benchmark goals based upon data collected by NCDHHS pertaining to North Carolina individuals receiving ADVP Services and/or Day Components of ICF IID In Lieu of Services In ADVP Settings, to be agreed upon in writing by the parties on or before October 31, 2021 (incorporated into the MOU by amendment). If more than 987

persons are subsequently identified as receiving ADVP Services and/or Day Components of ICF IID In Lieu of Services In ADVP Settings as of June 30, 2022 pursuant to Section 5(b), the total number of persons for whom NCDHHS will facilitate and support the provision of individualized supported employment services and related support services to help the individuals obtain CIE pursuant to this MOU will be proportionately increased by 75% of the number of additional persons identified. By September 15, 2022, the parties will revise the preliminary benchmarks accordingly.

- d. NCDHHS Adoption of CIE Plan. By November 1, 2021, DHHS will provide a draft of a comprehensive plan to phase out ADVP Services and Day Components of ICF IID In Lieu of Services In ADVP Settings to DRNC and CPR for comment. The plan will include an informed choice process pursuant to 5(g). By December 31, 2021, NCDHHS will adopt and begin implementing a comprehensive plan to phase out ADVP Services and Day Components of ICF IID In Lieu of Services In ADVP Settings in favor of services and strategies that promote CIE as the preferred outcome, based upon individuals' informed choice and person-centered planning efforts ("CIE Plan" or "Plan"). The details of the NCDHHS CIE Plan will be subject to available funding and will continue to grow and evolve as the Plan is implemented.
- e. Expansion of Integrated Employment Services. For all individuals receiving ADVP Services and/or Day Components of ICF IID In Lieu of Services In ADVP Settings on or after January 1, 2021, and all individuals who received ADVP Services and/or Day Components of ICF IID In Lieu of Services In ADVP Settings after January 1, 2020 but discontinued those services before December 31, 2020 and who have a Career Development Plan as provided by Section 5(f), NCDHHS will facilitate and support the provision of Individual Supported Employment, customized employment, post-secondary opportunities, or other related employment services sufficient to allow individuals to obtain CIE unless they make an informed choice not to pursue CIE. Integrated Employment Services include discovery, job development, and job coaching. Related Employment Services include supports necessary to obtain and sustain CIE, such as benefits counseling, transportation, personal care supports, behavior supports, adaptive equipment, and assistive technology.
- f. Employment Assessments and Career Development Planning. For all individuals receiving ADVP Services and/or Day Components of ICF IID In Lieu of Services In ADVP Settings on or after January 1, 2021, NCDHHS will facilitate and support the provision of employment assessments, by July 1, 2023. NCDHHS will also make reasonable efforts to identify, engage, and support individuals who were receiving ADVP Services and/or Day Components of ICF IID In Lieu of Services In ADVP Settings on or after January 1, 2020 and subsequently discontinued these services prior to December 31, 2020 and who currently are engaged with their LME/MCO. For these individuals, as part of the update of these individuals' person-centered plan after the effective date of this MOU, NCDHHS will also facilitate and support the provision of employment assessments by July 1, 2023. Employment assessments are individualized assessments that describe the strengths and interests of the individual with the disability and form the basis for discovery.

For all individuals receiving ADVP Services and/or Day Components of ICF IID In Lieu of Services In ADVP Settings on or after January 1, 2021 who make an informed choice to seek CIE, NCDHHS will facilitate and support the development of Career Development Plans by July 1, 2023. For all individuals NCDHHS identifies as receiving ADVP Services and/or Day Components of ICF IID In Lieu of Services In ADVP Settings on or after January 1, 2020 who subsequently discontinued these services before December 31, 2020, and who make an informed choice to seek CIE as part of their person centered planning after the effective date of this MOU, NCDHHS will facilitate and support the development of Career Development Plans by July 1, 2023. Career Development Plans identify the individual's employment goals and objectives, the services and supports needed to achieve those goals and objectives, the persons, agencies, and providers assigned to assist the person to attain those goals, the obstacles to the individual working in CIE, and the services and supports necessary to overcome those obstacles.

- g. Informed Choice Concerning Employment. For all individuals receiving ADVP Services and/or Day Components of ICF IID In Lieu of Services In ADVP Settings on or after January 1, 2020, NCDHHS will facilitate and support the provision of the information, reasonable accommodations, and opportunities sufficient to allow them to make an informed choice to seek CIE based upon person-centered planning. The informed choice process is multi-faceted, individualized, accessible, and meaningful, and includes the opportunity to participate in discovery and allow opportunities to visit and observe individuals working in CIE and to talk with them about their experience transitioning to CIE.

The parties acknowledge that some individuals with disabilities, including those represented by family members or others as appropriate, may make an informed choice, based upon their unique needs and circumstances, to pursue alternative meaningful day options other than competitive integrated employment, and that such individuals who choose to pursue alternative meaningful day options will not count toward the Department's progress benchmark of individuals formerly receiving ADVP Services and/or Day Components of ICF IID In Lieu of Services In ADVP Settings who obtain CIE. The parties further acknowledge that NCDHHS has no authority to compel individuals with disabilities to make an informed choice to pursue CIE.

- h. Provider Capacity and Transformation. NCDHHS will make guidance and technical assistance available to providers of ADVP Services and Day Components of ICF IID In Lieu of Service In ADVP Settings, through nationally recognized experts, to assist them with transforming their program and business models to become providers of, or to increase capacity within their existing, Integrated Employment Services resulting in CIE. NCDHHS will establish financial incentives to further the transformation efforts of ADVP Service providers into providers of Individual Supported Employment and other services that support people to achieve CIE.
- i. Training and Technical Assistance. NCDHHS will establish and implement core competencies and training requirements consistent with professional standards from accepted accreditation or certification entities such as the North Carolina Association of People Supporting Employment First (NC APSE), Association of Community Rehabilitation Educators (ACRE), or other similarly recognized organizations for job developers, job coaches, discovery leaders, and case managers who are responsible for the provision of Individual Supported Employment and other services that allow people to work in CIE. NCDHHS will contract with technical assistance providers to provide leadership, training, and technical assistance to employment providers and state staff.
- j. Interagency Collaboration. NCDHHS will ensure and promote cross-Divisional collaboration and will make best efforts to promote and pursue collaboration with other State agencies (Commerce, Public Instruction, etc.) to effectuate the provisions of the Department's CIE Plan and this MOU, including without limitation, the establishment of an internal agreement among DMHDDSAS, DHB, DVRS, DSS, and DSOHF, and to the extent needed, interagency agreements with other state agencies.
- k. Funding of NCDHHS Plan. NCDHHS will make best efforts to allocate and obtain necessary funding and appropriations for the actions detailed in its Plan to expand competitive integrated employment for individuals with IDD. Upon request by NCDHHS, DRNC and CPR will work cooperatively with NCDHHS to support its efforts to obtain necessary funding and appropriations for the actions detailed in its Plan to phase out ADVP Services and Day Components of ICF IID In Lieu of Services In ADVP Settings for individuals with IDD in favor of services and strategies that promote CIE as the preferred outcome.

6. Data Collection and Monitoring

The parties will meet quarterly to exchange information about the progress of expanding CIE for individuals with disabilities, discuss any difficulties or disagreements with how the reforms are progressing, and exchange information and developments of common concern to the parties, to the extent practicable.

- a. NCDHHS Quarterly Reports. For individuals identified as receiving ADVP Services and/or Day Components of ICF IID In Lieu of Services In ADVP Settings on or since January 1, 2021 on a quarterly basis, NCDHHS will provide de-identified data to DRNC/CPR, based upon data received from LME/MCOs and service providers, as to: (1) the number of individuals receiving ADVP Services and/or Day Components of ICF IID In Lieu of Services In ADVP Settings, including the provider, wages earned (to the extent individuals served agree to voluntarily share this information), and hours worked; (2) the outcomes of individuals who are no longer receiving ADVP Services or Day Components of ICF IID In Lieu of Services In ADVP Settings since the prior quarterly report, including information about individuals who have obtained CIE and, for those individuals, the place of employment, wages earned (to the extent individuals served agree to voluntarily share this information), and hours worked; (3) information about plans for transitioning the remaining individuals still receiving ADVP Services or Day Components of ICF IID In Lieu of Services In ADVP Settings, including (a) the number of individuals who have received (i) an employment assessment, (ii) a Career Development Plan; (b) the number of individuals receiving DVRS services; (c) the number of individuals receiving Integrated Employment Services from DMHDDSAS; and (d) the number of individuals receiving other services intended to lead to CIE and a description of those services; (4) information about individuals who decline to explore employment as part of a process described in 5(f)(g) including the number of individuals who decide not to pursue employment, the providers or LME/MCO with whom the individual has been engaged, and reason for the decision, and (5) progress made to develop and implement the CIE components of DHHS's CIE Plan. The parties will discuss and work cooperatively to identify any additional data points that would be useful in monitoring the implementation of the agreement. The first quarterly report by NCDHHS will be made on or before Jan. 31, 2022, and subsequent reports will be made approximately one month after the close of each calendar quarter, i.e., April 30, 2022, July 31, 2022, and so forth throughout the term of the agreement. NCDHHS will require LME/MCOs to collect from their network service providers and report to NCDHHS the information described in this Section. The parties acknowledge and agree that NCDHHS reports will be dependent and based upon data provided by LME/MCOs and service providers for the relevant time period.
- b. CIE Implementation Information. Upon request by NCDHHS, DRNC and CPR shall provide information pertaining to transitions to competitive integrated employment service array implemented by other states and data related to the public program and financial policies supporting such successful service transformations, including without limitation cost savings achieved by such states, and/or information regarding any concerns, questions, or issues learned from stakeholders in North Carolina pertaining to implementation of the NCDHHS Plan for use as a reference in implementing the CIE Plan.

7. Continued Collaborative Effort

NCDHHS will continue working collaboratively with DRNC and CPR to further develop and implement details of the Department's Plan to expand CIE and meaningful day services for individuals with disabilities and phase out funding and support for ADVP Services and Day Components of ICF IID In Lieu of Services In ADVP Settings.

DRNC and CPR will work cooperatively with NCDHHS to support the Department's requests to, and engagement with, the General Assembly and other public officials, stakeholders, providers and provider associations, pertaining to funding, legislation, and other matters necessary for implementation of the Department's CIE Plan.

8. Agreement Subject to Availability of Funding

The parties acknowledge and agree that NCDHHS does not have the legal authority to bind the North Carolina General Assembly, which has the authority under the North Carolina Constitution and laws to appropriate funds for, and amend laws pertaining to the State's system of services for people with disabilities. NCDHHS agrees to make best efforts to seek funding necessary to implement and complete the terms of agreement, and DRNC and CPR agree to work cooperatively to support the Department's efforts in that regard upon request by the Department. To the extent the Department is not able to attain necessary appropriations to implement and complete all terms of this MOU, the Department shall work in consultation with DRNC and CPR to prioritize available funding to continued implementation of the most critical components of the CIE Plan, and the agreement between the parties shall be subject to amendment to reflect adjustments based upon the funding available.

9. Effect of Agreement

Nothing in this MOU is intended to diminish or otherwise affect the authority of NCDHHS or DRNC and CPR to implement its administrative, statutory and/or other legally mandated functions. This MOU contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this MOU shall be deemed to exist or be binding upon the parties. This MOU is not intended to confer any right upon any private person or other third party.

The agreement effected by this MOU is a compromise of disputed claims, made to avoid the uncertainty and expense of litigation. The promises and terms agreed to herein are not to be construed as an admission of any alleged liability, nonconformity, error, or other deficiency on the part of NCDHHS, and NCDHHS denies that it is in violation of the ADA, the Rehabilitation Act, WIOA, or any other laws or regulations.

Each party and its legal counsel have participated fully in the negotiation, drafting and review of this Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement.

10. Points of Contact

To help ensure clarity and avoid any inadvertent miscommunications, the parties will communicate with each other through their designated points of contact for purposes of implementing this MOU. The parties' respective points of contact for this MOU are as follows:

North Carolina Department of Health and Human Services:

Chris Egan
Senior Director for Employment and Community Inclusion
North Carolina Department of Health and Human Services
chris.egan@dhhs.nc.gov
(919) 855-3509

Disability Rights North Carolina:

Holly Stiles and Chris Hodgson
holly.stiles@disabilityrightsnc.org; (919) 856-2195, ext. 228
chris.hodgson@disabilityrightsnc.org; (919) 856-2195, ext. 253

Center for Public Representation:

Cathy Costanzo and Steven Schwartz
ccostanzo@cpr-ma.org
sschwartz@cpr-ma.org
(413) 586-6024

11. Communications with Third Parties Regarding MOU and NCDHHS Plan

DRNC and CPR will work cooperatively with NCDHHS regarding any formal statements or communications with stakeholders, including media, LME/MCOs prepaid health plans, supported employment providers, federal, State and local government officials, North Carolina legislators and legislative staff, regarding this agreement and/or the Department's CIE Plan, including prior consultation and coordination with the Department before the release of such statements or communications. Except to the extent required by law, DRNC and CPR agree not to make any statements or communications with any such stakeholders regarding this agreement and the Department's CIE Plan prior to the time NCDHHS notifies DRNC and CPR that it has initiated its legislative and stakeholder engagement efforts or no later than December 1, 2021, whichever occurs first. This provision does not require DRNC or NCDHHS to coordinate with the other party regarding its communications with their individual constituents or consumers with disabilities who contact them for assistance.

12. Dispute Resolution

Disputes arising between the parties under this MOU will be resolved informally by discussions between the parties, including but not limited to, during quarterly meetings. In the event that informal discussions do not resolve the dispute, and either party believes that a modification of the MOU is necessary, or if DRNC and CPR believe that termination of the MOU is appropriate, they will provide a written notice describing their concern and offer to meet and confer concerning the dispute within 30 days. The parties agree to engage in good faith efforts to resolve any such dispute and, if possible, to do so without modifying or terminating the Agreement. If the meet and confer does not resolve the dispute, either party may request mediation of the dispute. The mediator shall be an individual agreed to by the parties who has a demonstrated expertise in disability supports and systems and supported employment for individuals with IDD. The parties will work cooperatively to communicate proactively with each other regarding any questions or concerns pertaining to this MOU or implementation of the Department's Plan as they may arise, and to address any such questions or concerns.

13. Term of Agreement

This MOU becomes effective upon being signed by both parties and will expire on June 30, 2028, unless terminated earlier pursuant to the terms set forth herein. This MOU may be modified in writing by mutual written agreement of the parties.

The undersigned represent and warrant that they are authorized to enter into this MOU on behalf of the parties.

14. Compliance with Federal and North Carolina Law

The MOU will be construed and governed in accordance with applicable federal and North Carolina laws, regulations, and federal interpretive guidance. In the event of any changes to federal or North Carolina law, regulation or federal interpretive guidance regarding competitive integrated employment or any key component of this agreement, the parties shall work cooperatively to amend the terms of the MOU to the extent needed to comply with the change in law, regulation or guidance.

NORTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES

By: 

Mandy Cohen, MD, MPH
Secretary

Date: 10/08/2021

DISABILITY RIGHTS NORTH CAROLINA

By: 

Virginia Knowlton Marcus (Oct 8, 2021 10:24 EDT)
Virginia Knowlton Marcus
Chief Executive Officer

Date: 10/08/2021

CENTER FOR PUBLIC REPRESENTATION

By: 

Cathy Costanzo
Executive Director

Date: October 8, 2021