Challenges of "Employment First"

Scott Spreat 23 March 2017

Summary

This article reviews some challenges that accompany efforts to achieve "Employment First" goals. It suggests some incentive-based programs that might increase the availability of employment opportunities for individuals with intellectual disability. It calls for an empirical evaluation of the impact of the reduced reliance on sheltered workshops to provide meaningful day activities for individuals.

"Employment First" is a national movement that is premised on the belief that all persons, including all persons with disabilities, are capable of full participation in integrated, community-based employment.[1] This movement is not restricted to individuals who have intellectual disability, but rather is inclusive of all persons with disability. Pennsylvania has proclaimed itself to be an Employment First commonwealth. Regarding the field of intellectual disability, this means that integrated, community-based employment should be the first option for meaningful day activity for adults who have intellectual disability. Segregated options, such as sheltered workshops and adult day training centers, are generally

viewed as less acceptable under the Employment First movement. Such options have come increasingly under fire, with some states electing to eliminate or highly restrict their use.

Support for Employment First derives largely from the growing social and legal recognition of the rights of individuals who have disabilities. The Olmstead decision by the Supreme Court ruled that persons with intellectual disability should not be segregated from society solely based on their intellectual disability.[2] Rather, such individuals were entitled to live in integrated community settings, provided the conditions of a) clinical team support, b) consumer support, and c) reasonableness for the state to accomplish community placement are met.[3] While the Olmstead decision was focused on the specific issue of where residential care was to be provided, the application of Olmstead to vocational endeavors seems to be a reasonable extension.[4] If individuals should not be segregated residentially based on a disability, why should segregation be permitted/encouraged in the workplace?

The sheltered workshop is the primary example of segregated, disability-based employment. Sheltered workshops typically engage in a variety of simple piece work vocational projects, and they often, with an appropriate Department of Labor authorization, pay less than minimum wage. Sheltered workshops typically employ only individuals with disabilities. Over the past several years, sheltered workshops have become a

primary focus of efforts to promote more integrated forms of employment. Several states have eliminated or severely restricted the use of sheltered workshops, while others are seeking ways to enhance the use of more integrated forms of vocational engagement. In Pennsylvania, sheltered workshops are licensed by the commonwealth under the 2390 regulations.[5]

Implementation of Employment First Activities

Despite studies that attest to the capabilities of individuals with disabilities to make real contributions to the workplace, the supply of jobs for individuals with disabilities has not kept up with the demand. While there are many examples of individuals with intellectual disability holding integrated forms of employment in the community, such employment has not become the dominant form of vocational engagement. This stands in sharp contrast to the use of group homes, which have since 1991 been the primary form of residential services for people with intellectual disability.[6] It is not currently unusual to have the paradoxical situation in which an individual lives in an integrated community apartment while working in a segregated sheltered workshop.

There are two broad issues related to reducing our reliance on sheltered workshops and the increasing utilization of integrated forms of supported and competitive employment. The first issue is the basic

outcome question that guided the analysis of the closure of Pennhurst[7]– are people better off? Do people fare better with integrated employment than they do in sheltered workshops? Do they work more hours? Do they make more money? Are they happier? The second issue is the more pragmatic question regarding the availability of jobs and the abilities of individuals to fit those jobs.

Are People Better Off?

The Center for Outcome Analysis has been studying the deinstitutionalization process in Oklahoma for the past 15+ years, collecting and analyzing data on a variety of dimensions, each of which help to answer the question of whether people are doing better.7 Vocational engagement has been one dimension that has been studied by the Center for Outcome Analysis researchers. Spreat, Conroy, and Fullerton compared a matched sample of over 200 people living in state centers and over 200 people living in community homes.[8] Consistent with most other published literature on deinstitutionalization, they found increased integration, lower costs, and increased service hours associated with living in community homes. A less positive finding emerged in vocational engagement. While people in the community tended to have more integrated jobs (supported employment, competitive employment), fewer individuals living in the community actually worked, and the hours that they worked were significantly less than the hours worked by individuals still living in the state center.

Only 51% of those living in the community worked each day, versus 99% in the state developmental center. Community jobs were more integrated (supported or competitive), while developmental center jobs were mostly sheltered workshops. The jobs in the community were more consistent with philosophical values regarding integration with the community, but there were simply less of them.

Passage of time afforded Spreat and Conroy the opportunity to study vocational engagement in the community over a 15-year period.[9] They were able to study the vocational engagement of 216 Oklahomans with intellectual disability who lived in community-based supported living arrangements (group homes) for the entire 15-year period. At the beginning of the study, approximately 40% of these individuals worked in sheltered workshops or some other segregated form of day activity. Another 40% worked in either competitive or supported employment in community-based jobs. The remaining 20% were in a variety of day activities. Over the course of 15 years, the use of sheltered workshops and other segregated day activities fell significantly to about 13%.

This decline in the use of more segregated forms of vocational engagement was not replaced with a corollary increase in the use of more integrated forms of employment. The more integrated forms of employment remained relatively stable over the 15 years. So where did

the individuals working in sheltered workshops go? Interviews with persons in the Oklahoma system indicated that these individuals were essentially unemployed, engaging in made-up day activities. Staff in Oklahoma homes pejoratively refer to this process as option quest, indicating that there was a daily quest to find an option that would occupy each unemployed individual. An additional troubling finding of the study was that, not only had a large number of individuals apparently fallen into unemployment, the number of hours worked by this sample fell by almost 50%. The Spreat and Conroy study was just one state, and it covered only 216 individuals. It should not be considered a definitive statement about vocational engagement for individuals with intellectual disability. It should, however, raise a concern about the anti-sheltered workshop movement.

Over the past ten years, several states have either closed or placed significant limits on the use of sheltered workshops, but none of these states have done an adequate job of ascertaining whether these actions actually enhanced the quality of life for the individuals affected. Maine eliminated state support for sheltered workshops, and state agencies were directed to increase support for integrated employment for people with disabilities. Janet, Phoenix, & Bysshe reported that persons formerly employed in sheltered workshops saw both their hours of work and their earnings decline.[10] Vermont closed its last sheltered workshop in 2003.[11] The

closing of sheltered workshops was followed by a modest decline in the percentage of people with intellectual disability in integrated employment. In 2004, 43% of people with intellectual disability were in supported employment and that number dropped to 35% in 2011. Rhode Island adopted the approach of closing admissions to sheltered workshops while allowing current employees to continue in the workshop.[12] The main impact of this seems to have been creating a barrier for admissions to group homes because group home providers were responsible for ensuring the availability of day programs, and without the sheltered workshops such day programs are not available.

The literature to date is scant, but not particularly encouraging. There appear to be no empirical reports of significant increases in integrated employment. At this time, we are entirely unable to answer Jim Conroy's question, "Are they better off?" The deinstitutionalization movement in intellectual disability was remarkably successful, promoting growth in skills, integration, and consumer happiness. This was at least partially possible because, in contrast with the mental health deinstitutionalization movement, the intellectual disability deinstitutionalization movement was initiated with proper planning, support, and funding. Such efforts will be necessary if Employment First is to be successful. As the nation moves forward in the implementation of Employment First activities, it will be essential to fund

empirical research that will quantitatively assess the impact that closing or reducing access to sheltered work has on the lives of people with intellectual disability.

Are the Jobs Available?

Employment First will not succeed in anything other than a piecemeal fashion if the economy cannot create additional jobs to support the transition from sheltered work to integrated forms of employment. In December 2016, U-6 unemployment (the most inclusive of unemployment indices) was 9.2%. The gross domestic product has not exceeded a 2% growth rate in several years. While we are not technically in a recession, the economy remains challenging, and jobs are hard to find. The job finding challenges faced by the general public are exceeded by the challenges faced by individuals who have disabilities. According to the Department of Labor, approximately 77% of working age Pennsylvanians without disability are actually working. For individuals with disabilities, this figure declines to about 35%. Note that in times of high unemployment, employers can generally be increasingly selective in their hiring practices, creating further challenges for individuals who have disabilities.

Can the Potential Employees do the Job?

A secondary concern is that some individuals, either by virtue of the magnitude of their disability or the seriousness of behavioral health challenges, may not be

employable within integrated employment settings. Note that Pennsylvania has created an exception process in its Medicaid Waiver plan in recognition of this possibility. Lengnick-Hall, Gaunt, & Brooks wrote that employers may hold the belief that potential employees who have disabilities may be unable to perform the work. The concern is essentially that individual with disabilities may, in the perception of the employer, lack the necessary knowledge, skills, abilities, and other characteristics needed for successful employment. The acronym KSAO is used to describe this belief set. And to some extent, the perception must be recognized for its validity. There are clearly individuals who are unemployable in community settings for a variety of reasons, and these individuals will need alternative ways to create a meaningful day.

Job Creation

High unemployment combined with the employability challenges evidenced by some individuals suggests that the traditional approach of creating jobs will not fully support the goals of Employment First. Having a staff person approach potential employers to solicit job opportunities for persons with disabilities will continue to result in some success, but it seems unlikely to be sufficient to fully support the attainment of Employment First goals. Two basic approaches must be considered. Vocational Providers must be encouraged to open community-based businesses to replace the sheltered

workshops, and more traditional community employers must be incentivized to hire persons who have intellectual disability. Additionally, providers will need to develop some sort of approach to support those individuals with behavioral, medical, or cognitive limitations. Each will be discussed below.

Providers Opening Businesses in the Community

Existing providers of vocational programs are uniquely qualified to assess the needs of their employees and to identify the supports that are needed. They must be encouraged and supported to create businesses in the community. Woods Services, for example, has moved its flower shop from a campus building to both a shop in a small shopping center and to a kiosk in a local mall. Individuals work at minimum wage in these two environments, learning to provide customer service and doing some flower arranging. Another vocational provider operates a bowling alley, staffed partly by individuals who have intellectual disability. The bowling alley helps to support some service programs that are not adequately funded.

One significant advantage to providers operating community businesses is that they have greater flexibility in dealing with employees who might not wish to adhere to a fixed work schedule. If an individual doesn't want to work on a given day, the provider typically will have a pool

of employees who could do the replacement work. Employee behavior that could not be tolerated in a more traditional employment setting is tolerable in a business operated by a vocational provider. In a sense, the provider creates an employment pool, from which employees are assigned to various integrated jobs. A second advantage is that providers could continue to charge for the provision of vocational services, thereby helping to offset any losses attributable to employee costs or weak business.

The possibility exists to create such businesses, but there are some barriers. In the perhaps unlikely event that such a business generated a profit, there could be state and federal tax ramifications. The costs associated with starting such businesses are not currently provided by any funding entity, and with one-third of Pennsylvania intellectual disability providers losing money each year,[14] many providers will lack the assets needed to open a business. It would perhaps be ideal if funders were to create some sort of mechanism to fund the start-up of such businesses.

Incentivizing Community Employers

Economists and psychologist seem to agree that human behavior is driven by incentives. An incentive, however, must have certain qualities if it is to be a successful modifier of human behavior. For example, an incentive must be sufficiently large to motivate employers to action. Second, access to the incentive must not be complicated

with so much “red tape” that employers become discouraged and decide to not seek the incentive. Finally, the incentive program must be sufficiently publicized that the employer knows about it. Psychologists might argue that there are conditions under which knowledge of an incentive program is unnecessary, but this would be under largely artificial conditions.

There appear to be a variety of federal incentives for employers to modify their work settings to make them accessible to workers who have disabilities, but there seems to be but a single incentive aimed directly at hiring employees who have disabilities. The Work Opportunity Tax Credit (often referred to as WOTC) is a program under which an employee can claim a federal tax credit for filling a vacant position with a WOTC-certified employee. WOTC certification can come from participation in a vocational rehabilitation program or through SSI eligibility. The employer tax credit is maximized at $2400 per new hire. One must suppose that if WOTC were a particularly effective program, we would have a far less significant challenge in finding jobs for people with disabilities.

Six states currently offer a variety of incentives for employees to hire individuals who have various disabilities (including intellectual disability). The incentives take the form of tax credits, tax deductions, sales tax refunds, and preferential contracting. Each will be discussed below.

- Iowa offers employers a state income tax deduction

up to 65% of wages paid during the first year of employment. This deduction is capped at $20,000, and it is in effect only during the first year of employment. Iowa also offers a $2500 tax credit for any accommodations (assistive devices, structural changes, etc.) that were necessary to support the employment of individuals who have a disability.

- Kansas offers a tax credit for employers who make an existing facility accessible to individuals with a disability. This tax credit is capped at 50% of a maximum expense of $10,000. This is not actually an incentive to hire individuals who have disabilities, but rather an incentive to make the work environment accessible. Kansas does not appear to directly incentivize employers to hire people with disabilities.
- Louisiana offers a sales tax refund for nonprofit agencies that sell donated goods or goods that were made from donated goods. There are state-imposed limitations on how this refund may be used. In addition, Louisiana offers a tax deduction for taxpayers who hire individuals who have disabilities.
- Maryland offers multiple tax credits (income tax, insurance premium tax, financial institution franchise tax, and public service company franchise tax) to employers that hire individuals who have disabilities. The cap is 30% of a maximum amount of $9000 in employee wages and up to $900 for employer reimbursed transportation or child care expenses. These tax credits can last two years. Maryland also

ensures that employees who have a disability remain entitled to Medical Assistance. In addition, Maryland law requires that a state or state-aided entity buy supplies and services from one of the following groups, if possible: Maryland Correctional Enterprises, Blind Industries and Services of Maryland, a community provider in the Employment Works Program, or a business owned by a person with a disability. While this practice doesn't directly incentivize employers to hire individuals who have disabilities, it appears to create jobs for individuals who have disabilities by encouraging nonprofit entities that serve/support individuals with disabilities to compete for various government contracts.

- New York has a Workers with Developmental Disabilities Act that offers a tax credit of up to $5000 (15% of employee's salary) for hiring an individual with a developmental disability to a full-time (30+ hours) position. The tax credit for a part-time position is $2000. This law appears to pertain only to sheltered workshops, although one can readily envision an extension to more integrated forms of employment. New York also offers a more general tax credit (35% of first $6000 earned) for employers that hire individuals who have any disability. This maximum $2100 tax credit is good for one year only.
- Tennessee offers a one-time tax credit of $5000 for creating a full-time job that is filled by a person with a disability. A one-time tax credit of $2000 is offered

for the creation of part-time jobs. Note that this is a job creation incentive, not a hiring incentive. The job must be a new job, not a vacancy that is filled.

In addition to incentives that attempt to create jobs by rewarding employers through tax credits or tax incentives, the use of preferential contracting is another form of incentive to create jobs. As noted above, Maryland law requires that a state or state-aided entity buy supplies and services from one of the following groups, if possible: Maryland Correctional Enterprises, Blind Industries and Services of Maryland, a community provider in the Employment Works Program, or a business owned by a person with a disability. Kansas has a similar program in which business that employ 10% or more persons with disabilities (among other conditions) are given a preferential bidder status for government contracts. Preferential contracting would seem to offer significant job creation possibilities.

Potential employees also respond to incentives, and sometimes these incentives motivate other than work behavior. For example, the receipt of federal payments for some individuals with disabilities is contingent upon certain work restrictions. Similarly, Medicaid places limits on assets, such that an active employee might lose Medicaid coverage if he/she saved too much money form a job. In a sense, there may be a disincentive for seeking work for some recipients of federal aid. One must also consider the simple disincentive associated with not

needing money. Group home residents receive clothing, food, lodging, and even some recreation. Who needs work?

What About Those Lacking the Knowledge, Skills, Abilities, and Other Characteristics?

Everyone should have a meaningful day, whether this means work in an integrated community job, work in a sheltered workshop, or participation in some sort of day activity center. Individualization is the key because the diversity and heterogeneity of the population that is subsumed under the title intellectual disability precludes the adoption of any one-size-fits-all model. We must match the individual with the appropriate vocational setting. Behaviors such as aggression and assault, cognitive limitations, medical conditions, and consumer choice all must be considered in making this determination. It must be recognized that for some individuals, the appropriate setting may be a workshop or some sort of vocational training center. The dignity that comes from a work experience is not to be underestimated. The task is to create meaningful days for all individuals who have intellectual disability.

Reforms as Experiments

Donald Campbell, at the start of Lyndon Johnson's Great Society, argued that all social reforms should be treated as experiments, and subjected to the same level of

scientific rigor that was afforded to other forms of research.[15] Campbell's comments, made almost 50 years ago, are just as pertinent today. We have an ethical responsibility to ensure that our social reforms do in fact leave people better off. This is certainly the case for Employment First, where funding for an evaluation of the social reform seems absolutely necessary. If Employment First succeeds in placing most individuals in integrated forms of employment and if most individuals with disabilities appreciate this, we have a demonstrably successful social reform. If those same individuals end up sitting at home watching television every day, we have grossly erred. Meaningful days enable individuals to experience the joys of achievement and the dignity that derives from work.

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