

Final Report on Non-Integrated Work Services (NIWS)
in Colorado

By:
NIWS Workgroup

February 26, 2010

INTRODUCTION

The purpose of this report is to communicate to the Colorado Department of Human Services (CDHS) recommendations from the Division for Developmental Disabilities (DDD) Non-Integrated Work Services (NIWS) workgroup regarding transitioning from NIWS as a reimbursable service under the Medicaid Home and Community Based Services (HCBS) waivers. Medicaid reimbursement for NIWS is no longer allowable after July 1, 2012.

During the process of submitting the renewal applications for the Home and Community Based Services-Developmental Disabilities (HCBS-DD) and Home and Community Based Services-Supported Living Services (HCBS-SLS) waivers in Spring 2009, DDD and Health Care Policy and Finance (HCPF) received technical assistance from the Centers for Medicare and Medicaid Services (CMS) regarding the prohibition of using Medicaid reimbursement in support of NIWS. The provision of NIWS is not a reimbursable service under Medicaid. DDD and HCPF are working together to implement a three-year transition plan to eliminate Medicaid reimbursement for NIWS by July 1, 2012.

Currently, CMS requirements prohibit the use of Medicaid funds in the support of sheltered work. These requirements are referenced in the Instructions, Technical Guide and Review Criteria (Version 3.5) released January 2008, in the following sections:

- Prevocational and Supported Employment Services Guidance: “Waiver funding is not available for the provision of vocational services (e.g., sheltered work performed in a facility) where individuals are supervised in producing goods or performing services under contract to third parties.” (p. 132);
- Day Habilitation Services and Supports Guidance: “Day habilitation may not provide for the payment of services that are vocational in nature (e.g. sheltered work).” (p. 153); and,
- Supported Employment Guidance: “Supported employment does not include sheltered work or other similar types of vocational services furnished in specialized facilities.”(p.156)

These three sections distinctly prohibit the use of Medicaid reimbursement for sheltered work activities under prevocational services, supported employment services, or day habilitation services and supports (DHSS).

DDD researched how other states operate Medicaid-reimbursed services and whether or not they provided any sheltered work or prevocational services. Many states do provide sheltered work services. However, Medicaid funds are not always utilized to support this service. There are many states, in addition to Colorado, that are reviewing their services, particularly prevocational services and day habilitation services and supports (DHSS), as they submit applications to CMS to renew their waivers.

In May 2009, DDD convened a workgroup to evaluate this issue and determine what steps should be taken to end Medicaid reimbursement of NIWS and to minimize the impact on persons

receiving this service. The workgroup consisted of fifteen people, not including representation from DDD and HCPF. The workgroup was comprised of a variety of stakeholders, including representatives from rural and urban areas of the state, agencies that provide NIWS and supported employment, advocacy organizations and most importantly persons receiving services and family members. Diverse representation was necessary to ensure the workgroup could identify potential concerns, solutions to those concerns, and recommend action steps for the various communities in Colorado.

Members of the workgroup, including DDD and HCPF staff were:

Mike Atlas-Acuna, Colorado Bluesky Enterprises
Amy Becerra, Health Care Policy and Financing
Louis Bruno, Parent
Tim Cairns, Parent
Candie Dalton, Division for Developmental Disabilities, Project Lead
Mike Davis, Division for Developmental Disabilities
Tona Felzien, Eastern Colorado Services for the Developmentally Disabled
Karen Ferrington, The Division of Vocational Rehabilitation
Liz Fuselier, The Legal Center
Todd Graves, Community Outreach, Inc.
Donna Gunnison, Self-Advocate
Kathy Hill, Goodwill Industries
Reginald Jarmillo, Self-Advocate
Arnie Kover, Jewish Family Services
Bob Lawhead, Employment Link and Parent
Jeff Nichols, Mesa Developmental Services
Valorie Randal, Schaefer Enterprises
Marijo Rymer, The Arc of Colorado
Marcia Tewell, The Colorado Developmental Disabilities Council
Christine Thomas, Division for Developmental Disabilities
Jeanne Weis, The Arc of Jefferson County

The workgroup recommendations provide the basis for the development of DDD's work plan for transitioning individuals to other services. Program Approved Service Agencies (PASAs) will continue to have the option of providing NIWS in Colorado with alternative funding sources (e.g., state funding for already authorized resources, grants, private funding)¹

DEFINITION OF NIWS (SHELTERED WORKSHOPS)

NIWS are defined as:

Services which are focused on providing supervision to persons who are engaged in remunerative work and instructions, as needed, to perform remunerative work. These services are provided in sheltered/segregated settings in which the majority of individuals

¹ According to June 2009 data, there are 75 people receiving NIWS funded by State General Funds.

have a disability or the primary purpose of the agency/business is to provide training or day activities for individuals with disabilities. (2 CCR 503-1 16.626 A 3c)

Although this definition exists, it was necessary to further define sheltered work for two reasons: 1) to ensure changes are not made to services and supports that may have been misclassified as NIWS; and, 2) to provide additional guidance to agencies in order to differentiate between supported employment services and sheltered work.

A working definition of sheltered work was developed based on what is excluded, or not allowed, under prevocational or supported employment services, as those are the only two employment-related service options for which Medicaid reimbursement is available. To define and identify sheltered workshops, PASAs and Community Centered Boards (CCBs) should use the NIWS definition and the following criteria:

- The service does not have an established time limit and can be provided indefinitely.
- There are no wage limitations.
- There are no restrictions on what type of goal can be identified in the Service Plan.

NIWS IN COLORADO

The following illustrates the day service options provided in Colorado for which Medicaid reimbursement is available. At this time, NIWS is provided as a specialized habilitation service under DHSS. Due to CMS requirements which state “Day habilitation may not provide for the payment of services that are vocational in nature (e.g., sheltered work),” Colorado must remove this service as a DHSS option in the waivers. In order to align Colorado’s waivers with CMS requirements, any day service reimbursed with Medicaid funds must fall into one of these categories:

Day Services Options

Employment Services

- **Supported Employment:** Supported employment can be provided to an individual or group setting (up to eight people) on a mobile work crew or enclave.²
- *Prevocational Services: not currently in Colorado’s waivers.*

² Enclave is defined as a group of people (not more than 8) with disabilities trained and supervised among employees who are not disabled at the host company’s work site. Mobile work crew is defined as a group of persons working as a distinct unit and operates as a self-contained business that generates employment for their crewmembers by selling a service.

Day Habilitation Services and Supports (non-employment services)

- Supported Community Connections: Community-based services designed to integrate persons into their community and to build relationships and natural supports.
- Specialized Habilitation: Non-integrated, facility-based activities services, which are primarily habilitative in nature.

Eliminating Medicaid reimbursement for NIWS will not only have a significant impact on persons in services and their families, but will also have a significant impact on PASAs statewide.³ Based on data from June 2009, there are 1,352 persons enrolled in a Medicaid waiver (i.e., HCBS-DD or HCBS-SLS) and receiving NIWS. Of those 1,352 people, 554 receive NIWS exclusively. That is, they are not receiving any other employment or day program service. Table 1 and 2 below provide the detail information by CCB and type of waiver.

There are 107 agencies with program approval to provide one or more day services in Colorado. Of those, 42 are approved to provide NIWS in addition to another day service. Each of those 42 PASAs also provide other day services.

CCB	Medicaid Waiver		Total
	HCBS-DD	HCBS-SLS	
Arkansas Valley	24	13	37
Blue Peaks	22	10	32
Colorado Bluesky Enterprises	91	50	141
Community Connections	-	-	-
Community Options	59	37	96
Denver Options	78	60	138
DDC/Imagine	4	-	4
DDRC	117	65	182
Developmental Opportunities	15	4	19
Developmental Pathways	97	22	119
Eastern	70	22	92
Envision	47	29	76
Foothills Gateway	76	24	100
Horizons	8	-	8
Mesa Developmental Services	13	7	20
Mountain Valley Developmental Services	17	3	20
North Metro Community Services	57	34	91
Southeastern Developmental Services	14	3	17
Southern	21	35	56
The Resource Exchange	74	30	104
TOTAL	904	448	1352

³ As the NIWS workgroup discussed the Medicaid reimbursement of NIWS, they concluded that actual data is not available as NIWS is subsumed under Day Habilitation Services and Supports. However, the Department was able to provide an estimate of Medicaid expenditure based on a survey completed in June 2009 of \$11,700,000 for FY 2010.

Table 2: Number of Persons Receiving NIWS exclusively by CCB and Type of Medicaid Waiver in FY 2008-09

CCB	Medicaid Waiver		Total
	HCBS-DD	HCBS-SLS	
Arkansas Valley	-	1	1
Blue Peaks	13	4	17
DDRC	88	53	141
DDC/Imagine!	1	-	1
Denver Options	69	17	86
Developmental Pathways	78	15	93
Eastern	7	-	7
Envision	31	2	33
Foothills Gateway	56	9	65
Mountain Valley Developmental Services	-	1	1
North Metro Community Services	19	12	31
The Resource Exchange	60	18	78
TOTAL	422	132	554

Table 3 shows the percentage of hourly minimum wage (\$7.28 for 2009⁴) paid to persons receiving NIWS according to June 2009 data. This information is relevant for the consideration of prevocational services' effect on the income of individuals. Per CMS requirements, if persons receiving prevocational services receive compensation it must be less than 50% of minimum wage.

Table 3: Percentage of Hourly Minimum Wage paid to Persons in NIWS in FY 2008-09

		Number paid less than 50% of minimum wage	Number paid more than 50% of minimum wage	Number paid at or above minimum wage ⁵	Earned less than \$100 for the month of June 2009
Persons receiving NIWS	1352	1119 (83%)	233 (17%)	46	943 (70%)
Persons receiving NIWS exclusively	554	498 (90%)	56 (10%)	15	354 (64%)

RECOMMENDATIONS

Due to the complexities of this issue and the various individual and regional circumstances that will be encountered, the response by DDD and HCPF must be multi-faceted. The workgroup strongly suggests that each of these recommendations be implemented in order to address this issue comprehensively.

⁴ Hourly minimum wage in Colorado will be adjusted for inflation to \$7.24 effective January 1, 2010.

⁵ Count of persons paid at or above minimum wage is included in number of persons paid more than 50% of minimum wage.

Many of the recommendations reference supported employment services. The workgroup recognizes that there is an on-going DDD employment committee addressing supported employment issues including the review of approaches for increasing community employment. It is not the intent of the NIWS workgroup to duplicate or replace the work of the supported employment committee.

The NIWS workgroup submits the following recommendations for consideration:

Recommendation # 1: Amend the HCBS-DD and HCBS-SLS waivers to include prevocational services with a three-year comprehensive review process for each person enrolled in prevocational services.

The workgroup was concerned about eliminating Medicaid reimbursement of NIWS while not having another service option available for persons who are not ready for community employment and who may not be interested in activities-based programs. As stated earlier, there are only two employment-related services reimbursed with Medicaid funds: supported employment and prevocational services.

Prevocational services are not synonymous with sheltered work. CMS defines prevocational services “as those preparing individuals for paid or unpaid employment.” Agencies providing NIWS and interested in providing prevocational services will have to augment current service delivery models to comply with CMS requirements. Per 42 C.F.R.§480.181 (i), prevocational services are distinguishable from noncovered vocational services by the following criteria:

- Prevocational services are provided to persons who are not expected to join the general work force or participate in a transitional sheltered workshop within one year of service initiation (excluding supported employment programs).
- If the recipients are compensated, they are compensated at less than 50 percent of minimum wage.
- The services include activities, which are not primarily directed at teaching specific job skill but at underlying habilitative goals (for example, attention span, motor skills).
- The services are reflected in a plan of care directed to habilitative rather than explicit employment objectives.

Per technical assistance with CMS, prevocational services are intended to be time limited. CMS does not specify the limit; therefore, Colorado has the flexibility to establish the duration of the service. While Colorado can establish the duration, the provision of this service would depend on demonstration of progress toward goals identified in the Service Plan and the clear expectation that the service is not provided indefinitely.

The workgroup recommends flexibility in the service definition and related rules when establishing the duration someone can receive prevocational services. Rather than an explicit

duration, each person's situation should be reviewed individually for continued appropriateness for prevocational services. However, at least every three years, a comprehensive assessment must be conducted to ensure there is ongoing need for such services.

Persons entering prevocational services should be aware that the intended outcome of the service is employment in the community within three years. Annually, the PASA providing the service should review/assess the person's progress toward goals that assist the person in preparing for paid or unpaid employment and the IDT should review/assess the barriers impeding employment or another more appropriate service option. In the event the person is not employed by the end of the three years, a standardized comprehensive process should be secured through the interdisciplinary team (IDT) to determine whether or not prevocational services continue to be appropriate.

If, based on annual/assessment review of progress and the comprehensive assessment completed at the end of the third year of receiving prevocational services, there has been progress toward the goals but the person is not yet ready for community employment, the (IDT) must document the continued need for prevocational services. The documentation for prevocational service delivery beyond the three years should include the location and length of any work experiences and the successful strategies used in the work place. This comprehensive assessment should occur, at minimum, once every three years during the time the person is receiving prevocational services.

The annual review/assessment of the progress toward the goals, completed by the IDT, will also assist in defining the continued need and appropriateness of prevocational services. The Developmental Disabilities Section of the Service Plan, which includes questions specifically about the pursuit of supported employment, could be one mechanism to review this information. These questions ask the IDT to identify barriers to supported employment that may exist and to identify action plans to address those barriers. DDD should evaluate if there are other methods that could be implemented by the IDT to assist in reviewing and documenting the need for this service.

Referral to the Division of Vocational Rehabilitation (DVR) should be made as soon as possible for individuals in prevocational services. At times, the individual and their IDT determine habilitative progress must be made first. At the point an individual demonstrates readiness to pursue integrated, competitive employment (typically following habilitative goal progress, community work exploration such as job shadows and/or try-outs, and Discovery Process activities), a referral should be made to DVR. DVR provides a wide variety of services and supports to individuals with disabilities to obtain employment, including vocational guidance, counseling, and development of an employment plan. As part of any HCBS-DD and HCBS-SLS waiver amendment to include prevocational services, persons who have an open case with DVR, or are otherwise searching for employment, should be able to receive prevocational services until they become employed. Likewise, if the person becomes unemployed they should be given the option of receiving prevocational services until they obtain employment.

The provision of prevocational services will be monitored by DDD through program quality surveys of both prevocational and case management services to ensure compliance. Through this

process, DDD can ensure there is adequate documentation to support the need for prevocational services and that prolonged service provision (beyond three years) is justified.

Recommendation # 2: Enhance PASAs ability to provide other employment and/or DHSS options.

Each of the 42 PASAs approved through DDD to provide NIWS is also approved to provide another day service such as supported community connections or supported employment. Although those agencies may have Program Approval for other services, for many agencies NIWS are the largest of their programs and may generate the majority of their revenue. This is not to say agencies provide this service for financial gain, only that if Medicaid can no longer reimburse this service these agencies are at risk of financial instability. In order to assist PASAs in reducing this risk, these agencies should be provided access to tools and resources to enhance and develop other services to sustain their infrastructure.

The current waivers for HCBS-DD and HCBS-SLS do specify training requirements for employment consultants/job coaches, but DDD should also provide agencies additional guidance regarding the provision of other day services. Many agencies and organizations offer supported employment training programs, but training in areas of community inclusion and person centered planning may also be of interest to PASAs statewide. In order to provide support to PASAs, the following lists of resources should be made available:

- Organizations that provide training relevant to supported employment, person centered planning and community inclusion.
- Supported employment agencies that have ongoing Program Approval from DDD and are willing to provide technical guidance to other agencies looking to enhance this service.

DDD should be available during the transition to help coordinate training and provide technical guidance as needed. Other organizations willing to assist in coordinating training opportunities can serve as additional resources.

Recommendation # 3: Implement the Discovery assessment process.

The workgroup believes that people receiving NIWS should be given every opportunity to pursue competitive employment. While many agencies provide supported employment services, it would be beneficial to implement an evaluation process that focuses on finding someone a job in which they are interested and well suited. The Discovery Process consists of evaluation and identification of vocational interests and capabilities in preparation for job development, job placement and the development of natural supports.

Conducting evaluations is a reimbursable service under supported employment in both the HCBS-DD and HCBS-SLS waivers. The workgroup recommends DDD specifically include the

Discovery Process as a reimbursable service within supported employment and prevocational services. A rate structure should be developed for this service.

Recommendation # 4: Review rates established for supported employment services and supported community connections.

It is not the intent of this workgroup to suggest that an increase in funding can solve the concerns associated with ending Medicaid reimbursement of NIWS. While the developmental disabilities system transitions from Medicaid reimbursement of NIWS, one goal should be to assist persons in seeking and obtaining community employment, especially for persons who have a desire to be employed, but who have been unsuccessful in doing so. Although DDD should review the rates for all services, particular attention should be given to supported employment services to determine if there could be an adjustment that would create an incentive to provide supported employment services.

Recommendation # 5: Consider the pay-for-performance supported employment models as recommended by the SB-08-005 Workgroup.

This bill established a pilot program to implement an outcome-based employment model for persons with developmental disabilities and to recommend a payment system for supported employment services for persons with developmental disabilities in Colorado.

Recommendation # 6: Ensure choice of services

The elimination of Medicaid reimbursement of NIWS will be challenging but it also provides a unique opportunity for persons who have been receiving NIWS for several years to explore other service options. In order to maximize this opportunity the workgroup recommends:

- Case managers ensure that persons and their families are aware of other day service options that might be available, including NIWS that are reimbursed with alternative funding (e.g., state funds, grants, private pay).
- Persons are afforded an opportunity to explore a wide variety of experiences so they can make informed choices about the services they choose.

Recommendation # 7: Provide guidance to the Developmental Disabilities System on how to transition persons from NIWS to other services.

The transition process should be determined by each service provision area by the CCB as part of their case management function. CCBs should develop written plans detailing the process they will use for their IDTs in transitioning persons in NIWS to other service options. These plans should be submitted to DDD to assist in monitoring the transition. The transition plans could address areas such as staff training, identification and notification of persons receiving NIWS, holding public forums, freezing new enrollments and IDT meetings. Persons transitioning into

prevocational services can do so once the amended waiver is approved by CMS. The amount of time it will take to have the amended waiver approved by CMS will need to be considered when the CCB is developing the plan.

The transition should occur across the state at the same time rather than focusing on geographic areas of the state. This will assure that technical assistance and information sharing are more efficiently implemented.

Persons receiving NIWS, families, guardians and advocates need to be informed of the progression of the change over the next few years. Written correspondence, website updates and regional forums are some of the methods that can be employed to help ensure open communication. DDD can also offer guidance to CCBs, as needed, on ways to keep all stakeholders informed of the change.

Recommendation # 8: Agencies examine alternative sources of funding for NIWS

Agencies that want to continue to provide NIWS can convene a workgroup to explore funding sources that are available to support persons who may not be interested in or necessarily benefit from prevocational services or supported employment, but rather want to continue to receive NIWS.

CONCLUSION

The workgroup acknowledges the many challenges and opportunities presented by this change. As a result of this change, Colorado has an opportunity to create service options that will meet the needs of persons with developmental disabilities while providing them an opportunity to work toward positive employment outcomes. A value assumption that was restated during the final NIWS Workgroup meeting was that the developmental disabilities system should assure, to the best of our ability, that the implementation and timing of these changes do no harm to the people being served. Throughout this process, it is imperative that our focus remain on the people we serve and how we, as providers, advocates, family members and policy makers, can best support and meet their needs.