

Employment First Policy



White Paper

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Executive Summary

Many people with disabilities want and need to work. Having a disability need not be a barrier to employment. However, there are often significant impediments including fear of losing health insurance (for those with Medicaid), inadequate availability of appropriate employment supports and other crucial services. This White Paper examines the policy option – Employment First – that can help address systemic employment obstacles for Rhode Islanders with disabilities.

The Advancing Employment Connecting People (APSE)'s Executive Board Statement on Employment First (October 2010) is: "*Employment in the general workforce is the first and preferred outcome in the provision of publicly funded services for all working age citizens with disabilities, regardless of level of disability.*" One of the key underlying principles is that "implementation of Employment First policy must be based on clear public policies and practices that ensure employment of citizens with disabilities within the general workforce is the priority for public funding and service delivery."

Historically, employment for people with disabilities has been regarded as a service. It is not – it is a civil right. Employment means having a job or career or running one's own business. The supports that an individual might need to secure and retain a job or run a business *are the services*. The United States Department of Labor, Office of Disability Employment Policy (ODEP) defines employment supports "as services, benefits, policies, tools and equipment that make it possible for us to get to work and do our jobs". While there are people who may not consider transportation, child care, access to health care, technology, and flexible work schedules as 'supports', for many Americans they can mean the difference between working and not working.

According to the US Census Bureau's 2009 American Community Survey (ACS), the overall percentage of Rhode Islanders with disabilities of all ages was 12.3%. Of the 665,845 working aged (ages 18-64) individuals, 67,816 (10.2%) reported one or more disabilities. Recent data (September 2010) from the U.S. Department of Labor indicate that *nationally* the percentage of people with disabilities in the labor force was 21.6%; by comparison, 69.9% of people with no reported disabilities were in the labor force. In 2009, 19.7% of non-institutionalized Rhode Islanders with a disability worked full-time, year round, according to the ACS. Over one in five (22.2%) RI residents with disabilities live in poverty (below 200% of the Federal Poverty Level), compared to 7.8% of working age individuals without disabilities. In 2009, the median earnings for the civilian non-institutionalized population in Rhode Island aged 16 and over with disabilities were \$21,225 (in contrast with median earnings of \$31,336 for their peers without disabilities).

Work is a pathway for people with disabilities to escape poverty and maximize their potential as individuals. If the state of Rhode Island is to prosper, all should have the opportunity to become tax-paying citizens.

Background

The first task of the Employment First Policy Workgroup (Policy Workgroup) was to review the significant work accomplished by the Global Waiver Task Force Employment Workgroup. This entailed taking into account changing employment services, training, transportation and employment services and supports. (Additional background on the Employment Workgroup may be found in Appendix A.)

One critical finding of the Employment Workgroup was that Rhode Island's Global Waiver Terms and Conditions stipulate that employment supports are "activities needed to sustain paid work by individuals receiving waiver services, including supervision, transportation and training." The consensus of the Policy Workgroup was to concur with the Employment Workgroup's recommendation to change the supported employment definition in Medicaid policy to "competitive work, including an opportunity to earn competitive wages and benefits, in an integrated setting with ongoing appropriate and necessary support services for individuals for whom competitive employment has not traditionally occurred, been interrupted or intermittent as a result of a disability."

Additionally, the Policy Workgroup strongly supports the following recommendations of the Employment Workgroup:

- (1) The Sherlock Plan, the state's Medicaid Buy-in, is cost-prohibitive. A more rational premium structure needs to be developed. In addition, regulations should be developed for the sections of the Sherlock Plan law which were never implemented (i.e. employer involvement in crafting employee health benefit and Medicaid benefit integration policy and personal care services in the workplace as a Medicaid state plan amendment).
- (2) A new comprehensive long term support and service evaluation / assessment tool with specific modules for medical, social and employment supports to determine the appropriate services that each individual needs to be fully employed must be developed and implemented. Evaluation of any Medicaid beneficiary who is disabled and working or wants to work should be performed by a professional qualified to provide assessment and employment plans stipulating the expectations of employment service providers, and a payment structure that is outcomes-based.

The Policy Workgroup then discussed and modified the Rhode Island Employment First policy goal in order for it to be more reflective of the ever-changing contemporary labor market. We therefore recommend this revised Employment First policy statement:

"To improve the competitive outcomes of individuals with disabilities based on contemporary labor market needs, which ensure that any individual who wants to work has the proper skills, tools, and access to training and employment that will lead to self-sufficiency and independence."

In order to understand the landscape as it pertains to employment policy in the state, the Policy Workgroup conducted environmental scans resulting in the following resources produced by the group:

- An inventory of the entities in the state, including state agencies, councils, commissions and boards, that have as part of their responsibility the provision of employment services, whether they are mandated by federal or state legislation, the authority they have, the membership of their entity and the populations they serve; (Appendix B)
- The roles and responsibilities of the Rhode Island Governor's Commission on Disabilities cross-walked with a sampling of the roles and responsibilities of Governor's Commission on Disabilities across the nation and the percentage of those that have disability policy as part of their charge; (Appendix C)
- A synopsis of federal and state workforce development - related legislation and executive orders impacting employment programs and services ; (Appendix D)
- A side-by-side comparison of the most recent and active state legislation, Rhode Island General Law, 42-102, which outlines the duties, responsibilities and authority of the Human Resource Investment Council and Executive Order 05-18, which established the Governor's Workforce Board (GWB) to serve as the federally mandated State Workforce Investment Board. (Appendix E)
- Workforce Investment Act 101-Power Point (Appendix F)

The Policy Workgroup spent significant time reviewing Rhode Island's enforcement of the federal Workforce Investment Act (WIA), which is designed to provide universal access to all individuals including those with disabilities. The act requires co-location of mandated partners in the One-Stop Career Centers to ensure that all Americans are provided with the same access and opportunity to become gainfully employed. In Rhode Island, co-location of partners has been cost-prohibitive and, as such, the presence of the partners in the One-Stop Career Centers is on a part-time basis or totally absent. For example, the Office of Rehabilitation Services (ORS) staff is not able to be at each One-Stop Career Center every day during all hours of operation. Therefore, employment services for people with disabilities are not fully integrated into the One-Stop system and remain siloed. Furthermore, the Governor's Workforce Investment Board has a strategic plan with several goals specific to increasing the employment outcomes for people with disabilities. Unfortunately, the 2009-2014 plan is not being actively implemented, so the state has not actualized a change in the delivery of services as required by WIA for people with disabilities to get the training, education and supports needed to compete in the labor market.

Determining the Appropriate State Law to Amend and the Appropriate Agency / Organization to Task with Implementation of the Employment First Legislation

The Policy Workgroup determined that the most relevant law pertaining to employment policy in the state is RIGL 42-102: July, 1992, which established the Rhode Island Human Resource Investment Council (HRIC). In addition, we reviewed relevant Executive Orders (EO) pertaining to the workforce system but since EO 05-18 rescinds EO 99-10 we will only be highlighting EO 05-18.

The Human Resource Investment Council (HRIC) was originally established within the executive department to be “comprised of influential and dedicated leaders for the purpose of strategic planning for an evaluation and coordination of work force development efforts in Rhodes Island and support of innovative and state-of-the-practice initiatives and programs for work development.” Until 2005 it was composed of twenty-seven members; in January 2005 membership was reduced to fifteen. Eliminated from membership were two employers, the chairperson of the Governor’s Commission on Disabilities, the chairpersons for the Private Industry Councils, and the directors / commissioners of the Departments of Labor and Training and Human Services (DLT, DHS), the Rhode Island Department of Education (RIDE) and the Economic Development Corporation (EDC). In 2007, the law was amended so that the council would now be “independent” rather than “within the executive department” and an annual report was required to be sent to the governor, speaker of the house, the president of the senate, and the secretary of state 90 days after the end of each fiscal year.

The powers and duties of the HRIC are to establish statewide policies, goals, and guidelines for the coordination of all federal and state employment and training programs and related services. These programs are collectively called “the coordinated programs system” in the law. The HRIC was also tasked to review, comment on, or approve as appropriate all other plans for employment and training for the newly created coordinated system of programs and is required to establish polices and performance goals for the coordinated system. In addition to the specific authority given to the HRIC the law went further and stated “the council shall have all other authority necessary for effective coordination and implementation of the coordinated programs system.”

Theoretically, the HRIC law’s main objective of coordinating the various employment programs in the state is an excellent goal. Streamlining the employment and training services in the state would create a more efficient and effective system as a whole. Practically speaking, aside from the Department of Labor and Training, many state agencies have an employment component as one of their missions: for example, the Department of Human Services’ “Work-First” initiative for those receiving cash assistance, the Office of Rehabilitation Services’ , a subdivision of DHS, which assists individuals with disabilities enter and remain in the workforce by providing employment services such as vocational rehabilitation, education, training and job development, and the Department of Behavioral Health and Developmental Disabilities and Hospitals (DBHDDH) which provides various employment programs to their clients. Unfortunately, these programs have not been coordinated by the HRIC because it has not delved into the policy coordination and evaluation authority given them by the law.

On January 2001, the HRIC was assigned the additional responsibility for the administration of Job Development Fund monies established by law (RIGL 28-42-84) to “ensure that the state workforce would be skilled, educated and able to upgrade workers’ skill as requirements advanced.” In the most recent Rhode Island 2010 legislative session the HRIC law was further amended: (1) to authorize the Auditor General to conduct a direct audit of the monies disbursed by the HRIC; (2) to update the federal and state employment laws for which they are to establish statewide policy; and (3) to establish and oversee the “State Career Pathways System”.

Executive Order 05-18 (September 2005) established the Governor’s Workforce Board (GWB), which would serve as the federally mandated State Workforce Investment Board (SWIB). This Board was originally established by Executive Order 99-10 (1999) but was rescinded and replaced by this Executive Order. Executive Order (EO) 05-18 stipulated that “the Board, *when acting in concert with the HRIC, shall conform its activities and procedures to the RIGL 42-102 and 28-42, and shall approve a budget, manage, and otherwise provide oversight of the RI Job Development Fund to ensure that all programs and expenditures are in compliance with the approved State Plan*”. The EO further designated DLT as the administrative entity responsible for administration and management of the Board and required the Department to provide staff support for the Board. Membership of the GWB is comprised of seventeen representatives as follows: nine employers, four from organized labor, two from community-based organizations, one from the post-secondary education system, *and the Director of the Department of Labor and Training*.

Many duties of the GWB overlap the duties and powers of the HRIC. (See Appendix C). Furthermore, Article II of the current by-laws of the GWB states, “13 members shall also comprise membership of the HRIC” and Article III stipulates, “that the Governor shall appoint the Executive Director who shall serve as Executive Director of the Board and the Council.” Some duties of the Executive Director are to “ensure compliance of state law” and “represent interests of the Board to the Administrative Entity.”

As a result of EO 05-18, inconsistency exists between it and the HRIC law. The Workgroups specific concerns are as follows:

1. The Board composition of the HRIC (15 members) and that of the GWB (17 members) are not aligned. The most significant difference in membership composition is that the GWB does not have state legislator representation, it appoints the Director of DLT and someone from the post-secondary system, and it appoints more employers than the HRIC. GWB by-laws further stipulate, “13 members shall also comprise membership of the HRIC”. The issue is that while some of the members of the HRIC can function in the dual role of representing the HRIC and the GWB, GWB members who are not also members of the HRIC cannot vote on matters of the HRIC. A review of minutes of the GWB support that voting items specific to the HRIC are not separated from those of the GWB and therefore tend to be voted on by all members of the GWB.
2. As amended in 2007, the HRIC is expected to be an independent body not within the executive department. Prior to this in January 2005 the reconfiguration of the HRIC Board explicitly

removed the state agency directors /commissioners from membership. As a result of the EO, the Director of DLT is a member of the GWB and DLT is designated as the entity responsible for administration and management of the GWB. The EO also stipulates that when the GWB, “acts in concert with the HRIC it shall conform to the HRIC law RIGL-42-102-its activities and procedures.” The concern is that DLT staff and its director are now significantly involved with the HRIC, in accordance with the EO but in contradiction to RIGL-42-102.

3. The Executive Director of the HRIC is by law “appointed by the council in consultation with the Governor.” Article III of the GWB By-laws states, “that the Governor shall appoint the Executive Director who shall serve as Executive Director of the Board and the council.” Again, there is a direct contradiction between the EO and RIGL-42-102.
4. Statewide and local employment efforts are not coordinated under the HRIC as stipulated in law. Full enactment of the law would mean that there would be a coordinated effort for all employment policy in the state. Currently there exists a much fractured workforce development system.

The Policy Workgroup closely examined the issue of which entity should be tasked with ensuring the full enactment of the Employment First legislation. The Workgroup’s recommended options to clarify accountability are:

Option 1: The Governor’s Commission on Disabilities (GCD) functions as the entity that handles disability policy. This will require the GCD to be restructured.

Option 2: There are specific points of entry in each state agency for people with disabilities to obtain services. A plan should be created that morphs access to services to a single state agency or point of entry.

Option 3: Assign a committed person in the Governor’s office to be responsible for disability policy and mandate that accountability. The person will also have oversight responsibility for an umbrella group comprised of representatives from the many different councils and commissions that represent the needs and interests of those with disabilities.

Rhode Island-Employment First Law: Recommendations for Change

Legislative Findings: The findings reveal that the original intent of workforce-related state legislation (RIGL 42-102) and workforce-related Executive Order (Executive Order 05-18) are problematic for the reasons iterated in this White Paper, and federal WIA legislation has not been fully implemented in principle (full integration in the One-Stop system) or in fact (co-location of mandated partners in the One-Stop Career Centers present for all of the Centers’ hours of operation). There is inconsistency and therefore confusion between the mandated composition of the HRIC and the Governor’s Workforce Board, and the latter’s Strategic Plan 2009 - 2014, which to this point has not been actively

implemented. Oversight for implementation of all of the above is negligible. The Policy Workgroup findings are as follows:

- The current low participation of citizens with disabilities in the workforce is unacceptable. Access to “real jobs with real wages” is essential if Rhode Islanders are to avoid lives of poverty, dependence, and isolation.
- All citizens, regardless of disability, have the right to pursue the full range of available employment opportunities, and to earn a living wage in a job of their choosing, based on their talents, skills and interests.
- Employment is the first and preferred option when exploring goals and a life path for citizens with disabilities.
- There is no single point of responsibility for overall disability policy in the State of Rhode Island. While there are many stakeholders who may weigh in on legislative issues related to disabilities, these entities are generally focused on the population they serve and not the overall disability population. The Governor’s Commission on Disabilities often develops legislation from consumer and advocates’ input / testimony but is not responsible for the creation of policy.
- Many agencies across Rhode Island provide employment services for people with disabilities. These state agencies and programs are siloed based upon the disability and the eligibility criteria for services. Employment supports are not available throughout the entire workforce development system; services should be blended and braided for greater efficiency and effectiveness.
- Prior to the Global Waiver, the type of disability a person has generally determined their Medicaid eligibility category and services available to them. The Global Waiver Terms and Conditions CORE services should be adopted as the state’s Employment Long Term Services and Supports for all people with disabilities.
- The majority of long-term services and supports in Medicaid cannot be used to *directly* support employment. Requiring Sherlock Plan participants to meet a nursing home level of care in order to obtain home and community based services is counterintuitive for an individual who is working; they should not be required to be evaluated through the long-term eligibility portal in order to obtain the supports and services needed to work.
- Only a small number of individuals with disabilities who are eligible for WIA services are enrolled in them. Successful employment attainment, wage gains and retained employment performance measures result in WIA counselors having to balance potential participants against their need to achieve outcomes. A person with a disability presents more challenges to achieving those measures without the proper supports.

Legislation Action Recommendations

Recognizing that Employment First is about more than employment, in order to make Employment First successful the supports people with disabilities need to be employed in the contemporary labor market must be addressed. Meaningful legislation must ensure that any individual with a disability receives supports and services needed to attain and retain competitive employment. These include education and training, employment services and supports and relevant skills training (e.g. resume writing, job interview skills), transportation, access to and provision of health care services, long-term care supports (e.g., personal care services and housing), asset development (e.g., benefits and work incentives planning, financial education and literacy, employment and career development, etc.).

1. **Rescind and Replace Executive Order 05-18** (2005 creation of the Governors Workforce Board (GWB) – federally mandated State Workforce Investment Board (SWIB). Specifically:
 - a. Review the duties of the GWB and those of the HRIC to determine if there needs to be a separate entity to operate as the federally mandated SWIB.
 - b. If a separate body, should the GWB coordinate functions with those of the HRIC.
 - c. Ensure that the GWB reports directly to the Governor and that the Governor’s Office staffs the GWB.
 - d. Review and modify membership to the Board. Similar to Executive Order 88-1, include executive department and commissioners and presidents of the University of Rhode Island, Rhode Island College and the Community College of Rhode Island as ex-officio members. Ensure membership of disability community and chairpersons of the two Local Workforce Investment Boards.
2. **Amend RI General Law 42-102** (Human Resource Investment Council, 1992)

Amend 42-102-1: (Establishment of council)

- Clearly state to whom this independent council reports and is accountable. The HRIC will report directly to the Governor.

Amend 42-102-2(b) (Composition of council):

- Include the Chairpersons of the two Local Workforce Investment Boards as members. Include state department directors of DLT, EDC, RIDE, DHS and RI University and college presidents as ex-officio members.
- Clarify (2) “provided, however, that in the event that there is established a State Workforce

- Investment Board that is separate and distinct from the council” - Clearly state the relationship of this council to the federally mandated SWIB (aka the Governors Workforce Board) or amend to make this council the SWIB.

Amend 42-102-6 (Duties)

- HRIC is mandated to provide to the Governor an analysis of the Sherlock Plan, its participants and operations on an annual basis.
- HRIC is to establish performance-based outcomes expected of employment providers and training services for any entity that receives money from the state for such purposes. These measures should include increases in employment, increases in incomes, increases in financial assets and increases in economic wealth of individuals with disabilities.
- HRIC is to establish a certification requirement for job developers / employment specialists as it pertains to employment and training.

Add this new section: 42-102-11 (Employment First):

- Mandate that there is cross-agency, cross-disability coordination of all available employment and employment - related programs, initiatives and services with an emphasis on braiding and blending those programs and services to reduce duplication and increase effectiveness. Interagency / interdisciplinary teams will be developed at the client service level.
- Mandate that education and training, employment services and supports and relevant skills training (e.g. resume writing, job interview skills), transportation, access to and provision of health care services, long-term care supports (e.g., personal care services and housing), financial training (e.g. asset development, financial literacy) are available components inter- and/or intra- relevant departments, agencies and programs.
- The HRIC will support the Department of Human Services’ development of a new comprehensive long term support and service evaluation / assessment tool with specific modules for medical, social and employment supports to determine the appropriate services that each individual needs to be fully employed. A due date for full implementation will be established.
- Define Supported Employment as “competitive work, including opportunity to earn competitive wages and benefits, in an integrated setting with ongoing appropriate and necessary support services for individuals for whom competitive employment has not traditionally occurred, been interrupted or intermittent as a result of a disability.”

- The Global Waiver Terms and Conditions CORE services will be adopted as the state's Employment Long Term Services and Supports policy for people with disabilities through this statute. Including, but not be limited to, job coaching, vocational evaluation, case management, job development, and job training.