



FAQs Concerning DODD's Vocational Habilitation Framework Proposal

What are the key components of DODD's proposal to bring Ohio's vocational habilitation services into compliance with federal regulations?

- **50% Calculation:** To determine if an individual is making 50% or more of minimum wage, DODD is proposing that wages be assessed annually to determine if the individual's annual wages earned while receiving vocational habilitation services are more than or equal to $[(\text{Ohio minimum wage}) \times (\text{BLS average hours a week}) \times (52 \text{ weeks}) / 2]$. This calculation will be used to define if the person can continue to receive vocational habilitation services. Using this calculation, individuals annually earning \$7,669.35 or above while receiving vocational habilitation would be impacted. Formal details on how this will be implemented have not yet been determined, but it is proposed that making 50% or more of minimum wage will trigger a plan to transition the person to other employment supports.
 - Providers will include annual vocational habilitation earnings on the annual progress report that is submitted to the SSA.
- **Compliance HCBS Settings Rule:** DODD is proposing that they gather baseline data on vocational habilitation, with a goal to increase community-based vocational habilitation by 10% over baseline by 2020 and by 20% over baseline by 2022. This data would be shared with CMS to evidence Ohio's progress in meeting the CMS Settings Rule.
- **Legacy Individuals:** DODD recognizes that some individuals have received services in facility-based programs for decades and may not want to change. DODD proposes that Ohio "carve-out" individuals 50 years of age and over and create a new service focusing on retirement that allows them to stay in a facility-based program if they so wish.
- **Time Limits for Vocational Habilitation:** DODD proposes that vocational habilitation only be authorized for a total of 24 months for individuals ages 18 – 49, with the option of unlimited annual extensions for the service if recommended by the team and authorized by DODD.

Why might DODD propose these changes?

- Over 16,000 people in Ohio are receiving prevocational services. DODD is attempting to find a balance between meeting federal regulations and guidance and still be respectful to the large number of people in Ohio that are currently receiving prevocational services in sheltered workshops.
- CMS limits prevocational services to individuals who are compensated at less than 50% of minimum wage.¹ Ohio's vocational habilitation service meets the definition of a CMS prevocational service; therefore, the service is required to meet the 50% regulation. CMS does not have a waiver service that allows individuals to continue working in a sheltered workshop setting if earning 50% or more of minimum wage.³
- CMS defines prevocational services as occurring over a defined period of time.²

- Waiver services are to be provided in the community .⁴
- Research indicates that sheltered work is inversely correlated to competitive, integrated employment outcomes.⁵
- Supported employment services are more cost effective than sheltered work.⁶

Why is DODD doing this now?

- DODD recently became aware of the 50% regulation while reviewing CMS guidance on payments and incentives.

Examples of items OPRA members MAY want to advocate for:

- This provides a real opportunity for OPRA to advocate for higher rates for day array services. OPRA members may want to advocate that DODD not enforce this proposal until funding for all day array services has been increased, with a focus on rates for group and individual employment services and career planning services, including self-employment
- That DODD has a plan to create resources to build provider capacity in the areas of self-employment, group employment and community-based vocational habilitation services. Ideally this plan would be implemented before any major changes to services are enforced.
- That DODD has a plan to build the SSA capacity needed to implement maintain DODD’s proposal.
- That ISP teams would approve/disapprove requests to extend vocational habilitation service, not DODD.
- That the new “Retirement Program” for individuals stays true to the intent of allowing “legacy individuals’ to continue working in sheltered workshops without time or wage limits..
- That DODD investigate with CMS the possible creation of an “in-between” service that allows individuals a pre-determined amount of time in vocational habilitation while earning 50% or more of minimum wage. This would likely require CMS to override past CMS guidance and would give individuals under 50 years of age more time to make the transition to community employment.

References

1. **CFR §440.180 Home and community-based waiver services** https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=1&SID=eb88c6dcade18f1456ea69aac2a98ebb&ty=HTML&h=L&mc=true&r=SECTI ON&n=se42.4.440_1180

“... (B) If the beneficiaries are compensated, they are compensated at less than 50 percent of the minimum wage...”

2. **CMS Technical Guide 9/16/2011** <https://downloads.cms.gov/cmsgov/archived-downloads/CMCSBulletins/downloads/CIB-9-16-11.pdf>

“...Services are expected to occur over a defined period of time and with specific outcomes to be achieved, as determined by the individual and his/her service and supports planning team through an ongoing person-centered planning process. ...”

3. CMS Technical Guide, Version 3.6, Released January 2015

“....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. Employment related waiver services must be provided in accordance with CMCS Informational Bulletin dated September 16, 2011...”

“...Pre-vocational services include activities that are not primarily directed at teaching skills to perform a particular job, but at underlying habilitative goals (e.g., attention span, motor skills, interpersonal relations with co-workers and supervisors) that are associated with building skills necessary to perform compensated work in community integrated employment. Vocational services, which are not covered through waivers, are services that teach job task specific skills required by a participant for the primary purpose of completing those tasks for a specific facility based job and are not delivered in an integrated work setting through supported employment. The distinction between vocational and pre-vocational services is that pre-vocational services, regardless of setting, are delivered for the purpose of furthering habilitation goals that will lead to greater opportunities for competitive and integrated employment and career advancement at or above minimum wage...

4. HCBS Settings Rule 42 CFR 441.301(4)

<https://www.medicare.gov/medicaid/hcbs/guidance/settings/index.html>

“...The regulation requires that all settings, including facility- or site-based settings, must demonstrate the qualities of HCB settings, ensure the individual’s experience is HCB and not institutional in nature, and does not isolate the individual from the broader community. In particular, if the setting is designed specifically for people with disabilities, and/or individuals in the setting are primarily or exclusively people with disabilities and on-site staff provides many services to them, the setting may be isolating unless the setting facilitates people going out into the broader community. We note, however, that states have flexibility in determining whether or when to offer HCBS in facility-based or site-based settings, as the regulation only establishes a floor for federal participation. Please see guidance on settings that isolate at: <http://www.medicare.gov/Medicare-CHIP-Program-Information/By-Topics/Long-Term-Services-and-Supports/Home-and-Community-Based-Services/Home-and-Community-Based-Services.html> “

5. <https://journals.sagepub.com/doi/abs/10.1177/1362361311408129?etoc=>

6. <https://www.dol.gov/odep/topics/EmploymentFirst/Cimera-CPSD-2014Is-Supported-Employment-a-Good-Investment-for-Taxpayers.pdf>