



September 22, 2016

The Honorable
Janet L. LaBreck
Commissioner
Rehabilitation Services Administration
Department of Education
400 Maryland Avenue, S.W.
Washington, D.C. 20202

Dear Commissioner LaBreck:

Thank you for your response to our letter regarding the work unit definition, and for your prompt response to our joint invitation to be involved in a webinar. We are delighted to hear that you are coordinating with the Department of Labor to host your own, and look forward to participating in it. There will be a good deal of interest.

I am reaching out to you today again on behalf of our members, all of which have numerous questions with respect to the implementation of the Workforce Innovation and Opportunity Act (WIOA) and the recently finalized regulations. These are questions that require answers, particularly in light of the Department of Labor/Wage & Hour Division's July 27, 2016 guidance setting forth penalties for Section 14(c) certificate holders effective July 22, 2016. The DOL guidance appears to place certificate holders in the position of being penalized if a state designated state unit (DSU) fails to fulfill its obligations under the regulations and Section 511. That certainly cannot be the intended outcome.

We attended the RSA training in August that took place in Washington, D.C., and appreciate RSA's efforts in preparing extensive slides, which were helpful. Providers also need information and help with respect to how these regulations will work in practice. We were dismayed at the extremely limited space available for the WIOA trainings in Chicago and Sacramento, as we had hoped that more questions could be asked at these meetings. That there would be enormous interest in attending these meetings cannot have come as a surprise given the turnout for the joint conference call that the Departments of Education and Labor held immediately after the draft regulations were released. We were told recently that the meeting room for the Chicago training held only 100 seats for training covering 20 states, with the vast majority being reserved for state agencies. Most community rehabilitation providers (CRP) therefore were precluded from attending, and even some of our state association members were unable to secure a seat. We know you are trying to rectify that with the webinar. But in the interim, given the limited opportunity for CRPs to ask questions during the trainings, we have gathered them from our members. This undoubtedly is not a complete list, however, it represents some of what we have asked to date. We respectfully ask for a response.

Technical Guidance TAC 06-01

Question No. 1: We understand that RSA intends to retire certain guidance, including TAC 06-01. Can you provide us information on what guidance will replace TAC 06-01 and how you anticipate that to affect referrals?

State Counseling Obligations

Question No. 2: What guidance has RSA given to DSUs as to their obligations to provide counseling to all persons working under a Section 14(c) certificate?

Question No. 3: If an individual declines counseling and receives documentation from the DSU that counseling was offered and declined, may that individual continue working under a special wage certificate?

Question No. 4: Certain states have advised our members not to refer their employees to the DSU because the DSU has no mechanism for handling their obligations; what action is RSA taking to make certain the DSUs are able to fulfill their obligations?

Question No. 5: Will RSA provide additional regulatory guidance that will protect a CRP in the event a state fails to provide the required counseling?

Question No. 6: At least one state has suggested that the state DSU will fulfill its counseling requirements by providing a video to the CRP for their employees to view. Is this sufficient to meet the regulations? If so, how will the DSU obtain the proper documentation and provide it to the employee so that the employee may provide it to the employer?

Question No. 7: At least one state has suggested that counseling might take place in a group session held at the CRP. Is this sufficient to meet the RSA regulation?

Question No. 8: Does an employee who was employed as of July 22, 2016, or an adult hired thereafter, and who is earning subminimum wage have a right to decline counseling from the DSU?

Question No. 9: What steps should a CRP take in order to remain within the law if an employee hired on or before July 22, 2016 declines counseling or declines to permit the CRP to reveal their names and the fact of their disability to the DSU?

Question No. 10: Many of our members have an increasing number of people who are working part-time in competitive employment but who use Section 14(c) pre-vocational services as their wrap-around employment service during the week (e.g., 8 hours a week in competitive employment and 22 hours under pre-voc). This method has helped pave the way for individuals and families to try competitive employment, without a fear of losing what they already have. When an individual is working partly in CIE and partly under a special wage certificate, are they still eligible for and required to have annual counseling?

Peer Mentoring

- Question No. 11: After a CRP provides information regarding peer mentoring, etc., is there any further requirement that the employee take advantage of these opportunities?
- Question No. 12: Many CRPs operate in rural communities or areas where there are not peer mentoring or similar providers. Is it sufficient for the CRP to provide information about online opportunities?

Students and Youth

- Question No. 13: If a CRP has an existing agreement with a local education agency under which specific students were working at the CRP during the 2015-2016 school year and earning a subminimum wage, may those same students continue working and earning a subminimum wage for the 2016-2017 school year despite having been away for the summer break? May the LEA continue to fund that service?
- Question No. 14: If a student with a disability was receiving pre-vocational transition services from a CRP during the last school year, may that CRP provide it again this school year?
- Question No. 15: If a student has never received services from a CRP in the past, may a CRP offer transitional pre-vocational services to a student with a disability during this school year assuming that the student will be paid at least minimum wage?
- Question No. 16: May a graduating student who worked with the CRP through a school program during the 2015-2016 school year continue working with the CRP and be funded through another funding source?
- Question No. 17: May a student who took a summer job with a CRP under a Section 14(c) certificate in 2016 return to their job next summer and work under a Section 14(c) certificate?
- Question No. 18: Before a youth with a disability may be hired, the youth must have “worked toward an IPE employment outcome for a reasonable period without success.” Who determines the length of time that is reasonable? Is it the youth, the DSU counselor, the guardian, the care manager or someone else entirely? Additionally, should the youth applying for VR services be found ineligible, it will dictate to any long-term care funding source that competitive integrated employment (CIE) is not a viable outcome. Based on the September 2011 CMS memo authored by Cindy Mann, prevocational services are not an end unto themselves. If the DSU, through its denial has indicated indirectly that someone is not a candidate for CIE may the person still enroll in a prevocational program in an effort to alter their eligibility status?
- Question No. 19: May a youth, as defined in the regulations, who is presently working under a Section 14(c) certificate and who finds CIE, but is only employed in that capacity one or two days a week, continue to work the remainder of the work week for subminimum wage?

- Question No. 20: May a youth who is not presently working under a Section 14(c) certificate, but who is engaged in the VR process and working one or two days a week in CIE also take employment where they will earn subminimum wage to round out their work week?
- Question No. 21: May a youth who is barred from special minimum wage work still participate in day programs as well as supports providing work exploration?
- Question No. 22: If a youth was already employed at a special minimum wage as of July 22, 2016, may an LEA continue to fund that service?
- Question No. 23: May an LEA fund services that result in a student working in a CRP at or above minimum wage?

Partial Care/Partial Hospital Clients

- Question No. 24: Mental Health partial care/partial hospital clients funded by Medicaid work in various work units under 14(c) and are paid subminimum wage. At this time, there are many youths interested in these programs, but the providers do not know how to proceed. Do the WIOA regulations pertain to partial care clients as well?
- Question No. 25: Are mental health clients subject to the same requirements as other disabled individuals in regard to transitional training, VR, and career counseling?

Documentation

- Question No. 26: What special documentation is necessary for a person of any age to be employed under a Section 14(c) certificate?
- Question No. 27: If an employee receives documentation from VR to provide to a CRP but fails to provide it, is the VR agency authorized to provide it directly to the CRP upon request?

Other

- Question No. 28: If a youth is terminated or resigns from their job in CIE, may the individual take a job working under a Section 14(c) certificate for subminimum wage? Does the same answer apply to people who are 25 or older?
- Question No. 29: If an individual chooses not to participate with a VR evaluation, may that individual choose to work under a Section 14(c) certificate for subminimum wage?
- Question No. 30: Does a youth who was employed as of July 22, 2016 under a Section 14(c) certificate have the freedom to quit that job and return to it later without going through VR services?

Question No. 31: How recently must the VR determination and counseling be completed before a disabled individual can be referred to a job that would be under a Section 14(c) certificate?

Question No. 32: If a person with a disability applies for admission to a CRP program prior to completion of a VR evaluation and counseling, can that individual be paid subminimum wage while VR completes its process.

Commissioner, these questions are representative of the myriad questions we have received from our members. It is very likely that there will be additional questions. Many of our CRP members have long waiting lists of people hoping for jobs with the CRP and numerous others are trying to work through these issues with their LEAs, many of which have been surprised to learn that long-running programs are subject to new rules. We are anxious to work with you to make sure this transition is as seamless as possible, and to make certain all people with disabilities continue to have a full array of employment opportunities. Answers to our questions will be very much appreciated. Please feel free to contact me or my colleague, Kate McSweeney, if we can provide you any additional information.

Very truly yours,

A handwritten signature in black ink, appearing to read "Terry R. Farmer". The signature is written in a cursive, flowing style.

Terry R. Farmer
Chief Executive Officer

cc: Kate McSweeney, Esq.