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**Testimony of Shayne Roos
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Before the House Committee on Education and Labor
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On

'Eliminating Barriers to Employment: Opening Doors to Opportunity'

INTRODUCTION

Thank you all for the opportunity to appear before you today to provide testimony and support of the *Transformation to Competitive Employment Act (H.R. 873)*. By way of background, my name is Shayne Roos. I am the Senior Vice President of ACHIEVA Support. Prior to joining ACHIEVA in 2001, I worked in the state of North Carolina, initially as a Qualified Intellectual/Developmental Disabilities Professional and then as a Vocational Rehabilitation Counselor.

ACHIEVA

Based out of Pittsburgh, Pennsylvania, ACHIEVA is a nonprofit parent organization that has comprehensive services and supports and serves thousands of people with disabilities and their families each year. ACHIEVA was founded in 1951 by a group of family members who all desired the same thing, to ensure their children with disabilities had the same chances in life that all children should be given. Their commitment helped to establish a nationwide movement that changed the long history of isolation and segregation for both children and adults with disabilities.

ACHIEVA is the only agency of its type in southwestern Pennsylvania that provides lifelong supports. From early intervention therapies and in-home support to older adult protective services for medically fragile senior citizens, ACHIEVA provides services through the entire lifespan. Total revenue for ACHIEVA in FY 17/18 was close to \$48 million with government revenue representing 73% of the total. Of that 73%, the majority of government funding received is through the Federal Medicaid Waiver programs. Other revenue streams include contributions, fundraising, etc.

ACHIEVA has always committed to and advocated for the provision of person-centered, inclusive supports in the least restrictive environments. In 1971 as a member of the Pennsylvania Association for Retarded Children (PARC) we brought the seminal lawsuit *PARC v. Commonwealth of Pennsylvania*, the first right-to-education suit in the country, to overturn Pennsylvania law, which allowed for public schools to deny services to children "who have not attained a mental age of five years" by the start of first grade, and secure a quality education for all children. The case quickly settled before the U.S. District Court for the Eastern District of Pa., resulting in a consent decree in which the state agreed to provide a free public education for children with mental retardation. In the late 1990's, ACHIEVA was one of three plaintiff organizations to file suit against Western Center, a Pennsylvania state-run institution housing close to 400 people with intellectual

disability. Those efforts, reinforced by the passage of the Olmstead decision, resulted in the closure of that facility in April 2000.

ACHIEVA'S VOCATIONAL TRANSFORMATION

ACHIEVA envisions a community where disability is a distinction that makes no difference. Our core service areas- early intervention, residential, home care, employment- focus on nurturing a community life. We recognize that in order to be successful in doing so that we must always be willing to evolve, subscribe to best practices and take an individualized approach because what living a community life looks like for one person may not look the same for the next. However, each person is entitled to have *full* access to the richness of community and it is our pledge to eliminate any barriers that place limits on a person with a disability.

Employment is the centerpiece of a community life and for nearly 50 years, promoting the employment of people with disabilities has been a part of ACHIEVA's landscape. We have always taken a diversified approach- supported employment, small group employment, internal business operations- to employment supports. Supported Employment consists of three primary components- career assessment, job finding or development, and job coaching and support. Small group employment is a mobile workforce model where teams of people, supervised by a training/job supervisor, conduct service activities. AbilityOne contracts make many small group employment opportunities possible.

Until recently, our business operations had relied heavily on sheltered workshops and the use of a 14(c) certificate. Less than four years ago ACHIEVA was operating five workshops where close to 500 people with disabilities were working under two separate 14(c) certificates¹. The type of work available varied amongst the five facilities with a large majority being jobs that entailed sorting, packaging, and labeling.

In 2014 ACHIEVA's approach to employment began to shift. In January of that year, the Centers for Medicare and Medicaid Services (CMS) issued the final rule as it relates to home and community-based services (HCBS). The final rule addresses several sections of Medicaid law under which states may use federal Medicaid funds to pay for HCBS. The rule supports enhanced quality in HCBS programs and adds protections for people receiving services. In addition, the rule reflects CMS' intent to ensure that people receiving services and supports through Medicaid's HCBS programs have full access to the benefits of community living and are able to receive services in the most integrated setting.² Later that year the Workforce Innovation and Opportunity Act (WIOA) was signed into law. WIOA is designed to help job seekers access employment, education, training, and support services to succeed in the labor market and to match employers with the skilled workers they need to compete in the global economy.³

As an organization, we recognized that the final rule and passage of WIOA would affect our organization greatly. Our five workshops would be subject to the requirements of WIOA which would impact eligibility for pre-vocational services. And each facility fell under the HCBS umbrella. As such, we endeavored to determine how we would bring these facilities into compliance with the final rule over an initial five-year period.⁴

¹ ACHIEVA merged with The Arc of Westmoreland in 2009 and in doing so inherited a second 14(c) certificate.

² CMS, Centers for Medicare & Medicaid Services, Office of Communications, FACT SHEET, January 10, 2014.

³ United States Department of Labor

⁴ In May 2017, CMS issued a 3-year extension for providers of HCBS to come into compliance with the final rule.

Initially, the discussions revolved around how to tweak what already existed in order to maintain the status quo. However, an unfortunate incident at one of our workshops changed ACHIEVA's trajectory for good.

In our pallet-manufacturing business, a material handler was gravely injured while operating a table saw. An Occupational Safety and Health Administration (OSHA) investigation led to a review of internal processes and working conditions. Findings specific to the injury aside, the investigation resulted in a realization that there was substantial 'down time' where work was simply not available and that a number of people currently working in the facility had been there for many, many years. With one of the primary objectives of a pre-vocational facility being to *assist clients in the development of skills necessary for placement in a higher-level vocational program and ultimately into competitive employment*⁵, we grew concerned as to why people were not moving onto competitive integrated employment.

From that point forward, internal discussions with ACHIEVA's senior management team gravitated away from focusing on compliance. We began to examine our scope of employment services relative to the mission, vision and core values of our organization. It was determined that they did not align. In a community where disability is a distinction that makes no difference, people should not be earning less than minimum wage with little or no access to the greater community.

For several months, this shift in thought and approach was strategically shared with ACHIEVA's executive team and board of directors. In November 2015, all four corporate boards⁶ and the ACHIEVA parent board unanimously adopted a resolution whereas ACHIEVA would divest itself from providing workshops and training facilities that segregate people from the richness of local community life. And with that, what would come to be known as ACHIEVA's Vocational Transformation began.

While it took time, planning, investment and a reallocation of resources, all five of ACHIEVA's workshops were shuttered within three years of the adoption of the resolution. Even more importantly, both of our 14(c) certificates were phased out within two years. And despite the rhetoric that implies when workshops close there are no other alternatives, the successes of those people once languishing in our workshops tell a different story.

To date, just over 100 people formerly in one of our workshops and earning a subminimum wage are now enjoying the richness and benefit of competitive integrated employment. Those jobs span across 53 unique employers with an average starting salary of \$8.25 per hour. An additional 65 people are employed by one of ACHIEVA's three businesses- pallets and packaging; property maintenance; and cleaning and janitorial. The average hourly rate earned in ACHIEVA's business operations is \$8.93. These same people were once earning an average wage of \$1.90 per hour under a 14(c) certificate. Current earnings represent a 370% increase in hourly wages.

Close to 250 people were undecided as to whether or not they wanted to actively pursue employment. They opted to engage in what is referred to by Pennsylvania's Department of Human Services (DHS), Office of Developmental Programs (ODP) as Community Participations Supports (CPS). CPS is a waiver funded service

⁵ PA Code Title 55, Chapter 2390.

⁶ In 2015, The ACHIEVA Family of Organizations consisted of five separate corporations- ACHIEVA, ACHIEVA Support, The Arc of Greater Pittsburgh, ACHIEVA Family Trust and The Arc of Westmoreland. The Arc of Westmoreland has since been dissolved into ACHIEVA Support.

and provides opportunities and support for community inclusion and building interest in and developing skills and potential for competitive integrated employment. It is designed to result in active, valued participation in a broad range of integrated activities that build upon a person's interests, preferences, gifts, and strengths while reflecting their desired outcomes related to employment, community involvement and membership⁷.

A number of the remaining people once supported in an ACHIEVA workshop, some in their 70's and 80's, opted to retire. Again, this is a somewhat sad narrative. Were they never offered the opportunity to retire in the past? Did they spend the entirety of their lives in a sheltered environment earning a subminimum wage without ever achieving a competitive integrated employment outcome?

Finally, a group of people left our supports and entered into workshops operated by other local agencies. When ACHIEVA began its' transformative efforts, we were met with much resistance, particularly from families. And while we had the commitment and vision for the future, we did not yet have all of the answers to their questions as to available alternatives and what a person's life would look like without a workshop. Ultimately decisions were made to transition to known entities who's plans were to remain status quo for as long as possible. Which emphasizes the fact that the continued existence of the 14(c) certificate serves only as a barrier to the pursuit of competitive integrated employment.

LESSONS LEARNED

Effective communication from the onset is key. You must know your audience, be able to relate to their concerns and impress upon them competitive integrated employment outcomes are achievable. Following the announcement of ACHIEVA's intent to part from providing employment services in segregated settings, we shared that message with the people we support and their families via written communication. We soon realized additional measures were necessary to properly convey the reason behind our conviction to alter our supports. ACHIEVA hired a Communications Manager to lead those efforts. In-person informational meetings for vocational customers and their families were held. Such meetings were offered in both large and small group settings. Smaller, personalized consultations were also provided. A database was developed and maintained to facilitate routine communications with agency stakeholders. Website updates, a monthly newsletter, social media posts, videos, and educational marketing materials were among the efforts taken to keep families informed.

The key component of ACHIEVA's communication efforts was to reinforce the dedication to the people we support and to help them, one-by-one, to recognize their vision of a good life. The result was one success after another. Previous negative behaviors that were exhibited in the sheltered workshop subsided as the people supported by ACHIEVA were given the personalized attention that they deserved. Parents who were initially angered by or fearful of the change found themselves grateful for the chance to witness their son or daughter succeed and make fair wages in less isolated settings.

Also, when shifting focus from a workshop to competitive integrated employment do not do so within a vacuum by targeting specific positions or industries. That approach only focuses on the disability and not the person's unique desires and strengths. What is key to successful competitive integrated employment

⁷ Commonwealth of Pennsylvania, Department of Human Services, Individual Support Plan (ISP) Manual for Individuals Receiving Targeted Support, Base Funded Services, Consolidated or P/FDS Waiver Services or Who Reside in an ICF/ID

outcomes is taking a person-centered approach and utilizing the wealth of long-established supports that are in place. The aforementioned supported employment includes activities such as training and additional supports including worksite orientation, job aide development, coordination of accommodations and ensuring assistive technology that may be needed by the person to obtain and sustain competitive integrated employment. And newer, innovative approaches to employment supports such as advanced supported employment which is an enhanced version of supported employment that includes discovery, job development, systematic instruction to learn the key tasks and responsibilities of the position and intensive job coaching and supports that lead to job stabilization and retention⁸.

THE TRANSFORMATION TO COMPETITIVE EMPLOYMENT ACT

Transitioning away from the 14(c) was not without its' challenges. The majority of people who were in our workshops transitioned into them directly from high school and they had remained there ever since. The workshops and the associated meager earnings were all they and their families had ever known. We worked hard to educate the people we support and their families so that they could make informed decisions about alternatives and the real possibility of becoming competitively employed. But the provider community at large continued to support the use of a 14(c) and it is difficult to work against preconceived or outdated notions of people's ability. However, the continued use of a 14(c) is an outdated carryover from the 1938 FLSA law and is counter to the Olmstead decision in the way that it promotes the unjustified segregation of persons with disabilities.

Furthermore, while the ODP was supportive of our efforts, their main focus was Pennsylvania's transition plan as it relates to the CMS final rule. Newly developed HCBS service definitions promoted competitive integrated employment and a community life but did not go as far as eliminating workshops. This left the door open for providers to remain status quo and continue with a subminimum wage, workshop model while infusing very little or no innovation.

Passage of the *Transformation to Competitive Employment Act* in and of itself sets a new standard. It answers the question as to whether or not people with disabilities should be paid less than minimum wage. That answer is no! It removes the 'what if' mentality that has been detrimental to our transformative efforts. What if I can't become competitively employed? What if I lose my job? This Act sends a message that all people with disabilities who choose to be employed have the same rights and opportunities as people without disabilities. It also addresses those challenges by first and foremost offering technical assistance to employers. Those employers will need to understand and buy into why it should be done and develop a competency as to how it can be done in order to more effectively communicate the benefits to their stakeholders.

With the proper tools and buy-in, all employers can successfully phase out the use of a 14(c). Technical assistance via the *Transformation to Competitive Employment Act* should include best practices in evaluating current business models to determine how employers can maintain their current customer base and maintain productivity levels utilizing a modified workforce. This should include mentoring with an employer who has

⁸ Commonwealth of Pennsylvania, Department of Human Services, Individual Support Plan (ISP) Manual for Individuals Receiving Targeted Support, Base Funded Services, Consolidated or P/FDS Waiver Services or Who Reside in an ICF/ID

already successfully transitioned away from the use of a 14(c) certificate. There is no need to reinvent the wheel.

Transformation of this kind does not occur overnight. The Act allows ample time to create and implement an exit strategy. Technical assistance and financial supports provided by the Act should be used at the onset to develop a vision of how things will look six years down the road and establish realistic deadlines for implementation. Having these two components in place prior to execution minimizes the fear of the unknown for your internal and external stakeholders and holds your organization accountable in terms of meeting your strategic benchmarks.

Technical assistance and financial supports should also be utilized to design a comprehensive communication plan. This is most important as it relates to the people with disabilities impacted and their families but reaches the likes of supports coordinators, case managers and employers. Technical assistance should also include how to access and navigate resources already established that could promote the employer's transformative efforts and provide any wraparound supports that may be deemed necessary.

If this legislation were available at the time, it would have facilitated the process more effectively for ACHIEVA. While we will always stand by our 'right thing to do' mantra it was not a well-received notion. A federal buy-in to such a movement would resonate with people much more so than one provider's shift in philosophy and approach. Furthermore, because we were in the minority among other providers and employers, technical assistance from trusted sources was difficult to come by through the process. Coordinated expertise from a national and state perspective would have helped facilitate and lend credibility to the process.

CONSIDERATIONS

In order to ensure that no person is left behind with this transformation, people with disabilities who have historically been working under a 14(c) must be involved in the process. They know first-hand where they are coming from and what they've experienced. They will be able to inform others as to what barriers they have faced, whether real or imagined, on their quest for competitive integrated employment. Employers, families and organizations specializing in employment for people with disabilities should round out the table. This diverse group of stakeholders can put the pieces together for a successful transformation if they are willing to approach it with open minds and strategic dialogue.

Supports and services need to align with an 'employment first' mentality. Whether through the Office of Vocational Rehabilitation, the various HCBS waivers, etc., assistance with career assessment, job development, job placement and follow-along need to be available. In addition, as people gravitate towards competitive integrated employment, they will need support in understanding and navigating the potential impact of increased earnings. Benefits Counseling and the availability of certified Community Work Incentive Coordinators will be paramount to the success of transitioning to a competitive wage. We also need to make sure that existing tools and policy that will supplement the Act align with its basic tenets. While there are organizations that exist to create job opportunities for people with disabilities, precautions must be taken to ensure the goals of this Act are accomplished in a way that does not generate segregated settings.

There are also typically concerns raised regarding the number of hours people will be working in competitive integrated employment as compared to the time that they spent in a 14(c) facility. A question frequently

asked is how the person will spend the rest of their time if they are no longer 'working' 30-40 hours per week. HCBS addresses that concern. CPS and other wraparound services such as habilitation and companion exist to complement a person's work schedule and are designed to support people to participate meaningfully in community life.

CONCLUSION

ACHIEVA's success in transformation is a result of establishing an ideal and standing behind it. Once the commitment to phasing out our workshops was made, we had to devise and implement a plan and continuously push the agenda forward. Self-imposed deadlines with lofty goals kept us on track. We operated as if we had no choice. But in actuality our drive came from internal champions who recognized that the 14(c) was yet another contributing factor to a societal misconception that a person with a disability is less valuable than a person without. External champions like Senators Bob Casey (D-PA) and Chris Van Hollen (D-MD) who introduced this bill in the Senate and Chairman Bobby Scott (D-VA) and Representative Cathy McMorris Rodgers (R-WA) who introduced this bill in the House clearly recognized that this is a national priority.

I support the Transformation to Competitive Employment Act. And ACHIEVA is a proud member of American Network of Community Options and Resources (ANCOR) who has endorsed the Act. While there may have been a place for such a law when it was created in 1938, this discriminatory practice that undervalues the abilities and contributions of a person with a disability is no longer acceptable. And while I will always stand tall behind ACHIEVA's decision to discontinue the use of our 14(c) because we felt that it was simply the right thing to do, my experience over the past few years has shown me that all too many current certificate holders will not take that approach under their own volition. They instead will lean on falsehoods such as a person's lack of options or eliminating one's choice to defend a model of sheltered employment and subminimum wage. And it is for this very reason that the adoption of *The Transformation to Competitive Employment Act* is so inherent to promoting competitive integrated employment opportunities for all.