



DISABILITY LAW CENTER

3330 Arctic Boulevard, Suite 103
Anchorage, AK 99503

www.dlcak.org

Dear Jetta Whittaker,

Please consider this public comment submitted on behalf of the Disability Law Center of Alaska. Disability Law Center is the designated Protection and Advocacy System (P&A) and Client Assistance Program (CAP) for the State of Alaska. The CAP exists to inform and advise clients of the Vocational Rehabilitation program of the available benefits and rights that they have in pursuing employment with the program. (See 29 U.S.C. §732). In creating both the Vocational Rehabilitation program and the CAP program, Congress found that, among other things, the reasons for significant numbers of individuals with disabilities not working, or working at levels not commensurate with their abilities and capabilities, include discrimination and lack of education, training, and supports to meet job qualification standards necessary to secure, retain, regain, or advance in employment. (See 29 U.S.C. §720).

This public comment is submitted in regard to the proposed regulation change for Supported Employment Services under 7 AAC § 130.270 that amends the regulation to include subsection (d)(8)(D) that states “the Department will not pay for employment services that are provided in residential settings unless a recipient is operating a home-based business (including subsistence).” This proposed change will harm the employment opportunities available to Alaskans with disabilities by unnecessarily limiting the circumstances in which individuals can seek supported-employment services in a way that disadvantages Alaskans with disabilities relative to their non-disabled peers, as well as ignores the facts on the ground concerning the COVID-19 pandemic and the changing nature of the work force.

The purpose of supported employment services is to assist Alaskans with disabilities in finding gainful employment in an integrated workplace which in turn helps maximize their engagement in community life. (See A.S. § 23.15.095, 7 AAC § 130.200).

Individuals with disabilities have employment rates that are significantly below the rates enjoyed by their nondisabled peers. (<https://www.dol.gov/agencies/odep/research/statistics>). However, the COVID-19 pandemic has affected employment for everyone, leaving many without jobs, forcing others to continue working from home, and changing the discussion about what traditional employment will look like moving forward. Alaskans with disabilities who work in competitive jobs because they receive supported employment services would be put at a disadvantage by an arbitrary prohibition on services in residential settings at a time when their employers require them to work from home. It would also be a questionable interpretation of the goals of supported employment to require Alaskans with disabilities to put themselves at a heightened risk than their nondisabled peers simply because they must physically be present in the workplace to receive supported employment services. Many individuals with disabilities already face a heightened risk from COVID-19, and that while the goals of supported



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employment help maximize the potential for Alaskans with disabilities to live in the community, the vaccine prioritization for individuals with disabilities living in the community has not received the same prioritization that it has for individuals living in congregate care. The harm faced by Alaskans with disabilities if this proposed regulation is implemented, however, goes beyond the Covid-19 pandemic.

It is an important step that the State of Alaska recognizes the significance of integrated employment and is ahead of the national trend on barring a subminimum wage for Alaskans with disabilities. However, forcing Alaskans with disabilities to work in a physical work environment in order to receive supported employment services when their non-disabled peers enjoy the benefit of working from home is its own form of segregation. There are many instances in which the most integrated setting appropriate to the individual will be their residence, even if they are not operating a home-based business. For example, an individual should always be able to work remotely to the same degree available to non-disabled peers, or as a reasonable accommodation to the individual's disability even when working from home is not available to non-disabled peers.

While the purpose for the proposed regulation change is not included in the publicly available material, there are three reasonable motivations that may be part of the State's contemplation – preventing fraud by individuals claiming to work from home in bad faith, eliminating waste by cutting supported employment services that may not be necessary if the individual is working from the residence, and avoiding duplicate services that may already be provided to an individual as part of their plan of care. All three of these concerns could be considered on a person-by-person basis by scrutinizing an existing plan of care or individual plan for employment to ensure that an individual's employment is genuine, the individual is using the supported services that are provided for them, and the services are not otherwise already available to the individual.

Additionally, the proposed amendment change as written may lead to inconsistent results. "Home-based business" is not defined in the regulations and there is no current amendment proposed to define it in 7 AAC § 130.319. This raises questions about what types of employment qualify as a "home-based business." For example, it is not clear whether contract work would qualify as a home-based business. This vagueness would allow different reviewers to evaluate the same supported employment services request and arrive at different results. This also leaves applicants unsure of which supported employment services they may qualify for when applying because a conditional term is not fully defined.

Supported employment services help Alaskans with disabilities find competitive employment in integrated settings. As we continue to adapt to working during a pandemic and consider what the future of employment may look like after it is over, it is important that the opportunities



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available to Alaskans with disabilities remain viable and that they not experience discrimination when the resources available to their non-disabled peers such as working from home are denied to them because of unreasonable limitations found in the regulations. I ask the State to not implement the proposed regulation change for 7 AAC § 130.270(d)(8)(D) and instead allow supported employment services to be provided in residential settings on a case-by-case basis and consistent with the goal of supporting Alaskans with disabilities to find jobs that are equal and competitive with their non-disabled peers.

Thank you,

Chad Hansen
Staff Attorney
Disability Law Center of Alaska