



*For people with intellectual  
and developmental disabilities*

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US AbilityOne Commission  
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Dear Chair Koses, Vice Chair Feldblum, and Executive Director Zeich:

Thank you for the opportunity to provide comments on behalf of The Arc of the United States on draft Compliance Policies 51.400 and 51.403.

The Arc is the largest national community-based organization advocating for people with intellectual and developmental disabilities (IDD) and their families, with over 600 state and local chapters nationwide. The Arc promotes and protects the human rights of people with intellectual and developmental disabilities and actively supports their full inclusion and participation in the community throughout their lifetimes.

#### **Policy 51.400**

The Arc supports the Commission's proposal to require that Central Nonprofit Agencies (CNAs) ensure that participating Nonprofit Agencies (NPAs) "achieve . . . application of the same legal standards to participating employees as apply to other employees under employment laws". Many NPAs have argued that their workers with disabilities do not have the same rights as others under labor laws. In order to strengthen this provision, we urge the commission to change the language quoted above from § 51.400(6)(c)(iv)(b)(2) to "classification of participating employees as employees for purposes of all labor and employment laws and extension of no lesser rights, privileges, or benefits to participating employees as are extended to other employees." This language removes any ambiguity as to whether it is permissible to classify participating employees as "clients." The Arc is pleased by the announcement that the commission will soon release a new guidance document clarifying the applicability of all labor and employment laws to participating employees. We urge the commission to issue a rule to that effect so that a future commission cannot easily undo it.

In the definition of "integrated workplace," after "employees without disabilities," we recommend adding "(not including supervisors)". This language will make clear that the presence of supervisors without disabilities is not sufficient to constitute integration.

#### **Policy 41.403**

The Arc is pleased to see reforms to the system of determining eligibility. Given the inherent conflict of interest, we support the requirement of third-party eligibility evaluations. We are mindful of the access barriers present in the system. Given those barriers, it is easy to see the appeal of creating alternative pathways based on eligibility for other programs. However, it is important that those programs have similar eligibility requirements to the AbilityOne program and do not create loopholes. We do not

believe that is the case with respect to Medicaid Home and Community Based Services (HCBS) or Vocational Rehabilitation.

We are concerned that the definition of “significant job support” provides is too expansive. Since almost all employers are required to provide “A reasonable accommodation that requires some difficulty or expense,” the need for such an accommodation should not be considered evidence of inability to participate in “normal competitive employment. We recommend changing the definition to include only the second part: “An action beyond what is required as a reasonable accommodation under the ADA.”

We are also concerned that the Social Security language is unintentionally broad enough that it covers people who receive Social Security for reasons other than disability, for example, people who receive it by reason of old age or because they are survivors. We recommend that the commission add language clarifying that an individual must be receiving Social Security or SSI because of a disability.

As mentioned in our previous correspondence, Medicaid HCBS has multiple eligibility pathways. For example, Medicaid buy-in options are specifically designed to allow people to work while maintaining their eligibility for HCBS. Another example is the 1915(i) state plan option. This option provides HCBS to people who do not meet the institutional level of care requirement. Because eligibility for Medicaid HCBS does not necessitate “a substantial handicap to employment ... of a nature that prevents the individual from currently engaging in normal competitive employment,” we do not believe it is appropriate to use it as proof of eligibility for AbilityOne.

With regard to Vocational Rehabilitation (VR), we are deeply concerned that this has the practical effect of dramatically broadening eligibility. While VR records only constitute medical determination, it is up to the NPA to determine if an individual requires significant job supports. This undermines the third-party evaluation requirement. Furthermore, the broad definition of significant job support gives little reason to disqualify anyone who is eligible for VR. The highly subjective nature of “some level of difficulty or expense” leaves virtually no lower limit below which an eligibility determination would be clearly improper.

In addition to concerns about broadening eligibility with no guarantee of increased job opportunities, we have concerns regarding the impact on means-tested benefits. One strength of the AbilityOne program as it now operates is that it is a source of good-paying jobs for many people with significant disabilities. Social Security disability programs, SSI, and Medicaid all have strict income limits. Additionally, SSI has an asset limit as do most Medicaid eligibility pathways. It is important that potential employees are aware of the potential impact that entry into the AbilityOne program could have on their benefits. Employer-based health insurance may or may not be sufficient to replace Medicaid depending on the individual’s needs. It is important that anyone who has benefits receives benefits counseling from a knowledgeable professional who can explain options available for the individual’s unique circumstances.

Thank you again for the opportunity to provide comments. If you have any questions, please feel free to contact Mike Nagel ([nagel@thearc.org](mailto:nagel@thearc.org))

Sincerely,

Mike Nagel  
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