PROVIDER ADVISORY #2017-001
SUBMINIMUM WAGE WIOA REQUIREMENTS

EFFECTIVE DATE: IMMEDIATELY

This advisory is intended to inform all APD providers that operate a program under the Fair Labor Standards Act (FLSA), section 14(c) certificate of the Workforce Innovation and Opportunity Act (WIOA) requirements and to provide additional clarification on implementation.

Section 14(C) Certificate Requirements

The WIOA was enacted on July 22, 2014. Section 458 of WIOA amends Title V of the Rehabilitation Act of 1973 (Rehab Act) by adding a new section 511 that limits the ability of employers to pay a subminimum wage to workers with disabilities. These new limitations prohibit employers from paying subminimum wage to persons with disabilities under section 14(c) unless each worker has been regularly provided with career counseling and information about self-advocacy, Self-determination, and peer mentoring training opportunities in the local area, also known as Career Counseling Information and Referral (CCIR) Service. The U.S. Department of Labor (DOL) sent information to section 14(c) certificate-holders on the limitations on subminimum wage that provides critical information regarding expectations and compliance.

WIOA <u>prohibits</u> employers from paying subminimum wage to <u>any individual</u> with a disability, regardless of age, unless they have been provided with CCIR services every six (6) months during the first year of employment, and annually for each year thereafter.

WIOA <u>prohibits</u> employers who are FLSA section 14(c) certificate-holders from hiring and paying subminimum wage to any individual with a disability who is <u>24 years of age or younger</u>, unless the employer has reviewed, verified, and maintained copies of all documentation that the youth has completed all three of the following requirements:

1) Transition Services under the Individuals with Disabilities Act (IDEA) and/or pre-employment transitions services under WIOA.
2) Vocational Rehabilitation (VR), as follows:
   a. The youth applied for VR services and was found ineligible OR;
   b. The youth applied for VR services and was found eligible AND;
       i. had and individualized plan for employment (IPE) AND;
       ii. Worked toward an IPE employment outcome for a reasonable period without success AND;
       iii. The VR case was closed.

February 14, 2017

3) Career Counseling, including information and referrals to federal and state programs and other resources in the employer's geographic area. *(Provided by VR)*

Required CCIR Services

Florida Vocational Rehabilitation (VR) will be providing CCIR Services to individuals working in sheltered workshops, making sub-minimum wage, in accordance with WIOA and DOL FLSA requirements. All individuals participating in subminimum wage are required to participate in this required CCIR Services on at least an annual basis. All 14(c) certificate-holders must contact VR to ensure CCIR services are provided to individual employed at subminimum wage under their 14(c) Certificate to comply with DOL requirements.

VR will contract and fund instructors to provide the 4-hour CCIR to individuals employed at subminimum wage at the 14c certificate-holder location. This counseling is employment based and will share information regarding a brief benefits discussion, career exploration, self-advocacy and self-determination. This training is intended to educate and encourage individuals currently working at subminimum wage to consider competitive employment; at least minimum wage and in the community.

If the employed individual at subminimum wage receives iBudget waiver funding and the 14c certificate holder is an APD iBudget waiver provider, the hours of the VR CCIR Service are billable hours through the iBudget waiver. This means that an iBudget waiver provider who delivers Adult Day Training (ADT) services that operates and manages a sheltered workshop with a 14c certificate can still bill the iBudget waiver for the hours the CCIR services take place in the ADT at the approved and authorized ADT rate for each individual.

APD ADT providers are required to conduct an orientation informing recipients of supported employment and other competitive employment opportunities in the community in accordance with the Developmental Disabilities Individual Budgeting Waiver Services Coverage and Limitations Handbook. The CCIR Service can be used to fulfill this requirement.

VR does not require individuals working in subminimum settings to go through the traditional VR referral process. Those individuals will be able to access VR services without applying for or becoming a VR customer. However, those individuals may apply at any time through the traditional VR referral process.

Enforcement

DOL Wage and Hour Division is responsible for the administration and enforcement of the section 14(c) certificate provisions. All compliance responsibilities reside with the section 14(C) certificate holder/employer. Section 14(c) certificate-holders will need to provide a record of proof for each completion of the career counseling for each employee paid below minimum wage to DOL during any DOL audit.

Employers remain responsible for compliance with all applicable labor laws.

Questions and Information

For any questions regarding the coordination of the counseling, and any other related questions should be directed to Jan Pearce with VR. She can be reached at Jan.Pearce@vr.fldoe.org.

If you are unfamiliar with these new requirements and limitations, you can find more information on the U.S. Department of Labor website at https://www.dol.gov/whd/specialemployment/14cLetter_July2016.htm and https://www.dol.gov/whd/workerswithdisabilities/. To find the five rules regarding the WIOA, visit http://www2.ed.gov/about/offices/list/osers/rsa/wioa-final-rules.html.