



## Policy Update – Employment, Health Care and Disability - August 2014 Newsletter

---

**August 29, 2014**

The LEAD Center Policy Update – Employment, Health Care and Disability is a project of the LEAD Center in collaboration with the [Autistic Self Advocacy Network](#).

### In This Issue

- [CMS Publishes Informational Bulletin on Impact Of FLSA Regulation Changes on Self-Direction Program Options](#)
- [Update on Implementation of HCBS Settings Regulations](#)
- [National Senior Citizens Law Center and National Disability Rights Network Publish Tips for Consumer Advocates on State Transition Plans for Medicaid Home and Community-Based Services](#)
- [CMS Releases Toolbox for States on Medicaid Expansion](#)
- [NASUAD State Medicaid Integration Tracker Focuses on Managed Long-Term Services and Supports](#)
- [President Obama Signs Workforce Innovation and Opportunities Act](#)

---

### **CMS Publishes Informational Bulletin on Impact Of FLSA Regulation Changes on Self-Direction Program Options**

In July, the Centers for Medicare and Medicaid Services (CMS) published an informational bulletin discussing the effect of recent regulations about wages paid for domestic workers assisting people with disabilities. Under the new regulations, workers who provide companionship and live-in domestic service workers will no longer be subject to exceptions from minimum wage and overtime laws if they are either employed by the state or jointly employed by the state and the individual receiving services. The new regulations also limit the exemption from overtime laws for “companionship services” even when the individual receiving services is the sole employer. The new CMS guidance provides advice to states on how to allocate overtime and travel time costs across Medicaid beneficiaries.

The new regulations may pose a challenge for workers with disabilities who rely on these kinds of services in order to remain in their homes and retain integrated employment. Medicaid programs will be required to pay overtime wages and pay for time spent in certain types of

travel for many workers who had previously been considered exempt from such requirements. CMS acknowledged that many states, to avoid budgetary shortfalls, may seek to “limit the use of overtime or to minimize the need for compensable travel between beneficiaries.” These limitations may limit the ability of individuals with disabilities to stay in their homes with their preferred workers. The guidance clarifies that, if states do seek to limit travel and overtime costs, they must develop strategies—such as exceptions in the case of worker shortages or emergency situations—that minimize impact on beneficiaries.

The new guidance also addresses scenarios in which states must allocate travel and overtime costs across multiple beneficiaries, especially in situations when the beneficiaries opt to “self-direct” services using a set budget. For example, when a worker provides five hours of services for one beneficiary, then travels one hour and provides four hours of services to another beneficiary, five days per week, this worker would incur five hours of travel time and five hours of overtime per week. Because these costs cannot be considered administrative costs under the Medicaid program, they must be allocated as the costs of delivering services to beneficiaries. Nevertheless, because neither beneficiary can be held responsible for the distance that the worker has to travel between them or the hours that the worker spends with the other beneficiary, CMS “strongly urges” states not to deduct these added costs from individuals’ self-directed services budgets. Rather, states should allocate these costs across all individuals served by the “joint employer” (in this case, the state) without deducting them from self-directed services budgets. States may use monthly service fees or other separate fees, separate from self-directed budgets, to allocate these costs across beneficiaries.

[The full guidance document is available online.](#)

<http://www.medicaid.gov/Federal-Policy-Guidance/Downloads/CIB-07-03-2014...>

[Back to Top](#)

## **Update on Implementation of HCBS Settings Regulations**

States have continued to submit transition plans to CMS detailing their plans to transition into compliance with new regulations defining HCBS settings. The [new regulations](#), issued in January, restrict Medicaid HCBS funding to settings that offer recipients maximum opportunities for community integration and competitive integrated employment. HCBS services include pre-employment and supported employment services designed to help people with disabilities achieve and retain employment. States seeking renewals or amendments of their HCBS programs are required to submit plans to transition into compliance with the new setting regulations along with their applications; those that do not seek to renew or amend their programs will be required to submit a transition plan no later than March 2015.

Transition plans submitted in the past month varied in their degree of detail. [West Virginia’s transition plan](#) consisted of a single paragraph declaring that its program already complied with the new regulations. [Colorado submitted a high-level work plan](#) to determine which services—

including supported employment services—were compliant with the new rule. In contrast, [Virginia submitted a detailed plan](#) to begin providing integrated day services to people with disabilities, including supported employment services. Even this plan, however, detailed a process through which the Commonwealth would determine which types of services complied with the new rule and with Employment First principles, rather than a substantive description of which services would and would not be covered. States are likely to submit more substantive plans as they complete their analysis of existing programs. Some states noted in their transition plans that they were still awaiting guidance on the new rule’s application to non-residential settings; CMS had announced in its January 2014 Notice of Final Rulemaking that it would issue further guidance on this issue.

National and state-level advocates are encouraged to submit comments on the recent transition plans. Further information on how to submit comments, as well as the transition plans themselves, are available online at [www.HCBSAdvocacy.org](http://www.HCBSAdvocacy.org).

<https://www.federalregister.gov/articles/2014/01/16/2014-00487/medicaid-...>

<http://www.dhhr.wv.gov/bms/news/Documents/ADW%20Transition%20Plan.pdf>

<https://hcsadvocacy.files.wordpress.com/2014/04/colorado-transition-pla...>

<http://www.dbhds.virginia.gov/documents/ODS/Integrated%20Day%20Activitie...>

[Back to Top](#)

## **National Senior Citizens Law Center and National Disability Rights Network Publish Tips for Consumer Advocates on State Transition Plans for Medicaid Home and Community-Based Services**

The National Senior Citizens Law Center (NSCLC) and National Disability Rights Network (NDRN) have issued guidance for consumer advocates on upcoming changes to Medicaid-funded home and community-based services (HCBS) programs. [New regulations restrict Federal HCBS funding](#) to ensure that it supports only services in settings that provide full opportunities for community integration, including competitive integrated employment. The regulations apply not only to home-based HCBS services that individuals may need in order to live independently, but also to pre-employment and supported employment services.

NSCLC and NDRN stressed to advocates the importance of reading states’ proposed plans for transitioning into compliance with the new regulations. The new regulations require that state Medicaid agencies give advocates the opportunity to provide feedback on the transition plans through a public comment process. NSCLC and NDRN suggested that consumers take these opportunities to ensure that states actively monitor compliance as opposed to accepting self-reported assurances from providers. Active compliance monitoring will ensure that individuals receiving HCBS not only have meaningful opportunities to engage in employment but also have the support that they may need in order to achieve and maintain employment. These supports

may take the form of transportation supports, incorporating flexibility into services scheduling, and supported employment services.

[The National Council for Aging Care's Guide on Elder Abuse](#)

The NSCLC and NDRN brief is available online.

<https://www.federalregister.gov/articles/2014/01/16/2014-00487/medicaid-...>

<http://www.nsclc.org/wp-content/uploads/2014/07/State-Transition-Plans-f...>

[Back to Top](#)

## **CMS Releases Toolbox for States on Medicaid Expansion**

The Centers for Medicare and Medicaid Services (CMS) issued a toolbox for states on implementing the Affordable Care Act's (ACA) provisions expanding Medicaid coverage. States who have committed to expanding Medicaid coverage as part of ACA implementation may find these materials useful in order to ensure that all eligible individuals - including individuals with disabilities - receive the Medicaid coverage that they need.

The toolbox includes extensive resources for states on streamlining renewal of Medicaid and CHIP coverage to eliminate coverage gaps; implementing ACA's "hospital presumptive eligibility" provisions allowing hospitals to immediately enroll patients who are likely to meet states' Medicaid eligibility guidelines; implementing requirements that states provide a "single streamlined application" for Medicaid; and other forms of state assistance.

Workers with disabilities stand to benefit from state efforts to streamline Medicaid applications and renewals. Health coverage is an important prerequisite to successful participation in the workforce, and many individuals with disabilities rely on Medicaid (including home and community-based services programs) in order to live and work in the community. Gaps in coverage as a result of cumbersome or lengthy renewals processes may result in loss of services that, in turn, can lead to inability to work. Increases in enrollment through hospital presumptive eligibility and streamlined benefits applications may result in health coverage for people with disabilities who previously had not received Medicaid benefits.

[View the toolbox, available via the HHS website.](#)

<http://www.medicaid.gov/State-Resource-Center/MAC-Learning-Collaborative...>

[Back to Top](#)

## **NASUAD State Medicaid Integration Tracker Focuses on Managed Long-Term Services and Supports**

The National Association of states United for Aging and Disabilities (NASUAD) has released a tool to track the status of State actions related to the integration of acute care and long term supports for individuals who are dually eligible for both Medicare and Medicaid. This population includes many lowincome workers with disabilities who are eligible for Medicare through the

Social Security Disability Insurance (SSDI), and for Medicaid through either the Supplemental Security Income (SSI) program for low-income people with disabilities, the Medicaid buy-in program for workers with disabilities, or another eligibility category. These populations often rely on LTSS, including home and community-based services, in order to live in the community and maintain employment.

The tracker also includes updates on states' efforts to implement managed care plans for individuals receiving Medicaid-funded LTSS; provision of Medicaid HCBS through the Community First Choice of HCBS State Plan Option; and expansion of non-institutional LTSS through the Balancing Incentive Program grants.

[View tracker at the NASUAD website.](#)

<http://www.nasuad.org/initiatives/tracking-state-activity/state-medicaid...>

[Back to Top](#)

## **President Obama Signs Workforce Innovation and Opportunities Act**

Last month, the President signed into law the Workforce Innovation and Opportunities Act (WIOA), which reauthorized the Workforce Investment Act of 1998 (WIA) and Rehabilitation Act through the year 2020. WIOA contains numerous provisions to increase competitive, integrated employment among individuals with disabilities, including a new requirement that state vocational rehabilitation systems enter into agreements with state Medicaid programs and state intellectual and developmental disability (ID/DD) agencies to coordinate employment services for people with disabilities. These agreements would ensure that vocational rehabilitation agencies coordinate with agencies that provide LTSS for people with ID/DD, psychosocial disabilities, or other disabilities requiring LTSS.

[Read the full text of the Workforce Innovation and Opportunities Act.](#)

<https://beta.congress.gov/113/bills/hr803/BILLS-113hr803enr.pdf>

[Back to Top](#)

**Please note:** *The PDF generated using this link is not 508-compliant and is provided as a courtesy for those who wish to print the material. For a fully accessible version of this newsletter, please read the web-based version.*