



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

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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](#).

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CMS Issues Guidance to States on Transition Plans for Compliance with New Home and Community-Based Services Settings Rule

On September 5, Centers for Medicare and Medicaid Services (CMS) issued the Statewide Transition Plan Toolkit containing guidance for states on how to create transition plans for compliance with new regulations governing the settings in which Medicaid-funded home and community-based services (HCBS) may be provided. The new rule requires that HCBS, including residential supports, employment supports and pre-employment services, be provided in settings that promote full access to the community, including access to competitive integrated employment and opportunity to control personal resources.

Under the new rule, states must submit written transition plans to CMS detailing a five-year process for coming into compliance with the new regulations. Transition plans must be submitted by March 2015 or sooner if they are seeking an amendment to or reauthorization of an HCBS program. The new CMS guidance explains that states should develop transition plans in two stages. First, states should conduct an assessment of the extent to which their existing rules, standards, or other policies and practices are already in compliance with the new rule. Next, in the event that the state is not already in compliance with the new regulations, it should develop an action plan for bringing its programs into compliance.

Although CMS has announced that it will issue further detailed guidance on how the new regulations apply to non-residential services such as employment services, states are still awaiting this guidance. In the meantime, however, states must evaluate their HCBS-funded employment services as part of the process of developing a transition plan. States must carefully evaluate HCBS-funded employment services, with a particular focus on the settings in which individuals receive those services and the degree to which those settings facilitate integration into the community, competitive integrated employment, and the ability to control personal resources. As the guidance notes, states are encouraged to conduct site visits and surveys of service recipients during the course of this process. Once this evaluation is complete, states may review the status of their employment services programs in light of the new regulations and any further guidance from CMS.

The guidance and final regulations are available via the CMS website.

<http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Long...>

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CMS Conducts Listening Sessions on Medicaid Innovation Accelerator Program

CMS Deputy Administrator Cindy Mann and CMS Medical Director Steve Cha are in the process of holding in-person meetings across the country on the Medicaid Innovation Accelerator Program (IAP). The Program is a technical assistance programs launched by CMS' Center for Medicare and Medicaid Innovation. The goal of the program is to improve health care for Medicaid beneficiaries by helping states make innovative reforms to their provider payment and service delivery systems, including developing payment strategies that create incentives for providers to deliver higher-value services. IAP will serve as a vehicle for CMS to work with states, consumers, and health providers on these critical issues. A virtual meeting will also take place in October. Highlights from the meetings will be available on the [new IAP Commentary page](#). Individuals who wish to provide feedback or ask questions about IAP can send an email to MedicaidIAP@cms.hhs.gov. You can also follow the IAP program on Twitter at @CMSgov and #MedicaidIAP.

<http://www.medicaid.gov/State-Resource-Center/Innovation-Accelerator-Pro...>

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Workforce Innovation and Opportunity Act Aims to Divert Workers with Disabilities from Sheltered Workshops

The Workforce Innovation and Opportunity Act (WIOA), which the President signed into law on July 22, adds new restrictions on sheltered workshops or other work environments where people with disabilities earn less than minimum wage in segregated settings. Beginning in two years, people with disabilities age 24 and under will not be allowed to receive less than the federal minimum wage of \$7.25 per hour without receiving employment transition services in school and vocational rehabilitation settings. The aim of the law is to increase opportunities for youth with disabilities to try integrated and competitive employment before placement in sheltered workshops. Combined with new CMS regulations, WIOA may significantly curtail sheltered workshop placements and increase placements in competitive, integrated settings.

Many states use Medicaid funding for sheltered workshop placements through HCBS waivers. Under the CMS Final Rule on HCBS issued in early 2014, these funds may no longer be used for placements in settings that isolate people with disabilities from the community. Although CMS has yet to issue more detailed guidance on the rule's application to employment services, many existing sheltered workshop settings maybe violating the rule. States presently using HCBS funding for individuals in sheltered workshops or other segregated settings are required to submit statewide transition plans to bring affected programs into compliance with the new regulations over the next five years.

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Wisconsin Asks CMS to Approve Sheltered Workshop Services as Home And Community-Based

On August 21, 2014, the Wisconsin Secretary of Health Services sent a letter to CMS detailing its position that new regulations on HCBS should allow states to offer a “full compendium” of HCBS-funded employment services, including placements in sheltered workshops that employ only individuals with disabilities.

The new regulations, issued in January 2014, require that Medicaid-funded HCBS be provided in settings that promote full integration into the community, including access to competitive integrated employment. A [recent report by the National Disability Rights Network](#) noted that less than five percent of individuals with disabilities in sheltered workshop placements “graduate” to competitive, integrated employment.³ Disability rights advocates in Wisconsin – including Disability Rights Wisconsin, the federally funded Protection and Advocacy organization – have [expressed concern](#) to the Wisconsin Department of Health Services regarding Wisconsin's use of HCBS funding for sheltered workshop placements and segregated day treatment centers.

CMS has yet to respond publicly to the recent letter. In its January notice of final rulemaking

announcing the new regulations, CMS stated that it would issue further guidance to states on how the new regulations should be applied to Medicaid HCBS-funded employment services. However, the additional guidance has not yet been issued.

The full letter to CMS can be viewed online.

<http://www.ndrn.org/images/Documents/Resources/Publications/Reports/Beyo...>

<http://www.disabilityrightswi.org/wp-content/uploads/2013/12/2014-Dec-Le...>

http://www.ancor.org/sites/default/files/news/wi_dhs_letter_to_cms_8-21-...

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Ohio Home Choice Program Moves 5,000 People Out of Nursing Homes

The Ohio Department of Medicaid has transitioned 5,000 people with disabilities from long-term care facilities into their own homes using funds from the federal Money Follows the Person program. The Ohio Home Choice program has been used to move people with disabilities and the elderly from nursing home and institutional settings to community-based settings with appropriate supports. Last year, a [Mathematica report ranked Ohio first among states participating in the Money Follows the Person program in transitioning people with mental illnesses into community-based settings](#). The Money Follows the Person program incentivizes states to emphasize community-based settings over institutional ones, while providing opportunities for full community integration for those who were previously placed in segregated settings. [Read more about the Ohio Home Choice program at the Columbus Dispatch](#).

<http://www.healthtransformation.ohio.gov/LinkClick.aspx?fileticket=fZEel...>

<http://www.dispatch.com/content/stories/local/2014/08/17/state-moves-500...>

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Policy Paper Encourages Nebraska to Reduce HCBS Waiting List Through Employment Programs

The Platte Institute released a [policy paper discussing a variety of proposals for Medicaid reform in Nebraska](#). The policy paper included a proposal to reduce the waiting list for its Medicaid HCBS waiver programs through “innovative pilot projects that use Medicaid funding to provide employment support services and other limited benefits” to individuals as they await enrollment in the HCBS waiver. Nearby, Kansas is already conducting a similar pilot program, offering employment services to individuals with disabilities awaiting enrollment in its HCBS waiver program. Increased employment would not only reduce poverty among waitlisted individuals with disabilities but also improve individual health outcomes.

<http://www.platteinstitute.org/research/detail/medicaid-reform-strengthe...>

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NRCPDS Releases Toolkit on Home Care Worker Rules

The National Resource Center for Patient-Directed Services (NRCPDS) has released a toolkit on compliance with new regulations on companionship and live-in domestic worker minimum wage and overtime exemptions, which will go into effect on January 1, 2015. Under the previous rules, workers whose services were primary companionship or fellowship were exempt from the overtime and minimum wage protections of the Fair Labor Standards Act. Live-in domestic workers who lived in the house of the service recipient were exempt from overtime protections but not minimum wage. Under the new rule, the exemptions are preserved but narrowed. The class of workers who would qualify for the companionship exemption will be smaller and will be limited to workers directly employed by the service recipient. Workers who are employed by a third-party employer, such as a service provision organization or the state, will be ineligible for either exemption.

The new rules may affect employment of individuals with disabilities who rely on home care workers to live in the community and maintain employment. States must carefully analyze their home care worker staffing and payment systems in order to minimize added overtime costs while ensuring that individuals with disabilities receive services from those most qualified to assist them and at times that fit with the work schedules of workers with disabilities.

The new toolkit was created to assist state entities, consumer direction programs, and financial management providers in understanding the impact of the new rules. The toolkit contains several graphic decision-making trees to help make determinations as to which types of exemptions may apply to which types of workers. The new rule may impact hiring decisions and access to personal care services for people with disabilities who have sole responsibility for choosing and managing their support workers.

[Download the FLSA Home Care Rule Toolkit.](#)

http://www.bc.edu/content/dam/files/schools/gssw_sites/nrcpds/FLSAmateri...

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Council on Quality and Leadership Issues Toolkit on Data-Based Compliance Monitoring for New HCBS Settings Rule

The Council on Quality and Leadership (CQL) has issued a new toolkit explaining how states can use survey data to assess compliance with the new HCBS settings rule that took effect in January 2014. The new rule requires that HCBS be provided in settings that promote choice, integration, and access to the community, including access to competitive, integrated employment. CQL publishes survey tools, aimed at individuals with disabilities, to assess providers' compliance with best practices and to assess outcomes for individuals using these services. CQL's instruments include questions about the degree to which providers actively support individuals with disabilities in seeking employment, provide necessary transportation

services, and ensure that individuals have adequate options about which forms of employment to pursue.

[Download CQL Toolkit for States: HCBS Setting and CMS Assurances Reporting.](#)

<http://thecouncil.org/resources/article.aspx?id=1835&cat=&sec=r>

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Bazelon Center for Mental Health Law Issues Report on Supported Employment for People with Mental Illness

The Bazelon Center for Mental Health Law has issued a new report, *Getting to Work: Promoting Employment of People with Mental Illness*, explaining how supported employment services can help individuals with psychosocial disabilities gain and retain competitive, integrated employment. According to the report, only 16.9 percent of people served by state mental health systems are employed, despite the fact that at least two-thirds are interested in working.¹¹ The number of people with mental illness who say they want to work is most likely lower than the number who are actually interested in working, as many people with mental illness have received repeated messages that employment is not a reasonable goal for them.

The report includes an in-depth discussion of the Individual Placement and Support (IPS) model, through which individuals with mental illness obtain placement in a job that matches their interests and skills and then receive supports in order to retain employment. Research has shown that IPS is extremely effective at helping people with mental illness find and retain work in competitive, integrated settings and that such support is highly cost-effective. Unfortunately, however, many people with mental illness lack access to IPS and are instead diverted to non-work day programs in segregated settings.

[Download *Getting to Work: Promoting Employment of People with Mental Illness*.](#)

<http://www.bazelon.org/LinkClick.aspx?fileticket=TW5AEIvqjs%3d&tabid=738>

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