



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

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**November 26, 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

- [Department of Labor Announces One-Year Non-Enforcement of New Home Care Rules](#)
- [American Psychiatric Association Releases Toolkit for Medicaid Mental Health Services, Including Supported Employment](#)
- [2014 Best and Worst Cities for People with Disabilities](#)
- [Rhode Island Governor Employment First Executive Order](#)
- [Equip for Equality Releases Blueprint Highlighting Employment Reforms for Illinois Residents with Disabilities](#)
- [Virginia to Overhaul HCBS Waiver Program](#)
- [OIG Audit Reveals NY Improperly Billed Supported Employment Services; NYC Comptroller Cites Sheltered Workshops for Wage Violations](#)
- [Highlights of Recent State Transition Plans](#)

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## **Department of Labor Announces One-Year Non-Enforcement of New Home Care Rules**

The [Department of Labor has announced](#) that it will temporarily delay enforcement of a recent [final rule](#) extending minimum wage, travel pay, and overtime requirements for certain home care workers serving people with disabilities. Under the new rule, initially issued in 2013, direct care workers who are either solely or jointly employed by third-party employers, such as states or home care agencies, must be paid at least minimum wage, must be compensated for time traveling from one client home to another, and must receive overtime pay when working more than 40 hours in one work week. Workers employed solely by a family or individual may be covered by these protections if they are providing health care assistance or perform more than a limited number of tasks in addition to “fellowship and protection.”

Numerous workers with disabilities rely on home care workers who will be covered by the new rule, including workers who help people with disabilities prepare for work each morning.

Although the new rule was intended to come into effect on January 1, 2015, the Department of Labor has announced that it will not take enforcement actions against employers who fail to comply with the new rule until June 30, 2015. Between July 1, 2015 and December 31, 2015, the Department of Labor will “exercise its discretion” to bring enforcement actions only against employers who have unnecessarily delayed coming into compliance. Nevertheless, employers who fail to comply with the new rule may still be subject to private enforcement actions beginning on January 1, 2015. This time-limited non-enforcement policy will allow states to complete the budgeting and legislative process necessary to comply with the new rule without disrupting services to individuals with disabilities.

[Learn more about the new Home Care Rule.](#)

<http://social.dol.gov/blog/an-announcement-concerning-the-home-care-fina...>

<http://www.dol.gov/whd/homecare/>

[Back to Top](#)

## **American Psychiatric Association Releases Toolkit for Medicaid Mental Health Services, Including Supported Employment**

The American Psychiatric Association (APA) has created two toolkits for advocates, describing how state Medicaid programs can improve services for people with psychosocial disabilities. The first toolkit, [Managing Managed Care: A Toolkit for Advocates](#), discusses ways in which managed care plans can improve outcomes for people with psychosocial disabilities by offering innovative home and community-based services – such as supported employment – that may not be available via traditional Medicaid plans, in addition to reforming traditional services delivery.<sup>4</sup> The second toolkit, [An Advocacy Toolkit—Improving Care for People with Serious Mental Illness: Medicaid’s 1915 \(i\) Option](#), provides further detail on home and community-based services that have been proven effective for individuals with serious mental illness, including supported employment and Individual Placement and Supports (IPS).<sup>5</sup> These interventions help people with serious mental illness find meaningful work, develop economic self-sufficiency, and even achieve better long-term health and mental health outcomes. The toolkit notes that these services can be particularly helpful for transition-aged youth.

More information about the toolkits is available via [Psychiatric News](#).

<http://www.psychiatry.org/File%20Library/Practice/APA-PR-ManagedCaretool...>

<http://www.psychiatry.org/File%20Library/Practice/APA-PR-1915iAdvocacyTo...>

<http://psychnews.psychiatryonline.org/doi/full/10.1176/appi.pn.2014.10b8>

[Back to Top](#)

## **2014 Best and Worst Cities for People with Disabilities**

In observance of Disability Employment Awareness Month, financial website Wallet Hub has

issued a report on the best and worst cities for people with disabilities. Their ranking methodology included rates of employment among people with disabilities, percentage of people with disabilities living at or below the federal poverty line, cost of health care, and cost of in-home services. The highest overall score went to Overland Park, Kansas, which also had the highest employment rate for individuals with disabilities. Cities such as Scottsdale, Arizona and Tampa, Florida also ranked in the overall top ten.

[Read the full Wallet Hub report.](#)

[http://wallethub.com/edu/best-worst-cities-for-people-with-disabilities/...](http://wallethub.com/edu/best-worst-cities-for-people-with-disabilities/)

[Back to Top](#)

## **Rhode Island Governor Employment First Executive Order**

On October 22, the Governor of Rhode Island signed an Executive Order declaring that “communitybased integrated employment shall be the priority and the preferred opportunity for Rhode Islanders with disabilities” and requiring that all Rhode Island Executive Branch agencies, including its Department of Health, “promote Employment First principles and ... adopt the goal of increasing the percentage of developmentally disabled people in the State’s workforce.” The Executive Order follows a 2013 settlement with the United States Department of Justice over the state’s funding of segregated, sheltered workshops that paid people with disabilities below the minimum wage. Coinciding with reforms required by that settlement – including use of Medicaid home and community-based services waiver funds to promote competitive integrated employment – the Executive Order will help ensure that the state’s public health programs aimed at people with developmental disabilities focus on integrated employment as an important outcome.

[A scanned PDF version of the Executive Order is available via the Governor’s website.](#)

<http://www.governor.ri.gov/documents/executiveorders/2014/Expanding%20Co...Individuals%20with%20Disabilities.pdf>

[Back to Top](#)

## **Equip for Equality Releases Blueprint Highlighting Employment Reforms for Illinois Residents with Disabilities**

Equip for Equality, the statewide Protection and Advocacy program serving Illinois individuals with disabilities, has released a Blueprint for implementation of the Illinois Employment First Act. The Illinois Employment First Act, signed by Governor Pat Quinn in July 2013, requires state agencies – including health, vocational, and educational programs – to prioritize competitive, integrated employment for individuals with disabilities.

The recently issued Blueprint identifies key areas in need of improvement, including lack of coordination between vocational rehabilitation and health agencies, misunderstandings as to

“what services may be provided by different agencies at the same time,” and difficulty transitioning between funding streams. For example, the Division of Rehabilitation Services can provide up to 18 months of supported employment services. Although Medicaid home and community-based services (HCBS) waivers may begin paying for these services after these initial 18 months, transitioning between funding streams is “difficult and cumbersome.” The Blueprint suggests that Illinois should expand supported employment programs, including Individualized Placement and Support programs that integrate mental health and employment support services, and to ease transition between funding sources for supported employment. It also suggests that Illinois create financial incentives for providers to offer integrated supported employment services, divert individuals with disabilities from segregated settings, and improve school-to-employment transition services for youth

Jones Day, a global law firm, provide pro bono assistance in drafting the Blueprint. [The full report and related resources are available online.](#)

<http://www.equipforequality.org/issues/employmentfirst/>

[Back to Top](#)

## **Virginia to Overhaul HCBS Waiver Program**

In order to comply with a 2012 settlement with the Department of Justice, Virginia is planning to overhaul its home and community-based services (HCBS) waiver program serving individuals with individuals with intellectual and developmental disabilities (ID/DD). The settlement requires Virginia to transfer adults with ID/DD from state developmental centers into the community, with appropriate independent living and employment supports. Virginia’s Waiver Design Advisory Committee (WDAC) has proposed several changes to Virginia’s waiver program related to employment, including addition of individual and “small group” supported employment services. Any “small group” supported employment programs must be integrated into the workplace and must facilitate interaction with nondisabled coworkers. In addition, the WDAC has proposed adding coverage for non-medical transportation services necessary to help individuals travel to employment or volunteering sites, as well as other community services and events.

The WDAC has further proposed to blend existing Medicaid waivers into three “replacement waivers”: an Independence Waiver that will assist only with “intermittent” supports such as personal care and companionship needs, a Supports Waiver to provide day supports and certain residential services, and a Comprehensive Waiver to cover more intensive residential needs.

More information:

- Virginia Department of Behavioral Health and Developmental Services’ [“My Life My Community” webpage](#)
- [Article about the waiver program overhaul in the Daily Progress](#)

<http://www.dbhds.virginia.gov/individuals-and-families/developmental-dis...>

[Back to Top](#)

## **OIG Audit Reveals NY Improperly Billed Supported Employment Services; NYC Comptroller Cites Sheltered Workshops for Wage Violations**

The United States Office of the Inspector General (OIG) has issued a [report finding that the New York State Health Department had improperly claimed at least \\$23 million in federal Medicaid reimbursements for supported employment services](#). Some of these improper claims were for services that do not qualify as supported employment, such as services to support individuals in segregated settings and/or working at less than the minimum wage. Other improper claims were for supported services that were not in accordance with individuals' care plans, or for individuals with incomplete or nonexistent care plans. Other issues included poor documentation, inconsistency with approved billing rates, or failure to use other sources of available funding such as school-based funding for transitioning youth eligible for services through the Individuals with Disabilities Education Act.

The New York Office of the State Comptroller has also [cited Shorefront Mental Health Board Inc.](#), a nonprofit organization that hires individuals with psychiatric disabilities to perform janitorial services at various state psychiatric outpatient facilities, for failing to comply with state laws that required it to pay the prevailing wage rates and benefits for the locality in which workers were employed. The Office of the Comptroller found that Shorefront had been misrepresenting both the hours that its employees worked and the rates at which they were paid, informally reducing workers' reported hours to account for their supposedly reduced productivity. As a result, it underpaid its 26 workers by at least \$123,224 for the year 2013. Shorefront had considered applying for, but had not obtained, a waiver that would allow them to pay its workers less than the prevailing wage rates on account of its employees' disability.

<http://oig.hhs.gov/oas/reports/region2/21301004.asp>

<http://osc.state.ny.us/audits/allaudits/093015/13s62.pdf>

[Back to Top](#)

## **Highlights of Recent State Transition Plans**

[Louisiana has proposed in its transition plan](#) to phase out its existing § 1915(c) home and community-based services programs and replace them with a § 1115 managed care demonstration program.<sup>14</sup> It intends to submit its § 1115 demonstration waiver application in Spring 2015. In the meantime, it is proposing to amend its existing § 1915(c) home and community-based services waiver to expand access to integrated day habilitation programs, require that pre-vocational services be time-limited and geared toward attainment of competitive integrated employment, and require that supported employment services be provided in integrated workplaces as opposed to facility-based or disability-specific settings. The

proposal does, however, permit “group” supported employment, which may include disability-specific work teams within a general workplace, and does not address whether pre-employment services can be delivered in facility-based settings such as sheltered workshops. Comments on the proposal and on other aspects of Louisiana’s transition plan are due December 17.

[North Dakota stated in its October 15 transition plan](#) that some of its existing adult day care programs do not currently comply with the new HCBS rules because they are provided on the grounds of hospitals or nursing facilities, but argued that group-based adult day care programs in other settings do comply because “recipients are free to choose what services and activities they want to participate in and who provides them.”<sup>15</sup> The transition plan does not address whether any HCBS funds currently pay for placements in sheltered workshops.

<http://new.dhh.louisiana.gov/index.cfm/page/1991>

<http://www.nd.gov/dhs/info/pubs/docs/medicaid/hcbs-transition-plan-comme...>

[Back to Top](#)

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