



Policy Update – Employment, Health Care and Disability - December 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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House and Senate Pass ABLE Act

On December 16, 2014 the United States Senate passed the Achieving a Better Life Experience Act of 2014 (ABLE Act) with a bipartisan vote of 76 to 16. The House of Representatives passed the legislation on December 3 by a vote of 404 to 17. The Act will allow working-age adults with disabilities, under certain conditions, to create a tax-free savings account to be used for an array of long-term and disability-related expenses, such as education, housing, transportation, employment training and support, assistive technology, personal support services, health care expenses, financial management and administrative services and other expenses. The first \$100,000 of savings in this account would be exempt from the \$2,000 asset cap for individuals receiving Supplemental Security Income (SSI). The accounts also will not count towards the

asset cap for Medicaid eligibility. To be eligible, adults must have a disability that existed on or before the date they turned 26.

The ABLE Act promises to enable workers with disabilities to maintain financial stability while working and receiving services through Medicaid. Many workers with disabilities rely on Medicaid-funded home and community-based services in order to live in typical communities at optimal levels of independence, including personal attendant care, transportation and integrated employment services. However, in many states that lack Medicaid buy-in programs, and have not expanded Medicaid eligibility to all adults within 138% of the federal poverty line, many workers with disabilities cannot accrue more than \$2,000 in savings without losing their eligibility for both SSI and Medicaid. Even in states with buy-in programs, people with disabilities may be subject to restrictive asset caps. As a result, when workers with disabilities face unexpected expenses such as car breakdowns, need to pay security deposits or attempt to save for higher education, they may lack adequate savings to pay for them. Inability to pay unexpected housing and transportation expenses can, in turn, lead to loss of employment.

[Read more about ABLE Act at TheHill.com.](#)

<http://thehill.com/blogs/congress-blog/healthcare/227207-able-opening-do...>

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OPM Releases New Report on People with Disabilities in the Federal Government

Earlier this month, the Office of Personnel Management (OPM) [released its report on the status of federal disability employment during Fiscal Year 2013](#). The report follows an executive order that President Obama signed in 2010, directing the federal government to improve efforts to employ people with disabilities. The executive order set a goal of hiring 100,000 people with disabilities every five years. The federal government is committed to being a model employer of individuals with disabilities. Employment is known to have a positive impact on the health of individuals with disabilities by virtue of increased financial security, access to health benefits and improved sense of well-being.

According to OPM's data, the percentage of people with disabilities working for the federal government increased from 11.89 percent to 12.80 percent during FY2013. At the same time, the percentage of people with disabilities who were new hires increased from 16.31 percent to 18.18 percent - higher than any rate in the past 33 years. The percentage of new hires with targeted disabilities, which include deafness, blindness, missing extremities, partial paralysis, complete paralysis, epilepsy, intellectual disabilities, psychiatric disabilities and dwarfism, is also the highest it has been in 18 years. The U.S. Department of Health and Human Services and U.S. Department of Labor both achieved a higher-than-average employment rate of individuals with disabilities.

In addition to describing the most recent data on hiring and retention efforts for employees with

disabilities, the report notes that OPM has provided training on disability recruitment to 56 federal agencies. OPM has also created an online course for federal human resources personnel on hiring, retention, and inclusion. The OPM report is produced annually as a requirement of the executive order to increase employment of people with disabilities.

<http://www.opm.gov/policy-data-oversight/diversity-and-inclusion/reports...>

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CMS Issues Guidance on Non-Residential Settings for Home and Community-Based Services

On December 15, the Centers for Medicare and Medicaid Services issued updated guidance on the effect of new home and community-based services (HCBS) regulations on non-residential settings. The new rule, which took effect in March 2014, prohibits states from using federal Medicaid HCBS funds to pay for services in settings that are segregated or provide insufficient access to the community. The new rule stated that its requirements applied not only to settings where individuals lived, but also to the settings in which they spend their day.

The new guidance sets forth numerous aspects of a non-residential placement that may make it eligible or ineligible for HCBS funding. For example, services intended to promote access to competitive, integrated employment must be provided in a setting that is actually conducive to achieving that goal. A provider's actual history of successfully supporting individuals in acquiring and maintaining competitive, integrated employment will be relevant. States should also inquire as to whether non-residential service providers provide individuals with adequate information about opportunities for competitive, integrated employment, whether individuals have the opportunity to manage their own money, and as to whether individuals have consistent interactions with nondisabled co-workers or customers. Individuals should be offered a choice of settings, including non-disability-specific settings, such as competitive integrated employment.

[Read the full guidance document via the CMS web site.](#)

<http://www.medicaid.gov/medicaid-chip-program-information/by-topics/long...> exploratory-questions-non-residential.pdf

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Department of Labor Home Care Rule to Take Effect January 2015

New Department of Labor regulations affecting pay of in-home workers for people with disabilities will come into effect on January 1, 2015. The new regulations require that in-home workers who provide a significant number of services other than companionship, and who are employed or jointly employed by someone other than the care recipient or the recipient's family, be compensated for overtime hours worked and for travel between work sites. This includes the majority of care workers funded through Medicaid.

Advocates for individuals with disabilities have expressed concern that if states do not amend their budgets to account for higher wages associated with wage increases and the new regulations, individuals with disabilities - including workers with disabilities - will stop receiving the support they need to live and work in the community. As a result, the U.S. Department of Justice and U.S. Department of Health and Human Services have issued a Dear Colleague letter explaining that, in order to comply with the integration mandate of the Americans with Disabilities Act, states must approve overtime and travel time for in-home workers in cases where people with disabilities would otherwise experience segregation or institutionalization.

[Download the Dear Colleague letter \(Word format\)](#)

[More information about the home care rule via www.dol.gov](http://www.dol.gov)

http://www.ada.gov/olmstead/documents/doj_hhs_letter.docx

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

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EEOC Takes Aim at Discriminatory Implementation of Employer Wellness Programs

The Equal Employment Opportunity Commission (EEOC) has filed several lawsuits challenging employee “wellness programs” that have the effect of discriminating against workers with disabilities.

Under the Affordable Care Act of 2010, employers may offer employees financial incentives to participate in medical testing and evaluation programs aimed at improving employee health, but under the Americans with Disabilities Act, these programs must be voluntary. The EEOC has challenged certain “incentive” programs as ultimately coercive and therefore discriminatory against individuals with disabilities. One program sponsored by a Fortune 500 company, for example, subjects employees and their families to a potential \$4,000 penalty if the employee refuses a program-administered blood draw to test cholesterol, glucose and nicotine use or refuses to undergo measurement of body mass index and blood pressure. Other employee wellness programs set financial incentives for attainment of health outcomes that may be out of reach for some individuals with disabilities.

[Further information is available via Kaiser Health News.](#)

<http://kaiserhealthnews.org/news/eec-takes-aim-at-wellness-programs-inc...>

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Rehabilitation Research and Training Center Releases 2014 Disability Statistics Annual Report

The Rehabilitation Research and Training Center on Disability Statistics and Demographics (StatsRRTC) collects statistics related to people with disabilities. The Center aims to help

policymakers and service providers make informed decisions about policy improvements, programs, services, civil rights and major life activities. The Compendium includes data on population, prevalence, health, access to health coverage, employment, poverty, earnings, disabled veterans, health and insurance. Some of the data is disaggregated by type of disability. The data also covers programs under the Social Security Administration, Medicare and Medicaid, vocational rehabilitation and special education.

According to the new report, adults with disabilities living in the community are slightly more likely to have health insurance coverage than those without disabilities, but 16% still lack coverage. Public health insurance remains the largest source of coverage, covering 51.3% of people with disabilities. As of 2012, people with disabilities accounted for 17% of all beneficiaries covered by Medicare. In comparison, data from 2011 indicate that people with disabilities accounted for 14.3% of all beneficiaries covered by Medicaid. Additionally, in 2012, 319,144 individuals started or completed state vocational rehabilitation programs and 55% of those individuals successfully attained employment. These data indicate that, although state vocational rehabilitation programs are effective, only a small percentage of people receiving federal health benefits may receive these services in any given year.

[Download the full 2014 Disability Compendium.](#)

<http://www.disabilitycompendium.org/docs/default-source/2014-compendium/...>

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NCD Releases Progress Report on Status of Disability Policy

The National Council on Disability has released its 2014 edition of [National Disability Policy: A Progress Report](#). This annual report provides an overview of the progress that the U.S. has made on the rights of people with disabilities. This year's report identified six main areas as priorities for the wellbeing of people with disabilities: employment access and inclusion, ending subminimum wage, the Convention on the Rights of Persons with Disabilities (CRPD), education, Medicaid managed care, and mental health care. The report includes an analysis of data trends in disability policy.

http://www.ncd.gov/progress_reports/10312014

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American Journal of Psychiatry Publishes Issue Focusing on Supported Employment

The November 2014 issue of the American Journal of Psychiatry included two articles relating to supported employment. The opening editorial by Emory University professor Benjamin G. Druss discusses the history of supported employment as part of the community mental health movement for people with psychiatric disabilities. Dr. Druss also provides a brief overview of the

research support for individualized placement and support, which is a model of supported employment, in improving positive employment outcomes. These services can be funded through Medicaid home and communitybased services waivers. Additionally, another study published in the journal (Hoffmann et al.) followed a randomized trial of supported employment over a five-year span. The study found that the beneficial effects of supported employment during an initial two-year period were sustained throughout the fiveyear follow-up period. The researchers noted that participants in supported employment had greater chances of obtaining competitive employment, worked more hours and weeks, earned more wages and had longer job tenures than those receiving traditional vocational rehabilitation services. [The articles are available online to OpenAthens and Shibboleth subscribers](#); access may be available through your public or university library.

<http://ajp.psychiatryonline.org/toc/ajp/171/11>

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Oregon Overhauls Exchange Insurance Application System, Increasing Accessibility for Workers with Disabilities

During this year's Open Enrollment period, which started November 15, 2014, Oregonians seeking coverage will be using the federal HealthCare.gov website instead of a state-specific website. When Cover Oregon went public in October 2013, the exchange was not fully launched and required consumers to enroll using a hybrid paper-online application process. This process was lengthy and complicated, which may have posed a particular barrier to workers with disabilities.

This past April, Oregon discontinued its state exchange and switched to the federal exchange system. Fifteen of Oregon's insurance carriers have provided their plan information, cost-sharing information, and premium data to the federal website HealthCare.gov, which will now include information specific to Oregon. Due to privacy concerns with information sharing, those who previously enrolled under Cover Oregon will need to resubmit their information and apply through the federal exchange.

[Read more about Oregon's health overhaul.](#)

<http://www.bendbulletin.com/home/2553298-151/not-so-rocky-oregons-road-t...>

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New York Offers Tax Credits for Hiring Workers with Developmental Disabilities Formerly in Sheltered Workshop Placements

New York State Department of Labor has created a new tax credit for employers hiring people with developmental disabilities who were formerly in sheltered workshops, most of which receive Medicaid funding to provide "pre-employment" services. The program provides a tax

credit of up to \$5,000 for hiring someone full time (30 or more hours per week) and up to \$2,500 for hiring someone part time (eight or more hours per week). The credit includes 15 percent of full-time workers' wages and 10 percent of part-time workers' wages. This tax credit was created as part of New York's efforts to close sheltered workshops and transition people with developmental disabilities into integrated employment settings. Under the Affordable Care Act, large employers who hire individuals with developmental disabilities to work full-time will also, as with their other employees, be required to provide employer-sponsored health insurance to those individuals. Others may be eligible for insurance through a Medicaid buy-in program or the statewide insurance exchange.

The original deadline to apply for the tax credit was November 30, but now any employer that had a valid unemployment insurance account as of November 30, 2014, will be eligible to apply for the Workers with Developmental Disabilities Tax Credit Program at any time after that date. The tax credit takes effect on January 1, 2015.

[Read more about the tax credit program.](#)

<http://labor.ny.gov/businessservices/developmental-disability-tax-credit...>

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