February 27, 2015

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

- Senate Panel Examines Effect of Employee Wellness Programs on Workers with Disabilities
- GAO Calls For Greater Interagency Collaboration on Mental Health Services, Including Employment Programs
- NDI Unveils ABLE Resource Center and Update on ABLE Implementation
- New Guide on Mental Health Parity in Workplaces
- NCD Releases New Report on Social Security Disability
- North Carolina Services for People with Disabilities at Heart of Class-Action Settlement
- California Agrees to Transform Employment Services for People with Disabilities - Many Paid Through Medicaid
- Delaware Plan for Supporting People with Mental Health, Substance use Disorders in Finding Employment

Senate Panel Examines Effect of Employee Wellness Programs on Workers with Disabilities

During a January 29th hearing of the Senate Health, Education, Labor and Pensions (HELP) Committee, testimony was presented on employer wellness programs. These programs, which are encouraged under the Affordable Care Act, allow companies to reward employees for participating in workplace wellness programs, which may require them to answer questions about health status to help them achieve certain health goals like smoking cessation or weight loss. The law, however, requires that the programs be voluntary and conform to nondiscrimination laws such as the Americans with Disabilities Act (ADA). Under Title I of the ADA, an employer cannot require its employees to undergo medical exams or answer health and/or disability-related questions unless doing so is “shown to be job-related and consistent with business necessity” or part of a “voluntary employee health program.”

Part of the testimony during the hearing focused on concerns about potential discrimination of
workers with disabilities and other ADA compliance issues in the implementation of wellness programs. For example, some employers may tie a significant portion of employee compensation or the employer's health insurance premium contribution to participation in the wellness program, effectively rendering the program involuntary. This may have a particularly adverse impact on employees with disabilities who do not wish to complete health information surveys that would reveal their disability-related information. Employees with disabilities may also need to be provided with a reasonable modification to health benchmarks if, because of the nature of their disability, the benchmark is not possible or medically advisable. U.S. Senator Patty Murray (D-Wash.) urged the Equal Opportunity Commission (EEOC) to clarify what constitutes a “voluntary” wellness program.

Read more about Congressional activities on employer wellness programs.
http://www.eeoc.gov/policy/docs/guidance-inquiries.html#N_77_
http://kaiserhealthnews.org/morning-breakout/senate-panel-questions-whet...

Back to Top

**GAO Calls For Greater Interagency Collaboration on Mental Health Services, Including Employment Programs**

The Government Accountability Office (GAO) presented testimony to Congress on the need for increased coordination of Federal efforts related to serious mental illness. The testimony, based on a report released in December 2014, reported that eight Federal agencies are responsible for evaluating and administering at least 112 different programs that can support people with psychiatric disabilities. These services and supports are multi-dimensional, meaning they are intended to not only help individuals manage their mental illness, but also to maximize their potential to live independently in the community by addressing employment, housing and other issues. Of the 112 programs identified, eight reside within the U.S. Department of Labor’s programmatic jurisdiction, and an additional seven programs related specifically to employment are housed within the domains of Veterans Affairs, Social Security Administration or the Substance Abuse & Mental Health Services Administration.


Back to Top

**NDI Unveils ABLE Resource Center and Update on ABLE Implementation**

National Disability Institute (NDI) announced a new Achieving a Better Life Experience (ABLE) Resource Center to consolidate information, resources and advocacy materials on state implementation of the ABLE Act. The ABLE Act enables individuals with disabilities and their families to open tax-free savings accounts that create opportunities and ease financial
challenges faced by individuals with disabilities and their families. ABLE accounts can cover qualified expenses such as education, housing, medical/dental care, community-based supports, assistive technology, job training and transportation. The bill creates accounts that can supplement benefits and services provided through private insurance, Medicaid, Social Security benefits, earnings and other programs.

Under the ABLE Act, each state must pass its own legislation in order for its residents to take advantage of these accounts. Each state must decide how they will manage ABLE accounts, which state agencies will be responsible for monitoring and oversight, and how they will disseminate information to consumers and other stakeholders. Over the last month, more than 17 states have introduced enabling legislation for the ABLE Act.

NDI’s ABLE Resource Center is a partnership of 16 national disability organizations. The Center plans to coordinate outreach to stakeholders, provide public comments on state legislative proposals and work with the Treasury Department and IRS on upcoming ABLE Act Federal regulations.

To learn more about the ABLE Resource Center, visit the NDI website.

Back to Top

New Guide on Mental Health Parity in Workplaces

The Partnership for Workplace Mental Health released a new guide on employer compliance with the Mental Health Parity and Addiction Equity Act. The Act aims to equalize insurance-related financial requirements and treatment options for employees with mental health conditions and those with substance use disorders. It prohibits covered health plans that offer mental health and substance use related benefits from imposing more restrictive financial requirements and treatment limitations on these benefits than on other covered benefits. The final rules and regulations for the Mental Health Parity Act were released in 2013. This guide is meant to serve as a reference for employers who offer mental health-related benefits as part of their employer health plan. The full guide is available from the Partnership for Workplace Mental Health website.

http://www.workplacementalhealth.org/ParityGuide15

Back to Top

NCD Releases New Report on Social Security Disability

The National Council on Disability (NCD) released a new report in January that examines the impact of the Americans with Disabilities Act (ADA) on the Social Security Disability Insurance (SSDI) and Supplemental Social Security Income (SSI) programs. The report highlights the importance of Medicaid Buy-In programs for enrollees. These programs allow people with
disabilities to earn income and build assets without losing health coverage. They incentivize people with disabilities to begin or increase employment by providing access to Medicaid coverage even if earnings are greater than the state’s usual eligibility limits. Access to necessary healthcare and long-term support services through Medicaid buy-in programs enables people with disabilities to take advantage of employment opportunities that do not offer a comparable health or long-term support and services benefits. In 2010, Medicaid Buy-In programs nationally had more than 175,000 enrollees. NCD’s report notes that early research shows a connection between employment and improved health outcomes for enrollees, which could further encourage participation in the workforce for people with disabilities. Read the full report on NCD’s website.

North Carolina Services for People with Disabilities at Heart of Class-Action Settlement

Five families settled a class-action suit against North Carolina’s Department of Health & Human Services and Piedmont Behavioral Health (now Cardinal Innovations Healthcare Solutions) originally filed in 2011.

The managed care organization had implemented a new version of the state’s “Innovations Waiver” - a Medicaid Waiver serving people with intellectual and developmental disabilities. The changes established 31 tiers of services (including services to support employment) each with their own budgetary limit. The tier assignment process, which resulted in substantial service cuts for a number of waiver recipients, was conducted without the benefit of any appeal or due process procedure that would allow the recipient to challenge their assignment. A judge issued a preliminary injunction in 2012 to restore services to their earlier level for all those affected. The plaintiffs agreed to a settlement in December 2014, but there will be a hearing in April 2015 to allow input from others who would be affected by the settlement. The court will then consider whether or not to approve the settlement. Advocates following the lawsuit hope it will prevent managed care organizations from setting arbitrary spending caps for whole groups of beneficiaries or budget limits based on cost ratings in the future. The families are represented by Disability Rights North Carolina, Legal Services of Southern Piedmont, and the National Health Law Program.

K.C. v. Cansler and PBH (U.S. District Court for the Eastern District of NC Case # 11-cv-0354-FL)
http://www.disabilityrightscnc.org/cases-we-are-working

California Agrees to Transform Employment Services for People with
Disabilities - Many Paid Through Medicaid

Three California agencies and the state protection and advocacy system have announced a new collaboration on a six-month blueprint to encourage competitive integrated employment for people with intellectual and developmental disabilities. The blueprint will contain a directive to all state agencies, employers and partners that competitive integrated employment is preferred. The blueprint will also call for the development of measurable goals and benchmarks for planning, services and coordination between departments working to support employment outcomes; delineation of state and agency responsibilities; development of specific recommendations for policy and regulatory change; and creation of a dispute resolution process among departments. Many employment-related support services provided through this collaboration are funded through Medicaid, including both employment-specific supports and necessary health supports that enable people to work.

Additionally, the blueprint will include annual requirements for informing people with disabilities and their families about opportunities and available supports for competitive integrated employment. The blueprint will be written by the California Department of Rehabilitation (DOR), Department of Developmental Services (DDS), Department of Education (CDE) and Disability Rights California (DRC).

Read more about the blueprint at Disability Rights California’s website.
http://www.disabilityrightsca.org/news/2015NewsAboutUs/20150126PressRele...

Back to Top

Delaware Plan for Supporting People with Mental Health, Substance use Disorders in Finding Employment

During remarks on his policy agenda for 2015, Delaware Governor Jack Markell has announced a statewide plan for Delawareans to thrive amidst a changing economy that strengthens statefunded education and employment initiatives. As part of the statewide plan, Markell cited two new recently launched programs within the Department of Health and Social Services to promote increased job opportunities for people with disabilities. The Pathways to Employment program, funded through a §1915(i) State Plan Amendment, will provide support to youth with disabilities in planning careers. The PROMISE program, funded through a Section 1115 demonstration waiver, will provide specialized employment supports to adults with mental health needs and substance use disorders. Markell announced that both programs are expected to launch this year. Learn more about the Delaware plan.


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.