



Policy Update – Employment, Health Care and Disability - July 2015 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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U.S. Department of Labor Issues Guide on Disability Non-Discrimination in Jobs Programs

The U.S. Department of Labor (DOL) has published a new guide to assist American Job Centers (AJCs) in serving people with disabilities. The AJCs, which are funded through DOL, are a network of one-stop centers to assist individuals in finding employment. The new guide is aimed at ensuring compliance with Section 188 of the Workforce Innovation and Opportunity Act (WIOA), which prohibits disability-related discrimination in any programs or activities receiving federal DOL funding. The new guide will also serve as a more general resource on disability and workforce development by describing promising practices in accordance with WIOA Section 188 on nondiscrimination and related regulations.

The guide encourages integrating employment services and healthcare delivery systems, in addition to developing data linkages between employment- and healthcare-related state and local agencies. Additionally, the guide provides recommendations for helping people with disabilities navigate health benefits eligibility implications as part of employment-related

services, ensuring network adequacy, and implementing a person-centered services delivery model. The guide also discusses the provision of reasonable accommodations and designation of qualified equal employment opportunity officers to ensure equal opportunity.

[Read the full DOL guide on disability and workforce development.](#)

<http://www.dol.gov/oasam/programs/crc/Section188Guide.pdf>

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New Home and Community-Based Services Waiver Changes and Updated State Plan Amendments in Washington State, Tennessee And Indiana

States have continued to submit transition plans to bring their Medicaid Home and Community-Based Services (HCBS) waiver programs into compliance with new rules for community integration of HCBS settings.

Washington State has submitted transition plans for the Children’s Intensive In-Home Behavioral Support waiver, the Core waiver, the Basic Plus waiver, and the Community Options Program Entry System (COPEs) waiver, and has received approval from CMS for a Community First Choice state plan amendment and a new Individual and Family Services waiver program. Under the proposed plans, personal care, personal emergency response systems and community transition services will be removed from the COPEs waiver and offered instead under the Community First Choice program, which aims to maximize flexibility and choice for program participants. The new Individual and Family Services waiver provides services, supports, and a small benefits package, for participants three and older who live in their family home. Services available include transportation, assistive technology, and peer mentoring, which can help waiver participants access and maintain employment in the community.

Tennessee has submitted several amendments to CMS for its TennCare 1115 Demonstration Program. The Demonstration already includes the CHOICES program, which provides HCBS to three groups of eligible participants: (1) people of all ages who receive nursing home care; (2) adults with physical disabilities over 21 and seniors 65 and older who qualify for nursing home care but elect to receive home care; and (3) adults with disabilities over 21 and seniors 65 and older who do not qualify for nursing home care and for whom home care services could delay or prevent a need for nursing home care. A brand new amendment includes an Employment First HCBS model, focused on competitive integrated employment and independent integrated community living as the first and preferred options for people with intellectual and developmental disabilities. This new program will be called “Employment and Community First CHOICES.” This most recent amendment also adds community-based residential alternatives, including adult care homes and companion care, as well as adding community living supports at multiple levels of reimbursement depending on intensity of services. Tennessee is awaiting CMS approval.

Indiana recently received CMS approval for an amendment to its Community Integration and

Habilitation waiver for people with intellectual and developmental disabilities. The amendment adds a new Extended Services option to the waiver, which replaces the former Supported Employment Follow-Along service. Participants receiving extended services may generally not also receive pre-vocational services except for participants receiving the former supported employment services simultaneously with prevocational services. Extended services are time-limited and aim to maximize development of natural supports with tangible outcomes, including overall hours reduction in paid services that an individual needs; however, this service does not penalize individuals unable to secure natural supports. These services may be provided in small groups and seek to promote job seeking and retention skills.

[Read about the Washington State waiver changes.](#)

[Read more about the TennCare Employment and Community First CHOICES program.](#)

[Read the Indiana Community Integration and Habilitation waiver amendment.](#)

<https://www.dshs.wa.gov/dda>

<http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Waivers/1115/downloads/tn/tn-tenncare-ii-pa-amend-27.pdf>

<http://www.in.gov/fssa/files/CIHW.pdf>

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WIOA Advisory Committee Meeting Held July 13-14

The Advisory Committee on Increasing Competitive Integrated Employment for Individuals with Disabilities, established under the Workforce Innovation and Opportunity Act (WIOA) in 2014, held its fourth meeting on July 13-14, 2015 in Washington, D.C. During the meeting, the committee's four subcommittees reported out on their work on draft chapters for the interim report. Additionally, committee members heard from expert panels that addressed issues with provider transformation to Competitive Integrated Employment and a provider panel discussed sheltered workshops.

During the meeting, ODEP presented findings of state Employment First efforts and challenges states implementing cross-systems change efforts to improve integration outcomes for people with disabilities are facing that require Federal policy changes based upon the agency's work within the Employment First State Leadership Mentoring Program (EFSLMP). The EFSLMP provides funding and technical assistance from national subject matter experts on developing and implementing policies and practices that prioritize employment as a prerequisite for quality of life for people with disabilities. In order to participate, states must require collaboration among at least six state agencies receiving federal funding, such as the state educational agency, the intellectual and developmental disabilities services agency, the state Medicaid entity, the mental health agency, and vocational rehabilitation or workforce investment entity. At present, 15 states are core states receiving technical assistance through this state leadership

program, and over 1,000 state government officials, providers, and direct support professionals across 43 states participate in ODEP's National Employment First Community of Practice.

In addition to information presented by the EFSLMP, community rehabilitation providers (CRPs) of community-based integrated services, as well as CRPs operating 14(c) special wage certificates, identified barriers in service delivery across service systems that require Federal policy change. For example, potential barriers in some state Medicaid programs may include funding transportation for group or center-based services; allowing funding for sheltered work under both prevocational services and other service categories; or maintaining day reimbursable rates that impede individuals from transitioning to individual supported employment or competitive integrated employment.

[View slides from DOL's presentation on the Employment First State Leadership Mentoring Program.](#)

[View the meeting agenda for the July WIOA Advisory Committee meeting.](#)

<http://www.dol.gov/odep/pdf/ACICIEIDE-FirstPresentationSerenaLisa.pdf>

<http://www.dol.gov/odep/topics/date/20150713.htm>

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Following Supreme Court Ruling on Same-Gender Marriage, Advocates Highlight Marriage Penalty and Income Limits on Disability Benefits

In the wake of the Supreme Court's decision in Obergefell on same-gender marriage, advocates with disabilities in the LGBTQ community have raised concerns about continued barriers to marriage for couples who rely on Supplemental Security Income (SSI) and Medicaid benefits. While legal recognition of marriage can grant spouses access to certain rights and benefits, people with disabilities who marry may experience loss of income from Social Security payments or lack of access to healthcare due to a "marriage penalty" in existing benefits laws. By counting spousal income and assets for the purposes of eligibility calculations, and by imposing a lower cap on couples' incomes than would be imposed collectively on two separate individuals, these marriage penalties can present a significant barrier to families in which one person is dependent on benefits. [According to one Social Security Administration \(SSA\) analysis](#), marriage between two SSI beneficiaries results in an automatic 25 percent reduction in total benefits. If an SSI beneficiary marries someone with greater income, the beneficiary will have SSI reduced and potentially eliminated altogether, regardless of whether the spouse shares financial resources or is able to fully support the beneficiary's needs on a single income.

This policy may particularly impact couples in which both individuals receive Medicaid benefits, but one works outside the home. A worker with a disability may benefit from Medicaid Buy-In programs which are open to individuals with higher incomes than the usual income cap for eligibility. However, many of these programs are not open to individuals who exceed income

limits as a result of a spouse's earnings, rather than their own earnings.

[Read more about Obergefell's impact on disability benefits for LGBTQ people with disabilities.](#)

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Comment Period Ends for EEOC's Proposed ADA Wellness Plan Rule

Earlier in 2015, the Equal Employment Opportunity Commission (EEOC) issued a proposed rule amending the agency's Americans with Disabilities Act (ADA) regulations for employer-sponsored wellness plans. The EEOC earlier concluded that medical exams and questions about medical history do not violate the ADA when conducted as part of a voluntary employer-sponsored wellness program. During the public comment period that ended on June 19, disability rights advocates argued that employer-sponsored wellness programs could require employees with disabilities to undergo medical exams or answer health-related questions – either of which could result in disability disclosure in the workplace – as a condition of receiving employee health benefits. The EEOC maintains that some financial incentive for wellness program participation is permissible under the ADA's exception for employer-sponsored wellness programs. The Bazelon Center for Mental Health Law and the American Association of People with Disabilities are among the national advocacy organizations concerned that the proposed rule would erode ADA protections for employees with disabilities if adopted.

[Read more about the EEOC proposed rule on employer wellness plans and ADA compliance.](#)

<http://www.bna.com/eeocs-proposed-ada-n17179928862/>

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Massachusetts Home Health Workers Win Wage Hike to \$15 Per Hour

In the wake of national advocacy to raise minimum wage to \$15 per hour across all labor sectors, home health workers who provide care for seniors and people with disabilities, as well as the clients they serve, have been at the forefront of low-paid workers' demands for increased wages and improved labor protections. Last year, Seattle became the first major city to set \$15 as the minimum wage. In Massachusetts, after five months of negotiations between union members and Governor Charlie Baker, the state made a deal with Service Employees International Local Union 1199 to raise the starting wage for personal care attendants and other home health care workers from \$13.38 to \$15. Workers covered under the agreement provide services funded under Medicaid. The wage increases for home health workers can help ensure a more stable and long-term workforce by reducing turnover and making home health work more financially feasible for entry-level workers. A larger and more stable workforce could help people with disabilities, who rely on home health care services, to maintain the level of care they need to keep their own employment.

[Read more about the Massachusetts home health care wage hike.](#)

<https://www.bostonglobe.com/business/2015/06/26/home-health-workers-win-wage-hike-hour/KrsUcC8dPIDdwpnJYjNzRI/story.html>

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KANCARE Not Working for People with Disabilities, Advocates Say

During a public listening session hosted by the National Council on Disability (NCD) earlier this month, disability rights advocates, including representatives from the Disability Rights Center of Kansas, spoke on concerns about the capacity of KanCare, the state's Medicaid managed care model, to provide continuity and quality in long-term services and supports. Kansas was the first state to put all Medicaid services under managed care including long-term services and supports. The transition to managed care has aimed to integrate medical care with long-term services and supports as well as behavioral health services. The National Council on Disability elected to host this forum to solicit feedback on KanCare's successes and needs, in order to better inform the Council's submission to CMS in advance of new rules on Medicaid managed care.

Since KanCare began in 2013, there has been a 27 percent drop in emergency room visits by people with disabilities receiving home- and community-based services. Kansas spent \$65 million on HCBS waiting lists that had been growing for more than a decade, but are now shrinking. Since the KanCare launch, however, the number of people with disabilities actually receiving services has plummeted even though the waiting lists have shrunk. According to the Disability Rights Center of Kansas Executive Director Rocky Nichols, administrative hurdles have been a major contributing factor to the decrease in the number of people with physical disabilities receiving services. Representatives from service provision agencies raised additional concerns on service reductions, delays in claims processing and payments, and oversized caseloads for care coordinators.

[Read more about the NCD listening session on KanCare.](#)

<http://salinapost.com/2015/07/09/kancare-not-working-for-people-with-disabilities-advocates-say/>

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Judge Rules That Illinois State Employees Only Earn Minimum Wage Without Budget

Illinois Governor Bruce Rauner and the state legislature are in the middle of a dispute over whether State employees can receive partial or full wage payments in the absence of a State budget created by the legislature and signed by the governor. In early July, Cook County Circuit Court Judge Diane Larsen ruled that, without a state budget to fund the government, state

workers are only entitled to the federal minimum wage. State Comptroller Leslie Geissler Munger is appealing the decision, citing concerns for continuity of care for the most vulnerable residents, including people with disabilities who depend on publicly funded services – such as employment, healthcare, residential, and transportation – to stay in their homes and have access to their communities. The Service Employees International Union Healthcare Illinois Vice President James Muhammad has also issued a statement expressing concern about potential harm to people with disabilities in danger of losing necessary home- and communitybased services they need in order to maintain integrated employment.

[Read more about the Illinois ruling on state employee wages.](#)

<http://www.examiner.com/article/judge-rules-that-illinois-state-employees-only-get-minimum-wage-without-a-budget>

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