



Policy Update – Employment, Health Care and Disability - September 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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Opportunity for Public Input into IRS’ Proposed Regulations for Implementing ABLE Act

On June 19, 2015, the Internal Revenue Service (IRS) posted in its Notice of Proposed Rulemaking (NPR) its recommended approach for implementing the Achieving a Better Life Experience (ABLE) Act of 2014. The ABLE Act allows people with disabilities to create special tax-advantaged savings accounts that can be used for disability-related expenses. Account holders can save money in these accounts without becoming ineligible for Supplemental Security Income (SSI), Medicaid, or Medicaid Buy-In programs because the funds inside the ABLE accounts will not count towards the asset limits associated with each of these programs’ eligibility requirements. ABLE accounts can help workers with disabilities save their earnings and build a financial cushion, enabling them to maintain employment while keeping essential health care benefits.

The proposed regulations address several issues and concerns policymakers and advocates had with the ABLE Act’s provisions. The NPR explained how the ABLE accounts are to be

administered and the expenses for which they can be used. Some provisions include broad and useful definitions of “disability-related expenses” under the Act, definitions of who can be a beneficiary and when they are eligible, the exemption of ABLE accounts from gross income, and an explanation of the reporting requirements for ABLE accounts.

Comments on the new regulations were due September 21, 2015. A public hearing on the new revisions is scheduled for October 14, 2015 at 10:00 a.m. The public hearing will be held in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, D.C. Visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification. The IRS requests that anyone planning to attend the hearing in person should contact Regina Johnson at (202) 317-6901 in order to be placed on the building access list. The IRS has not yet issued instructions on how to attend the hearing by electronic means. [The proposed regulations can be read online.](#)

<http://www.gpo.gov/fdsys/pkg/FR-2015-06-22/pdf/2015-15280.pdf>

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CMS Announces Performance-Based Payment Options for Employment Services

At the annual Home and Community-Based Services (HCBS) Conference, hosted by the National Association of States United for Aging and Disabilities (NASUAD), the Centers for Medicare and Medicaid Services (CMS) announced new performance-based options for funding employment supports through a Medicaid §1915(c) waiver. These options reflect CMS’s goal of promoting integrated competitive employment outcomes for people who receive waiver services. The options will allow states to pay for employment outcomes based on the average amount of time the state expects it to take to reach that outcome, based on actual data, and the cost per hour determined by the state. This enables states to incentivize individual competitive integrated employment over other options. States could also provide milestone payments, which would reimburse service providers when a specific employment outcome is achieved, with the amount determined by data based on their past experiences. CMS would accept tiered outcome payments based upon the intensity of services an individual might require. Their guidance emphasizes the critical role of person-centered planning in achieving employment outcomes, and that Ticket to Work milestone and outcome payments still are not in conflict with Medicaid payments.

CMS notes that payment options require financial oversight measures to ensure that the amounts listed are accurate estimates based on data. Amounts of support would be expected to decrease the longer an employee works at a particular job.

- [View the CMS/ODEP joint PowerPoint presentation from the HCBS conference.](#) Formal guidance has not yet been issued.

- [Read a summary of the CMS presentation guidance.](#)

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National Employment First Online Policy and Data Platform Launch

The Office of Disability Employment Policy (ODEP), in partnership with the National LEAD Center, is launching a new Internet-based platform that will allow policy-makers, researchers, and stakeholders to learn about national trends, policies and activities related to Employment First. This new resource will specifically provide outcome data across Federally-funded systems that address the needs of people with disabilities including, but not limited to, education, intellectual and developmental disabilities, mental health, workforce and vocational rehabilitation. Additionally, users will have the ability to review an individual State's legislation, regulations, policies, and existing systems-change initiatives. The platform also allows users to conduct advanced search inquiries into all policies and actions taken around a specific topic in order to scan what is happening nationwide in that area, as well as to compare several states' outcome data simultaneously. The purpose of the platform is to improve access of policy-makers, researchers, disability stakeholders, and the public to learn about and garner a stronger understanding of the impact of Employment First investments in the United States.

ODEP will host a national public webinar on the launch of the new platform via the National LEAD Center on October 1, 2015 from 3:00-4:30 p.m. EST. [Register to attend the webinar.](#)

<https://leadcenter.webex.com/leadcenter/onstage/g.php?MTID=ec4cc7fa58f916ef917ad7fd849223439>

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Department of Health and Human Services Proposes Revisions to the Non-Discrimination Policy of Section 1557 of the Affordable Care Act

On September 8, 2015, the U.S. Department of Health and Human Services (HHS) announced proposed regulations to implement Section 1557 of the Affordable Care Act (ACA), which prohibits discrimination by health programs based on race, color, national origin, sex, age, or disability. Under the proposed revisions, healthcare providers and Health Care Marketplaces that provide health insurance under the provisions of the ACA must also provide effective communication and comply with the accessibility requirements of Section 504 of the Rehabilitation Act and Title II of the Americans with Disabilities Act. Electronically provided information must be accessible to all people with disabilities, consistent with Section 508 of the Rehabilitation Act. The revisions also enhance language assistance for people with limited literacy skills or limited English proficiency. These antidiscrimination protections will enable workers with disabilities to acquire and maintain effective health coverage.

The proposal also bans discrimination, including discrimination based on disability in any health

insurance program or other health-related activity that receives federal funding, which would include Medicaid-funded employment, and health and community-based support services (HCBS). These regulations are an important step forward for health care and people with disabilities. [Read an overview of the regulations.](#)

<https://www.federalregister.gov/articles/2015/09/08/2015-22043/nondiscrimination-in-health-programs-and-activities>

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Oregon: Department of Justice’s Settlement Phases Out Sheltered Workshops and Provides Gains to Supported Employment in the State

On September 8, 2015, the U.S. Department of Justice (DOJ) entered into a [proposed settlement agreement with Oregon](#) that provides 1,115 adults with disabilities who currently work in sheltered workshops with support to achieve competitive integrated employment in the community over the next seven years. Additionally, Oregon will no longer fund sheltered workshop placements for transitionage youth and working-age adults who are newly eligible for state-funded employment services. Also over the next seven years, Oregon will ensure that youth 14-24 years of age are provided with individually-planned employment services necessary for them to prepare for, choose, secure, and maintain competitive integrated employment. The settlement calls for a cross-systems approach to implementing the settlement agreement with fidelity, with a strong reliance on the state’s existing HCBS waiver system. DOJ found that people with disabilities in Oregon were unnecessarily segregated into sheltered workshop settings to the exclusion of community-based alternatives, and that this unnecessary segregation of people with disabilities was a violation of the Americans with Disabilities Act.

http://www.ada.gov/olmstead/olmstead_cases_list2.htm#lane

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Minnesota: Plaintiffs in Minnesota Lawsuit Claim Department of Human Services Underspent \$1 Billion in Medicaid Disability Waiver Funds

Minnesota attorneys, representing a group of plaintiffs with disabilities, are arguing that Minnesota’s Department of Human Services mismanaged money set aside for Medicaid HCBS waivers, leading to the plaintiffs’ placement on waiting lists for waivers for more than a decade. One plaintiff stated that he had been waiting for Medicaid benefits for his daughter for more than 14 years. If a person with a disability in Minnesota receives one waiver service, that person is eligible for additional services to support their integration into the community, employment, independent living and transportation.

According to the complaint, there is wide variation in how much each county spends of the waiver funds allocated to that county, and some Minnesota counties underspend to avoid the possibility of a payback to the state. Under Minnesota law, any county that overspends the funds

allocated to them must reimburse the state for the amount overspent. As a result, some counties spend 20 to 40 percent of their allocated funds, while other counties spend most of their allocated funds.

The Minnesota Department of Human Services Commissioner has noted that reducing the waiting lists is one of the key goals of the state's new Olmstead Plan, which proposes sweeping expansions to community services for people with disabilities. For further information on this issue, [read the DisabilityScoop article](#).

<http://www.disabilityscoop.com/2015/09/01/lawsuit-mismanaged-waiver/20761/>

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Utah: The Need for Healthcare Reform

Disability rights advocates in Utah are expressing concern about a failed plan to expand Medicaid coverage by the end of this past July. The expansion, authorized under the Affordable Care Act, would have provided Medicaid coverage to all adults earning less than 138 percent of the Federal Poverty Level (FPL). Jerry Costley, director of the Utah chapter of the disability rights group ADAPT, expressed his concern that many Utah residents with disabilities fall through gaps in the state's Medicaid coverage. Some low-income workers with disabilities may rely on the Medicaid expansion to provide "bridge" coverage while they apply for disability-based Medicaid coverage. Utah residents with disabilities are also concerned about disparities in access to Medicaid HCBS waivers that can help people with disabilities live in the community and receive employment services. Statistics show that nearly 400,000 Utah residents have disabilities and many of their families are feeling the lack of coverage in the state to support health, employment and community living. The ADAPT chapter is planning a protest in Salt Lake City in late September. [Listen to the Utah Public Radio show or read the transcript for more information.](#)

<http://upr.org/post/disability-activists-call-utah-healthcare-reform>

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