



## Policy Update – Employment, Health Care and Disability - October 2015 Newsletter

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**October 29, 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](#).

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### **Advisory Committee on Increasing Competitive, Integrated Employment for Individuals with Disabilities Releases Interim Report**

On September 15, 2015, the Advisory Committee on Increasing Competitive Integrated Employment for Individuals with Disabilities (ACICIEID) released its Interim Report to Secretary of Labor Thomas Perez, the Senate Committee on Health, Education, Labor and Pensions (HELP), and the House Committee on Education and the Workforce. ACICIEID, created by a provision of the Workforce Innovation and Opportunity Act (WIOA) is charged with providing Congress with a regular assessment report on the current state of employment outcomes for people with intellectual and developmental disabilities (I/DD). The Interim Report contains information on the current prevalence of segregated, subminimum wage work among people with I/DD and recommendations for increasing competitive integrated employment in this population.

The ACICIEID is made up of several subcommittees. Some of the issues the subcommittees discuss in the Interim Report include:

- Recommendations to improve the delivery of supported employment and vocational rehabilitation in the states, including changing the state match rate for HCBS waiver funds to match the rate for Vocational Rehabilitation, and expanding the use of HCBS waivers. ACICIEID suggested that CMS create a standardized system for reporting quantifiable employment outcomes of HCBS employment programs. It should also aim to realign existing infrastructure funding to favor competitive integrated employment.
- The need for improved coordination between the agencies that support youth with I/DD during their transition between school and employment, and the need to offer youth with I/DD greater access to reasonable accommodations in schools and vocational rehabilitation services.
- Reform the AbilityOne Program, which includes improving oversight of AbilityOne contractors, conflict-of-interest policies, and a requirement that Ability One contractors be competent in practices that help workers with disabilities transition to competitive integrated employment.
- Recommendations for marketplace incentives for competitive integrated employment, including the production of a nationwide educational campaign on the benefits of disability inclusion and the improvement of transportation systems that serve people with I/DD getting to and from work.

The ACICIEID held its latest meeting on October 14 and 15, 2015. At the meeting, each of the four subcommittees presented their most recent work and Interim Report recommendations before the Committee and opened those recommendations for discussion. A number of stakeholder organizations submitted public comments and testified before the committee on their greatest concerns. Three prominent issues at the meeting were: (1) whether it was appropriate to recommend a responsible phase-out of Section 14(c) of the Fair Labor Standards Act; (2) what the limitations were on ACICIEID's power as a committee, given that they make recommendations to the Department of Labor, but offered several recommendations in the Interim Report that necessitated both regulatory and legislative changes across the Federal government; and (3) the need to ensure services remain consistent to an individual both during and after a transition into competitive integrated employment.

The ACICIEID will continue developing its recommendations during the next year and will eventually release a Final Report incorporating the feedback that it has received. For further information, read the [Committee's Interim Report](#).

<http://www.dol.gov/odep/pdf/20150808.pdf>

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## **ACL No Wrong Door System Grants Helps Streamline Access to Services and Supports**

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## **ODEP and Administration for Community Living Sign Memorandum of Agreement to Expand Competitive Integrated Employment for People with Disabilities**

The Office of Disability Employment Policy (ODEP) and the Department of Health and Human Services' (HHS) Administration for Community Living (ACL), building on a partnership between the two organizations that began in 2012, recently signed a memorandum of agreement (MOA) to jointly expand and promote competitive integrated employment as the first option for individuals with significant disabilities.

Jennifer Sheehy, the Acting Assistant Secretary at ODEP, stated that the memorandum will solidify the continued collaboration between the two agencies to support states to “align policy, practice, and funding toward outcomes related to competitive, integrated employment.” The combined network of the two agencies includes a diverse group of service providers and disability advocates, including protection and advocacy agencies, aging and disability resource centers, and state developmental disability councils - all of which may help connect a person with a disability with health care and Medicaid-funded Home and Community-Based Services that they may need to gain and retain employment. The MOA also focuses on the co-development and sharing of technical resources to assist in promoting strong collaboration between Centers for Independent Living and American Job Centers in supporting job seekers with disabilities secure and maintain employment. For further information on the memorandum, read the [ODEP News Brief](#).

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## **CMS Responds to Statewide HCBS Transition Plans**

As of October 2015, the Center for Medicare and Medicaid Services has sent 42 states Clarifications and/or Modifications Required for Initial Approval (CMIA) letters in response to each state's published Statewide Transition Plan. These plans describe a timeline and steps that a state will take in order to bring existing and future settings into compliance with CMS' Final Rules on Medicaid-funded Home and Community Based Services (HCBS), which promote services in inclusive community settings.

CMS' CMIA letters highlight the concerns that CMS has with the reporting requirements of many of the plans and whether the state has clearly defined how it assesses the settings that must undergo heightened scrutiny review. These are settings and services that isolate people with

disabilities from the broader community, including services and settings that may limit integrated employment opportunities.

For example, CMS notes, in the CMIA letter sent to New York, that the state said it completed the required systemic review designed to identify barriers to the HCBS rule's implementation, but New York did not identify the standards that were assessed or provide evidence that the review was completed. Several of the letters note that the Public Notice and Comment Period for the state's transition plans are either inefficient or inaccessible to the public. CMS has noted that, in many states, information on how the state identifies which settings are presumed to be institutional is lacking or absent.

Many transition plans discuss strategies that show that the state is working toward ensuring that people with disabilities have access to services that support them in integrated employment and other nonresidential services that enable them to live and work in the community. For instance, Delaware's DDDS waiver states that it may fund "Prevocational Services," which are designed to help people develop generalized work skills. This type of service can include unpaid or sub-minimum wage work in either "fixed site" or community-based locations, which may be interpreted to include sheltered workshops. The Delaware waiver, however, notes that prevocational services also includes "volunteer work and internships" and that services must be geared toward attaining competitive, integrated employment. The District of Columbia has created and funded a waiver service under its Developmental Disabilities waiver, known as Individualized Day Supports, that provides individualized services within community settings and provide opportunities for life skill development and vocational exploration. It has also created an Employment Learning Community, which brings providers together to focus on customized, integrated employment in the District of Columbia, with support from the U.S. Administration on Intellectual and Developmental Disabilities.

For [further information on each of the transition plans and CMS' CMIA responses](#), visit the [Medicaid.gov](https://www.Medicaid.gov) website.

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## **ABLE Act Gains Traction in the States**

Legislation enabling disability savings accounts under the Achieving a Better Life Experience (ABLE) Act continues to gain ground in state legislatures. The ABLE Act, which was signed by President Obama last year, allows states to authorize special tax-advantaged accounts called ABLE accounts. These accounts enable people with disabilities to save money in special tax-advantaged accounts without their savings being counted in means-testing for means-dependent benefits such as Medicaid Home and CommunityBased Services and Supplemental Security Income (SSI). The accounts will help workers with disabilities save money to be used later for qualified disability expenses, which can include support to gain and keep employment,

without losing services they also may need in order to be employed. In order for people with disabilities to set up ABLE accounts, the states in which they live must first pass legislation authorizing the accounts.

So far, 33 states have signed ABLE-related legislation into law. Notably, California bill AB 49, which will make ABLE accounts available to Californians with disabilities, was signed into law as of October 11, 2015. Pennsylvania Senate Bill 879, which would do the same in Pennsylvania, was approved by the Pennsylvania Senate and awaits approval by the House.

In addition, the Internal Revenue Service (IRS) has issued a Notice of Proposed Rulemaking (NPRM) regarding ABLE Act implementation. The Rulemaking would give clarity and guidance over how the ABLE Act is to be implemented in states. The NPRM includes a flexible definition of what constitutes a “qualified disability expense” and would allow the ABLE account holder to keep the same ABLE account even if he or she moves to another state.

For more information, read the [article on the ABLE Act’s progress](#) from National Disability Institute’s Washington Insider.

[http://www.realeconomicimpact.org/newsletters/wash\\_insider\\_sep\\_2015.html#2](http://www.realeconomicimpact.org/newsletters/wash_insider_sep_2015.html#2)

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## **Minnesota: New Olmstead Plan Addresses Barriers to Living in the Community Faced by People with Disabilities**

On September 29, 2015, United States District Judge Donovan Frank, pursuant to an existing settlement agreement, approved a plan detailing Minnesota’s strategy to achieve compliance with Olmstead. Under the Supreme Court’s decision in *Olmstead v. L.C.*, states have an obligation under the Americans with Disabilities Act (ADA) to provide services in the most integrated setting appropriate to individual needs. The Minnesota Olmstead plan was developed pursuant to a June 2011 Stipulated Class Action Settlement Agreement in the District of Minnesota. The settlement agreement required the State of Minnesota to develop a comprehensive plan to improve the number of people with disabilities in integrated settings, as articulated in *Olmstead*.

The Olmstead plan calls for a series of state and local initiatives that would reduce the State’s dependence on sheltered workshops and move people from institutions into the community. It outlines specific goals and timelines for these initiatives in order to measure the progress Minnesota has made towards the objectives of the plan. An Olmstead subcommittee will issue public reports and work plans detailing the transition to competitive, integrated employment models. In addition, the state will conduct Quality of Life surveys asking Minnesotans with disabilities how much autonomy they have and gauging whether they are working and living in the most integrated setting possible. The first work plans for the Olmstead Plan were due on October 10, 2015, and the first Quality of Life survey will be completed in 2016.

Judge Frank praised the State for creating a realistic plan with clear-cut goals, but noted that the state must make the completion of these goals a top priority. Several advocacy organizations and stakeholders are concerned that Minnesota might not fulfill the plan's ambitious goals. For example, the Minnesota Disability Law Center, the federally-funded Protection and Advocacy organization for the state, argues that the plan does not track how choices will be made between sheltered workshops, day programs, and more integrated settings under the plan.

For more information on Minnesota's new Olmstead Plan, read the state plan. You can also view the [specific goals and timeline for Minnesota's plan](#).

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## **Wisconsin: Changes to Family Care and IRIS Programs**

Witnesses at a [recent public hearing in Wisconsin](#) expressed concerns about changes made to the state's budget, passed in July, which would require the state to contract with insurance companies to administer long-term services and supports, including employment services, to Wisconsin residents with disabilities.

Currently, more than eight regional managed care organizations administer the state's Medicaid programs, which serves some 48,000 people, and another 12,000 people rely on an alternative Wisconsin program called IRIS, which stands for Include, Respect, I Self-Direct. Under the new budget, a smaller number of insurance agencies called Integrated Health Agencies (IHAs) would offer both the managed care options and an option similar to IRIS. Stakeholders at the hearing expressed concern that the change in providers could have negative consequences on the availability of services they need to maintain employment. Nick Zouski, who has quadriplegia and is one of the people who testified, said that he doesn't expect that an insurance agency would send a caregiver over to his house at 5:30 a.m. to help him get ready for work, as the current health care providers do. In addition, stakeholders noted that the IHAs should not be evaluated solely in terms of medical outcomes, such as hospitalizations, but also in terms of their ability to help people gain and maintain employment in the community.

Other witnesses expressed concerns about proposals to replace the state's existing Aging and Disability Resource Centers, which help people with disabilities access services.

Representatives of Wisconsin's Department of Health assured hearing attendees that quality and access to long-term services and supports were an important goal of the Department. At least three more hearings on this issue have been scheduled. For more information, [read the Wisconsin State Journal article](#).

List of all public hearings held on this issue:  
<https://www.dhs.wisconsin.gov/familycareiris2/index.htm>

[http://host.madison.com/wsj/news/local/health-med-fit/disabled-elderly-concerned-about-state-changes-to-family-care-iris/article\\_94240346-ef6f-5927-86bf-19c6da12ae83.html](http://host.madison.com/wsj/news/local/health-med-fit/disabled-elderly-concerned-about-state-changes-to-family-care-iris/article_94240346-ef6f-5927-86bf-19c6da12ae83.html)

## **Kansas: State Delays Changes to Medicare/Medicaid System Until January 2017**

Kansas' Department of Health and Environment and Department of Aging and Disability Services, after receiving feedback from stakeholders in the community (e.g., health care providers, people with disabilities, family members of people with disabilities, etc.) will delay a major change to the way it administers its Medicaid waiver program until January 1, 2017. The two agencies had planned to consolidate seven disability-specific Medicaid waivers that they jointly administer into a single universal waiver by January 1, 2016 and transfer all beneficiaries over to the universal waiver by July 1, 2017. These waivers include home and community-based services programs aimed at helping people with disabilities obtain and maintain employment in the community. The state will now condense the waivers into a single waiver on January 1, 2016, but delay the transfer of the waiver beneficiaries by six months to January 2017.

The concerns raised by the disability stakeholder community focused on two major issues. The first was that the state intended to expand the services it provided under the new universal waiver and reduce its waiting list without spending any more money. For instance, the proposed universal waiver would average reimbursement rates for similar services provided under all seven waivers. Providers under the current waivers report that some of them are operating under razor-thin reimbursement rates that have not changed since 2008, and an averaging of the service costs would only limit their budgets even further. Dee Staudt, director of the Sedgwick County Developmental Disability Organization, said that some waivers had associated policies and laws unique to the population served by the waiver.

The second concern was that the state had an insufficiently developed plan to deal with the logistics involved in merging all seven disability-specific waivers into a single waiver. Most of these services involve providing people who would otherwise be institutionalized with community-based supports that allow them to live independently, such as 24-hour intensive care, help with daily living, educational assistance, work assistance and medical care. These services are currently provided in a way that is specific to the disability involved. If the waivers are merged, several members of the community with significant disabilities worry that fewer or less effective services would be provided. Merging the waivers would also involve new licensing qualifications and training for service providers, which would further limit the number of services available initially.

The state overhaul would affect thousands of people with disabilities in the state. The general consensus is that Kansas must take more time to consider the impact the overhaul would have on Medicaid beneficiaries. For [more information on the planned overhaul and its delay](#), read the Wichita Eagle article.

<http://www.kansas.com/news/local/article38029176.html>

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