



Policy Update – Employment, Health Care and Disability: January 29, 2016 Newsletter

January 29, 2016

The LEAD Center’s Policy Update – Employment, Health Care and Disability is a monthly update focusing on the intersection of disability, employment and health care policy. The LEAD Center’s Policy Update – Employment, Health Care and Disability provides policymakers, disability service professionals, individuals with disabilities and their families with information about relevant policy developments regarding Medicaid, the Affordable Care Act and related topics, with a focus on improving employment outcomes for individuals with disabilities.

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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EconSys and ODEP Release Review of HCBS Reimbursement Rates for Supported Employment and Integrated Day Services across All 50 States

In January 2016, the Office of Disability Employment Policy (ODEP) contracted with Economic Systems, Inc. and jointly released a review of the [reimbursement rates and methodologies used in home and community-based services \(HCBS\) waivers](#) for supported employment and integrated day services which covers all 50 States. The information was collected from publicly

available data reported by state Medicaid agencies or other state agencies managing various HCBS waivers on behalf of their state governments. The document describes each service that's covered under the state's HCBS waiver, the components making up each service, the state's limits on what is covered by the waiver for each service, what constitutes a single "unit" of that service for reimbursement purposes, the average cost per unit, the number of users for that service, and finally how many units each user tends to use. It also discusses whether the state has included incentives, tiered, or milestone payments into service rates to encourage more integrated outcomes. The document is likely to be useful as a frame of reference for states that are still re-tuning their HCBS Transition Plans. Each state's individual rates and reimbursement methodologies will be added to the "Medicaid Funded Initiatives" under each state's individual profile on the platform later this month.

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NASUAD Publishes Tip Sheets for Increasing MIPPA Outreach

On December 2, 2015, the National Association of States United for Aging and Disability (NASUAD) published two tip sheets designed to increase the number of low-income seniors and people with disabilities that the Medicare Improvements for Patients and Providers Act (MIPPA) reaches. MIPPA improves the quality of existing Medicare assistance programs, such as the Medicare Savings Program (MSP) and Medicare Part D Low-Income Subsidy program (LIS). Awareness of the existence of these subsidy plans may help low-income people with disabilities who otherwise might have to quit their jobs to be eligible for a healthcare plan contingent on limited earned income, such as Medicaid or Supplemental Security Income (SSI). This plan would allow an otherwise eligible person to remain in the workforce on Medicare.

The two tip sheets are the Internal Tip Sheet and the External Tip Sheet. The Internal Tip Sheet, "[Promising Practice Tip Sheet: Increasing ADRC Employees' Awareness of Medicare 'Help' Programs](#)", provides agencies with examples of two methods that were used to increase the number of beneficiaries who were aware of Medicare Savings plans and available low-income subsidies.

Catawba Aging and Disability Resource Center (ADRC) in South Carolina created an internal information template that helps employees that assist people to start a conversation about the caller's eligibility and allows them to gather information on eligibility more easily. Illinois Department on Aging's Senior Health Insurance Program (SHIP) hangs a poster with MSP and LIS eligibility information behind the desks of their employees, which prompts them to ask callers about the caller's eligibility more often.

The External Tip Sheet, "[Promising Practices Tip Sheet: Increasing Outreach by Building Partnerships](#)," discusses the best way to conduct outreach to the community on MSP and LIS programs. It uses, as an example, the Aging and In-Home Services of Northeast Indiana (AIHS),

which conducts outreach with organizations that may be overlooked if the agency uses only traditional outreach approaches (e.g., Meals on Wheels, libraries, state and health fairs, etc.).

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EEOC Issues Proposed Rule to Amend Title II of GINA

The Centers for Medicare & Medicaid Services (CMS), the Administration for Community Living (ACL) and the Veterans Health Administration (VHA) released a No Wrong Door System Reference Document for Medicaid Administrative Claiming Guidance document in early December to assist states in their effort to provide consumers with more coordinated long-term services and supports (LTSS). The document is designed to help states that are establishing No Wrong Door Systems across systems to access Medicaid funding for some of their work.

[No Wrong Door \(NWD\) Systems](#) are state-created programs that coordinate services across multiple agencies that serve older adults and people with disabilities, including employment services, so that people experience a streamlined user-friendly eligibility process regardless of where they enter the service system. The guide informs states about how they can appropriately claim federal matching funds, including Federal Financial Participation (FFP), for administrative work related to their NWD programs and services.

The guide clearly explains how matching funds can be claimed for certain activities, noting that states can only claim funds for NWD activities that match with a corresponding Medicaid administrative activity for which the state incurs a cost. For instance, the state cannot claim funds for the activities of unpaid volunteers in the state's NWD program working on outreach to people with disabilities or elders because there is no cost to the state or No Wrong Door System and therefore nothing to claim. Similarly, outreach activities conducted by NWD staff that are not directly related to the Medicaid program or that are made available free of charge to the general public would not be eligible for Medicaid funding or match. However, administrative match can be available for "Program Planning, Interagency Coordination and Continuous Quality Improvement" even if not directly Medicaid-related. In the Guidance, NWD System personnel are provided with a code to use "when completing activities related to establishing and maintaining documentation, internal processes, quality oversight and policies related to the provision of LTSS, health care services, and other supports that may assist an individual to remain in the community, return to the community, or otherwise enhance the person's quality of life (e.g., income supports, energy assistance, etc.). They also use these codes when working with other partner agencies to improve the coordination and delivery of services, and performing collaborative activities with other agencies to provide services. Examples include: (1) Analyzing Veterans Health Administration data related to the NWD System; (2) Participating in an advisory group for the Department of Labor to provide consultation and advice regarding the delivery of employment programs for people utilizing the NWD System; (3) Working directly with other agencies, such as the State Department of Education to improve the coordination of

Vocational Rehabilitation Services and the NWD System.

- ✘ Download the [No Wrong Door System Reference Document for Medicaid Administrative Claiming Guidance](#) document.

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EEOC Issues Guidance about HIV-Positive Employees' Human and Health-Related Rights Under ADA

The Equal Employment Opportunity Commission recently issued two publications that explain how the Americans with Disabilities Act (ADA) applies to job applicants and employees who are HIV-positive.

- ✘ The first publication, [Living with HIV Infection: Your Legal Rights In the Workplace Under the ADA](#), is directed at HIV-positive job applicants themselves. The second publication, [Helping Patients with HIV Infection Who Need Accommodation at Work](#), educates health care professionals who treat HIV-positive patients about the ADA and how they can help their patients obtain reasonable accommodations in the workplace.
- ✘ Before these publications were issued, only a [questions-and-answers sheet](#)⁸ was available, which gave general guidance on how the ADA applies to people who are HIV-positive. The current publications more clearly address the specifics of obtaining reasonable accommodations for people who are HIV-positive, and what is generally covered. The publications each specifically mention altered break and work schedules, accommodations for visual impairments, ergonomic seating, and other accommodations that are necessary due to the health impact of HIV, another condition that now exists because of HIV, or the side effects of medication designed to treat the disease. The publications describe how HIV can create a broad variety of possible symptoms and, therefore, accommodations may differ for each person.

The specifics in each publication address the most likely questions different target audiences would ask. [Living with HIV infection](#) describes, for example, the need for a job applicant to disclose their condition if they are requesting an accommodation, and [Helping Patients with HIV](#) explains how health care providers can communicate with someone's employer if they require a reasonable accommodation at work. For example, the health care provider can describe the person's health condition as an immune disorder if the person does not want their HIV status disclosed.

Further reading: [EEOC issues guidance directed specifically to HIV-positive employees and their physicians](#) | Lexology

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ANCOR and Disability Advocates Call for CMS to Consider Supported

Employment and HCBS Services in Its Managed Care Network Adequacy Rulemaking

The American Network of Community Options and Resources (ANCOR) and a coalition of disability rights advocates are urging the Center for Medicare and Medicaid Services (CMS) to consider both supported employment and Home and Community-Based Services (HCBS) waiver services in its Request for Information (RFI) on “Data Metrics and Alternative Processes for Access to Care in the Medicaid Program.” Final comments on this RFI were due on January 4, 2015.

The RFI establishes requirements for procedures that states must follow to ensure compliance with the Medicaid Access Provision set forth in Section 1902(a)(30)(A) of the Social Security Act, for services provided through each state’s Medicaid State Plan. Section 1902(a)(30)(A) specifically states that a state program must establish rules for calculating payments for Medicaid-funded services that ensure access to quality, affordable health care and adequate networks of providers in the geographic area. Procedures that ensure that most of the state’s beneficiary population has access to health care services covered under their plans are crucial. ANCOR proposed three things of note in its comments:

- That CMS include HCBS waiver programs in its access standards for states. ANCOR argues that other regulations governing HCBS services lack the explicit access protections in these proposed regulations. It also cites multiple occasions on which CMS itself stated that payments for waiver services must be consistent with the Medicaid Access Provision rule.
- That CMS specifically consider the unique needs of the intellectual/developmental disability (I/DD) population with regards to access to services when implementing the rule. CMS lists a number of access concerns that affect the I/DD population, including: (1) whether they have meaningful access to services besides physical health care, including supported employment, supported housing, and meaningful integration in the greater community; and (2) whether they have access to health care services that are physically accessible and accessible to people with cognitive disabilities and other communication barriers.
- That CMS include additional metrics for access to care that address other important community integration outcomes for this population, including the number of people with I/DD in the competitive workforce, waiting lists statistics, and the relationship between the adequacy of the health care workforce on the availability of long-term services and supports.

For further information, read the [RFI’s entry in the Federal Register](#) and [download a PDF of ANCOR’s comments](#).

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ABLE Act Celebrates Its 1st Anniversary

December 19, 2015 marked the one-year anniversary of President Obama’s signing of the Achieving a Better Life Experience (ABLE) Act into law. The ABLE Act authorizes states to create their own ABLE programs, which offer unique savings accounts called “ABLE accounts” to qualified individuals with disabilities (with an age of onset up to 26 years old). ABLE savings accounts are tax-advantaged accounts, similar to college savings accounts and individual retirement accounts, which allow qualifying people with disabilities to save money for certain categories of expenses including transportation, healthcare, and education. The money saved in an ABLE account also does not count against the beneficiary’s eligibility for any other federal benefits program, such as Medicaid or SSI.

Since the ABLE Act was signed into law, reforms and implementing regulations have improved its promise as an effective means of aiding beneficiaries. Subsection 303 of Section Q (The “Tax Extender” or “Protecting Americans from Tax Hikes” section) of the Consolidated Appropriations Act of 2016 eliminated the state residency requirement for ABLE programs, which opens up more ABLE account choices for beneficiaries and families and encourages competition between state ABLE programs.

The IRS also issued regulations limiting unnecessary procedural requirements for determining when something is a “qualified disability expense.” At least 36 States have either already created ABLE account programs or have proposed the programs to their legislatures.

For more information, please visit the [National Disability Institute ABLE Act page](#).

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Oregon Court Approves Settlement in Lane v. Brown

On December 29, 2015, the Department of Human Services was informed that U.S. Magistrate Judge Janice Stewart approved the final settlement in the historic *Lane v. Brown* community integration lawsuit in Oregon. The Final Settlement Agreement requires a systems-wide change over seven years designed to divert transitioning people with disabilities from segregated, sheltered workshop placements into competitive integrated employment and to transition people currently in sheltered workshops into competitive integrated work. The complainants in the lawsuit argued that sheltered workshops segregate rather than integrate people with  disabilities into the community and that Oregon has an obligation under the Americans with Disabilities Act (ADA) to improve competitive integrated employment for people with disabilities.

The immediate effects of the agreement are that Oregon will support 1,115 adults with disabilities, who currently work in sheltered workshops, to achieve integrated employment in the community over the next seven years. Additionally, young people between the ages of 14 to 24 will receive supported employment services, which will help them choose a career in the future.

Oregon agreed to seek funding for these supported employment services through Medicaid. The agreement would allow individuals with disabilities to access integrated day services if they are preferred over supported employment services, but states that offer such services must “include regular opportunities for community-based recreational, social, educational, cultural, and athletic activities” and must allow individuals with disabilities to interact with individuals without disabilities to the fullest extent possible.

Judge Stewart found that the settlement as written provides “valuable and substantial relief” to the class members, who all have intellectual/developmental disabilities (I/DD), and ordered the Joint Motion to approve the settlement granted. For more information, read the [Judge’s Approval Order](#) and the [Settlement Agreement](#).

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Connecticut: Waiting List for Services Never Ends for Individuals with I/DD and Their Families

A recent news investigation revealed that, for many Connecticut citizens with significant disabilities, eligibility for services never translates into actually receiving services. The State Department of Developmental Disability Services spends nearly 25 percent of its \$1 billion budget on state facilities that serve just 961 people, rather than allocating the funds to any of the nearly 2,000 people with intellectual/developmental disabilities (I/DD) on the state’s waiting list who need long-term services and supports (LTSS) in the community. Services funded by the waivers range from day programs and health care services to supported employment services, which are vitally necessary if the person with I/DD is to obtain and maintain competitive integrated employment. Many of the people on the waiting list may be unable to hold down a job without these services.

[For more information on this developing situation, read the Hartford Courant article.](#)

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