



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

February 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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President Obama’s 2017 Budget: Impact on Employment and Health Care for People with Disabilities

On February 9, 2016, President Obama and his administration released their proposed budget for Fiscal Year 2017. The proposed budget includes funding to increase the number of people with disabilities in the competitive workforce and funding increases for programs relating to

Medicare, Medicaid, and the Affordable Care Act. It also includes proposed increases in funding for several educational programs and administrative agencies designed to help people with disabilities transition more effectively into employment from school. For example, the budget proposes that the Department of Education's Disability Innovation Fund (DIF), which supports educational projects aimed at transitioning people with disabilities from high school into postsecondary education or competitive, integrated employment, be funded annually at the same rate in the budget rather than be reauthorized at different levels of funding each year. The DIF has been used to fund the Promoting Readiness of Minors in SSI (PROMISE) program, which tests and evaluates educational and health care interventions that reduce the need for youth to remain in the SSI program.

Regarding employment for adults, the President's budget proposes to reauthorize the Social Security Disability Insurance (SSDI) program's demonstration authority, allowing it to test changes to the SSDI benefit structure that might allow more SSDI recipients to remain in the workforce. It also proposes creating an Interagency Council on Workforce Attachment, which would better coordinate disability activities across the Federal government and encourage demonstration projects aimed at providing people with disabilities with supported employment.

The budget also contains provisions that would increase coverage and improve healthcare outcomes for people with disabilities. It would expand access to Medicaid home and community-based long-term care services and supports, including supported employment. It also proposes a robust series of initiatives to strengthen Medicare by encouraging better outcomes for patients, and increases the number of quality health clinics by investing \$5.1 billion in the Health Centers program. Additionally, it invests \$8.1 billion in the Aging and Disability Resource Centers (ADRCs), which help inform people with disabilities of affordable health care options they may be eligible for. The ADRCs also connect people to funding for other long-term services and supports, including employment services. The President intends to continue to invest in the Affordable Care Act, which often is the best source of affordable health care coverage for working people with disabilities who are not eligible for SSDI.

For general information, read the [President's 2017 budget](#). For information on the President's budget as it applies to health care and employment, read the [Expanding Opportunities for People with Disabilities](#) brief.

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[Disability Advocates Create Comprehensive Toolkit Calling for Strong Implementation of the Home and Community-Based Settings Rule](#)

The [HCBS Advocacy Coalition](#) has released a three-part toolkit that explains the Center for Medicare and Medicaid Services' (CMS) Home and Community-Based Services (HCBS) Settings rule and its potential to promote the full integration of people with disabilities. The HCBS Advocacy Coalition is a group of prominent disability rights organizations working together to

advance state compliance with the HCBS rule and promote the full integration of people with disabilities in our society. HCBSadvocacy.org was created by the Association of University Centers on Disability (AUCD), the National Association of Councils on Developmental Disability (NACDD), and the National Disability Rights Network (NDRN) in collaboration with the DD (Developmental Disability) Network.

The three-part toolkit includes: (1) The Medicaid Home and Community-Based Settings Rules: What You Should Know!, which provides a broad overview of the various HCBS regulations and why HCBS is important; (2) Home and Community-Based Services Rules Q&A: Settings Presumed to Be Institutional and the Heightened Scrutiny Process, which explains special processes for reviewing settings that are likely to isolate individuals from the community; and (3) HCBS Setting Rules: How to Advocate for Truly Integrated Community Settings, which discusses ways in which advocates can help states implement the HCBS rules effectively so that they truly promote community integration.

The toolkit explains how to ensure that Medicaid-funded HCBS promotes competitive integrated employment for people with disabilities. For example, many State Transition Plans contain very little information on how the HCBS rules apply to non-residential settings, such as employment and pre-vocational services.

View the toolkit:

- [Part I - What You Should Know](#)
- [Part II - Settings Presumed to be Institution & the Heightened Scrutiny Process](#)
- [Part III - How to Advocate for Truly Integrated Community Settings](#)

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EconSys and ODEP Release State Review of HCBS Reimbursement Rates and Employment First Brief on Federal Resources

The Office of Disability Employment Policy (ODEP) and Economic Systems, Inc. (EconSys) have jointly released a 50-state review of the reimbursement rates and methodologies used in Home and Community-Based Services (HCBS) waivers for supported employment and integrated day services. The report compiles information from publicly available data reported by state Medicaid agencies or by other state agencies managing various HCBS waivers. The document describes each service 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 how many units each user tends to receive. For more information, read the [Employment First HCBS review](#).

In February, ODEP also released an Employment First technical brief, the fourth in a four-part

series, titled [Federal Resources Available to Support State Employment First Efforts](#). The brief provides state governments and external stakeholders with information about Federal funding and technical resources available to support state Employment First systems change efforts. The brief describes funding vehicles such as competitive grants, direct programmatic funding, demonstration projects, and Federal matching funds that help to incentivize changes to state plans that promote competitive integrated employment. Read all [four Employment First Technical Briefs](#).

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StatsRRTC Releases Its 2015 Annual Disability Statistics Compendium and 2015 Annual Report

The Rehabilitation Research and Training Center on Disability Statistics and Demographics (StatsRRTC), a project that compiles statistics on disability in the United States, has recently released its [2015 Annual Disability Statistics Compendium](#) and the [2015 Disability Statistics Annual Report](#). These two publications summarize the state of disability in the United States as it relates to a wide variety of relevant factors, including the number of people with disabilities who are employed and the type and quality of health care that they receive.

The *Compendium* is a web-based tool that compiles disability statistics already published by various federal agencies together in one place for ease of access. The *Compendium* discusses employment participation and how many people with disabilities are employed full-time and year-round in the United States, the amount of money that these individuals earn, the health insurance coverage of and health of people with disabilities, and the number of beneficiaries served by Social Security programs that support people with disabilities. This information is invaluable as a resource for advocates and state-level service providers seeking to improve outcomes for people with disabilities.

The *Annual Report* summarizes the statistics contained in the Compendium in a more accessible format. Specifically, the *Annual Report* answers the following questions: (1) How many people with disabilities live in the United States? (2) What is the disability percentage in different age groups? (3) What is the disability percentage for different types of disabilities? (4) To what extent are people with disabilities employed? (5) What are the earnings for people with and without disabilities? (6) What is the poverty percentage for people with and without disabilities? (7) Is disability status associated with percentages of smoking, obesity, and binge drinking? All of these are important questions for the purposes of gauging the overall independence and health of a population.

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NPR Explores Disparities in Workers' Compensation Options

A recent episode of NPR's Morning Edition highlighted disparities in access to workers' compensation for work-related injuries. Due to state employer opt out provisions in workers' compensation laws, 1.5 million workers in Texas and Oklahoma lack workers' compensation coverage if they become injured or significantly disabled while on the job. Although state employers who opt out still must provide workplace injury plans that comply with workplace benefits protections in the Employee Retirement Income Security Act (ERISA), in practice these alternative plans may not sufficiently protect employees who become disabled.

Under Federal ERISA law, employees who seek to enforce their rights under these alternative workplace injury plans must prove that their employer's administration of the plans is "arbitrary and capricious." Courts only reject benefits decisions if the decision is "unreasonable" or contrary to the terms of the plan. In practice, this means that employees rarely prevail in Federal court. Employees whose ERISA claims are rejected must pay the legal expenses of their employers. If the employee was able to sue under a state workers' compensation plan, the employee would receive an independent review of the case in state court and can receive pain and suffering damages they cannot receive in Federal court. State-regulated plans also typically lack the required arbitration and required settlement clauses of employer-regulated workers' compensation plans.

[Read the full article or listen to the NPR radio segment online.](#)

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Update on HCBS Transition Plans: Washington State

Washington State's newly revised HCBS Transition Plan makes a number of important steps towards the full integration of people with disabilities into the community. It proposes a four-year plan to transition the state away from the use of sheltered workshops and pre-vocational employment and expands access to supported employment integrated in the community. The plan has eliminated new admissions to prevocational services, as of September 1, 2015, and expects all beneficiaries to be employed or have an individual employment plan. Washington has also created an intricate series of milestones designed to train all staff in the proper implementation of the HCBS rules, which shows Washington's commitment to the effective implementation of the rule.

The Revised Statewide Transition Plan will be submitted to CMS for review in March 2016.

Read [Washington's Revised Statewide Transition Plan](#).

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Minnesota Waiting List for Services Ends for Many

Minnesotans with significant disabilities had much to celebrate as the state's Department of Human Services (DHS) removed long-standing barriers preventing them from accessing critical services, including support for competitive integrated employment. A court report issued from Minnesota's Federal District Court states that 1,100 people were moved off the state's waiting list for services in the last nine months of 2015. The report was a status report on DHS' attempts to comply with the changes required by Minnesota's August 10, 2015 Olmstead Plan. Although 23 percent of those on the state's waiting list have now been supplied with services, 4,000 people are still waiting for services in Minnesota.

The change was due to state's officials pressuring Minnesota counties to spend more of the waiver funds they were allocated annually for providing such services. State lawmakers passed legislation requiring the counties to spend approximately 97 percent of the waiver funds. The state Department of Human Services also began moving waiver funds from counties that regularly underspent to the counties with the longest waiting lists. Alex Bartolic, disability services director at the Department of Human Services, says they are "making great progress."

For more information on this positive change in Minnesota's policy, read the SCTimes article. For a breakdown of the specific statistics, read the [January 4, 2016 court report for Jensen v. Minnesota Department of Human Services](#).

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