



LEAD CENTER

New CMS Regulation on HCBS Settings: Implications for Employment Services

Wednesday, June 25, 2014

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TODAY'S SPEAKERS

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TODAY'S SPEAKERS

Annette Shea

Center on Disability and Aging Policy (CDAP)
Administration for Community Living
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The National Center on Leadership for the Employment and Economic Advancement of People with Disabilities (LEAD) is a collaborative of disability, workforce and economic empowerment organizations led by **National Disability Institute** with funding from the **U.S. Department of Labor's Office of Disability Employment Policy**, Grant No. #OD-23863-12-75-4-11.

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WELCOME

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LEAD CENTER MISSION

- ▶ To advance sustainable individual and systems level change that results in improved, competitive integrated employment and economic self-sufficiency outcomes for individuals across the spectrum of disability.



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Please note: This webinar is being recorded and the materials will be placed on the LEAD Center website at <http://www.leadcenter.org/webinars/new-cms-regulation-hcbs-settings-implications-employment-services>



TECHNICAL ASSISTANCE

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FRAMING TODAY'S CONVERSATION

- ▶ The LEAD Center co-hosted two webinars on the new regulations with the U.S. Department of Labor's Office of Disability Employment Policy (ODEP), CMS's Disability and Elderly Public Health Group and Employment First. Both webinars and related handouts are available in their entirety through the LEAD Center webinar archives by clicking the links below:
 - ▶ [Innovative Strategies for Using Medicaid State Plan and Waiver Options to Promote Integrated Employment of People with Disabilities](#) (Feb. 20, 2014)
 - ▶ [Implications of HCBS Final Rule on Non-Residential Settings – The Impact of New HCBS Guidance on Employment & Day Services](#) (Feb. 27, 2014)



FRAMING TODAY'S CONVERSATION

- ▶ CMS is in the process of preparing and releasing additional guidance regarding transition planning, public input requirements, person-centered planning, **application of the settings requirements to non-residential settings**, and changes to the 1915(c) Waiver Technical Guide.



FRAMING TODAY'S CONVERSATION

- ▶ Annette Shea, Center on Disability and Aging Policy with the US Department of Health and Human Services Administration for Community Living, will share information on the commitment of CMS and ACL to support improved employment outcomes.
- ▶ Samantha Crane, an attorney with background in disability law and Director of Public Policy at the Autistic Self Advocacy Network will provide a third-party assessment of the application of the settings requirements to non-residential settings.



FRAMING TODAY'S CONVERSATION

- ▶ Views expressed in this webinar are based on the speaker's expert analysis of existing regulations and programs. They do not necessarily reflect the views or policies of the Centers for Medicaid and Medicare Services or the U.S. Department of Labor's Office of Disability Employment Policy, nor does the mention of trade names, commercial products, or organizations imply endorsement by the U.S. Government.



MEDICAID FINAL RULE: CMS 2249-F AND CMS 2296-F

- ▶ Published in Federal Register on January 16, 2014
- ▶ Designed to ensure that services provide through home and community-based services (HCBS) funding are actually community-based
- ▶ Applies to all HCBS provided through the Community First Choice Act, State Plans (Section 1915(i)), or HCBS waivers (Section 1915(c))



TIME FRAME

- ▶ Rule applies to all new 1915(c) waivers and 1915(i) state plan amendments
- ▶ States must submit “transition plan” when renewing/amending waivers or state plan amendments
- ▶ Alternately, states must submit transition plan within 1 year of effective date of final rule
- ▶ If no renewal or amendment is submitted before March 17, 2015, then transition plan is due on March 17, 2015
- ▶ See HCBSadvocacy.org for key deadlines in your state



HCBS REQUIREMENTS

1. HCBS must be provide after person-centered planning process and service plan
 - ▶ Must include people chosen by individual
 - ▶ Must allow person to make **informed choices**
 - ▶ Must be reviewed periodically
 - ▶ Service providers are not part of the person-centered planning process unless there are no other viable options and the state has a conflict-of-interest policy in place



HCBS REQUIREMENTS

2. Settings must be:

- ▶ Integrated into community and maximize *opportunities to seek employment and work in competitive integrated settings*, control personal resources, and receive services in the community
- ▶ Must also be consistent with individual choice, right to privacy, dignity, respect, freedom from coercion and restraint
- ▶ Must facilitate autonomy, independence, and choice of services and supports

HCBS REQUIREMENTS

- ▶ Focus is on nature and quality of individuals' experiences
- ▶ Individuals must have maximum opportunities for community integration, including competitive integrated employment
- ▶ Must also maximize opportunities to control personal resources, engage in community life



RESIDENTIAL V. NON-RESIDENTIAL SETTINGS

- ▶ Regulations provide additional requirements for provider-owned residential settings
- ▶ However, *regulations apply to non-residential settings as well*, including places where people receive environmental supports
- ▶ CMS will issue additional guidance explaining application of rule to non-residential settings



SERVICES IN NON-RESIDENTIAL SETTINGS

Include:

- ▶ Adult Day Health Services (also known as “adult day care”
 - ▶ Many of these services have historically been provided in settings that are segregated, [as noted by the Department of Justice](#) after its investigation of Rhode Island

SERVICES IN NON-RESIDENTIAL SETTINGS

▶ Habilitation Services

- ▶ Includes home-based habilitation services that may help people gain skills in activities of daily living
- ▶ This also includes “day habilitation” services, which are also often center-based in some states



SERVICES IN NON-RESIDENTIAL SETTINGS

- ▶ Expanded Habilitation Services (42 C.F.R. 440.180)
 - ▶ “Pre-vocational” services, which prepare an individual for paid or unpaid employment
 - ▶ Not focused on job tasks or specific employment objectives but rather general skills, like following directions, attendance, task completion, safety, etc.
 - ▶ Individuals are not paid, or not paid more than 50% of minimum wage
 - ▶ Educational services
 - ▶ Supported employment services
- ▶ Currently, many sheltered workshop services are billed as “pre-vocational services”



SERVICES IN NON-RESIDENTIAL SETTINGS

- ▶ Some states, like Oregon, have already [announced in their transition plans](#) that they plan on waiting for additional guidance from CMS on non-residential settings before they determine whether their existing employment services need modification.
- ▶ Nevertheless, the Final Rule itself sets basic requirements for services in non-residential settings.



REQUIREMENTS FOR EMPLOYMENT SERVICES

- ▶ The following requirements will apply to services non-residential as well as residential settings
- ▶ This includes adult day programs, supported employment programs, and pre-vocational services



FULL ACCESS TO COMPETITIVE INTEGRATED EMPLOYMENT

- ▶ Final rule: the setting in which the person receives services “is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS.”



FULL ACCESS TO COMPETITIVE INTEGRATED EMPLOYMENT

- ▶ Setting must be integrated to “the same degree” of access as people not receiving HCBS.
- ▶ This refers to rural, at-home, or other settings where interaction may be limited for reasons other than disability.
 - ▶ E.g. - a person with a disability may work at home or on a non-disability-specific farm.

FULL ACCESS TO COMPETITIVE INTEGRATED EMPLOYMENT

- ▶ Person is not *required* to seek employment, but cannot waive the *opportunity* to seek employment or control personal resources in the future
- ▶ Segregated “pre-vocational” or habilitative programs that have poor track record of placing people in competitive integrated employment may not be considered to provide adequate opportunities



OPPORTUNITY TO CONTROL PERSONAL RESOURCES

- ▶ Employment or other habilitative services must offer opportunity to “control personal resources.”
- ▶ Consumers may need counseling in financial competency in order to manage benefits and finances while earning a paycheck.



CONFLICT OF INTEREST

- ▶ Providers of HCBS services for the individual cannot be part of person-centered planning process unless there are robust conflict of interest provisions.
- ▶ This applies to sheltered workshop operators, who may otherwise encourage sheltered work during planning process.



INFORMED CHOICE

- ▶ Individuals must have opportunity for “informed choice” during person-centered planning process.
- ▶ Options must include “non-disability specific settings.”



PROVIDER-CONTROLLED SETTINGS

- ▶ Final Rule includes specific standards that apply to provider-owned or operated *residential* settings
- ▶ HCBS recipients must have rights as tenants, right to privacy, right to control own schedules and activities, right to accessible structures
- ▶ Some “provider-owned” settings, like hospitals or nursing facilities, are *automatically* not HCBS

PROVIDER-CONTROLLED SETTINGS

- ▶ CMS may apply similar “extra” standards to “provider-operated” employment or training settings, such as:
 - ▶ Ability to set employment goals
 - ▶ Right to accessible workplace or education, including reasonable accommodations
 - ▶ Protection by laws governing employment, such as Fair Labor Standards Act or Family Medical Leave Act
 - ▶ These standards are *supplements* to the other requirements, including access to non-disability-specific settings and competitive integrated employment



SAMPLE STATE RESPONSE

- ▶ Tennessee submitted “[concept paper](#)” for transition on May 30, 2014.
- ▶ Will create a new program, *Employment and Community First CHOICES*, that will be “geared toward promoting and supporting integrated, competitive employment and independent living as the first and preferred option” for all people with ID/DD.
- ▶ Will be operated as a managed long-term services and supports program.



SAMPLE STATE RESPONSE

- ▶ Consumers can choose from 3 models of service delivery:
 - ▶ Consumer direction: person manages own support budget
 - ▶ Health home agency with choice: person selects a provider who will help direct services
 - ▶ Basic managed long-term services and supports



SAMPLE STATE RESPONSE

- ▶ Tennessee program will provide preparation and transition services to youth with disabilities under age 21
- ▶ Adults will receive employment supports regardless of whether they are at the “nursing facility” level of care
- ▶ Will first target “new” HCBS recipients, then be expanded to existing recipients
 - ▶ (existing recipients have already been receiving “employment first” services through pre-existing program)



OTHER CONSIDERATIONS

- ▶ Recent ADA *Olmstead* litigation over use of segregated employment programs:
 - ▶ *United States v. Rhode Island* (settled 2014): consent decree requires phase-outs of sheltered workshops and increase in supported employment services
 - ▶ *United States v. Virginia* (2012): requires states to provide supported employment to people with ID/DD
 - ▶ *Lane v. Kitzhaber* (Oregon, pending): Department of Justice issued findings letter stating that segregated employment services violate the ADA



OTHER CONSIDERATIONS

- ▶ Compliance with *Olmstead* in provision of HCBS is one of the stated goals of the Final Rule
- ▶ As a result, the Final Rule should be interpreted as incorporating *Olmstead* requirements into Medicaid HCBS funding decisions



OTHER CONSIDERATIONS

- ▶ ACL, CMS, and VHA have announced grants to create “No Wrong Door” system for long-term supports and services.
- ▶ Department of Labor has announced \$15 million in grant funding through the latest round of the Disability Employment Initiative. Grants will support states that wish to improve education, training, and employment opportunities and outcomes for youth and adults by refining and expanding on successful public workforce programs.



IMPACT ON OTHER AGENCIES

- ▶ Workforce development agencies may integrate Medicaid-funded services into plans, e.g., pre-vocational or supported employment services
- ▶ School systems may also integrate Medicaid-funded services, such as pre-vocational or supported employment services, into transition planning
- ▶ Agencies may need to anticipate the consideration and/or inclusion of different kinds of services, partners and providers



OPPORTUNITIES FOR THE WORKFORCE SYSTEM

The Final rule and the multiple initiatives Medicaid is moving forward offer new opportunities for the public workforce system to partner with community-based organizations and support improved outcomes for Medicaid beneficiaries.



OPPORTUNITIES FOR THE WORKFORCE SYSTEM

- ▶ Include Medicaid in Integrated Resource Teams to identify and increase support for eligible job seekers with disabilities.
- ▶ Collaborate and blend/braid funds with Medicaid providers to support Discovery and Customized Employment.
- ▶ Connect eligible job seekers with disabilities to Medicaid Buy-In programs, allowing for increased earnings and savings.
- ▶ Design career pathways to increase the availability of frontline workers for Medicaid programs.



RESOURCES

- ▶ Medicaid has posted Question and Answers on the Final Rule on their website, <http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Long-Term-Services-and-Supports/Home-and-Community-Based-Services/Downloads/Final-Q-and-A.pdf>
- ▶ On March 20, CMS released the [Home and Community-Based Service \(HCBS\) 1915\(c\) Waiver and 1915\(1\) State Plan Amendment \(SPA\) Settings' Requirements Compliance Toolkit](#). While it does not include tools for employment settings, this toolkit was developed to help stakeholders comply with the new requirements
- ▶ Additional information on the new regulations is available at <http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Long-Term-Services-and-Supports/Home-and-Community-Based-Services/Home-and-Community-Based-Services.html>



QUESTIONS?



LEAD CENTER *FREE* WEBINAR SERIES

- ▶ The LEAD Center will provide a new webinar on the last Wednesday of each month from 3:00p.m. EDT - 4:30p.m. EDT.
- ▶ Webinars will include three mini-series on:
 1. Economic Advancement
 2. Leadership
 3. Employment
- ▶ Next month launches the employment mini-series, focused on improving outcomes for individuals with disabilities.

<http://www.leadcenter.org/webinars>



UPCOMING WEBINARS

July 30, 2014 at 3:00pm EDT

Customized Employment: Moving Beyond the Basics

Join us to continue to build your understanding of Customized Employment and your ability to provide this innovative employment practice to those you serve. This webinar will move beyond the basics of Customized Employment to explore using the information gathered during Discovery to connect job seekers to a vast array of employment opportunities using a casual approach to job development. Participants will gain valuable information and strategies to support job placement efforts for a variety of job seekers both with disabilities, and harder to serve job seekers without disabilities.

Target Audience: Workforce Development Professionals, Employers, Individuals with Disabilities and related stakeholders



UPCOMING WEBINARS

August 27, 2014 at 3:00pm EDT

Best Practices in Employee Retention and Return-to-Work: Lessons Learned from Employers

Disability management and prevention is an important component in retaining talented employees and reducing turnover costs. In 2013, the LEAD Center studied a large successful U.S. Corporation to learn about and document effective retention and return-to-work policies and practices. This is a major focus for the U.S. Business Leadership Network as well as the Families and Work Institute, which just published their 2014 National Study of Employers. Join us for a review of lessons learned including:

- Employer retention and return-to-work best practices.
- How workforce professionals can partner with employers to promote employee retention and return to work.
- How to identify employers with policies that support customized employment.

Target Audience: Workforce Development Professionals, Employers, Policy Makers, Individuals with Disabilities and related stakeholders.



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THANK YOU

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