



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

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**January 30, 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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### **WIOA Advisory Committee Named**

The Department of Labor has named the members of its new Advisory Committee on Increasing Competitive Integrated Employment for Individuals with Disabilities. The Committee is part of the Workforce Innovation and Opportunity Act (WIOA), which was signed into law on July 22, 2014. Members of the committee will research ways to increase competitive integrated employment opportunities for people with intellectual, developmental and other significant disabilities. The committee will also prepare recommendations about the special wage certificate program under Section 14(c) of the Fair Labor Standards Act that permits employers to pay workers with disabilities subminimum wages under specific conditions. Federal members of the Committee include representatives from the Department of Labor, Administration on Intellectual and Developmental Disabilities (including the Administration on Community Living), Centers for Medicare and Medicaid Services, Rehabilitation Services Administration and Social Security Administration.

At its first meeting on January 22-23, the Advisory Committee discussed and heard testimony on the importance of Medicaid-funded services such as transportation, independent living services

and supported employment in assisting people to find and maintain competitive, integrated employment. Testimony included discussion on ways that new regulations on Medicaid-funded home and community-based services could increase opportunities to maximize availability of supports necessary for community living and supported employment services, which will enable access to the full breadth of competitive integrated employment opportunities. The final rule and accompanying guidelines will be critical for state agencies and service providers responsible for transitioning people with disabilities into housing and employment settings compliant with the regulations.

The Department of Labor received more than 280 nominations for public membership on the committee, which includes both private citizens representing particular stakeholders as well as federal officials. The 17 members appointed include three self-advocates alongside representatives of employment services providers, national disability advocacy organizations, academia and employer organizations. The committee's members are required to meet eight times annually, and must submit an initial report to the Secretary of Labor within one year.

To learn more, visit the [Department of Labor website](#).

<http://www.dol.gov/odep/topics/WIOA.htm>

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## **Open Enrollment Ends February 15**

Workers with disabilities seeking individual health insurance coverage will be able to enroll in plans via [healthcare.org](http://healthcare.org) until February 15, 2015. Under the Affordable Care Act of 2010, plans available through the Health Insurance Marketplace must be available to people with disabilities regardless of their medical history or disability status. Health insurers will also be required to cover medically necessary care including pre-existing conditions. People earning between 138 percent and 400 percent of the Federal Poverty Level (FPL) may be able to pay lowered monthly premiums. People interested in enrolling in health plans, but concerned about choosing a plan that meets their health care needs, can get help from trained navigators either in-person, over the telephone or online. So far, [9.5 million Americans have already enrolled in coverage through the Health Insurance Marketplace](#).

Access to individual insurance plans through the Affordable Care Act removes a major barrier for workers with disabilities, especially those whose earnings make them ineligible for Medicaid or Medicaid Buy-In programs. Although many employers provide health coverage to full-time employees, people with disabilities who are self-employed or work for small businesses may need coverage through individual plans.

Although the open enrollment period ends February 15, people with disabilities who have recently lost coverage or experienced changes in employment, income or family status can enroll in coverage through [healthcare.org](http://healthcare.org) year-round. Individuals can also use [healthcare.org](http://healthcare.org) year-round to determine their eligibility and enroll in Medicaid.

To learn more, visit [healthcare.org](http://healthcare.org).

<http://www.hhs.gov/news/press/2015pres/01/20150127b.html>

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## **Briefing on Earnings Disparity for Workers with Disabilities**

On January 22, the American Institutes for Research (AIR) held a congressional briefing session on the earnings disparity between workers with disabilities and nondisabled workers. Panelists discussed [AIR's recent report finding that workers with disabilities are paid an average of 37 percent less than workers without disabilities](#). This earnings disparity increases at higher levels of educational attainment. As the report noted, this earnings disparity can present an extra challenge for people with disabilities who must pay out-of-pocket for in-home supports, medical supplies, adaptive equipment or accessible vehicles. Panelists agreed that, in the face of high out-of-pocket costs for supports and decreased earnings potential, many workers with disabilities may exit or limit participation in the workforce in order to maintain eligibility for Medicaid or Medicaid buy-in programs. Representative Chris Van Hollen (D-MD) also spoke at the event.

<http://www.air.org/sites/default/files/Lack%20of%20Equal%20Pay%20for%20P...>

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## **Fair Wages for Workers with Disabilities Act Introduced (H.R. 188)**

This month, Congressman Gregg Harper of Mississippi introduced H.R. 188, the Fair Wages for Workers with Disabilities Act of 2015. Representative Harper introduced an identical bill in 2013 that gained 97 co-sponsors before dying. The bill aims to phase out special wage certificates issued under Section 14(c) of the Fair Labor Standards Act. These special wage certificates allow holders to pay employees with disabilities at subminimum wage rates. Although many of these settings supplement their income with Medicaid funding for “pre-employment” services provided to employees, few workers in these settings actually achieve competitive employment.

The bill would prohibit the Department of Labor from issuing any new certificates and would require all current certificate holders to transition to a competitive integrated employment model within three years. Private for-profit businesses would have one year to transition; public or government entities would have two years; and nonprofit organizations, which comprise 95 percent of all certificate holders, would have three years. Finally, the bill would repeal Section 14(c) to completely eliminate subminimum wage for people with disabilities. States would retain the ability to use Medicaid funding for supported employment and job search services that would help people with significant support needs find competitive integrated employment.

[Learn more about H.R. 188 at the NFB website.](#)

<https://nfb.org/timefactsheet>

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## **‘Hire More Heroes’ Offers Veterans Boost for Small Business Jobs**

In early January, House Republicans announced the re-introduction of the Hire More Heroes Act, which would incentivize small businesses to hire military retirees, reservists and veterans with disabilities. The bill permits small businesses without health plans to hire any person covered by Tricare or receiving care from the Department of Veterans Affairs without that person counting towards the 50 full-time worker threshold at which employers are required to offer health insurance for employees. Individuals could continue to receive health care through TRICARE instead of through their employer.

More information and “Hire More Heroes” bill text is available via [Military.com](http://www.military.com).

<http://www.military.com/daily-news/2015/01/08/hire-more-heroes-offers-ve...>

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## **Judge Strikes Down New Overtime Rules for Home Care Workers**

A federal court in Washington, D.C. has [recently issued two decisions striking down aspects of a Department of Labor regulation governing overtime pay for home care workers for people with disabilities](#). The regulation made most home care workers for people with disabilities eligible for overtime pay and compensation for time they spent traveling between two different service locations. It applied to all home care workers who were employed or jointly employed by someone other than the household in which they worked, which includes workers who are employed by a staffing agency and most workers who are paid through Medicaid home and community-based services programs.

Some disability advocacy organizations have previously raised concerns about how states might implement the new rule. Advocates were particularly concerned that states would rearrange workers’ schedules in order to avoid paying for travel time or overtime, and that these changes in schedule could make it difficult for workers with disabilities to get the help they needed when they needed it (for example, support in getting to work on time).

On December 22, the D.C. District Court ruled that the new regulations could not be applied to home care workers employed by third parties, such as Medicaid or staffing agencies. In a second decision on January 14, the judge ruled that the new regulation had too narrowly defined its definition of “companionship care,” thus giving overtime protections to workers who perform some other tasks like helping with health care or activities of daily living. The Department of Labor has appealed the decision.

<http://thehill.com/business-a-lobbying/229604-judge-strikes-down-second-...>

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## **Proposed Virginia Medicaid Budget Caps Hours of Home Care Workers**

Governor Terry McAuliffe’s [proposed Medicaid budget contains language forbidding some home](#)

health workers for working for more than one family as well as capping overtime hours for workers paid under certain waivers.<sup>7</sup> The proposed changes may limit workers to no more than 56 hours per week at any wage, which could lead to workers dropping some of their clients to remain in compliance. Many workers with disabilities rely on home care workers in order to perform daily tasks and maintain employment. Federal Medicaid rules already set an hourly wage of \$8.86 for home health workers, while prohibiting families or service recipients from supplementing that amount.

<http://www.dailypress.com/news/politics/dp-nws-ga-budget-hearing-2015010...>

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## **Delaware 1915(I) Plan Starting January 2015 Will Focus on Employment Supports for Workers with Disabilities**

Delaware's Pathways to Employment program, which will provide a variety of employment services to people with targeted disabilities, came into effect on January 1, 2015.<sup>8</sup> Under the program, employment and transition services for people with intellectual disabilities, autism spectrum disorders, visual impairments or physical disabilities will now be covered through Delaware's Medicaid 1915(i) State Plan.

Employment services include not only supported employment services but also job search assistance, career assessment, financial coaching, transportation to job sites, assistive technology and personal care services. Delaware expects to serve approximately 345 individuals through the program this year and gradually increase the number of individuals served over the next five years, rising to 430 by 2018.

To be eligible for services, individuals must be between the ages of 14 and 25 and have incomes exceeding 150 percent of the FPL.

<http://dhss.delaware.gov/dhss/dsaapd/pathways.html>

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