



Policy Update – Employment, Health Care and Disability - July/August 2016 Newsletter

August 30, 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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America Celebrates the 26th Anniversary of the Americans with Disabilities Act

July 26th, 2016 marked the 26th anniversary of the Americans with Disabilities Act (ADA). The ADA, passed in 1990, has improved access to the community and integrated employment for many Americans with disabilities who may have otherwise been unnecessarily segregated from the greater community. The ADA banned disability discrimination in employment, publicly-funded services and programs, and public accommodations such as hotels and restaurants, including access to any auxiliary aids and services necessary to make equal benefit possible.

Much has changed since ADA was passed in 1990. Curb cuts and ramps provide access to many public places and places of employment that were previously inaccessible to people with disabilities. Several cases, including the landmark Supreme Court case *Olmstead v. L.C.*, have found that rules which segregate people with disabilities away from their communities violate

the ADA. The Department of Justice has promulgated rules and regulations ensuring that the ADA's anti-discrimination mandate is upheld.

The LEAD Center celebrates the increased self-determination and inclusion of persons with disabilities, and the progress that has been made at all levels of government towards the full implementation of the ADA. The ADA supports the LEAD Center's work to promote employment and economic advancement for people with disabilities. As noted by President George H.W. Bush at the signing of the ADA, "Together, we must remove the physical barriers we have created and the social barriers that we have accepted. For ours will never be a truly prosperous nation until all within it prosper."

Read the [Department of Labor blog post](#) and the [presidential proclamation for the 26th anniversary of the ADA](#).

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HCBS Transition Plans: Update on Select Plans

During the months of July and August, the states of Missouri, Massachusetts, and Arkansas released revised versions of their home and community-based services (HCBS) Transition Plans and posted them for public comment. The state of Delaware was granted initial approval of its HCBS Transition Plan by CMS.

Massachusetts HCBS Transition Plan

[Massachusetts' HCBS Transition Plan](#) was posted in July 2016 and its public comment period ended on August 10, 2016.

Massachusetts' Transition Plan based its revisions to employment services on its "Blueprint for Success: Employing Individuals with Intellectual Disabilities in Massachusetts" program. Issued in November 2013, the blueprint proposes that the state close sheltered workshops by halting new referrals to them and transitioning the individuals in these settings into competitive integrated employment. The Transition Plan proposes significant revisions to Massachusetts' community-based day services (CBDS). Most of these changes were focused on quality control and assurance, to ensure that CBDS providers create "meaningful daily activities" for their beneficiaries.

Massachusetts' Department of Developmental Disabilities Services (DDS), in its self-assessment of CBDS services, conducted a survey to gather data on 98 CBDS providers. The results of this provider survey will be used to make significant changes with regards to the development of clear standards for CBDS programs, including the definition of "meaningful daily activities," the development of training manuals and technical assistance, and the incorporation of qualitative and quantitative measures into DDS' licensure and certification process for CBDS providers. Providers of day and employment services receiving HCBS funds under waivers from the Massachusetts Rehabilitation Commission (MRC) are now subject to stringent ongoing licensure

and certification procedures to ensure that the services they provide truly adhere to the CMS Final Rules.

Missouri HCBS Transition Plan

The [Missouri Transition Plan](#) was posted on July 29, 2016 with a request for comments using the [instructions on the Missouri notice](#).

The Missouri Transition Plan aligns its provider self-assessments with CMS guidance by categorizing settings that provide employment, health care, and residential services in the same location as presumptively isolating. These settings are rejected unless Missouri determines that they might overcome this presumption and unless CMS agrees with that determination through its heightened scrutiny review process. Missouri revised many of its employment-related service definitions for its Comprehensive and Community Support Waivers. For example, in Missouri's Comprehensive Waiver, the service "Community Employment" was renamed "Supported Employment Services" to better align with the CMS definition. The language pertaining to Supported Employment was strengthened by aligning it with the CMS HCBS Settings Rule and by making it more individualized. Missouri defines both Group Supported Employment from Individual Supported Employment in its waivers, but treats them as sub-classifications of the same service, "Supported Employment."

Arkansas HCBS Transition Plan

[Arkansas' Revised HCBS Transition Plan](#) was posted on August 17, 2016. It is available for public comment through September 15, 2016.

The Arkansas HCBS Transition Plan includes a clear timeline for transitioning all HCBS, including state policies associated with home and community-based employment services, into full compliance with CMS Final Rules. The state intends to modify its provider certification standards and Waiver Manuals to maximize competitive integrated employment by rewriting these standards to incorporate the U.S. Department of Labor's supported employment definition, as developed by the Employment First State Leadership Mentoring Program. The state generally found that its HCBS Waivers had policies, manuals, and statutory language that were partially, but not fully, compliant with CMS' Final Rules regarding employment and community integration. The state plans to complete remediation for most waivers by 2017.

Delaware HCBS Transition Plan

On July 14, 2016, the state of Delaware [was granted initial approval](#) of its HCBS Transition Plan by CMS. CMS' letter confirming initial approval states that Delaware completed its systemic assessment of all settings, identified remediation strategies to address the issues uncovered by its systemic assessment, and is working to implement these strategies. CMS reiterated the need for Delaware to address several concerns it had in order to receive final approval. First, CMS stated that Delaware must ensure that beneficiaries are provided with the ability to choose non-disability-specific settings as well as disability-specific settings for services across all home and

community-based services the state provides. This includes non-residential employment settings. Second, CMS noted that all services that cluster participants for the purposes of receiving HCBS must be assessed by the state for compliance. CMS specifically mentions prevocational services, group supported employment services, and group day habilitation services as examples. Third, CMS clarified again that reverse integration practices are not enough by themselves for a setting to comply with CMS' community integration requirements.

The state of Delaware administers two employment-related HCBS waiver programs designed to be compliant with CMS' Final Rules: The Pathways program and the PROMISE program. Pathways is a waiver program for individuals with disabilities aged 14-25 who want to work that provides them with employment services that help them achieve their goals. PROMISE provides behavioral health services and other supports to individuals with substance abuse and mental health disorders who need these services to remain in the community. Delaware's Transition Plan also lists specific home and community-based services (and the service definitions for each service) provided by its Department of Developmental Disability Services and Diamond State Health Plan that its compliance reviews and remediation will bring into full compliance with the Final Rules. This list specifically includes prevocational, day habilitation, and supported employment services.

For more information, read [the Delaware HCBS Transition Plan](#).

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CMS Releases Report on Medicaid LTSS Expenditures

The Center for Medicare and Medicaid Services (CMS) recently released a report on changes to long-term services and supports (LTSS), "[Improving the Balance: The Evolution of Medicaid Expenditures for Long-Term Services and Supports \(LTSS\), FY 1981-2014](#)". The report provides details on CMS' use of Medicaid to fund LTSS and on the various ways in which LTSS services have changed. LTSS are supports that help people with more chronic conditions live and work in the community, such as long-term health, personal care, or supported employment services.

The report explains that LTSS have undergone profound changes since 1981, changing from services generally provided in institutions to services that are primarily home and community-based. The report describes several major trends over the past 30 years, including the growth of section 1915(c) waivers as a method of service provision rather than providing LTSS in nursing facilities and intermediate care facilities. These changes are the product of the deinstitutionalization movement for persons with developmental disabilities. The use of HCBS now exceeds 50 percent of expenditures for people with developmental disabilities, but not for other groups.

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EEOC Releases New FAQs for Employers on How to Create Notices That Comply with Its Final Regulations on Employee Wellness Programs

The Equal Employment Opportunity Commission (EEOC) recently released a [sample notice](#) and [FAQs](#) that may assist employers in complying with its [final ADA regulations on employer-sponsored wellness programs, published on May 17, 2016](#). The final regulations at Section 1630.14 (d) (2) (iv) require employers to provide all employees, from whom they request personal health information, with a notice describing “the information to be collected, how it will be used, with whom it will be shared, and how it will be kept confidential.” The sample notice gives employers a template for constructing their own similar notice, while the FAQ provides employers with answers to frequently asked questions about the notice requirement.

The FAQ document clarifies that the employer, not necessarily the wellness program provider, is responsible for providing the notice. It clarifies that the notice must be provided in the method that will be most effective in reaching the employees invited to participate and in accessible formats for persons with disabilities. It also clarifies that the employer need not provide separate ADA and HIPAA notices for the wellness program. If the wellness program participants already received a HIPAA notice with this information, a separate ADA notice is not necessary. However, if the HIPAA notice does not include information that must be in the ADA notice, a separate notice might be necessary. This guidance will likely be helpful to employers who need clarification in order to provide effective notices, particularly to employees with disabilities with protected health information.

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Harvard School of Public Health Study Finds Lack of Workplace Accommodations and Supports May Lead to Poorer Health Outcomes for Workers with Disabilities

A July 2016 survey by Harvard’s T.H. Chan School of Public Health reports that people with disabilities, who are not provided with necessary workplace accommodations and health-related supports in the workplace, are disproportionately likely to report adverse health effects as compared with people without disabilities. The survey shows that workers with disabilities are more likely than workers without disabilities to rate their stress levels as higher; to rate the healthy food options at the workplaces as poorer; to state that the absence of such options has had an adverse effect on their health; and to rate their workplace policies as less accommodating.

About half of all workers with disabilities rate their workplace as only fair or poor at providing a healthy work environment, as compared to 21 percent of non-disabled workers. These statistics may suggest that workplace policies and wellness policies and programs geared towards preserving the health of all workers may have less of an impact on workers with disabilities. A more individualized approach towards wellness with regards to workers with disabilities may or

may not be necessary.

The Harvard study also details the effect of the workplace on health with regards to a wide variety of other social groups and types of workers. For more information on the study, [read "The Workplace and Health,"](#) produced by the Harvard T.H. Chan School of Public Health.

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