



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

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**April 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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## **CMS Finalizes Medicaid and CHIP Mental Health and Substance Abuse Parity Rules, Providing Access to Behavioral Health and Vocational Rehabilitation Services**

The Center for Medicare and Medicaid Services (CMS) has released final regulations on mental health and substance abuse disorder parity for people in Medicaid Managed Care Organization, (MCOs), Medicaid Alternative Benefit Plans (ABPs), and Children’s Health Insurance Program (CHIP) health insurance plans. These benefit plans must now provide mental health and substance abuse disorder benefits that comply with parity standards in the Affordable Care Act (ACA) and Mental Health Parity and Addiction Equity Act of 2008. These benefits include supported employment services for people with psychiatric disabilities, such as Vocational Rehabilitation (VR) or Individualized Placement and Support (IPS) programs. They must also provide the same parity protections for long-term mental health and substance abuse support services that they provide for other long-term support services.

Health and Human Services Secretary Sylvia M. Burwell said that the rule “eliminates a barrier to coverage for the millions of Americans who for too long faced a system that treated behavioral health as an unequal priority.” The rule will impact the more than 23 million people enrolled in one of the three types of benefit plans it affects, particularly (according to CMS) the percentage of Medicaid and CHIP beneficiaries with significant emotional or behavioral difficulties. Ensuring that there is sufficient and appropriate coverage of mental health services for people with psychiatric disabilities may improve their prospects in other areas of their lives, including employment. CMS, when estimating the impact of this regulation in Section (VI) (C) of their report on the final rule, estimated that increased access to mental health treatment would lead to better employment outcomes for this population.

For more information on the rules change:

- [CMS press release](#)
- [Medicaid Fact Sheet: Mental Health and Substance Use Disorder Parity Final Rule for Medicaid and CHIP](#)
- [Final Rule: Medicaid and Children’s Health Insurance Programs; Mental Health Parity and Addiction Equity Act of 2008; the Application of Mental Health Parity Requirements to Coverage Offered by Medicaid Managed Care Organizations, the Children’s Health Insurance Program \(CHIP\), and Alternative Benefit Plans](#)

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**Department of Health and Human Services Releases Report on the Benefits of Expanding Medicaid to Cover More Behavioral Health Programs, Including Its**

## Impact on Employee Productiveness

The Department of Health and Human Services (DHHS) released [a report on how expanding Medicaid could provide more Americans with access to both health insurance and behavioral health services](#). According to DHHS, people who need behavioral health services make up 28 percent of all low-income uninsured people living in states that did not expand Medicaid under the Affordable Care Act. The report notes that expanding Medicaid benefit programs improves a wide variety of economic, social, and health outcomes for this population.

The report highlights that, if all states expanded Medicaid, an estimated 540,000 more people would report good health and an estimated 371,000 fewer people would experience depression. The report also states that, ultimately, expansion might lead to cost savings for the state. DHHS found that, given that the state spends money to cover behavioral health care costs for the uninsured, expanding Medicaid sometimes increased general health care cost savings. They also experienced improvement in the quality of behavioral health programs without incurring new costs.

The report also notes that workers who receive some form of behavioral health treatment for their mental health or substance abuse condition are more productive. Research found that workers with substance abuse disorders who received specialized behavioral health treatment were less likely to miss work, be late for work, have a conflict with a co-worker or be less productive at any time. The overall economic benefit was nearly \$8,205 annually per worker with substance abuse disorders alone.

For further information on the CMS report, read the [HHS press release](#).

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## **Senator Schumer Promotes Disability Integration Act Initiative, a Bill that Requires Providers to Deliver All Support Services (Including Employment Services) in the Community**

Senator Charles Schumer (D-NY), other members of Congress, and disability rights advocates have recently made a more concerted effort to promote Senate Bill S. 2427, known as the Disability Integration Act (DIA). Senator Charles Schumer announced his initiative to promote the bill in late March 2016. The DIA is designed to address the fact that people with disabilities who receive long-term support services (LTSS), often cannot receive, find or fund services in the community. This leads to the unnecessary segregation and exclusion of these individuals. It may be impossible for people with disabilities to pursue or sustain competitive integrated employment and supported employment in the community if they cannot get the support services they need in activities of daily living, such as personal care or personal assistant services, in a community-based setting.

The DIA would require that every individual eligible for LTSS have the ability, if they choose, to

receive those services in the community. It would prohibit policies that (a) prevent people for qualifying for LTSS on the basis of age or the age that they acquired a disability, (b) require a person to receive LTSS in a disability-specific or congregate setting, and (c) have rules that arbitrarily limit access to community-based LTSS.

Senator Schumer said of his bill that “we have to do everything in our power to make sure that those with disabilities have the resources needed to live and thrive in ..... their own communities.” For more information on the bill and the initiative, read the [WAMC Northeast Public Radio article](#), or visit the [ADAPT website](#).

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## **Congress Considering Bills that Would Expand the Amount Working People with Disabilities Can Save in ABLE Accounts**

Three bills were recently introduced in Congress that would expand the flexibility and the number of people who have access to the tax-advantaged savings accounts created by the Achieving a Better Life Experience Act (ABLE). The bills are the ABLE To Work Act (H.R. 4795, S 2702), the ABLE Financial Planning Act (H.R. 4794, S.2703), and the ABLE Age Adjustment Act (H.R. 4813, S.2704). The ABLE Act currently allows beneficiaries to save up to anywhere from \$250,000 to \$500,000 total, up to \$100,000 without impacting their Supplemental Security Income (SSI), and \$14,000 annually without impacting their eligibility for federally-funded means-tested benefits, such as Social Security and Medicaid. It is important to note, however, that once the account reaches \$100,000, the beneficiary’s monthly SSI will be temporarily suspended until such time that the account balance falls back below the \$100,000 cap. This \$100,000 cap only applies to SSI and will not affect any other federally-funded public benefits. States are still working on developing their ABLE Act programs. Funds placed in ABLE accounts may be used for any expenses or expenditures that are sufficiently related to the beneficiary’s disability, termed “qualified disability expenses.” Qualified disability expenses can include, among other things: health care expenses, housing, long-term support services (LTSS) such as personal care and behavioral health services, and employment supports such as job coaches and transportation to and from work.

The ABLE to Work Act would allow people with disabilities who are employed to annually allocate extra money, up to the federal poverty level of \$11,770, providing an additional benefit to working people with disabilities that plan to use an ABLE account. The bill does not remove the Substantial Gainful Activity (SGA) limits with regards to income that ABLE beneficiaries need to adhere to in order to remain eligible for SSI or SSDI.

The ABLE Age Adjustment Act would expand eligibility for ABLE accounts to people with disabilities who became disabled before the age of 46, rather than the current onset age limit of 26.

The ABLE Financial Planning Act would allow beneficiaries of college savings accounts

(commonly referred to as 529 accounts) to shift funds from these accounts to ABLE accounts. U.S. Representative Pete Sessions, a sponsor of the bills, states that the ABLE accounts were an excellent first step and that the package will both strengthen the law and ensure a greater number of opportunities for people with disabilities.

For further information, read [Representative Pete Sessions' press release on the bills](#).

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## **Kansas State Officials “Sending Mixed Messages” on Disability-Related Medicaid Waiver Integration**

As reported in the *Salina Post* (04/05/16), Kansas state officials are giving conflicting timelines for when a massive change (i.e., waiver integration) in the way Kansans with disabilities receive Medicaid-funded services will occur. The planned waiver integration would merge waivers that are currently split across seven groups based on disability type (i.e., developmental, physical, frail elderly, autism, traumatic brain injury, technology assisted and serious emotional disturbance) into two: one for children and one for adults. A legislative subcommittee recommended postponing the change for one year until January of 2018. However, at a KanCare advisory council meeting, officials from the entities implementing the change said it would still happen in 2017. KanCare is the program through which the State of Kansas administers Medicaid.

Any delay may impact the benefits that Kansans with disabilities receive, including employment services. In particular, the waiver integration impacts those who receive services tailored to their specific needs, such as supported employment services for adults. Some stakeholders have concerns that state legislators have not clarified how they intend to structure and deliver services following the waiver integration. Other stakeholders expressed concerns that the delay itself, rather than the planned integration, will slow service delivery. Tim Keck, Interim Secretary of the Kansas Department for Aging and Disability Services, said that services for different waivers have different waiting lists and that some may have to wait longer for services if there is a delay.

For more information on the developments in Kansas, read the [Salina Post article](#).

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## **Maine Department of Health and Human Services (DHHS) Proposes Changes to Reimbursement for Mental Health Providers**

Maine's mental health providers are concerned about potential changes to Maine's reimbursement rate structure proposed by a consultant hired by Maine's Department of Health and Human Services (DHHS). The study was part of a compromise budget bill enacted by the legislature in June 2015. It examines reimbursements for a number of different services funded according to the rules listed in various sections of the MaineCare Benefits Manual. Health and

Human Services Commissioner Mary Mayhew said the rate study was performed to ensure that health and behavioral health services funded by taxpayers have appropriate costs.

Mental health providers have indicated that while the studies include suggestions for both reimbursement increases and decreases, the overall effect will be that providers receive much less funding. The study examines and makes recommendations for decreases to Section 17 funding, which covers behavioral health services designed to promote community-based support services for people with psychiatric disabilities. Section 17 and other Sections fund supported employment services, which will impact services such as the [Community Employment Services project](#).

Mary Lou Dyer, director of the Maine Association of Community Service Providers, said that the mental health community is still “reeling from the proposal” and is reviewing the details. DHHS is still determining whether it is committed to the rate reductions proposed by the consultant. For more information, read the [Bangor Daily news article](#), the [Portland Press Herald article](#), or the [consultant’s full report](#).

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## **Disability Rights Ohio and Six Individuals with Developmental Disabilities File Class Action Lawsuit against Ohio State and State Officials**

Disability Rights Ohio, on behalf of six individuals with developmental disabilities, filed a lawsuit claiming that Ohio is in violation of the Supreme Court’s ruling *Olmstead v. L.C.* and the Americans with Disabilities Act (ADA) for not providing sufficient alternatives to institutional placements. The six individuals in the complaint are at serious risk for institutionalization and wish to reside in a community setting and receive integrated, community-based employment or day services. They cannot do so, the Complaint contends, because Ohio’s waiting list for Home and Community Based Medicaid waiver funding is too long.

According to the complaint, many of the residents of Ohio’s intermediate care facilities (ICFs) want services in the community rather than through an ICF program, including employment services. Rather than receiving support for integrated work in the community, most of the people who live in ICFs work in sheltered workshops or attend segregated day programs due to lack of access to services that facilitate and support competitive, integrated employment. The complaint also notes that individuals with developmental disabilities living at home have similar concerns. Disability Rights Ohio’s Director Michael Kirkman said that, because each of Ohio’s 22 counties separately provide developmental disability services, access to service depends on where residents live. The complaint seeks class-action certification, as 27,800 Ohioans may be similarly situated.

Zach Haughawout, a deputy director with the Ohio Department of Developmental Disabilities, disagrees and said that the state is allocating sufficient funds to community-based options for

people with developmental disabilities. He reported that the state recently created 3,000 new waiver slots to cover community-based options, 1,200 of which will be available to people who would otherwise be at risk for institutionalization.

For more information on the lawsuit, read the [AdvanceOhio article on the lawsuit](#), [The Blade article](#), or [the complaint](#).

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## **CMS Approves Tennessee's HCBS Transition Plan, Including Supported Employment Provisions**

On April 13, 2016, the Center for Medicare and Medicaid Services (CMS) granted final approval for Tennessee's Statewide Transition Plan, designed to bring the state into compliance with CMS' final rules on home and community-based services (HCBS). [CMS has granted approval of Tennessee's plan](#), according to CMS' announcement, finding that Tennessee has completed its systemic and site-specific assessments and clearly identified remediation strategies for fixing the issues it uncovered in both. CMS also said that it approved the plan because Tennessee has created a very comprehensive heightened scrutiny procedure, which will allow the state to review whether settings that have been identified as institutional or isolating in nature have overcome those characteristics and comport with the rule, or a plan for relocating beneficiaries if a setting cannot come into compliance.

Tennessee's Transition Plan states that it has aligned all waiver incentives and systems of reimbursement toward supporting integrated employment at a competitive wage and community living as the preferred outcome for all those receiving HCBS. For example, Tennessee's Department of Intellectual and Developmental Disabilities (DIDD) conducted a self-assessment and found that, while its policies were compliant with the final HCBS rules, its provider manuals and training requirements for providers needed to be updated. DIDD has now submitted its provider manuals to TennCare for review. They now include both compliance with HCBS-specific rules and exploration of supported employment and community volunteer options as requirements for service providers. Tennessee presumes that its sheltered workshops and day habilitation settings are out of compliance with the final rule and will require major modifications in order to comply. Tennessee has also built in Individual Experience Assessments as an important component of its evaluations of a setting's effectiveness.

For more information on Tennessee's Transition Plan, [read the Transition Plan](#) or [NASDDS' brief article on the approval](#).

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