



# Employment, Health Care and Disability Policy Update: November 2016 Newsletter

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**November 29, 2016**

The LEAD Center's Employment, Health Care and Disability Policy Update is a quarterly update focusing on the intersection of disability, employment and health care policy. The Employment, Health Care and Disability Policy Update 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 Employment, Health Care and Disability Policy Update is a project of the LEAD Center in collaboration with the [Autistic Self Advocacy Network](#).

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## HCBS Transition Plans Update

### **Arkansas**

On November 7, 2016, the Centers for Medicare and Medicaid Services (CMS) granted initial approval for the Arkansas HCBS Transition Plan. CMS stated that they granted initial approval because the state completed its systemic assessment and clearly outlined remediation strategies that rectified compliance issues uncovered by the systemic assessment.

Several issues of compliance that Arkansas rectified in its latest revisions to the Plan relate to employment. The state now says that it will modify the definition of Supported Employment services in its regulations to fully address the Final Rule and reflect the state's participation in

the Department of Labor Office of Disability Employment Policy (ODEP)'s Employment First State Leadership Mentoring Program.

Arkansas still needs to take some steps in order to receive final approval from CMS, including: (a) assessing all settings that cluster participants, including prevocational settings, sheltered workshops and settings that provide day habilitation, for compliance with the Rule; (b) explaining the action steps they will take to improve outreach to beneficiaries of Medicaid-funded HCBS; and (c) ensuring that providers are aware that reverse integration alone does not meet the requirements of the Final Rule.

For more information, [read the CMS letter granting Arkansas initial approval.](#)

### ***South Carolina***

On November 3, 2016, CMS granted initial approval to South Carolina for its HCBS Transition Plan. Several issues of compliance that South Carolina rectified in its latest revisions to the Plan relate to employment. For instance, CMS was particularly concerned that beneficiaries in adult day care settings might not have opportunities to pursue Competitive Integrated Employment (CIE). South Carolina originally included language showing that, when the state determines an individual would benefit from employment, the state will regulate the terms and conditions of employment and “supervise” the beneficiary. CMS asked for further clarification that this new provision does not make the state/provider the employer of record. South Carolina stated it will include language by January 31, 2017 affirming the following: (a) individualized employment services in the community are the first and preferred service option; (b) individuals are not mandated to have the provider as their employer of record, and (c) language defining the meaning of “supervision.”

South Carolina still needs to take some steps in order to receive final approval from CMS: including clarifying whether all HCBS beneficiaries were given an opportunity to complete the state's survey of beneficiaries and family members, and whether the state ensured beneficiary and family members' surveys were independent of one another.

For more information, [read the CMS letter granting South Carolina initial approval.](#)

### ***Indiana***

On November 8, 2016, the Centers for Medicare and Medicaid Services (CMS) granted initial approval to the Indiana HCBS Transition Plan.

Several issues of compliance that Indiana rectified in its latest revisions to the Plan relate to employment, but do not fully address CMS' concerns. CMS asked Indiana to verify that all Supported Employment services that cluster participants were reviewed for compliance with the Final Rule. CMS also asked Indiana to clarify the service ratio in the Transition Plan to reflect that all Supported Employment services require a 1:1 service ratio or, if that is not the case, “to include group Supported Employment settings among the settings that will be assessed and

validated for compliance with the home and community-based settings requirements.”

In Indiana’s Division of Disability and Rehabilitative Services (DDRS) systemic assessment, CMS said that Indiana needed to include language showing that individuals would be able to control their resources and pursue Competitive Integrated Employment in the community. Indiana created language that would put protections in place to address control of personal resources, but not what it would do with regards to employment.

For more information, read [the CMS letter granting Indiana initial approval](#).

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## **CMS RFI Seeks Information on How to Accelerate Access to Home and Community-Based Services**

On November 9, 2016, the Centers for Medicare and Medicaid Services (CMS) published a Request for Information (RFI) entitled, “Medicaid Program Request for Information (RFI): Federal Government Interventions to Ensure the Provision of Timely and Quality Home and Community-Based Services.” CMS seeks comments for this RFI until January 9, 2017.

The RFI requests input from the public on ways that CMS can improve the quality of Medicaid-funded Home and Community-Based Services (HCBS). Specifically, CMS requests information and data on reforms and policy options they can consider in accelerating the provision of Home and Community-Based Services (HCBS), including a focus on choice and control, program integrity, rate setting, quality infrastructure, and the homecare workforce. Medicaid-funded HCBS include the job training and Supported Employment services provided by Medicaid. CMS also requests input on how to improve policies that protect HCBS beneficiaries from harm and how to address some of the workforce challenges in this field (e.g., how to ensure that wages are sufficient to attract and retain staff).

CMS particularly wants to understand how it can best monitor and standardize the quality of services available, given diverse state service delivery systems and the lack of an overarching federal oversight framework for community-based long-term services and supports (LTSS).

For more information and how to comment, [read the RFI](#). If you wish to comment, you can do so online or by mail to: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS-2404-NC, Mail Stop C4-26-05, 7500 Security Boulevard, Baltimore, MD 21244-1850.

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## **United States Department of Justice Releases Statement on Application of Title II of the ADA and Olmstead to State Employment Service Systems for Individuals with Disabilities**

On October 31, 2016, the Department of Justice (DOJ) released [a statement](#) on how the

integration mandates of Title II of the Americans with Disabilities Act (ADA) and the Supreme Court case *Olmstead v. L.C.* apply to state and local governments' employment service systems for people with disabilities. This includes a state's health care service systems that also pay for employment services, such as Medicaid.

DOJ explains that a state's employment service system violates the integration mandate in *Olmstead* and Title II of the ADA when it unnecessarily relies on the use of segregated settings rather than Competitive, Integrated Employment to employ persons with disabilities. This includes using policies and practices (e.g., service system design, funding and reimbursement methods) that tend to favor segregated rather than integrated settings. Under the ADA, employment service systems are required to modify their policies and practices when these policies and practices discriminate against persons with disabilities. Unjustified segregation is considered discrimination.

DOJ emphasizes Supported Employment as the most effective way to integrate people with disabilities into the competitive workforce. It states that, in order for Supported Employment services to be successful, they must: (a) be individualized and matched to the skills of each person supported; (b) be of sufficient intensity and duration to be effective; and (c) allow individuals access to the community during non-work hours. DOJ recommends that the states cultivate their integrated day services programs in conjunction with their Supported Employment services, but not be delivered at the same time.

[Read the DOJ statement for more information.](#)

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## **CMS Releases National Data Report for 2012 on Demographics of Beneficiaries Receiving Medicaid-Funded Long-Term Services and Support**

The Centers for Medicare and Medicaid Services (CMS) recently released its report "[\*Medicaid Long-Term Services and Supports Beneficiaries in 2012\*](#)," which describes the 2012 population who were receiving Medicaid-funded Long-Term Services and Supports (LTSS). The report is part of a series of reports contracted by CMS, which analyze CMS's expenditures, both over time and for a particular year; waiver data; and beneficiary data relating to LTSS. Medicaid-funded LTSS include employment-related services, and beneficiaries of Medicaid-funded employment LTSS would be included in the data.

CMS found that the majority of Medicaid beneficiaries of LTSS used HCBS rather than services delivered in institutions. Of the LTSS beneficiaries receiving HCBS, the two most common types of HCBS used were Section 1915(c) waivers, used by 48 percent of all HCBS beneficiaries, and personal care services, used by 28 percent. One or more Section 1915(c) waivers in all States cover employment services, so some of the 48 percent of beneficiaries using Section 1915(c) waivers are receiving employment-related services. Many beneficiaries used more than one type of HCBS service at the same time.

These 2012 demographics reflect the growing preeminence of HCBS as the chief service delivery method for persons with disabilities served by Medicaid. For more information on the data, [read the report](#). For future reports, [periodically check the CMS LTSS website](#).

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## **Nation Celebrates National Disability Employment Awareness Month**

October was National Disability Employment Awareness Month (NDEAM), a time during which many people reflect on both the progress that has been made towards the full employment of people with disabilities and the long way that we still have to go. This year's theme was "#Inclusion Works." First instituted in 1945, Congress declared the first week in October "National Employ the Physically Handicapped Week." [The Office of Disability Employment Policy \(ODEP\) offers template press releases and other materials every year](#) to help disability service providers and others celebrate the month.

A variety of service providers, federal agencies, and others celebrated NDEAM. This included state and federal agencies that provide services which include or facilitate employment for people with disabilities, some of which are supported by Medicaid. Here are some of many examples:

- The White House hosted [several events and an Opening and Closing Session on NDEAM](#), celebrating the federal government's success at increasing the number of employees with disabilities in its ranks
- The Administration for Community Living celebrated NDEAM by [posting a blog on their website](#);
- Illinois' federal agencies, including its Department of Human Services (DHS) and Department of Rehabilitative Services (DRS), which offer health care and long-term services and supports, [held multiple events around the month's theme](#); and
- Colorado State University [created a series of dialogues on disability](#), including one on how mental health impacts productivity in the workplace.

The U.S. Department of Labor also released the [Medical- and Disability-Related Leave Advisor tool](#) to close out the month. This tool helps employers and employees understand the medical and disability-related leave that employees are entitled to, by asking a series of questions to determine which federal laws apply.

ODEP is committed to increasing the number of people with disabilities engaged in competitive integrated employment in their communities. For more information, visit [the ODEP NDEAM webpage](#).

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