

OPPORTUNITIES AT THE INTERSECTION OF THE HCBS SETTINGS REGULATION AND WIOA

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There exists now an opportunity for states to systematically change current service systems that support people with disabilities to achieve valued outcomes. States should use this opportunity to focus on systemic change and not just compliance with the U.S. Department of Health and Human Services (HHS), Centers for Medicare & Medicaid Services (CMS) Home & Community Based Services (HCBS) settings rule. Systemic change will come about as a result of vision, leadership, and ardent stakeholder engagement. States have the opportunity to strengthen or, in some cases, forge new partnerships with the people who receive supports and services, vocational rehabilitation agencies, workforce development, labor/employment agencies, and school systems to focus on achieving real employment outcomes for people with disabilities. This level of transformation requires states to fully embrace the goal that employment in integrated settings is the priority service option for the people they support.

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NEW RULES AND REGULATIONS

In early 2014, CMS promulgated the new HCBS settings rule, effective March 17, 2014. In mid-2014, the Workforce Innovation and Opportunity Act (WIOA) was passed by Congress and became effective upon signature by the President on July 22, 2014. Their passage puts a laser focus on the need to reform the dismal status of employment of people with disabilities and offers states an opportunity to transform their systems so they truly support people to achieve valued life outcomes.

The HCBS settings rule impacts all 1915 (c) Home and Community Based Services (HCBS) waivers, section 1915 (i) State Plan HCBS and section 1915 (k) Community First Choice authorities and covered Home and Community Based Setting Regulations. The stated purpose for the rule per CMS is

“...to ensure that individuals received Medicaid HCBS in setting that are integrated in and support full access to the greater community...This includes opportunities to seek employment and work in competitive and integrated settings, engage in community life, control personal resources and receive service in the community to the same degree as individuals who do not receive HCBS...”

WIOA includes changes for the employment services funded through the U.S. Department of Labor (DOL) and the vocational rehabilitation services funded through the U.S. Department of Education (ED). WIOA replaced the Workforce Investment Act of 1998 and amended the Rehabilitation Act. Additionally, the new act directed the creation of a National Advisory Committee on Increasing Competitive Integrated Employment for Individuals with Disabilities. Per the announcement on the recent reorganization within the Administration for Community Living (ACL), the actions were taken “to better align missions,” including accommodation of programs that will move from ED to ACL as part of WIOA. Among the many reforms included in WIOA is the goal to increase access for people with disabilities to high quality workforce services that prepare them for competitive, integrated employment. WIOA also, for the first time, defined competitive, integrated employment, added a definition for customized employment, and provided clarification in the definition of supported employment. The Unified Plan included in WIOA and the performance accountability provisions take effect on July 1, 2016.

FOCUS ON EMPLOYMENT

Why the focus on employment of people with disabilities? To provide some context on the disparity that exists in employment for people with disabilities, DOL November 2014 statistics showed that labor force participation by people with disabilities was 19.7 percent while for people without disabilities it was 68.7 percent. For that same time period, the unemployment rate for people with disabilities was 10.8 percent and for people without disabilities it was 5.3 percent. We know that the primary way for people to escape poverty and increase their standard of living is employment. Employment allows us all to make choices about where we live and what kinds of social activities we engage in, widens our opportunities for relationships, and provides status in our lives and the eyes of others.

Many organizations such as NASDDDS, NACDD, NAMD, NDI, AUCD, NDRN, the CSAVR, and ANCOR are focusing their actions and those of their members on the importance of employment. Additionally, the President’s Committee for People with Intellectual Disabilities (PCPID), the National Governor’s Association, and the Administration on Community Living have all provided information, webinars, and publications focused on the importance of employment of people with disabilities. For example, in September 2014, the Senate Committee on Health, Education, Labor and Pensions released a report entitled, “Fulfilling the Promise: Overcoming Persistent Barriers to Economic Self-Sufficiency for People with Disabilities.” The National Governor’s Association (NGA) published, “A Better Bottom Line: Employing People with Disabilities.” “Curb Cuts to the Middle Class,” a new initiative from the White House, is another tool to bring focused efforts toward achieving real progress in the implementation of the Executive Order 13548, signed by President Obama in 2010 to increase the number of people with disabilities employed in the federal government.

Currently, more than 30 states have policy directives, official legislation, and/or policy statements that proclaim integrated employment as the desired option for people with intellectual and developmental disabilities. Some of these actions cover the broader disability community. ‘Employment First’ is the mantra across the states and, in a number of them, has become the official state policy, resulting in reports and policies, collaborations across a variety of state agencies, and a shifting of resources to support the achievement of the identified goals.

State agencies want and need to ensure that people are realizing employment as an outcome. Federal and state programs that support people with disabilities are focused on people achieving life goals, not on fostering dependence and life wasting. The goals contained in the CMS settings rule and WIOA clearly state and set expectations that support states in achieving these goals. WIOA also includes many provisions that focus on financial literacy for people with and without disabilities.

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CMS has provided guidance and tool kits for the HCBS settings rule and state agencies have been completing initial assessments of their services (both residential and day/vocational) and developing and posting draft transition plans. Many states have recognized the opportunity the HCBS settings rule presents to systematically and carefully examine service offerings, including definition, provider qualifications, contract language, and the service settings. In many cases, the current arrays of supports and services have been developed over a period of years and while some reflect what was once considered best practice, many have not yielded the outcomes that people with disabilities are seeking, including employment, community integration, and independence. The meaningful and transparent engagement of people who receive supports and services and other stakeholders as an integral part of the systems change is a clear expectation of CMS and advocates are voicing their ideas on what changes must be made and what they think about states' transition plans. Advocates have also established a website where resources and information on states' transition plans are posted (<http://hcbsadvocacy.org>). The DOL Employment and Training Administration, along with HHS and ED, are also seeking input and participation from stakeholders in the development and implementation of strategies.

HCBS transition plans must be submitted to CMS no later than March 16, 2015. WIOA includes the requirement for states to develop and submit a single, coordinated four-year plan for core programs, called the Unified Plan, due in March 2016. The core programs included are the 1) Adult, Dislocated Worker and Youth formula programs; 2) Adult Education and Literacy program; 3) Wagner-Peyser employment services program; and 4) programs under Title 1 of the Vocational Rehabilitation Act. WIOA also contains six primary indicators of performance for core programs at the state and local levels.

OPPORTUNITY FOR MEANINGFUL CHANGE

Both the WIOA Unified Plan and the HCBS settings transition plan should be viewed by states as an opportunity for leadership and vision that result in meaningful change. States should use this opportunity along with the tools to partner in win-win efforts to forge new and better paths with people with disabilities in the achievement of employment and full participation in the community. The provisions of WIOA, including the Unified Plan, along with the HCBS settings transition plans, can serve as states' coordinated efforts to achieve systemic change that turns the current bleak picture of employment for people with disabilities into a success story achieved through comprehensive, collaborative system redesign. The potential for numerous immediate and

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long-term systems transformations is high. Now more than ever, agencies must work closely with the people they support, using a common and shared vision to ensure people with disabilities achieve employment. States can maximize success by aligning resources through collaborative partnering across state agencies, including formal cooperative agreements, joint planning and service coordination, cross training of staff, enhanced utilization of agency-specific expertise, seamless transitions from school to work, and utilization of technology. None of these collaborative tasks are easy. However, they present the best opportunity states have had since the Supreme Court's *Olmstead v. L.C.* decision to leverage federal directives to make changes that result in people with disabilities achieving employment at a rate consistent with that of people without disabilities.



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