

Driving System Change Through Federal Rules

Strategies for Supporting People with Disabilities to Work and Live in Their Communities

Since 2014, when the Home and Community Based Services (HCBS) rules were amended by the U.S. Department of Health and Human Services' (HHS) Centers for Medicare and Medicaid Services (CMS), states have worked toward compliance. Many states have also challenged themselves to strive for true systemic change pushed forward by the vision, leadership, and ardent stakeholder engagement of human services agencies nationwide.

To increase employment services for people with disabilities, states are creating and strengthening partnerships with those who receive supports and services; vocational rehabilitation agencies; workforce development professionals; labor/employment agencies; and school systems. These partnerships are designed to support people with disabilities with obtaining and maintaining competitive, integrated employment, which is defined as, according to the Rehabilitation Act of 1973 (as amended), "meaningful or part-time work at minimum wage or higher, with wages and benefits similar to those without disabilities performing the same work, and fully integrated with coworkers without disabilities."¹ It is essential for states to fully embrace this level of support and engagement.

Federal Rules and Regulations That Drive Systemic Change Strategies

HCBS Rules

In 2014, CMS amended the HCBS rules for person-centered planning, which included HCBS settings requirements² (also referred to as the HCBS Settings Final Rule or the [HCBS Final Rule](#)). They offer states the opportunity to transform their systems, so they can more directly and effectively support people to have access to- and engage in- their communities including through employment.

The HCBS rules impact all 1915(c) Home and Community Based Services (HCBS) waivers (regardless of target population). In addition, they impact the Section 1915(i) State Plan HCBS options and the Section 1915(k) Community First Choice option as well as covered home and community based settings. According to CMS, the purpose of the HCBS rules is "to ensure that individuals received Medicaid HCBS in settings 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..."³

While the HCBS rules primarily focus on the settings in which people receive services, they also include requirements for the

development and documentation of person-centered plans. A person-centered plan must include services to address the needs, goals, and preferences of an individual along with risks to a person's health or safety and ways in which those risks can be mitigated. A person-centered plan should document a person's goals and needs that can help them to successfully obtain and maintain employment. The services used to achieve employment goals must also be documented, even if the service is not a benefit of an HCBS waiver.

The Workforce Innovation and Opportunity Act (WIOA)

In 2014, CMS also enacted the [Workforce Innovation and Opportunity Act \(WIOA\)](#).⁴ WIOA includes changes to employment services funded through the U.S. Department of Labor (DOL) and vocational rehabilitation services funded through the U.S. Department of Education (ED). Among the many reforms included in WIOA, the primary goal is to increase access for people with disabilities to high-quality workforce services that prepare them for competitive, integrated employment.

For the first time in a federal regulation, WIOA defines competitive, integrated employment and customized employment. It also provides clarification on the definition of supported employment. WIOA's unified plan requirement along with performance accountability provisions took effect on July 1, 2016.

HCBS Transition Plans

CMS provides guidance and tool kits for the HCBS rules. Since 2014, state agencies have been directed to complete assessments of their services (for both residential and non-residential settings). They have also been developing and posting draft and final transition plans.

Additionally, states are documenting when settings have begun as well as when work is completed to comply with the HCBS rules. Many states recognize the opportunity the HCBS rules present to examine service offerings systematically and carefully and outline definitions, provider qualifications, contract language, and the service settings. HCBS advocates have also created the following website where resources and information on states' transition plans are posted: <http://hcbsadvocacy.org>.⁵ In addition, the DOL's Employment and Training Administration along with HHS and ED, are seeking input and participation from HCBS professionals regarding the development and implementation of new regulatory strategies.

The Role of the COVID-19 Pandemic on Rules and Regulations

On July 14, 2020, in response to the COVID-19 pandemic, CMS extended the deadline for states to be compliant with the HCBS rules. The new deadline is March 17, 2023.

To meet this requirement, Public Consulting Group (PCG) recommends that HCBS transition plans be submitted to CMS no later than July 2021. This will give CMS sufficient time to review and approve information and documentation. It also gives states additional time to fully implement the steps outlined in the transition plan. (Person-centered plan development and documentation requirements have been in effect since March 17, 2014.)

Also, WIOA includes the requirement for states to develop and submit a unified state plan across core programs, so they can coordinate services and utilize funds efficiently. Core programs include:

1. Adult, Dislocated Worker and Youth formula programs
2. Adult Education and Literacy programs
3. The Wagner-Peyser employment services program
4. Programs under Title 1 of the [Vocational Rehabilitation Act](#) (Chapter 1, WIOA)⁶

WIOA includes many other requirements that promote employment opportunities for people with disabilities. For example, vocational rehabilitation agencies are now required to spend 15 percent of federal funds on pre-employment transition services for youth, ages 14 to 22, to supplement existing transition services and support successful outcomes following high school.

Focus on Employment

Table 1 (below) provides context for the disparities that exist in employment for people with disabilities. The DOL's 2020 statistics⁷ show that labor force participation by people with disabilities was 20 percent and 66.6 percent for people without disabilities. During 2020, the unemployment rate for people with disabilities was 11 percent and 6.3 percent for people without disabilities.

TABLE 1: COMPARING LABOR FORCE PARTICIPATION



The U.S. Department of Labor's Office of Disability Employment Policy (ODEP) prioritizes investment in systemic change efforts to result in increased community-based, integrated employment opportunities for individuals with significant disabilities. This priority reflects growing support for a national movement called Employment First through the [Association of People Supporting Employment First \(APSE\)](#). The Employment First movement is a framework for systemic change that focuses on the premise that all citizens, including individuals with significant disabilities, should have equal opportunities to fully participate in integrated employment and community life. It also drives national and state policy resulting in collaborations across a variety of state agencies and the shifting of resources to support the achievement of identified goals.⁸

In January 2021, APSE reported that 49 states and the District of Columbia have policy directives, official legislation, and/or activities that identify competitive, integrated employment as the desired option for people with disabilities.⁹

These efforts are supported by many national organizations, such as:

- ✓ APSE
- ✓ TASH
- ✓ The National Association of State Directors of Developmental Disabilities Services (NASDDDS)
- ✓ The National Association of Councils on Developmental Disabilities (NACDD)
- ✓ The National Association of Medicaid Directors (NAMD)
- ✓ The National Disability Institute (NDI)
- ✓ The Association of University Centers on Disabilities (AUCD)
- ✓ The National Disability Rights Network (NDRN)
- ✓ The Council of State Administrators of Vocational Rehabilitation (CSAVR)
- ✓ The American Network of Community Options and Resources (ANCOR)

Opportunities for Meaningful Change

HCBS and WIOA require states to provide equal employment opportunities for people with disabilities and people without disabilities with system alignment to support the expectation that people with disabilities live their lives like- and alongside- those without disabilities. State WIOA unified plans and HCBS rules' transition plans should be viewed as opportunities for leadership and vision that can result in meaningful change. The goal is to redesign existing systems and collaborate support for improved outcomes.

Now more than ever, agencies must work closely with the people they support, using a common and shared vision to support people with disabilities with acquiring employment.

States can maximize success by partnering across state agencies to align resources.

These collaborations can include:

- ✓ Formal cooperative agreements
- ✓ Joint planning and service coordination
- ✓ Cross-training of staff
- ✓ Enhanced utilization of agency-specific expertise
- ✓ Creating seamless transitions from school to work
- ✓ Utilizing technology

Looking into the future, states can further improve employment outcomes for people with disabilities by leveraging policies; strategizing systemic change; funding changes; and coordinating efforts across agencies and funding streams. PCG is here to help!

Founded in 1986, we help state, county, and municipal human services agencies respond to change, enhance operations, improve access to services, optimize processes and compliance, and achieve their performance goals in order to better serve populations in need.

Find out how we can support your human services agency with systemic change. Contact us today!



(800) 210-6113



info@pcgus.com



www.publicconsultinggroup.com

Endnotes

- 1 Rehabilitation Act of 1973, as amended, Authority: Sections 7(5) and 12(c), 29 U.S.C. 705(5) and 709(c)
- 2 "Medicaid Program; State Plan Home and Community-Based Services, 5-Year Period for Waivers, Provider Payment Reassignment, and Home and Community-Based Setting Requirements for Community First Choice and Home and Community-Based Services (HCBS) Waivers," National Archives: Federal Register, January 16, 2014, <https://www.federalregister.gov/documents/2014/01/16/2014-00487/medicaid-program-state-plan-home-and-community-based-services-5-year-period-for-waivers-provider>
- 3 "Home and Community Based Services Final Regulation," Medicaid.gov, accessed March 1, 2021, <https://www.medicaid.gov/medicaid/home-community-based-services/guidance/home-community-based-services-final-regulation/index.html>
- 4 Public Law 113–128, 113th Congress, 128 STAT. 1425, June 22, 2014, <https://www.govinfo.gov/content/pkg/PLAW-113publ128/pdf/PLAW-113publ128.pdf>
- 5 "HCBS Advocacy Coalition: Information for Advocates About the New Home and Community-Based Services Rules," HCBS Advocacy, accessed March 1, 2021, <https://hcsadvocacy.org/>
- 6 Public Law 113–128, 113th Congress, 128 STAT. 1425, June 22, 2014,
- 7 "Disability Employment Statistics," U.S. Department of Labor: Office of Disability Employment Policy, accessed March 1, 2021, <https://www.dol.gov/agencies/odep/research/statistics>
- 8 "Employment First," the Association of People Supporting Employment First, accessed March 1, 2021, <https://apse.org/employment-first/>
- 9 "Employment First," the Association of People Supporting Employment First, accessed March 1, 2021, <https://apse.org/employment-first/>