

Enhancing Employment Opportunities and Outcomes Within Medicaid Home- and Community-Based Services

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Association of University Centers on Disabilities



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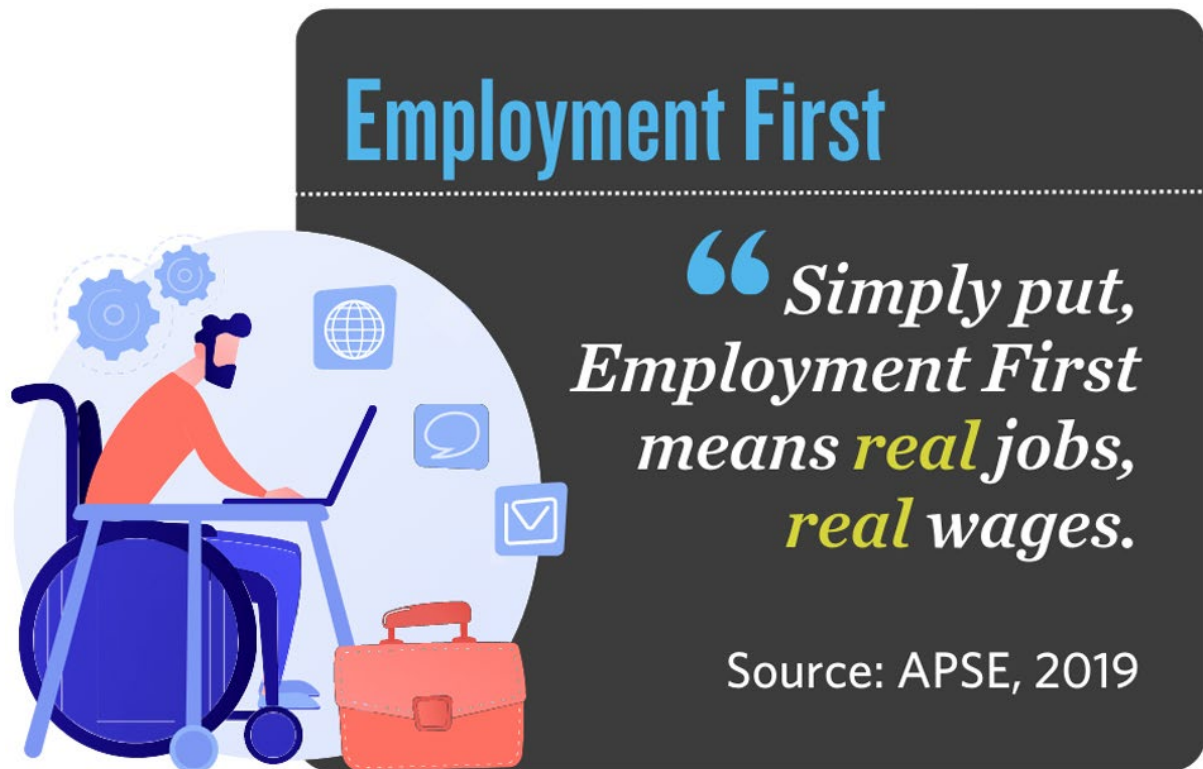
Introduction

This brief focuses on how Medicaid mechanisms, including Medicaid home- and community-based services (HCBS) funding, can enhance employment opportunities for people with disabilities and people who are aging. Medicaid can be an important tool to improve access to employment and to increase wages for people with disabilities in competitive integrated employment (CIE). CIE promotes improved wages, income, assets, and other financial outcomes. People with disabilities, just like their nondisabled peers, have the right to competitive, paid employment that provides benefits commensurate with those offered others in similar employment and that is in the field and of the job types of their choice. We offer policy recommendations for ways that Medicaid and Medicaid HCBS programs may be used to decrease the likelihood of those with disabilities needing to choose between work and healthcare, the latter which includes essential long-term life supports and services. Recommendations in this brief were informed via a process that involved development of a working group and an environmental scan. (See [Appendix](#) for more details.)

Employment is not only a critical source of income to support a stable lifestyle, but also an important part of community inclusion for people with disabilities. CIE and increased employment access can change the trajectory for employment for people with disabilities. For decades, people with disabilities have faced higher unemployment and poverty compared to their nondisabled peers. In 2020, the employment-to-population ratio for people with disabilities, representing the percentage of the population that is employed, was 38.4 percent. In contrast, the employment-to-population ratio of people without disabilities was 75.8 percent, approximately double that of people with disabilities. This amounted to an employment gap of 37.4 percentage points. Additionally, the poverty rate of people with disabilities living in the community was 25.2 percent in 2020, while it was 11.1 percent for people without disabilities, leaving a poverty gap of 14.1 percent (Paul et al., 2021).

Federal policies seek to increase the employment participation and financial well-being of people with disabilities. One of the main purposes of the [Workforce Innovation and Opportunity Act \(WIOA\)](#), the primary employment legislation supporting people with disabilities, is to “maximize opportunities for individuals with disabilities, including individuals with significant disabilities, for competitive integrated employment.” Ensuring that CIE is the first option for people with disabilities, as is required for youth under WIOA, increases community inclusion, reduces segregated work programs, and gives employers a larger and more diverse pool of applicants at a time when they are searching for workers. Employment is one of the most significant everyday activities for any individual and CIE is a direct path to independence, self-sufficiency, economic security, and community inclusion for people with disabilities.

Employment First programs promote CIE as the first and preferred employment option for people with disabilities. Employment First itself means that employment in the general workforce should be the first and preferred option for people with disabilities: *real jobs for real wages*. Unlike Social Security, these programs start with a presumption that people with disabilities can work. More than thirty-five states have adopted legislation or official state policy stating that employment in the community is the first and preferred service option for people with disabilities (Association of People Supporting Employment First, 2019).



Support of employment access through CIE across government programs, including by providing supports through Medicaid and Medicaid HCBS, is a critical element of employment, security, and self-sufficiency. As the Centers for Medicare and Medicaid Services (CMS) specifically recognizes:

“ ... employment is a fundamental part of life for people with and without disabilities. Employment provides a sense of purpose, how we contribute to our community and are associated with positive physical and mental health benefits. Meaningful work is part of building a healthy lifestyle as a contributing member to society and essential to individual's [sic] economic self-sufficiency, self-esteem, and well-being. All individuals, regardless of disability and age, can work and have access to pre-vocational services, education and training opportunities that build on strengths and interests. Individually tailored and preference-based career planning, job development, job training, and job support recognizes each

person's employability and potential contributions to the labor market.
(Centers for Medicare and Medicaid Services, n.d.)

It is essential that Medicaid increase its role in promoting CIE in order for other efforts across the federal government to come to fruition.

Recommended Innovations in Medicaid and HCBS Waivers to Encourage the Paradigm Shift

Medicaid Eligibility and Barriers to Employment

While a conversation about major changes to the Social Security system—such as changing the eligibility criteria to consider what a person with a disability *can* do, as opposed to what that person *cannot* do—is an important priority, this brief focuses on current opportunities within Medicaid HCBS. These recommendations aim to make incremental changes in the Medicaid and HCBS systems to remove existing policy barriers so that people may gain better access to employment opportunities and earn more income, while retaining their healthcare as they do so. Increasing the benefits of work for people with disabilities will help move people to CIE and away from segregated, low-paying jobs.

Promote Medicaid Buy-In Programs

Created in the mid 1990s, Medicaid buy-in programs allow people with disabilities to continue to access Medicaid, and particularly the long-term service and supports available through HCBS waivers, even after they are earning more income than is traditionally allowed in Medicaid. Under both [Section 4733 of the Balanced Budget Act \(BBA\) of 1997](#) and [Section 201 of the Ticket to Work and Work Incentives Improvement Act \(TWWIIA\) of 1999](#), Congress recognized a new eligibility group of people with disabilities who can use services available through Medicaid and provided additional flexibility for states. These two programs are collectively referred to as Medicaid Buy-In (MBI).

These programs allow higher earning individuals with disabilities who meet the Social Security definition of disability but earn more money than Social Security allows to access benefits through Medicaid. Such programs have prevented people from having to choose between earning a living through jobs and careers and receiving necessary healthcare supports and services. MBI programs allow continued access to personal care attendants, transportation, durable medical equipment, habilitative services, case management, and other services not normally covered by private insurance. Many of these services are utilized to enable individuals to work and may literally make the difference between an individual going to work and not doing so. Personal care attendants, for instance, often are used by individuals with disabilities at work.

Currently, there are 47 states that have taken advantage of the MBI option, though, as with other Medicaid services and options, the states' programs vary. Because of the very nature of the Medicaid program, states decide what to offer and how MBI looks in their particular state (Table 1 in Musumici et al., 2022). That means that premiums, asset limits, earnings limits, and retirement all differ greatly from state to state. This variation adds to the complexity of the system and makes it difficult for individuals with disabilities and their families, along with providers, states, and others, to understand how to access and benefit from the system.

Medicaid Buy-In Programs



- 46 states currently offer an MBI option.
- Over 400,000 people across the country have opted into MBI programs in the last decade.
- With MBI, people with disabilities who earn more than Social Security usually allows may access Medicaid benefits.



- MBI programs vary greatly from state to state, creating differences in premiums, asset limits, earnings limits, and retirement.
- The variation by state adds to the system's complexity and makes it difficult for people with disabilities and others to understand and access MBIs.

For instance, significant state variations occur in MBI programs when an individual reaches the age of 65. In effect, people with disabilities who have opted into MBI programs are not allowed to retire—or, if they do, and their participation in the MBI program ends, they are required to spend down the very assets the program allowed them to acquire as a condition of accessing Medicaid long term supports and services. The fact that the very people that Social Security deems unable to work as a requirement for accessing that system cannot make the choice to retire without losing benefits clearly shows the inconsistency and barriers to employment that exist. Moreover, in some states individuals under the MBI program *must* retire at age 65 because the program limits eligibility to that age. Again, at that point, individuals may

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have to spend down to rid themselves of the assets they were allowed to acquire in order to maintain their long-term services and supports.

Some states charge premiums, sometimes on a sliding-scale basis, for those who opt into the state's MBI program while others do not. The variation in MBI programs also severely limits the ability of people with disabilities to accept new jobs that might require a move to other states and generally causes confusion over how the system works and who is eligible from state to state. Finally, there is also an issue of the "claw back" requirement in some states when a person dies. Particularly where there is no asset limit in the state, Medicaid's attempt to reimburse itself when a person with a disability has died with assets, particularly assets they have been allowed to earn under the system, seems counterintuitive. This is particularly true where their monthly premiums for the MBI program are aligned with their income.

Over 400,000 people over the last decade have opted into the programs across the country and, for those individuals, MBI has allowed them to be employed, earn more income, increase their number of hours worked, advance in their careers, support their families, save more money, and otherwise promote their independence and community inclusion. Research has also shown that MBI programs are an advantage to employers, who can have a consistent integrated workforce that includes people with disabilities (Hayes, 2021). They also have been shown to be an advantage to Medicaid agencies combatting some of the churn of people falling off and returning to Medicaid, encouraging employment and the use of fewer Medicaid services and, therefore, decreasing reliance on public benefits (Hayes, 2021). Improving, expanding, and spreading the word about these already existing programs is one way to promote the expansion of CIE for people with disabilities.

MBI programs are often referred to as one of the "best kept secrets" in disability employment policy. While 400,000 people opting in over a decade is an improvement, this is only a small percentage of people with disabilities who are employed and who could benefit from the program. Research shows that more education and technical assistance is needed for people with disabilities, vocational rehabilitation counselors, providers, benefits counselors in workforce development programs, one-stops, and others to understand the program and to connect people to it.

Sustained federal investment through establishing a means of providing technical assistance and information dissemination would increase the availability of shared best practices, promote additional policy development, and further the paradigm shift nationally to CIE, including through outreach to the four states that do not yet have MBI programs. Such a technical assistance portal could also support the spread of state-by-state examples of ending barriers to employment in the MBI programs.

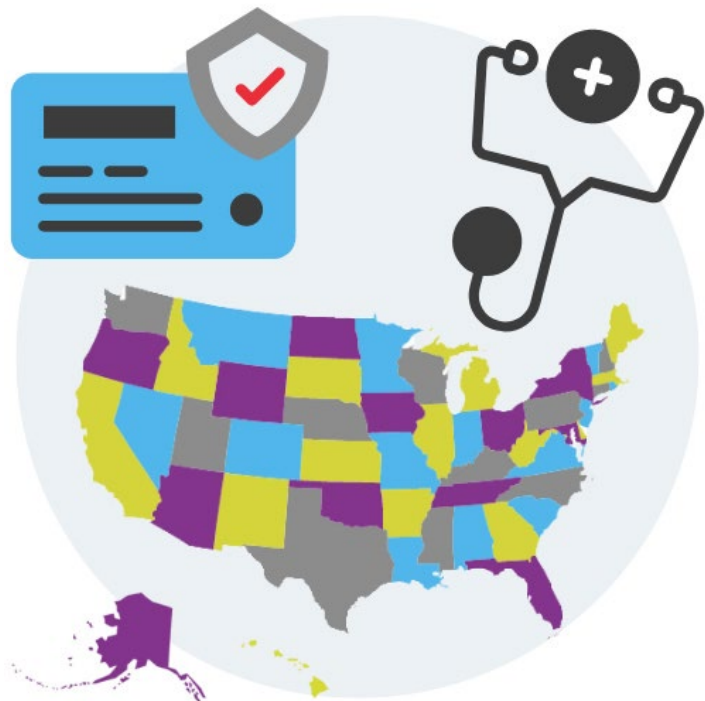
Examples include:

- ▶ New Jersey recently removed its age 65 limit (N.J. Sen., 2020).
- ▶ A number of states—Arkansas, Colorado, Massachusetts, Washington—have no asset limit (Table 3 in Musumeci et al., 2022).
- ▶ Indiana considered a recent bill in their 2022 session that would have removed the requirement of countable resources in its eligibility criteria and would allow a person to participate in both the MBI program and an HCBS waiver (Ind. Sen., 2022).

Policy Recommendations to Promote Medicaid Buy-In Programs

Policy recommendations to promote Medicaid buy-in programs include the following:

- ▶ Create a national mandate that this program be offered in all states, as well as a description of how the program is to work that either sunsets all asset- and income-eligibility limits over time or creates a floor under which state-specific rules cannot fall. This is warranted for a program that has been so widely accepted by states. The same recommendation might be made for premiums: remove all premium/sliding-scale payments or create a rule to regulate premium payments. A basic program in all states, above which states could offer more generous benefits or allowances, would at least allow individuals with disabilities some consistency in looking at other employment opportunities either in their own states or elsewhere. The issue of retirement and what happens to assets at that time and at death could also be solved this way. This mandate also would require acknowledgement that these systems exist in varying agencies by state—some are Medicaid waivers, some are traditional Medicaid.
- ▶ Issue a Notice of Proposed Rulemaking (NPRM). With no federal regulations or guidance having been issued on MBI programs in the last 20 years, a NPRM could allow the agency a chance to clarify questions that continue to arise as well as give stakeholders a chance to identify some of the issues to be addressed. It



would also create a blueprint for what MBI programs should look like according to the federal model.

- ▶ Pass legislation needed to update and streamline the systems that exist and to create one Medicaid buy-in model instead of the dual-eligibility systems that exist under the Ticket to Work and the Balanced Budget Act MBI programs.
- ▶ Develop and maintain technical assistance and information dissemination. Sustained federal investment through establishing a means of providing technical assistance and information dissemination would increase the availability of shared best practices, promote additional policy development, and further the paradigm shift nationally to CIE. All these suggested regulatory or legislative fixes are currently possible on a state-by-state basis and are being activated in particular states.
- ▶ Promote and broaden the use of benefits counseling, particularly work-incentives benefits counseling, to assist people with disabilities and others in understanding how MBI programs work and the impact they have in particular states on employment. For instance, in Wisconsin, the state uses Centers for Independent Living (CILs) and Aging and Disability Resource Centers (ADRCs) to offer such counseling. Additionally, Work Incentives Planning and Assistance programs (WIPAs) currently can do outreach but they cannot individualize benefits support for those for whom employment is not imminent. Many states have supplemented the federal funding with state-level funding, but WIPA counseling could be expanded significantly.

Promote Higher Wages for People with Disabilities

All Americans deserve to be fairly compensated for their work. Unfortunately, thousands of Americans with disabilities are paid less than the minimum wage because of a provision in the Fair Labor Standards Act that allows employers to apply for special certificates from the U.S. Department of Labor to pay people with disabilities a subminimum wage. Referred to as Section 14(c), the existence of the provision means that people with disabilities in subminimum-wage employment have a harder time achieving financial independence or living independently in the community. Such subminimum wages are often paid in segregated environments where disabled people are separated from their nondisabled peers who earn more. According to a recent U.S. Commission on Civil Rights report, between 2017 and 2018 the average wage of a person with a disability working under such certificates was only \$3.34 per hour—less than half the federal minimum wage (U.S. Commission on Civil Rights, 2020). People with disabilities are better able to achieve financial independence and spend more time engaging in their communities when they transition to competitive employment and work in integrated environments, that is, in workplaces that hire both people with disabilities and people without disabilities. Moving away from subminimum wages

allows people with disabilities to be paid competitive wages, which is more likely to occur in integrated settings.

Policy Recommendations to Promote Higher Wages for People with Disabilities

Policy recommendations to promote higher wages for people with disabilities include:

- ▶ End the paying of subminimum wage and incentivize CIE for people with disabilities.
 - ▣ Pass federal legislation to end the use of Section 14(c) certificates.
 - ▼ Legislation is currently before Congress to end the use of subminimum wage under section 14(c). [The Transformation to Competitive Integrated Employment Act \(TCIEA\)](#) (H.R. 2373/S. 3238) would prohibit the U.S. Secretary of Labor from issuing new subminimum-wage certificates and would phase out the use of subminimum wages by all employers over a five-year period. It would also provide grants to states or employers currently paying subminimum wage to workers with disabilities to transition to a business model that pays at least minimum wage and to continue to provide services and supports to workers with disabilities. It would also create a technical assistance center to support employers making the transition “to help them continue to provide wrap around services and supports for workers as the business moves to a competitive integrated business model, including how to use Medicaid home and community-based services to support people with complex disabilities in a competitive integrated work environment.”
 - ▣ Until passage of legislation ending subminimum wages, the U.S. Department of Labor could review existing certificates not being used and discontinue them and/or limit new certificates pending a review.
 - ▣ Additionally, the Department of Labor could track more closely the status of 14(c) certificate holders. Currently, the information on certificate holders is out-of-date; many certificates may be expired or not in use. The department has begun auditing certificate holders more regularly, e.g., every two years. Under the direction of the Department of Labor, that audit would include the entire organization, not solely the portion using 14(c) certificates (U.S. Department of Labor, 2022).
 - ▣ Continue to pass legislation state by state to end the payment of subminimum wages to individuals with disabilities. Currently 13 states have ended the payment of subminimum wages to people with disabilities: Alaska, California, Colorado, Delaware, Hawaii, Maine, Maryland, New Hampshire, Oregon, Rhode Island, South Carolina,

Tennessee, and Washington (Association of People Supporting Employment First, 2021).

- ▶ Continue to promote the use of American Rescue Plan Act (ARPA) Section 9817 funds to move away from sheltered and segregated work settings for people with disabilities. The American Rescue Plan provided states with a temporary 10% increase in federal funding to enhance HCBS. This funding can and is being used in some states to promote CIE. Funds under ARPA must be spent prior to March 31, 2024. For example, Minnesota has written into its ARPA plans use of the funds to offer grants to help achieve this goal.
- ▶ Urge the expansion of Employment First by states. Make Employment First a national policy and provide federal monetary support for this work. For instance, shifting funds from CMS day habilitation services/day programs to the support of CIE helps shift away from segregated day and employment programs to CIE.
- ▶ Urge the expansion of Technology First commitments by states and expand Medicaid dollars to better support available, appropriate, and innovative technologies that lead to greater independence and employment. Technology First is a state commitment where “technology is considered first in the discussion of support options available to individuals and families through person-centered approaches to promote meaningful participation, social inclusion, self-determination and quality of life” (Tanis, 2019, as cited in State of the States in Intellectual and Developmental Disabilities, n.d.). As of now, 17 states are currently involved in Technology First initiatives.



Appendix

Methodology

Based on outreach to the Association of University Centers on Disability (AUCD) network broadly and to specific centers doing innovative work on employment, a working group of individuals with expertise in Medicaid and employment was created from the AUCD Network, including the co-chairs of the AUCD Employment Special Interest Group. The initial working group consisted of:

- ▶ Kelly Nye-Lengerman, Director of the Institute on Disability, University of New Hampshire
- ▶ Wendy Parent-Johnson, Director of the Sonoran University Center for Excellence in Disabilities, University of Arizona
- ▶ Cindy Thomas, Director of the Institute for Community Inclusion, University of Massachusetts Boston
- ▶ Tim Riesen, Division Director of Research and Training, Institute for Disability Research, Policy, & Practice, Utah State University.

An environmental scan was performed to ascertain innovative practices and activities related to employment and Medicaid supports.

The working group met several times virtually and via email to outline the scope and framework of the project. The initial vision for the paper brief was to focus on innovative state, system and provider practices using Medicaid home- and community-based services funding to enhance employment opportunities, particularly focused on competitive integrated employment.

The framework for the project was sent to the Community Living Policy Center (CLPC) for review in June 2021. As the pandemic expanded, the focus shifted to employment and Medicaid in the hope that COVID-19 might contribute to accelerated systems change away from day habilitation and congregate settings toward more integrated employment supports. Data indicating that had occurred was not forthcoming. In spring and summer 2022, a working draft was developed with working-group participants writing, editing, and revising sections of the draft.

Outreach was made to additional experts on Medicaid HCBS services and employment for feedback on the legislative recommendations, e.g., Colleen McLaughlin, Associate Director, The Boggs Center on Developmental Disabilities (UCEDD), Rutgers Robert Wood Johnson Medical School; Angela Martin, Senior Associate Director, Michigan Developmental Disabilities Institute (UCEDD), Wayne State University; Maureen van Stone, Maryland Center for Developmental Disabilities, Kennedy Krieger Institute; Jennifer Lav, Senior Attorney, National Health Law Program; and Henry Claypool, Visiting Scientist, Community Living Policy Center, Brandeis University.

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The draft brief was submitted to the Community Living Policy Center (CLPC) on September 30, 2022. Revisions to the draft, including specificity of methodology, were submitted to CLPC in January 2023.

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