



June 25, 2015

The “Transition to Independence Act” (S. 1604)
Medicaid Buy-In Option Demonstration Program for Improving Employment Opportunities for Individuals with Disabilities

Summary:

Introduced on June 18, 2015 by former Finance Chairman Charles Grassley (R-IA), Finance Ranking Member Ron Wyden (D-OR) and Robert Casey (D-PA), the “Transition to Independence Act” is five year, 10 state demonstration project for Medicaid Buy-In states. Under this demonstration program, states will receive a bonus payment for meeting specific measurable benchmarks in expanding individual integrated employment and reducing subminimum wage work, congregate setting work, or facility-based day habilitation programs for working-age individuals with a disability receiving Medicaid-funded home or community-based services and for taking other actions conducive to expanding employment opportunities for individuals with disabilities within the state.

The Secretary of Health and Human Services (HHS) will establish minimum standards for the Medicaid Buy-In states participating in the demonstration program for eligibility requirements, benefits and administrative requirements; such as: (1) an assets or resources test for participation by an individual that is not less than \$20,000; (2) an income requirement for participation that is at least up to 400 percent of the poverty line; and (3) other such requirements as the Secretary shall specify. A participating state shall provide work incentives coordinators who have been trained as a work incentive specialist under a community-based work incentive planning and assistance program established under §1149 of the Social Security Act (42 USC 1320b-20) to assist participating individuals. The minimum standards of the demonstration program requires the Medicaid Buy-In state to allow an individual’s participation in the Transition to Independence program to be voluntary and does not preclude them from electing to enroll in a qualified health plan offered through an American Health Benefit Exchange.

State Selection Requirements: Not later than June 30, 2016, the Secretary will solicit applications from Medicaid Buy-In states and select 10 to participate in the program. Selected states will represent a range of low, medium and high numbers of working-age individuals with disabilities receiving Medicaid-funded home or community-based services working in individual, integrated employment, subminimum wage work, congregate setting work or facility-based day habilitation or treatment. Applications must include:

- 1) Data regarding the numbers of working-age individuals with disabilities who are receiving Medicaid-funded home or community-based services in the Medicaid Buy-In state who are in individual integrated employment, subminimum wage work, congregate setting work or facility-based day habilitation or day treatment,
- 2) Verification that the state is prepared to meet the minimum established standards,

- 3) A plan for promoting the Transition to Independence Medicaid Buy-In Option to potentially eligible individuals on the Medicaid Buy-In state's Medicaid and Disability Determination Services agency websites,
- 4) Verification that the Medicaid Buy-In state will use independent contractors to determine whether an individual who is potentially eligible to participate but not who is not receiving disability insurance benefits under Title II of the Social Security Act (42 USC 401 et seq.) or supplemental security income benefits under Title XVI (42 USC 1381 et seq.) is determined to be eligible for such benefits within 90 days of applying to participate in the demonstration program, and
 - a. Verification that the Medicaid Buy-In state shall establish a Stakeholder Advisory Committee to analyze outcomes data and regularly submit recommendations on the conduct of the demonstration program. The Stakeholder Advisory Committee will be comprised of at least 50 percent by individuals with disabilities and at least 1 provider of services to individuals with disabilities.

Performance Bonus Payments: For each year in which the demonstration program is conducted, a Medicaid Buy-In state may qualify for a performance bonus payment. In order to achieve a performance bonus payment, a Medicaid Buy-In state must develop criteria and a plan for achieving the mandatory and 'additional' benchmarks.

Mandatory Benchmarks:

- Reduction of participation in segregated programs; and
 - Performance bonus payments will be based on achievement of differing tiers; tiers begin at a reduction of at least 10 percent below the state's most recent census of eligible population.
 - Tiers increase at percentage reductions of 20, 30, and 40 percent or more with respect to the prior year's census of the eligible population.
 - To be deemed as counting towards a percentage reduction, the individual must be employed in an integrated individual setting for at least 10 hours a week on average over a 120-day period during the year involved or be receiving integrated day services supported by the state.
- Increased participation in individual integrated employment
 - Performance bonus payments will be based on achievement of differing tiers; tiers begin at an increase of at least 10 percent above the state's most recent census of eligible population.
 - Tiers increase at percentage increases of 20, 30, and 40 percent or more with respect to the prior year's census of the eligible population.
 - To be deemed as counting towards a percentage increase, the individual must be employed in an integrated individual setting for at least 10 hours a week on average over a 120-day period during the year involved or be receiving integrated day services supported by the state.

Additional Benchmarks:

- Elimination of new placements of working-age individuals with disabilities receiving Medicaid-funded HCBS in subminimum wage work, congregate setting work, or facility-based day habilitation or day treatment;
- Demonstration of interagency collaboration;
- Ceasing to use vocational rehabilitation funding for subminimum wage work, congregate setting work, or facility-based day habilitation or day treatment;

- Workforce development through the implementation of at least two of the following strategies;
 - Increasing Medicaid payments for supported employment providers by an amount necessary to ensure an adequately supported employment network, as determined by the Secretary;
 - Adoption of employment strategies to recruit, hire, and retain people with disabilities who are receiving Medicaid-funded HCBS as full-time employees of state government or government contractors;
 - Development of a state equivalent of §503 of the Rehabilitation Act of 1973 to recruit, hire, promote, and retain working-age individuals with disabilities who are receiving Medicaid-funded HCBS with a utilization goal of 7 percent of the state government workforce;
 - Development of a special hiring authority mechanism akin to the Schedule A appointing authority of the federal government; and
 - Provision of state tax credits for employers that hire new working-age people with disabilities who receive Medicaid-funded HCBS.

Medicaid Buy-In State Performance Bonus Payment Outlays: States participating in the Medicaid Buy-In demonstration program and achieving the metrics necessary to qualify for the bonus in a fiscal year, will receive the bonus as a single payment not later than the last day of the first calendar quarter of the following fiscal year. The performance bonus payment shall consist of the additional amount that the state would have been paid for providing medical assistance to individuals enrolled in the demonstration program during the preceding year if the regular FMAP application for such assistance were increased as follows:

- Two (2) percentage points for achieving the minimum 10 percent reduction in the mandatory benchmark of reduced participation in segregated programs (2.4 percentage points for a reduction of at least 20, but not more than 30 percent; 2.5 percentage points for a reduction of at least 30, but not more than 40 percent; and 2.8 percentage points for achieving a reduction of at least 40 percent);
- Two (2) percentage points for achieving the minimum 10 percent increase in the mandatory benchmark of increased participation in individual integrated employment (2.4 percentage points for a increase of at least 20, but not more than 30 percent; 2.5 percentage points for a increase of at least 30, but not more than 40 percent; and 2.8 percentage points for achieving a increase of at least 40 percent); and
- 0.5 percentage points for each additional benchmark achieved during the preceding fiscal year.

In no case may the increase in the regular FMAP resulting from these achieved bonus levels exceed 100 percent of the costs for providing medical assistance to individuals enrolled in the demonstration program. States participating in the demonstration program must use the performance bonus payment only to expand individual integrated employment and community integration for working-age individuals with disabilities receiving Medicaid-funded home or community-based services.

Reporting Requirements: States participating in the demonstration program must submit reports to the Secretary, at a period to be determined, including data and information with respect to the mandatory and additional benchmarks and any other such information as the Secretary may require on individuals with disabilities who have attained age 18 but have not attained age 31 and are receiving Medicaid-funded home or community-based services through an Intermediate Care Facility for Persons with Developmental Disabilities (ICF-DD), a nursing facility, an institution, or other congregate facilities and where subminimum wage work, congregate setting work or facility-based day habilitation or treatment occur.

The Secretary, not later than January 1, 2017 and January 1 of each of the 6 years thereafter, shall submit to Congress a report on the demonstration program that includes data and information regarding state performance, best practices and an assessment on success in transitioning working-age individuals with disabilities to independent living and work in their communities. The Secretary shall submit recommendations to Congress about whether to continue the demonstration program not later than December 31, 2019.

Definitions:

Congregate Setting Work: Means a non-profit, for-profit or state agency entity that employs a majority of individuals with disabilities and receives Medicaid or other state funds for the purpose of providing employment services, or a facility or sub-unit of any such agency that meets such criteria.

Facility-Based Day Habilitation or Treatment: Means, for the purposes of the demonstration program and shall include residential day services which take place predominantly or in large part at a single site, fixed site, or center-based program for individuals with disabilities. The Secretary shall provide clear instructions distinguishing facility-based day habilitation or day treatment programs taking place in settings within the broader community and which do not isolate individuals participating in such integrated day habilitation or day treatment programs from mainstream life.

Individual Integrated Employment: Means the ongoing supports to an individual who needs intensive on-going supports to obtain and maintain an individual job in competitive or customized employment, self-employment, or in an integrated work setting and is compensated at or above minimum wage, but not less than the customary wage and level of benefits paid by the employer for the same or similar work. *ACCSES Note: We anticipate this language to be updated to 'competitive integrated employment' to match WIOA proposed rule language and definitions.*

Customized Employment Services: Includes customized employment services in which individuals receive supports to craft a job description around their strengths and challenges.

Exclusions: *Term does not include enclaves, mobile work crews, or other settings in which the location and nature of employment is determined by the individual's disability.*

Integrated Day Services: Means services integrated in and supporting the full access of individuals with disabilities to the greater community to the same degree as individuals not receiving services provided consistent with the following: (a) no overall facility or program schedule for the individuals receiving such services; (b) each individual receiving such services has a unique schedule reflecting the individual's interests and goals; (c) activities take place on an individual basis or in small groups of individuals who choose to be served together; (d) the majority of time spent receiving such services takes place within the broader community rather than within a single-site, fixed site, or center-based program for individuals with disabilities; and (e) the services provided are consistent with the requirements of §441.710 of Title 42 of the CFR.

FMAP: Means the federal medical assistance percentage (FMAP) applicable to the state without regard to any increases in that percentage or under any other provision of law.

Recommendations:

Subsequent to review and consideration by the ACCSES Policy Committees on Long Term Services and Supports and Employment, ACCSES would recommend the following changes to the bill:

- The Additional Benchmarks should focus less on the elimination of new placements of working-age individuals with disabilities receiving Medicaid-funded HCBS and cessation of vocational rehabilitation funding for subminimum wage work, congregate setting work, or facility-based day habilitation or day treatment; instead focusing on long-term continuation of employment at more than 10 hours per week for a minimum of 120 days.
 - The terms “elimination of” and “cessation of” indicate that a one-size fits all approach to employment for individuals with disabilities is appropriate and realistic, when that is not the case (*See: Transitions: A Case Study of the Conversion from Sheltered Workshops to Integrated Employment in Maine*).
 - There is no maintenance of effort to support the same individuals being used to reach the required benchmarks in successive years, thereby potentially leaving individuals without individual integrated employment or access to Medicaid-funded HCBS or vocational rehabilitation funded programs for subminimum wage work, congregate setting work, or facility-based day habilitation or day treatment should an individual with a disability not be successful at integrated employment.
 - Under this model, individuals with disabilities could be transitioned into integrated employment, but still be working fewer hours and while earning a higher hourly wage rate, actually earning less per week than they had previously, thereby leaving individuals with disabilities under-employed and worse off financially.
- Additional safeguards for individual eligibility should be included to ensure that participation is in fact voluntary and individuals with disabilities are not being pushed into participating in a program that is not in their best interests.
- Additional clarification is needed to ensure that individuals understand that participation in this program is voluntary and not mandatory.
- States should be required to track the status of individuals who transition into integrated employment for the purposes of meeting the benchmarks, but also track those who leave integrated employment after the required 120 days, or anytime thereafter during the demonstration program and why they left integrated employment to provide the Centers for Medicare and Medicaid Services (CMS) and Congress with a better understanding of what happens to these individuals after the minimum timeframes are met.

Background:

The Medicaid Buy-In program is an optional State Medicaid benefit group for workers with disabilities who have earnings in excess of traditional Medicaid rules. Individuals with disabilities who would be ineligible for Medicaid because of earnings can work and access the services and supports they need. Ideally, it means workers with disabilities do not need to choose between healthcare and work.

The Centers for Medicare and Medicaid Services (CMS) supports the competitive employment of workers with and without disabilities by providing Medicaid services to eligible individuals that enable workers with disabilities to gain and maintain employment. Optional Medicaid eligibility groups, such as the Medicaid Buy-In, allow workers with disabilities to have higher earnings and maintain their Medicaid coverage as more than 150,000 individuals in 42 States were covered under this new eligibility group.

Section 201 of Ticket to Work and Work Incentives Improvement Act (TWWIIA) governs the provision of health care services to workers with severe disabilities by establishing Medicaid state plan buy-in optional eligibility groups. In addition, the Balanced Budget Act of 1997 (BBA) created a separate optional Medicaid eligibility group for working individuals with disabilities. Currently, 42 States provide

Medicaid eligibility through the TWWIIAA Buy-in, the BBA Buy-in, or a Section 1115 waiver. Over the past decade more than 400,000 individuals with disabilities have taken part in the Medicaid Buy-In program. Total earnings among all Medicaid Buy-In participants in 2011 were about \$1.15 billion.

Current Legislative Status:

Officially, the bill has been referred to the Committee on Finance; no new co-sponsors have joined on as of June 24, 2015.

Outlook:

The National Council on Disability provided technical assistance in developing the bill. Other national organizations supporting the bill include ANCOR, the American Association of People with Disabilities, the American Association on Health and Disability, the Autistic Self Advocacy Network, the Muscular Dystrophy Association, the National Adult Day Services Association, the National Association of State Directors of Developmental Disabilities Services and Autism Speaks. These groups have been aggressively pushing for grassroots support of the bill calling for co-sponsors.

The limited, demonstration nature of the program and five-year scope could increase its chances for movement within the Senate. There is no discussion as of yet on a potential House companion bill.