



## ACCSES Public Policy Principles and Issues for 2015

Fiscal issues remain front and center in the first year of the 114th Congress. ACCSES members are particularly cognizant of the disproportionate and adverse impact budget cuts and service reductions have on people with disabilities in terms of meeting their needs for support in early intervention, education, transition, employment, day habilitation, residential, healthcare, and independence. Funding constraints hamper ACCSES members' ability to deliver necessary and quality supports to the people they serve. Waiting lists for Medicaid Home and Community-Based Services are growing and have eclipsed 300,000 individuals with Intellectual and Developmental Disabilities being denied support. State budgets will not be able to fund this growing demand for services.

Federal policies pertaining to disability programs are under mounting pressure to change as well. Whether because of the conflict between growing demand and tight funding, or the push of some organizations to alter programs based on philosophical grounds, efforts to transform service delivery systems are escalating. Program policies of particular interest to ACCSES members include: IDEA, WIOA/Rehabilitation Act, SSA, Medicaid (including Home and Community-Based Services and Medicaid Managed Care), the Fair Labor Standards Act, AbilityOne, the Patient Protection and Affordable Care Act, housing, and transportation.

Also, at both federal and state levels, there is continued activity to significantly restrain, phase out and/or eliminate the availability of certain employment, day habilitation, and residential opportunities with consequences that will affect those with the most significant disabilities. As result, states are experiencing increased expectations to transform delivery systems and alter funding patterns that could impair ACCSES members' capacities to deliver appropriate services and supports identified in person-centered plans. Disability service providers are already filling the funding gap for hundreds of thousands of individuals who receive minimal public support for their needs. Additional cuts to funding and services will leave many without the vital services they need. These trends could shred the work-opportunity safety net, and limit community living options. Restricting skill development, job training, employment, and community residential settings will impact those for whom competitive work is not presently attainable, even with extensive accommodations, or choice of different residential options is desired. Thus, hundreds of thousands would be denied access to a full array of opportunities; some losing the dignity and purpose that comes with work and a paycheck, and others the home they want in their communities.

In the coming year, ACCSES will continue its mission to work with government and other stakeholders to ensure that there is no gap in services and that a full array of options and opportunities are available to support the full potential of each person with a disability to enjoy a meaningful life. ACCSES recognizes that no two people are alike, and that each person must have a tailored plan of services and supports chosen from a broad and diverse range of options and opportunities to reach optimum potential across the lifespan. To that end ACCSES will:

- Serve as a national leader advocating for person-centered services and supports that assist people with disabilities to lead independent and fruitful lives in the most integrated community settings appropriate;
- Support legislative and regulatory efforts that promote the expansion and improvement of opportunities, choices, and community-based service options for persons with disabilities; and
- Oppose efforts that restrict, phase-out, and/or eliminate a full array of choices and opportunities for these individuals.

Consistent with our Mission, Vision, and Values, ACCSES will direct its advocacy activities toward specific goals for each of our priority areas on behalf of disability service providers, including community rehabilitation providers, and the people with disabilities we serve. ACCSES is continually proactive and collaborative in working with government and other advocacy and service organizations on our policy issues and always has our legislative team ready to respond to legislative, regulatory, and other proposals that arise. Policy changes should support and incentivize providers that serve people with disabilities. The federal government should not impede the ability to serve people with disabilities.

The ACCSES public policy team will continue to respond to member requests and monitor policy issues with important implications for disability service providers, particularly to providers who utilize the Medicaid program to provide services to people with disabilities. ACCSES will monitor and respond to policy issues that impact its members in terms of their businesses and organizations, including federal policy regarding disability service providers. The ACCSES public policy team will monitor and act as appropriate in response to non-profit organization policy, particularly as it pertains to the roll out of new employer shared responsibility requirements in the Affordable Care Act (ACA). ACCSES will monitor implementation of the ACA employer shared responsibility provisions, advocate for appropriate regulations that impact ACCSES members as employers and provide ACCSES members with guidance on compliance with the regulations.

ACCSES intends to primarily focus its efforts on the top four most pressing areas for the people with disabilities served by our members:

- **Education,**
- **Medicaid,**
- **Employment, and**
- **AbilityOne.**

The following information is subject to change based on congressional and regulatory events or other relevant circumstances.

## **I. Education**

### **Outlook**

During the past several years, ACCSES has attempted to facilitate consensus among the disability community regarding education-related policy initiatives.

Part B of the Individuals with Disabilities Education Act (IDEA) - a state grant program - is permanently authorized. The remainder of IDEA, including the early intervention program for infants and toddlers with disabilities, is up for reauthorization. The Elementary and Secondary Education Act (ESEA), which

was passed in 1965, authorizes federally funded education programs that are administered by the states. In 2002, Congress amended ESEA and reauthorized it as the No Child Left Behind Act (NCLB). The Department of Education has allowed states to apply for ESEA flexibility waivers around NCLB requirements.

Several bills addressing students with disabilities as well as the reauthorization of ESEA have been introduced thus far in the 114<sup>th</sup> Congress. In the House of Representatives, the major vehicle for moving ESEA reauthorization, and a major vehicle for more than 40 amendments dealing with various aspects of NCLB and disability issues, is the “Student Success Act” (HR 5). While this bill appeared to have momentum and was being developed on the House Floor into a bipartisan measure, a lack of votes to support overall passage derailed it at the end of February; its future now seems murky at best. The Senate, however, has developed a bipartisan bill under the direction of Health, Education, Labor and Pensions (HELP) Committee Chairman Lamar Alexander (R-TN) and Ranking Member Patty Murray (D-WA), that provides more positive outcomes and protections for students with disabilities.

The Departments of Education and Labor have released proposed rules for implementation of the “Workforce Innovation and Opportunity Act (WIOA)” (PL 113-128) this year. These rules will have a direct impact on the services available for people with disabilities and the operations of disability service providers. It will be critical to ensure that the new rules are consistent with the legislative intent of WIOA, and do not hinder the accessibility of services or have other unintended consequences.

## Principles

*The federal government should provide significant increases in funding for special education, consistent with its promises. Education programs should be provided in the least restrictive environment and be sufficiently rigorous to ensure success with the diverse and complicated needs of students with disabilities. Goal planning for each student should include an effective transition to adulthood, secondary education, and/or meaningful employment. Early childhood intervention programs under IDEA should be based upon child development principles, with a strong family component. The role of disability service providers in the provision of early intervention programs and transition programs should be expanded and improved.*

## Issues

- ACCSES will monitor implementation of the Workforce Innovation and Opportunities Act (WIOA) during this Congress to ensure the rule making process preserves the ongoing role of community rehabilitation providers and preserves critical employment options for the people we serve.
- ACCSES will advocate for IDEA and ESEA reauthorizations that ensure the needs of children with disabilities are met, including the use of IDEA funds to develop and implement coordinated early intervening services for students, particularly students in kindergarten through grade 3 who have not been identified as needing special education or related services but who need additional academic and behavioral support to succeed in a general education environment.
- ACCSES will fight for increased federal funding for the basic state grant under IDEA as an investment in the future, despite recognition of federal fiscal pressures. ACCSES will advocate for special education and related services in the least restrictive environment, and advocate for expanded and improved provision of transition services at younger ages and grades.

- ACCSES will advocate for increased funding of early intervention services, and to retain the family-centered approach and expand the role of disability service providers in providing early intervention services.
- ACCSES will support federal grant programs that focus on transitional services and employment and explore appropriations and other strategies to establish more secure financial support for transition services, including enhancing the role of disability service providers in providing transition services and supports.
- ACCSES will support the enhancement of parent training and mentoring to maximize the investment in education and to help facilitate informed choice on behalf of their children and adolescents with disabilities.
- ACCSES will work to preserve federal student financial aid eligibility for people with disabilities.

## **II. Medicaid**

### **Outlook**

ACCSES expects Congress and the Administration to continue to push expansion of Medicaid managed care (MMC) and other delivery reforms, including implementation of these changes for individuals with developmental and intellectual disabilities. There is an emerging interest within the Centers for Medicare and Medicaid Services (CMS) and the states in the use of Accountable Care Organizations (ACO) as a service delivery model. Implementation of the Affordable Care Act (ACA) will also continue at an exceptional pace, as the U.S. Department of Health and Human Services (HHS) oversees the activities of the health insurance exchanges and states consider, prepare for, and implement a significant expansion of the Medicaid program.

Congress continues to struggle with long-term care policy. Medicaid provides the bulk of the country's long-term services and supports (LTSS), and some policymakers are looking to either establish a new entitlement program for LTSS or to add a new LTSS benefit to Medicare, similar to how a hospice benefit was added to the program.

Many states have opted to provide LTSS in the home and community under Medicaid waivers. States also have participated in a number of Medicaid demonstrations aimed at caring for people in their home and community. For example, the Money Follows the Person Demonstration, first authorized by Congress as part of the Deficit Reduction Act of 2005 and then extended in 2010 through the ACA, is designed to transition people living in long-term care institutions into the community and to change state policies so that Medicaid funds for long-term care services and supports can "follow the person" to the setting of his or her choice.

In 2012, The Administration combined multiple agencies: The Office on Aging, the Administration on Intellectual and Developmental Disabilities and the HHS Office on Disability, which ran the Community Living Initiative tasked with expanding home and community-based services for people with disabilities, into one agency called the Administration on Community Living (ACL). The ACL continues to become more involved in HCBS issues and provides another venue from which to communicate more effectively with CMS on HCBS issues.

With the economy under great pressure, and as the demographics of an aging population drives demand while resources are stretched, changes in the long-term care system may result in unintended consequences. For individuals with intensive support needs, including 24-hour supervision and professional services like nursing care, adequate care options must continue to be available including appropriate settings where high level-of-care needs can be met.

## Principles

*The federal and state governments should maintain public support and adequate funding of Medicaid and Medicare, two of the largest programs in the country that assist people with disabilities to maintain healthy, functional, and independent lives. Medicaid should continue to cover benefits that include the full array of services necessary to maintain function and independent living, not simply serve acute health care needs. The bias in health care should be toward home and community-based care with access to service delivery programs rather than institutional care, consistent with the principles of informed choice and person-centered planning. People with disabilities should have access to health care practitioners who understand their unique needs and challenges and who practice in facilities that are accessible. Rehabilitation and habilitation providers should be entitled to receive appropriate and timely reimbursement in order to meet the needs of the people they serve.*

*All federal policies shall support the rights of people with disabilities to make individual choices that affect their lives, including living, working, and functioning in the community. The federal government must help to ensure that long-term services and supports for people with disabilities are person-centered and available in the community. The federal government must continue to have a strong role in assuring and funding community-based residential supports for people with disabilities. People with disabilities must have access to assistive technology in order to maximize their ability to live independently and function in the community. There must be accessible and safe transportation available for people with disabilities.*

## Issues

- ACCSES will defend individuals' access to the services and supports they need to live, work, and play in their communities. We will not allow the federal government and states to balance their budgets by eliminating life giving services and supports that people with disabilities rely on.
- ACCSES will protect Medicaid programs for people with disabilities, and will fight attempts to reduce services and hurt people in MMC programs that are driven by corporate profits and supported by the short-term thinking of some politicians.
- ACCSES will work to ensure that any efforts to include people with disabilities in managed care arrangements, particularly with respect to Medicaid long-term services and supports, adequately address concerns with a state's ability and capacity to serve people with disabilities and maintain the types of Medicaid benefits currently available under Medicaid waivers and demonstration projects.
- ACCSES will monitor the development and utilization of the ACO model and disseminate relevant information to the field.
- ACCSES will defend individuals with disabilities access to Medicaid and will oppose federal or state proposals to eliminate or reduce support for Medicaid by decoupling the federal entitlement,

capping the federal share of Medicaid costs, block granting the program, or repealing the Medicaid expansion, and other mechanisms that seek to reduce the federal commitment to Medicaid services for people with disabilities.

- ACCSES will ensure its members are a recognized part of care coordination efforts by HHS, along with the medical community. ACCSES will highlight the cost-effectiveness of its services, as opposed to expensive interventions such as the emergency room.
- ACCSES will ensure that the regulations and sub-regulatory guidelines implementing the Medicaid HCBS program are clarified to enhance the full array of service options consistent with informed choice and person-centered planning.
- ACCSES will assess each new step of implementation of the ACA, including benefits coverage by qualified health plans and Medicaid alternative benchmark plans, for the benefit of coverage of home and community-based benefits and habilitation benefits, and lead opposition to potential threats to optional services under Medicaid waivers.
- ACCSES will promote independent, community living by developing relationships with ACL staff and political appointees and commenting on agency programs.
- ACCSES will ensure that an appropriate array of long-term care services, supports and settings are adequately funded and available to meet the needs and choices of individuals, including those who require intensive levels of care.
- ACCSES will monitor and support the efforts of CMS and state programs that offer funding for assistive technology that help individuals transition from institutions and into the community.
- ACCSES will monitor implementation of the ACA employer shared responsibility provisions, advocate for appropriate regulations that impact ACCSES members as employers and provide ACCSES members with guidance on compliance with the regulations.

### **III. Employment**

#### **Outlook**

During the past several years, ACCSES has attempted to facilitate consensus among the disability community regarding employment-related policy initiatives. Despite our best efforts, the disability community is often divided in how best to achieve the goals of disability employment policy articulated in the ADA (equality of opportunity, full participation, independent living, and economic self-sufficiency). This discord has manifested in competing approaches on issues including reauthorization of the Rehabilitation Act, prevocational services and the definition of “integrated setting” under the Medicaid Home and Community-Based Services program, Section 14(c) of the Fair Labor Standards Act, and the AbilityOne program. We expect that this discord will continue during the year.

There has also been a disturbing trend in recent years showing an increase in individuals with intellectual and developmental disabilities (I/DD) served in day habilitation programs and declining numbers served in employment programs. A 2012 report from the Institute for Community Inclusion and studies on national HCBS Waiver spending, suggest that in many states, employment-related services funded by

Medicaid for people with I/DD are declining while non-work day services are increasing. ACCSES is concerned that state agencies, in response to formal and informal directives from CMS, are adopting policies that are having the effect of reducing support for employment options such as paid work in skill development centers and supported employment.

The “Workforce Innovation and Opportunity Act (WIOA)” (PL 113-128) was enacted in 2014 and created the seventeen member panel known as the Advisory Committee on Increasing Competitive Integrated Employment for Individuals with Disabilities (ACICIEID). The mission of the ACICIEID is to prepare findings and recommendations to the Secretary of Labor on (1) ways to increase the employment opportunities for individuals with intellectual or developmental disabilities or other individuals with significant disabilities in competitive integrated employment; (2) the use of the certificate program carried out under Section 14(c) of the FLSA for the employment of individuals with intellectual or developmental disabilities, or other individuals with significant disabilities; and (3) ways to improve oversight of the use of such certificates. ACCSES will monitor implementation of changes in the workforce system and engage the work being done by the ACICIEID prior to its submission of recommendations to the Secretary.

## **Principles**

*ACCSES believes in the dignity of work. Work is a valued activity for both the individual and society. Work provides both tangible benefits (greater independence and economic self-sufficiency) and intangible benefits (purpose, dignity, self-esteem, and sense of accomplishment). Public policy should promote the expansion and improvement of meaningful employment opportunities for people with disabilities who desire to work. Public policy must aggressively encourage employers to hire and accommodate people with disabilities in a variety of work settings. Government programs must fund services and supports which ensure that a full array of employment opportunities is available for persons with disabilities. Public policy must facilitate appropriate training and accommodations for community-based, integrated employment--the presumed option should be competitive integrated employment. The full array of options should also include employment in skill development centers. Individuals must be permitted to exercise their informed choice of the employment option that is consistent with their strengths, needs, interests, abilities, and capabilities.*

*The federal government should provide significant increases in funding for special education, consistent with its promises. Education programs should be provided in the least restrictive environment and be sufficiently rigorous to ensure success with the diverse and complicated needs of students with disabilities. Goal planning for each student should include an effective transition to adulthood, secondary education, and/or meaningful employment. Early childhood intervention programs under IDEA should be based upon child development principles, with a strong family component. The role of disability service providers in the provision of early intervention programs and transition programs should be expanded and improved.*

## **Issues**

- ACCSES will monitor implementation of the Workforce Innovation and Opportunities Act (WIOA) during this Congress to ensure the rule making process preserves the ongoing role of community rehabilitation providers and preserves critical employment options for the people we serve.
- ACCSES will promote the reauthorization of the Work Incentives Planning and Assistance Act (WIPA) program.

- ACCSES will advocate for public policies that foster better jobs, wages, and working conditions for individuals with disabilities, including individuals with the most significant disabilities. ACCSES will lead the charge to defend individuals' with disabilities right to have access to employment options and opportunities that represent the fullest expression of their vocational strengths, priorities, needs, abilities, and capabilities.
- Some individuals with the most significant disabilities may not be able to meet productivity standards established by an employer, even with the provision of reasonable accommodations. Section 14(c) of the Fair Labor Standards Act enables hundreds of thousands of people with the most significant disabilities to be paid for their efforts commensurate with their levels of productivity. ACCSES protects the choice of people with the most significant disabilities to engage in economic activity and to be paid in accordance with Section 14(c). ACCSES will oppose the phase out or repeal of Section 14(c). ACCSES fully supports aggressive enforcement of Section 14(c).
- ACCSES will ensure that the Department of Justice (DOJ) recognizes the need to maintain a range of choices and opportunities that reflect the needs and desires of the individual and the employment-related recommendations of the treatment professionals. ACCSES will ensure that DOJ adopts state employment-related policies, practices, and procedures that comply with the ADA's most integrated setting appropriate mandate and the Olmstead Supreme Court decision.
- ACCSES will support efforts to ensure the Work Opportunity Tax Credit (WOTC) continues to be available as an incentive for employment of people with disabilities.
- ACCSES will support federal grant programs that focus on transitional services and employment and explore appropriations and other strategies to establish more secure financial support for transition services, including enhancing the role of disability service providers in providing transition services and supports.

#### **IV. AbilityOne**

##### **Outlook**

In 1938, the Wagner-O'Day Act was passed under President Franklin D. Roosevelt in order to provide employment opportunities for people who are blind by authorizing them to manufacture mops and brooms to sell to the federal government. In 1971, under the leadership of Senator Jacob Javits, Congress amended this Act ([41 U.S.C. 46-48c](#)) to include people with severe disabilities and allow the program to also provide services to the federal government. Under the oversight of the AbilityOne Commission (Commission), and over 70 years later, this extraordinary socioeconomic program provides federal customers with a wide array of quality products and services, while providing employment for thousands of people with severe disabilities.

The AbilityOne Program (Program) sales and services to the Federal Government are valued at more than \$2 billion. While the Program continues to experience growth in wages paid to its more than 40,000 employees, Program sales to the federal government account for less than one percent of all federal procurement dollars spent. The U.S. Government Accountability Office (GAO) concluded in a 2013

report that the Program is the single largest source of employment for blind and others with severe disabilities.

Recent events have raised issues that have set into motion program changes that could adversely affect opportunities for AbilityOne employees and their employers who are disability service providers. In 2012, a court case called into question the processes and procedures used by the AbilityOne Commission to determine who is eligible to be an employee and the suitability of contracts that should be acquired. Also, the GAO issued a report in 2013 finding that the Commission has limited control over some aspects of operations; relies heavily on its Central Nonprofit Agencies (CNAs), National Industries for the Blind (NIB) and SourceAmerica, to recommend projects for the Program, but has not resolved concerns about how CNAs assign projects to producing affiliates; and, has final approval of project prices, but procedures could be strengthened.

As result, the AbilityOne Program is undergoing scrutiny from additional federal government agencies leading to proposed changes in definitions, processes and standards. ACCSES is concerned that some groups may attempt to alter the Program in ways whereby jobs for individuals with significant disabilities could be put unnecessarily at risk.

## **Principles**

*ACCSES believes the AbilityOne program is a viable means for creating job opportunities for individuals with significant disabilities. The vision of Congress and the mission of the Program should be preserved and updated within the context of current trends and circumstances. Maintaining the purpose and integrity of the Program are critical to enable thousands of individuals with significant disabilities the opportunity for good jobs at good wages.*

## **Issues**

- ACCSES will lead efforts to modernize and advance the AbilityOne program and comparable state use programs and work to improve job opportunities, wages and working conditions.
- ACCSES will support expanding opportunities for veteran-owned small businesses and service-disabled veteran-owned small businesses. At the same time, ACCSES will oppose any efforts to curtail protections and priorities for procurement contracts with the federal government awarded through the AbilityOne program designed to enhance employment opportunities for individuals with the most significant disabilities, and oppose any related efforts to curtail state preferred source programs.
- ACCSES will support efforts to implement the revised rule regarding affirmative action provisions of Section 503 of the Rehabilitation Act applicable to government contractors.

## **Conclusion**

ACCSES and its members will fight to ensure that the more than 3 million people with disabilities we serve every year will continue to have a full array of options and opportunities available to them. There is strength in numbers and through the continued participation of the over 1,200 disability service providers that ACCSES represents across our great country we will continue to drive for shared success for members. To learn more about ACCSES, visit us at [www.accses.org](http://www.accses.org).