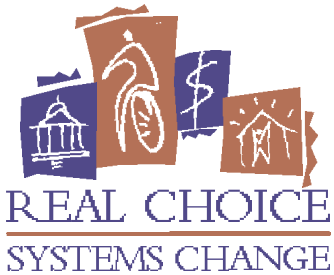


THE POLICY RESOURCE CENTER

INSTITUTE FOR HEALTH, LAW, AND ETHICS

WINTER 2005 / ISSUE 5



The Concord Center
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The Policy Resource Center (PRC) at the Institute for Health, Law, and Ethics was established in 2002 under a Real Choice Systems Change Grant from the Centers for Medicare and Medicaid Services. The mission of the PRC is to identify barriers to real choice and consumer directed services for elders and persons with disabilities and to recommend reforms in policy, regulatory structure and practices. PRC partners include: Consumers, Families, the Institute on Disability at UNH, Granite State Independent Living, the DD Council, and the NH Department of Health and Human Services (Bureaus of Elderly and Adult Services, Behavioral Health, and Developmental Services and the Office of Medicaid Business and Policy.) The preparation of this policy brief is financed under an agreement with the State of NH, Department of Health and Human Services, Office of Medicaid Business and Policy, with Medicaid Infrastructure Grant funds provided by the U.S. Centers for Medicare and Medicaid Services.

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EMPLOYMENT AND DISABILITY

"Without the economic and social benefits of employment, people with disabilities are forced into poverty and isolation." - U.S. Department of Labor Delivering on the Promise, New Freedom Initiative, 2001

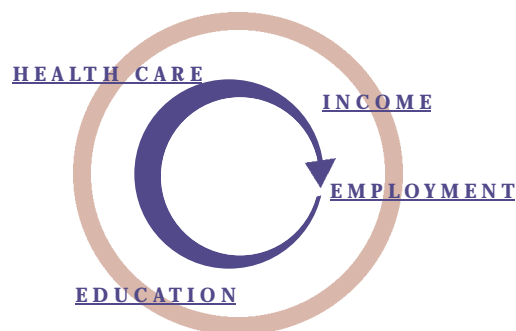
Gainful employment is entirely possible for people with disabilities and yet it remains outside the grasp of many. Today, one in five Americans has a disability and one in 10 has a severe disability.¹ Many are unemployed or grossly underemployed. For people with disabilities, more so than for any other group of people, success in employment is caught in a vicious circle with the insufficiency of employment supports, health care coverage, education and training, and income potential. Further aggravating that cycle are barriers in transportation, child care, and accessible and affordable housing.

HEALTH CARE FACTS:

- Private health insurance covers acute care and Medicaid is the only long-term care coverage available to most people with disabilities.¹
- Workers are less likely to be offered health insurance coverage through a small employer, if they work part-time, or if they work for a low-wage business.²
- If offered, the worker's premium contribution for employer-sponsored health insurance may be cost prohibitive at a monthly average cost of \$53 for a single plan and \$223 for a family plan.²

EDUCATION FACTS:

- 22% of people with disabilities fail to complete high school. For people without disabilities, the percentage is 9%.³
- Only 12% of people with disabilities complete college. For people without disabilities the percentage is 23%.³
- Vocational rehabilitation often does not include education to upgrade skills and credentials.



INCOME FACTS:

- u The average livable wage in New Hampshire was \$18,734 per year (\$9.01 per hour) for a single individual in 2000.
- u The average wage of the people served by the Bureau of Developmental Services is \$5.11/hr. and the average hours worked is 8 hours per week.⁴
- u The average monthly income of MEAD participants in FY 2003 was about \$1,200 (earned and unearned total).
- u People with disabilities are three times as likely to live in poverty (household incomes below \$15,000) as people without disabilities.³

EMPLOYMENT FACTS:

- u 63% of working-age people with disabilities are unemployed compared to 6.4% of working-age people without disabilities.
- u 67% of unemployed people with disabilities would prefer to work compared to 40% of unemployed people without disabilities.³
- u 39% of students with disabilities (not including learning disabilities) are competitively employed 3 to 5 years after exiting school, compared to 69% of students without disabilities.³

LANDMARK FEDERAL LAWS ON EMPLOYMENT FOR PEOPLE WITH DISABILITIES

Over the last 15 years, the passage of landmark laws initiated the dismantling of barriers to employment for people with disabilities.

u 1973, REHABILITATION ACT

The Rehabilitation Act is the first major effort to address nondiscrimination in employment on the basis of disability. The 1973 law is an amendment to an older law providing vocational rehabilitation to World War I veterans with disabilities. It prohibits the federal government, federal contractors, and federal financial assistance recipients from discriminating on the basis of disability against otherwise qualified individuals.

u 1990, AMERICANS WITH DISABILITIES ACT

The Americans with Disabilities Act (ADA) prohibits discrimination on the basis of disability in both public and private employment.

l Title I requires employers with 15 or more employees to provide equal opportunity in employment to qualified people with disabilities. The law prohibits, for example, discrimination in recruitment, hiring,

promotions, training, and pay. Employers must also make reasonable accommodation to the person's physical or mental limitation, unless it would cause the employer undue hardship.

▫ Title II of the Act requires that State and local governments give people with disabilities equal opportunity in employment. Absent undue burdens, entities must ensure job site accessibility and effective communication with people who have sensory disabilities. The law also requires reasonable modifications in policies, practices, and procedures, unless doing so would fundamentally alter the nature of the activity.

▫ **1994, INDIVIDUALS WITH DISABILITIES EDUCATION ACT**

The Individuals with Disabilities Education Act (IDEA) requires public schools to make a free and appropriate education available to children with disabilities and to do so in the least restrictive environment. IDEA also provides funding to school districts for transition services – a coordinated set of activities that promotes the student's movement from school to post-school activities, such as post-secondary or adult education, vocational training, employment, and independent or community living.

▫ **1999, THE TICKET TO WORK AND WORK INCENTIVES IMPROVEMENT ACT**

The Ticket to Work and Work Incentives Improvement Act (TWIIA) changed Social Security programs to allow people with disabilities to go to work without losing needed benefits. Key changes included expanding Medicaid eligibility options and the "Ticket to Work" program.

TWIIA allows states to expand Medicaid eligibility to working people with disabilities in two ways.

▫ Option 1 is for people who would be eligible for Medicaid except that their earnings exceed program income limits.

▫ Option 2 is for people who lose eligibility because they are determined to no longer be disabled "by reason of medical improvement," but continue to have a "severe medically determinable impairment."

States may establish premium and cost-sharing requirements on sliding-scale bases related to income. The federal financial matching rate is the same as generally applies to the state Medicaid program. The New Hampshire program enacted in 2001, Medicaid for Employed Adults with Disabilities (MEAD), is a "buy-in" program under Option 1 and the federal matching rate is 50%.

The Ticket to Work program provides access to vocational rehabilitation and employment services supports for SSI and SSDI working-age (age 18 to 64) recipients with disabilities. Private sector service providers, called Employment Networks, and state Vocational Rehabilitation Agencies assist ticket holders with employment objectives. Benefit planners perform outreach and assists recipients in making informed employment choices.

INTERNAL REVENUE CODE, FEDERAL TAX INCENTIVES FOR BUSINESSES

The Small Business Tax Credit is an annual credit for making a business accessible to people with disabilities. The eligible business is one that earned up to \$1 million in revenue in the previous year or had 30 or fewer full-time employees. The credit is 50% of expenditures over \$250, not to exceed \$10,250, for a maximum benefit of \$5,000. The credit is subtracted from the total tax liability.

The Architectural/Transportation Tax Deduction is an annual deduction for all businesses for expenses incurred to remove physical, structural, and transportation barriers for persons with disabilities at the workplace. Businesses may deduct up to \$15,000 a year and amounts in excess of this maximum may be depreciated.

The Work Opportunity Tax Credit is a credit for employers who hire targeted low-income people with disabilities, such as vocational rehabilitation referrals or SSI recipients. There are a minimum of work days or hours required for the employee. The credit is up to 40% of the first \$6,000 in wages paid during the first 12 months for each new hire.

THE CHALLENGES AHEAD FOR NEW HAMPSHIRE

Employment data shows a decline in the employment rate for people with disabilities in the 1990s. While some debate this finding, researchers agree there has been little improvement in disability-related employment post-ADA. The answer lies in more than anti-discrimination laws alone. Advancing employment opportunities for people with disabilities must also include direct and sustained government intervention and the de-linking of disability and poverty through asset development. In 2003, the Governor's Task Force on Employment and Economic Opportunities for Persons with Disabilities set the following goals for New Hampshire-- engage employers; support the infrastructure already created; and afford people with disabilities the same life opportunities as everyone. Today, researchers and experts are pointing the way to these goals through anti-discrimination measures, government interventions, and asset development.

TO ENGAGE EMPLOYERS:

- u *Dispel the myths about employees with disabilities.* Real facts, include:
 - l Over two-thirds of unemployed people with disabilities want to work.
 - l The ADA does not protect people who cannot perform essential job functions or who do not perform up to standard. In fact, employers prevailed in over 90% of ADA Title I cases at trial and 84% at appeal.⁶
 - l The ADA does not require work accommodations that would cause undue hardship for the employer. In fact, 87% of people with disabilities require no accommodation.⁷ The U.S. Department of Labor also reports that more than 50% of all accommodations cost less than \$500 and federal tax credits help defray the costs.

- u *Provide incentives to employ people with disabilities, such as a state business profits tax credit.* A State tax incentive would complement and enhance federal tax incentives, a factor especially important to the small businesses that account for 97% of New Hampshire employer firms and for the employment of 55% of the State's non-farm private workforce.⁸

u *Establish a partnership between the Vocational Rehabilitation (VR) program and employers.* A partnership would ensure that employer needs are met by a qualified supply of job seekers represented by the VR program. The State VR program should also act as a technical resource to both the private and public sectors for services and supports available to employers and employees with disabilities.

u *Develop the State as a model employer.* The President's New Freedom Commission and the Governor's Task Force both recognize the need for model employers. The Commission commits the federal government toward that end. The State should, in turn, commit to being the local model employer, so as to better advise and show by example a commitment to improving employment for people with disabilities.

TO SUPPORT THE INFRASTRUCTURE ALREADY CREATED:

u *Sustain the MEAD program.* There is good reason to sustain this program that allows individuals with disabilities to find and maintain competitive employment. MEAD permits eligible individuals to find and keep work without losing needed health care benefits. There have been more than 1,400 enrollees in MEAD and an average earnings increase of 75%.¹⁰ The net State Fiscal Year cost for the first seventeen months of the program was only \$900,000. In grant year four, the federal Medicaid Infrastructure Grant (MIG), of \$1,385,041, supports State efforts to enhance employment options for people with disabilities. MEAD is effective and should be sustained.

u *Improve supported employment programs.* Many employees with disabilities will need job coaches and other supports to integrate successfully into an employment setting. In focus groups, New Hampshire employers identified gross insufficiencies in State job support efforts. While employers find support personnel qualitatively effective, the amount of supports available are quantitatively insufficient.

u *Strengthen and stabilize the personal care service infrastructure.* Many people with disabilities need personal care assistance to accomplish activities of daily living, such as eating, transferring, and bathing. It follows that many need personal care to remain successfully employed. Today's insufficient and unreliable personal care infrastructure needs strengthening and stabilizing for successful support of the worker with a disability. This includes: establishing competitive wages and employee benefits for care providers; ensuring sufficient Medicaid budgets for the recipient; and recruitment efforts to address the workforce shortage.

TO AFFORD PEOPLE WITH DISABILITIES THE SAME LIFE OPPORTUNITIES AS EVERYONE:

u *Promote Asset Development for Low-Income People.* Researchers have begun to focus on asset development for low-income people to promote social and economic independence, a goal also at the heart of disability policy. Conflicting with this goal are needs-based eligibility standards for needed public benefit programs, requiring those eligible to be asset-poor. To break the poverty cycle and its associated social and economic dependence, asset development pathways for public benefit recipients should be explored and developed.¹¹

u *Bridge the infrastructures supporting small business development.* Start-up supports for small business development are separate for people with disabilities. Today's successful micro-enterprise supports for people with disabilities are operated outside the mainstream of small business advisors. A bridge between the two advisor sectors would offer greater opportunities for economic self-sufficiency to people with and without disabilities.

These are only some key actions needed to meet the general goals identified by the Governor's Task Force and not an all-inclusive list of needed efforts. There are also many other issues that touch on and impact employment. Affordable credit for homeownership and home modifications, as well as accessible and affordable housing is very much needed. Lack of accessible and available transportation significantly impacts employment. Employer-sponsored health insurance fails to provide the coverage needed for long-term needs in mental health, personal care, physical therapy, durable medical equipment, and more. Most importantly, it is important to fundamentally alter the system that forces people with disabilities to sit idle when they are able to work and want to work. The challenge is to level the playing field through anti-discrimination laws, direct and sustained government intervention, and the de-linking of disability and poverty.

A C R O N Y M S

ADA	Americans with Disabilities Act
MIG	Medicaid Infrastructure Grant
IDEA	Individuals with Disabilities Education Act
SSI	Supplemental Security Income
MEAD	Medicaid for Employed Adults with Disabilities
SSDI	Social Security Disability Insurance
TWWIIA	Ticket to Work and Work Incentives Improvement Act

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