



**CONSORTIUM FOR CITIZENS
WITH DISABILITIES**

April 26, 2021

The Honorable Debbie Dingell
116 Cannon House Office Building
Washington, DC 20515

The Honorable Maggie Hassan
324 Hart Senate Office Building
Washington, DC 20510

The Honorable Bob Casey
393 Russell Senate Office Building
Washington, DC 20510

The Honorable Sherrod Brown
503 Hart Senate Office Building
Washington, DC 20510

Dear Congresswoman Debbie Dingell, Senator Maggie Hassan, Senator Bob Casey, and Senator Sherrod Brown:

The Consortium for Citizens with Disabilities (CCD) is the largest coalition of national organizations working together to advocate for federal public policy that ensures the self-determination, independence, empowerment, integration, and inclusion of children and adults with disabilities in all aspects of society. The CCD Employment and Training Task Force wishes to acknowledge the many years of intensive efforts expended by many advocates to press for rebalancing the Medicaid program away from prioritizing institutionalization over community integration. The HCBS Access Act is a testament to their perseverance and advocacy.

You have received, separately, a comprehensive set of recommendations regarding the proposed Home and Community Based Services (HCBS) Access Act from CCD's Long-Term Services and Supports (LTSS) Task Force. We wish to lift up these recommendations as they reflect the subject matter expertise they have brought to this discussion as well as numerous deliberations in the past.

In addition, the Employment and Training Task Force offers comments related specifically to the ways in which the HCBS Access Act has the potential to enable significant numbers of people with disabilities to enter or re-enter the workforce because of their expanded access to direct service providers and personal care attendants. As noted in [a recent op-ed by former Secretary of Homeland Security Tom Ridge and former Special Advisor for International Disability Rights Judith Heumann](#) expanding home and community based services to people with disabilities is consistent with the aim of the American Jobs Act because it will enable many Americans with disabilities to finally leave their homes to go to work. We support the requirement in Section 5 of the draft bill that states include in their implementation plan a description of "how the State will coordinate eligibility for such services with other disability eligibility programs, such as disability buy-in programs."

Often overlooked in discussions of HCBS and its impact on employment patterns is that of unpaid family or informal caregivers. Too often, these caregivers step out of the workforce to care for someone with a disability, sacrificing not only their earnings capacity but also their ability to earn retirement credits in Social Security that will contribute to their own economic insecurity. Numerous measures have been introduced in Congress over the years providing credit within Social Security for up to 60 months of unpaid caregiving and could be a useful addition to the bill language. One program model for compensating family caregivers is that which is available through the Department of Veterans Affairs (VA) for caregivers of veterans with significant disabilities. Those eligible for this VA program receive a monthly stipend (paid directly to the caregiver), access to health care insurance through [CHAMPVA](#), if they do not already have health insurance, mental health counseling and other benefits. While tailored to the veteran community, it nonetheless may offer an example of an approach to creating an infrastructure that supports family caregivers.

As this legislation evolves, it is also important to consider the impact that expanding the supply of HCBS within the Medicaid program may have on other public and private community support programs serving people with disabilities. Not all people with disabilities qualify for Medicaid but may nevertheless rely on long term services and supports through other avenues that enable them to live in the community. Provision may need to be made to ensure that other parts of the disability services system can respond to increased demand for direct support professionals and personal care attendants through state vocational rehabilitation agencies, state workforce programs, VA home care and other public and private providers.

We recommend that not later than two years from enactment of the HCBS Access Act that Congress appoint a review commission to examine the impact of this rebalancing of Medicaid on programs, services, and supports received by people with disabilities who obtain long term services and supports from other public or private programs.

Lastly, as you consider development of an HCBS infrastructure that supports workforce development we urge you to consider some of the following factors and considerations:

- From assistive technology to job coaches HCBS funding supports the accessibility needs of many jobseekers with disabilities. As such, those already receiving support need to be protected even as any changes to Medicaid are being made.
- For individuals with the most significant disabilities, Medicaid-funded LTSS is often the sole system that pays for long-term employment services. It is not immediately clear from the draft text of the legislation how or if the expansion of HCBS funding would be directed to provide employment supports and services. Greater clarity now will ensure that jobseekers with disabilities benefit if this Act is passed.
- Coordination and collaboration with the existing networks of disability employment services will need to be factored in the implementation plans for the Act. In what ways will expanding HCBS build on or connect with vocational rehabilitation, Veterans Affairs, or Ability One programs which already struggle with inadequate resources to meet the broad needs of people with disabilities who want to work. How will the HCBS Access Act address existing gaps between these programs?
- HCBS Waivers allow for greater flexibility in setting reimbursement rates for employment services. How will the expansion of HCBS under the Act impact those rates? Likewise, in many states, HCBS Waivers also provide “cover” for making the case for where

employment supports and services “fit” within a health care plan. Can language be adopted to ensure access to those supports?

- The COVID-19 pandemic has not only costs thousands of workers with disabilities their jobs, but it has also directly impacted the Direct Support Professionals (DSPs) who help people with disabilities enter the workforce. Current estimates show the potential loss of up to 25 percent of job coaches/job developers within the DSP workforce as a result of COVID-19. We applaud the HCBS Access Act intent to address the broader DSP workforce crisis, but assurances are needed that employment supports are included in this effort. Can such language be made clear as the Act moves forward in Congress?
- Managed care has taught us that employment expertise or employment as a priority for services is NOT a given within a health care management system. If employment supports remain a mandated service, how will the Medicaid system be held responsible for ensuring adequate funding flows to CRPs?
- The Centers for Medicare and Medicaid Services has not fully enforced [the HCBS final settings rule](#). Is the lack of state “readiness” being taken into consideration in the timeline for implementation of this legislation?
- If at all possible, the Act should include language that affirms a commitment to “individualized, integrated employment services that lead to competitive, integrated employment.” It also makes sense for the Act to specify and lay out the various employment supports available to those who leverage expanded HCBS funding to pursue their employment goals. (Services to be identified could include individual supported employment services, individual career planning, discovery and customized employment services, job exploration, small-business development/entrepreneurship, benefits planning, and job coaching).
- In considering future increases to the Federal Medical Assistance Percentage (FMAP) for State Medicaid Agencies that provide/expand services to HCBS beneficiaries, attention must be paid to ensure that individualized, integrated supports focused on CIE as the outcome are prioritized. This would include community-based, individualized pre-vocational services, individual supported employment services, individual career planning, discovery and customized employment services, job exploration, small-business development/entrepreneurship, benefits planning and job coaching. Likewise, increased FMAP outcome payments for transitioning beneficiaries from pre-vocational and day habilitation services to supported employment could be crucial to increasing employment outcomes.
- Increased FMAP should not be allowed for facility-based congregate models providing prevocational employment services or day habilitation, unless it is tied to assuring states use the funding to increase rates for providers to pay DSPs more adequate wages/benefits (and there should be safeguards in place to assure the increased rates are trickling down to achieve this goal).
- In terms of aligning similar efforts, it is worth considering one of the specific provisions from the Transformation to Competitive Integrated Employment Act (H.R. 2373). That bill would create a competitive state grant program to help employers transition their business models to support competitive, integrated employment outcomes for workers with disabilities. A similar grant program through HCBS could help providers of facility-based prevocational services build capacity and shift to individualized, integrated employment. Make sure grants/funding is awarded to every state to provide this TA/training/resources. Some of the money needs to go to DSPs getting certified in one of more areas of specialization to provide the above-mentioned services. Also allow states some greater flexibilities and financial incentives to pilot value-based payment methodologies that encourage providers to offer these services.

- As discussed above, any expansion of HCBS needs to harmonize with existing programs for getting jobseekers with disabilities into the labor force. As such, the Act could directly help individuals with disabilities who are on state vocational rehabilitation waiting lists and who are eligible for HCBS waiver services by adding clarity so that they can access supported employment services. CMS has provided technical assistance to VR agencies about this issue before and the Act is a further opportunity to reinforce this synergy.
- Too many jobseekers with disabilities remain in prevocational programs for extended periods of time. Guidance from CMS released back in 2011 suggest that prevocational services be time-limited and the HCBS Access Act could be a vehicle for putting in place a 2-year limit on such services.
- Given that the HCBS Access Act could be critical to expanding and support more integrated employment outcomes for people with disabilities, it is worthwhile to include language that reinforces that while individualized integrated employment settings that provide competitive wages are considered to be in compliance with the HCBS rule, any facility-based day or prevocational settings must be assessed, validated, and remediated to be in full compliance with the federal HCBS regulations. Additionally, CMS should be required to provide guidance that was previously promised back in 2014 and has yet to be released.
- Lastly, we hope that the Act will confirm that providers of HCBS cannot also be the employers (direct or third-party) of individuals that they also provide HCBS too. Providers can do both (be providers of HCBS and be an employer of HCBS recipients under a state/federal contract or internally within the organization), but the individuals they are providing direct HCBS to cannot be employees of the provider.

We applaud your efforts to expand access to home and community-based services through Medicaid. We commit to working with you and our disability partners and allies to ensure that this legislation results in true community integration for people with disabilities.

Sincerely,
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The Consortium for Citizens with Disabilities (CCD) is the largest coalition of national organizations working together to advocate for federal public policy that ensures the self-determination, independence, empowerment, integration and inclusion of children and adults with disabilities in all aspects of society. The Employment and Training Task Force monitors federal legislation and regulations relevant to the employment of people with disabilities, particularly issues related to the programs and projects funded under the Rehabilitation Act of 1973, as amended.