



March 15, 2022

TO: Joint Budget Committee;
Business Affairs and Labor, Public and Behavioral Health and Human Services; and Health and Insurance Committees of the House of Representatives; and
Business, Labor, and Technology, and Health and Human Services Committees of the Senate

FROM: The Employment First Advisory Partnership (EFAP)

SUBJECT: Recommendations for addressing structural and fiscal barriers to phasing out subminimum wage employment and successfully implementing competitive integrated employment

INTRODUCTION:

Senate Bill 21-039, “Elimination of Subminimum Wage Employment,”¹ requires the Employment First Advisory Partnership (EFAP) to “develop actionable recommendations to address structural and fiscal barriers to phasing out subminimum wage employment and successfully implementing competitive integrated employment for individuals with disabilities” and address related barriers.²

The COVID-19 pandemic has had a devastating effect on employment for all Coloradans and especially so for those with disabilities. Although numerical data documenting job losses for this group are not presently available, stakeholders, including individuals with disabilities and agencies that provide employment services, have reported to EFAP significant job losses for people with disabilities. The recommendations within this report have been made to improve Colorado’s efforts to reduce barriers to Colorado citizens with disabilities in their efforts to become employed. These recommendations become even more important within the context of the pandemic and its negative impact on Colorado’s business community and workforce.

¹ Colorado Senate Bill 21-039 found at: <https://leg.colorado.gov/bills/sb21-039>

² “The recommendations to address barriers must: **(I)** Include payment reform for employment-related services;**(II)** Establish adequate reimbursement rates for employment-related services to ensure the availability of high-quality support services;**(III)** Address unit caps on employment-related services; and **(IV)** Address any necessary medicaid waiver and state regulatory barriers”

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The EFAP and its state agency partners have been engaged in a variety of recent activities, below, for how employment service payments can be reformed to support the successful implementation of competitive integrated employment (CIE) outcomes for Colorado citizens with disabilities. This has included the following:

- A study was conducted from 2020 to 2021 by the Colorado Office of Employment First in response to employment services providers advocating for payment reform and “as an initial step in the overall goal of increasing availability of quality employment service providers who are committed to Employment First practices and principles resulting in CIE for many more Coloradans.”⁵ The report documenting this study, *Rate Structure and Rate Methodology Study Report*⁶ was published in November 2021. A primary recommendation of this report is to build a milestone/performance-based rate structure for employment services and supports which includes “acuity levels” to assure that people with more intensive service needs associated with their disability are not discriminated against. An additional recommendation involves providing financial incentives to enhance job coach “fading” (reduction in the number of service hours during an interval of time) by implementing monthly retainer payments based upon hours worked and wages earned by the worker with disabilities.
- The Colorado Department of Health Care Policy and Financing is in the process of conducting the *Supported Employment Incentive Based Pilot Program*⁷ to determine how an incentive-based payment model might improve employment outcomes for Coloradoans with Intellectual and Developmental Disabilities. Expected improved outcomes from this activity include increased hours of work, enhanced co-worker and supervisor supports (“natural supports”), improved social integration at the workplace and reduced job coach support hours. To date, limited project-related data has been collected largely due to implementation issues resulting from the COVID-19 pandemic. This pilot program has been extended by an additional two years through

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⁵ Bergman, A., Robinson-Rosenberg, C., Henke, P., Taylor, A. & Cron, T. (2021). [Rate structure and rate methodology report](#). Colorado Office of Employment First.

⁶ Ibid.

⁷ Joint Budget Committee FY 2019-20 Figure Setting Final Document. R 16. p. 24.

the use of federal American Rescue Plan Act (ARPA) funds. Two additional employment service providers, based in rural areas of the state, are scheduled to be added to the pilot in early 2022.

- The above efforts by the Colorado Office of Employment First (COEF) and the Colorado Department of Health Care Policy and Financing (HCPF) utilize the work of Lisa Mills, PhD., a national leader in rate structure development. Dr. Mills' recent publication describing how competitive integrated employment (CIE) outcomes can be improved through the use of value-based payment methodologies⁸ has been used as a primary source document by COEF's rate structure study and HCPF's ongoing pilot program. It is anticipated that Dr. Mills will continue to consult with HCPF as the pilot program progresses. The confluence of the use of Dr. Mills' work points to the consistency between these two efforts and is another example of the collaboration between EFAP state agency partners.

RECOMMENDATIONS

RECOMMENDATION AREA I: PAYMENT REFORM FOR EMPLOYMENT-RELATED SERVICES

DRAFT RECOMMENDATION 1: It is EFAP's recommendation that agency partners develop outcome-based, value-based and incentive-based vendor payment structures to improve CIE outcomes consistent with the *COEF Rate Structure and Rate Methodology Study Report*, the *HCPF Supported Employment Incentive Based Pilot Program* and Dr. Lisa Mill's *Value based payment methodologies to advance Competitive Integrated Employment: A mix of inspiring examples from across the country*. Other terms used in the literature for value-based payment structures include outcome-based and incentive-based payments and pay-for performance.

DRAFT RECOMMENDATION 2: EFAP recommends HCPF and Colorado Department of Labor and Employment (CDLE) vendor payment structures allow for exception flexibility for people served who may require different or additional resources to produce an employment outcome.

DRAFT RECOMMENDATION 3: It is a recommendation of the EFAP that HCPF and CDLE explore how rate payment structures can sustainably incentivize training for and competency of employment support professionals over time. This concept is presently being achieved through SB18-145- in the form of reimbursement to employment service providers for nationally recognized training and certification.

RECOMMENDATION AREA II: ADEQUATE REIMBURSEMENT RATES FOR EMPLOYMENT-RELATED SERVICES TO ENSURE THE AVAILABILITY OF HIGH-QUALITY SUPPORT SERVICES

⁸ Mills, L. (2021, April). Value based payment methodologies to advance Competitive Integrated Employment: A mix of inspiring examples from across the country. ODEP, U.S. Department of Labor.
https://www.dol.gov/sites/dolgov/files/ODEP/pdf/Value_Based_Payment_Methodologies_FINAL_Lisa_Mills_05_04_2021_READ_ONLY_COPY.02.pdf

DRAFT RECOMMENDATION 1: In the development of employment services rates, EFAP recommends HCPF continue and the Division of Vocational Rehabilitation (DVR) within CDLE start utilizing “the cost of doing business,” defined by the costs to employment providers to, at a minimum, cover the costs of their services as a primary factor when developing rates for reimbursement. Additional and ongoing analysis will be required to determine a new reimbursement structure that leads to sustainable employment programs, including the ability to cover the cost of doing business. The COEF *Rate Structure and Rate Methodology Study Report* has provided 2021 survey results from 35 Colorado employment service providers on the cost of doing business, while a small sample of overall providers, based on the numbers served by the programs, these agencies do represent a large portion of the people receiving supported employment services and therefore, it is recommended to be utilized as an indication that rates must be increased to cover the cost of business.

DRAFT RECOMMENDATION 2: The rate setting process HCPF is required to use has historically resulted in rates which are significantly below what is needed for provider agencies to cover “the cost of doing business.” EFAP recommends HCPF work with the general assembly to fully fund, expand and sustain Colorado’s employment service capacity for people with disabilities.

DRAFT RECOMMENDATION 3: Issues and mechanisms such as stakeholder input, staff salary surveys, defined minimum staff compensation levels, accounting for non-billable staff hours and Consumer Price Index (CPI)-based annual rate increases be considered by HCPF and CDLE in their rate-setting processes.

DRAFT RECOMMENDATION 4: EFAP recommends rate setting processes conducted by EFAP agency partners include robust stakeholder involvement.

RECOMMENDATION AREA III: UNIT CAPS ON EMPLOYMENT-RELATED SERVICES

DRAFT RECOMMENDATION 1: It is a recommendation of EFAP that HCPF explore the elimination of individual caps on employment services through the implementation of incentive-based payment structures and other strategies/mechanisms.

DRAFT RECOMMENDATION 2: EFAP recommends HCPF explore the use of differential rates and unit caps to financially incentivize integrated community-based services over facility or congregate employment services.

RECOMMENDATION AREA IV: ANY NECESSARY MEDICAID WAIVER AND STATE REGULATORY BARRIERS

DRAFT RECOMMENDATION 1: It is EFAP’s recommendation that HCPF make supported employment services available within all Medicaid Home and Community Based Services (HCBS) waiver programs.

DRAFT RECOMMENDATION 2: EFAP recommends HCPF develop a funding mechanism that allows for co-worker supports, which would include cases when safety-based “line of sight supervision” is necessary.

DRAFT RECOMMENDATION 3: EFAP recommends HCPF work with partners to eliminate participant segregation in Prevocational Services by transitioning from facility-based to community-based service modalities, including appropriate policy changes.

DRAFT RECOMMENDATION 4: EFAP recommends HCPF/OCL and CDLE/DVR expand access to universal technological solutions applied to employment services and supports.

DRAFT RECOMMENDATION 5: It is EFAP’s recommendation that CDLE/DVR and HCPF/OCL continue exploration of collaboration to support Inclusive Higher Education when consistent with an employment goal.

DRAFT RECOMMENDATION 6: It is a recommendation of EFAP for their agency partners to ensure that people with disabilities, family members and case managers have access to information and training on employment supports and the reduction of barriers to employment.

IN CLOSING

The foregoing report is provided to the General Assembly as directed by SB21-039, “Elimination of Subminimum Wage Employment.” Related legislation in 2021 (SB21-095 “Sunset Employment First Advisory Partnership”) serves to indefinitely extend our mission to advise the General Assembly as we monitor Colorado’s efforts to improve employment outcomes for people with disabilities. The Employment First Advisory Partnership looks forward to providing ongoing periodic advisory reports to the legislature as Colorado continues to make equal employment opportunity for people with disabilities a reality.