

Register for NASHIA's Public Policy Committee's webinar scheduled for next Tuesday, June 21. Read further for more information in this week's *Washington Weekly*.



Washington Weekly!

by the National Association of State Head Injury Administrators

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Administration

CMS Launches Webpage on NEMT

This week, the Center for Medicare and Medicaid Services (CMS) launched a new **Non-Emergency Medical Transportation (NEMT) webpage** as part of Medicaid.gov. The new resource contains recordings from the recent stakeholder listening sessions for improving Medicaid program integrity for NEMT. These listening sessions were directed as part of the Section 209(b)(3) of the Consolidated Appropriations, 2021. Federal regulations require State Medicaid agencies to specify in the State plan that they will ensure necessary transportation for clients to and from providers and describe the methods that the agency will use to meet this requirement.

DOL Issues Guidance on Law Limiting Subminimum Wages for Workers with Disabilities

Yesterday, the U.S. Department of Labor (DOL) announced new guidance published the department's Wage and Hour Division on important limitations on the payment of subminimum wages under Section 511 of the Rehabilitation Act, which applies to certified employers otherwise authorized to pay subminimum wages to workers with disabilities under specific requirements of the **Fair Labor Standards Act** (FLSA). Section 511 requires employers with a certificate under Section 14(c) of the FLSA to ensure that workers have received critical resources and information prior to and throughout the duration of employment at a subminimum wage. The timely provision of these resources and information helps maximize opportunities for workers to obtain competitive integrated employment. When employers fail to comply with the requirements of Section 511, they are required to pay workers the full federal minimum wage.

The new guidance, Field Assistance Bulletin No. 2022-4 "**Enforcement of the Rehabilitation Act Section 511 Requirements for Workers with Disabilities in the Section 14(c) Program**," supplements Field Assistance Bulletin Nos. **2016-2** and **2019-1**, **Fact Sheet 39H** and **other materials designed to provide guidance** on the provisions of Section 511 and the protections it offers workers in the Section 14(c) program. The new FAB reaffirms and provides assistance to stakeholders in determining compliance with the timing and documentation requirements of Section 511 of the Rehabilitation Act of 1973, as amended by the Workforce Innovation and Opportunity Act (WIOA).

DOL Files Lawsuit on Violation of Section 511

Meanwhile, this week, DOL's Office of the Solicitor filed suit in the U.S. District Court for the District of Montana, Billings Division, alleging the owner and operator of Special K Ranch – a Columbus, Montana, residential and working ranch facility for individuals with intellectual and

developmental disabilities – violated the requirements of Section 511. The litigation follows a Wage and Hour Division investigation that found the employer falsely stated that required counseling and referrals had been provided to workers paid subminimum wages, and that it informed these workers of available training opportunities, when it had not. The employer's failures required Special K to pay the full minimum wage to legally continue to employ the workers until the workers received the required information and services. Investigators determined the facility paid 35 employees below federal minimum wage during and after the investigation period.

ICDR Meetings to Focus on Disability Data, Equity and COVID-10

The [Interagency Committee on Disability Research \(ICDR\)](#) will host two events in June focusing on new research and development for the disability and rehabilitation community. ICDR will hold a virtual [Stakeholder Meeting](#), June 23rd, 12:00noon – 4:00 pm (ET). Presenters will share the current accomplishments and vision of the ICDR, along with an overview of the current state of research progress and future research priorities across three focus areas: Disability data and statistics, equity, and COVID-19. ICDR will also host a [Lunch & Learn webinar](#), June 30th, 11:00am – 12:00pm (ET). Presenters will discuss the role of pediatric psychologists in mitigating disability-specific barriers among youth during the COVID-19 pandemic. Registration is free and required and space is limited for both events.

Agencies Make Recommendations for Young Children's Social-Emotional Development

On June 14, the Departments of Education and Health and Human Services issued a [Dear Colleague Letter with four recommendations](#) to equitably support the social-emotional development and mental health of young children. The departments intend for the recommendations and action steps to help early childhood systems work collaboratively to ensure that young children and their caregivers have access to high-quality resources. The "Dear Colleague Letter" addresses State, territorial, tribal, and local policymakers and administrators of systems, agencies, and programs responsible for young children's health and well-being, social-emotional development, and early learning.

EEOC and DOJ Warn Against Disability Employment Discrimination and AI Tools

Last month, the U.S. Equal Employment Opportunity Commission (EEOC) and the U.S. Department of Justice (DOJ) each released a technical assistance document about disability discrimination when employers use artificial intelligence (AI) and other software tools to make employment decisions. Employers increasingly use AI and other software tools to help them select new employees, monitor performance, and determine pay or promotions. Employers may give computer-based tests to applicants or use computer software to score applicants' resumes. Many of these tools use algorithms or AI. These tools may result in unlawful discrimination against people with disabilities in violation of the Americans with Disabilities Act (ADA).

The EEOC released a technical assistance document, [The Americans with Disabilities Act and the Use of Software, Algorithms, and Artificial Intelligence to Assess Job Applicants and Employees](#),” focused on preventing discrimination against job seekers and employees with disabilities. Based on the ADA, regulations, and existing policy guidance, this document outlines issues that employers should consider to ensure that the use of software tools in employment does not disadvantage workers or applicants with disabilities in ways that violate the ADA. The DOJ's guidance document, [Algorithms, Artificial Intelligence, and Disability Discrimination in Hiring](#),” provides a broad overview of rights and responsibilities in plain language, making it easily accessible to people without a legal or technical background.

HHS' OCR to Issue Guidance on Use of Audio-Only Telehealth Services

On Monday, the U.S. Department of Health and Human Services (HHS), through its Office for Civil Rights (OCR), announced it is issuing guidance on how covered health care providers and health plans can use remote communication technologies to provide audio-only telehealth services when such communications are conducted in a manner that is consistent with the applicable requirements of the Health Insurance Portability and Accountability Act of 1996

(HIPAA) Privacy, Security, and Breach Notification Rules, including when OCR's [Notification of Enforcement Discretion for Telehealth- PDF](#) is no longer in effect. This guidance will help individuals to continue to benefit from audio-only telehealth by clarifying how covered entities can provide these services in compliance with the HIPAA Rules and by improving public confidence that covered entities are protecting the privacy and security of their health information.

The Guidance on How the HIPAA Rules Permit Health Plans and Covered Health Care Providers to Use Remote Communication Technologies for Audio-Only Telehealth may be found [here](#).

Judiciary

SCOTUS Agrees to Hear Case on Rights of Private Nursing Facility Residents

Last month, the Supreme Court of the U.S. (SCOTUS) agreed to hear *Health and Hospital Corp. v. Talevski*, which will reexamine whether the spending clause legislation (42 U.S.C. §1983) gives rise to private rights of action. Talevski, a resident with dementia, brought suit against a privately ran facility for violations of the Federal Nursing Home Reform Act (FNRA). He sued the nursing home claiming it had violated his rights under the 1987 Federal Nursing Home Reform Act (NHRA) by unlawfully medicating him, then discharging him. NHRA set the federal quality standards for nursing homes if they receive Medicare or Medicaid. The Seventh Circuit Court of Appeals unanimously ruled that nursing home residents in publicly-owned facilities enjoy a private right of action to enforce residents' rights identified in the 1987 law and that Talevski's case met all three standards for finding an implied private right of action, in keeping with previous court decisions.

The case is significant in that case law holds that residents in nursing facilities that are privately-owned and operated do not have a private-right of action to sue the facilities. Yet, in many States, public entities have transferred their operations to private entities to manage. Reconsideration of private rights of action under Section 1983 is critical for community services as it threatens access to legal action where States violate Medicaid law. Other State-administered public assistance programs that create rights, such as nutrition or public housing assistance, also will be affected, depending on the ruling, as individual guarantees to food and shelter could become unenforceable. The case is scheduled for argument during the Court's October 2022-2023 term.

Reports and Resources

CDC Provides New Handout on Its TBI Prevention Initiatives

The Centers for Disease Control and Prevention's Injury Center (CDC) has just cleared a new resource that provides a [1-page overview of CDC's TBI prevention initiatives](#). This resource clarifies CDC's role within the TBI field while providing a broad overview of its research and programming.

CDC Reports on Outcomes for People with Disabilities from COVID-19

In today's Centers for Disease Control and Prevention's (CDC) *Morbidity and Mortality Weekly Report (MMWR)*, there are two articles relating to COVID-19 and Medicare beneficiaries with disabilities in hospital settings and residents in long-term care facilities and community dwellings. The study, "[COVID-19 Cases and Hospitalizations Among Medicare Beneficiaries With and Without Disabilities](#) in the United States from January in 2020 to November in 2021," indicates that persons with disabilities are at high risk for severe outcomes from COVID-19, including death. COVID-19-associated hospitalization rates among disability-eligible Medicare beneficiaries (3,148 per 100,000) were approximately 50% higher than rates among age-eligible

(i.e., ≥65 years) beneficiaries (2,129 per 100,000), and hospitalization rates increased by age in both groups. Among persons with disabilities, American Indian or Alaska Native persons experienced the highest rate of COVID-19–associated hospitalization (4,962 per 100,000). Efforts to increase access to and implementation of COVID-19 prevention and treatment strategies, including vaccination, are critical to reducing severe COVID-19–associated outcomes among persons with disabilities.

The second study featured in *MMWR* is “ **COVID-19–Associated Mortality Risk Among Long-Term Care Facility Residents and Community-Dwelling Adults Aged ≥65 Years in Illinois from December 2020 to January 2022.**” Although the COVID-19 mortality rate has been lower among community-dwelling adults aged ≥65 years than among long-term care facility (LTCF) residents aged ≥65 years throughout the pandemic, the rate among the LTCF group declined 69% during the study period, from 1,932 per 100,000 at baseline (December 2020) to 594 during the comparison month (January 2022) ($p < 0.01$), whereas among community-dwelling adults, this rate increased by nearly 8%, from 120 per 100,000 to 129. The ratio of the COVID-19 mortality rate among LTCF residents to that among community-dwelling adults decreased by 71%, from 16.1 to 4.6, during this period. In January 2022, 91% of LTCF residents and 85% of community-dwelling adults were fully vaccinated, and 75% and 61%, respectively, had received a booster dose; no one in either group was fully vaccinated in December 2020.

NCAPPS Updates Resource on Person-Centered Practices Self-Assessment

The National Center on Advancing Person-Centered Practices and Systems (NCAPPS) has updated the **Person-Centered Practices Self-Assessment** to better assist human services agencies in measuring their progress in developing a more person-centered system. Developed through NCAPPS technical assistance, the Self-Assessment contains questions about observable practices across eight system domains.

Upcoming Webinars and Conferences

Don't Miss NASHIA's Public Policy Webinar Scheduled June 21

Next Tuesday, the National Association of State Head Injury Administrators (NASHIA) Public Policy Committee, chaired by Jennifer Braun (MO), is offering the webinar, "Capitol News Live!" to provide an update on current legislation and Administration policies impacting individuals living with brain injury and their families. The webinar will be held from 1:00pm-2:00pm (Central). Register [here](#).

NCAPPS Offers Webinar on Person-Centered Decision-Making and Guardianship

The **National Center on Advancing Person-Centered Practices and Systems** (NCAPPS) is offering the webinar, "Pathways to Person-Centered Decision-Making and Alternatives to Guardianship," on Tuesday, June 21, from 3:00-4:30pm (ET). This webinar will explore how systems are expanding alternatives to guardianship, such as supported decision-making where people choose supporters to help them make important decisions in their lives. Current efforts across the country and internationally to implement supported decision-making and other alternatives provide an historic opportunity to help people take control of their lives. In this webinar, national experts, State representatives, advocates, and people with lived experience of disability from Colorado, Georgia, and Wisconsin, will outline strategies for systems and a **new NCAPPS resource** to expand supported decision making so that more people can benefit from these alternatives to guardianship. **Register** for the webinar.

TBI TARC Offers Webinar on Behavioral Health Guide

On June 22, 2022, from 3:00—4:30pm (ET), the Administration for Community Living's (ACL) Traumatic Brain Injury (TBI) Technical Assistance and Resource Center (TARC) will offer the webinar, "Introductory Webinar to the Behavioral Health Guide: Considerations for Best Practices for Children, Youth, and Adults with TBI." This webinar will introduce Behavioral Health

Guide designed to provide State brain injury professionals with the tools to effectively partner with their State behavioral health entities and improve outcomes for this population. The guide's authors will provide an overview of the various sections and answer questions about applying some of the tools and strategies identified within a State system. View the guide [here](#). Register [here](#).

LEAD Center to Host Webinar on Funding and Resources for Integrated Employment

On June 29, from 2:00pm-3:00pm (Central) / 3:00pm-4:00pm (ET), the National Center on Leadership for the Employment and Economic Advancement of People with Disabilities (LEAD), a Workforce Innovation and Opportunity Act (WIOA) policy development center, will host a webinar on how to blend, braid, and sequence resources and funding to support employment outcomes and promote equity and inclusion for people with disabilities. This webinar will feature speakers from Maryland who will share their promising practices at the State and local levels, including lessons learned and tools they use to sustain their partnerships. Join the webinar [here](#).

This webinar is presented by the Office of Disability Employment Policy at the U.S. Department of Labor (DOL), along with federal partners at the Administration for Community Living (ACL), the Centers for Medicare and Medicaid Services (CMS), Employment and Training Administration, the Rehabilitation Services Administration, the Office of Special Education and Rehabilitative Services, the Office of Special Education Programs (OSEP), the Social Security Administration (SSA), and the Substance Abuse and Mental Health Services Administration (SAMHSA).

Register Now for NASHIA's 33rd Annual State of the States Conference

You may now register for NASHIA's 33rd Annual State of the States (SOS) Conference, *Breaking New Ground*, to be held virtually Sept. 7-9, 2022. The conference will include live sessions, video networking rooms, as well as an exhibit hall for attendees to visit.

Registration is \$300 for members and \$350 for guests. You may register [here](#). NASHIA is offering the Legacy Scholarship to cover SOS fees. Go [here](#) for more information. You may also contact Haleigh Cushen for more information regarding the scholarship at hcushen@nashia.org. Information regarding sponsorships may be found [here](#).

ARCH Announces Respite Conference Speakers

ARCH has announced keynote speakers for the 2022 National Lifespan Respite Conference: Alison Barkoff, Administration for Community Living; Dr. Jennifer Olsen, Rosalynn Carter Institute for Caregivers; Charlotte Deleste, Evening News Anchor, Madison WISC-TV, and Founder and Vice-President, Gio's Garden Therapeutic Respite Center, Madison, WI.

Early bird registration is open for the National Lifespan Respite Conference, "Reimagine Respite!", hosted by the Respite Care Association of Wisconsin and co-hosted by the ARCH National Respite Network and Resource Center. The conference will be held September 13-15, 2022, at the Madison Concourse Hotel, Madison Wisconsin. Register [here](#).

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The National Association of State Head Injury Administrators assists State government
in promoting partnerships and building systems
to meet the needs of individuals with brain injuries and their families.

Support States. Grow Leaders. Connect Partners.



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