

Colorado Elimination of Subminimum Wage

Annual Report to the Public

March 2024



COLORADO
Department of Health Care
Policy & Financing

Recommended Citation The Colorado Department of Health Care Policy & Financing, 23/24, Colorado Elimination of Subminimum Wage-Annual Report to the Public.

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Executive Summary

Advocates, Medicaid service providers and invested community members, worked with the Colorado legislature to pass [Senate Bill 21-039](#), “The Elimination of Subminimum Wage Employment,” which called for ending subminimum wage (SMW) practices in Colorado by 2025. In this report, you will find an update on this work and our accomplishments over the past year, including that all subminimum wage was fully eliminated two years before the legislative deadline.

Colorado is an Employment First state. Employment First is a framework centered on the premise that all people, including people with disabilities, can fully participate in community living and community-based employment that pays at or above minimum wage. Under section 14 of the Fair Labor Act of 1938, employers can receive a waiver that allows them to pay their employees with disabilities less than minimum wage. Before the year 2020, 500+ citizens of Colorado with a disability were being paid wages below the state’s minimum wage. These employees were compensated at wages averaging a third of minimum wage.

As of July 1, 2021, the number of Home and Community Based Services Supported Living Services and Developmental Disability (HCBS-SLS and HCBS-DD) waiver members who received subminimum wages decreased by more than 60%, from 500 to 195. This high decrease was likely due to the COVID-19 pandemic and the subsequent steering away from congregant settings. By June 30, 2022, more than half of the remaining 195 workers receiving wages below minimum wage had transitioned out of subminimum wage employment, with the rest fully transitioned in 2023, two years ahead of schedule. This was achieved by the collaboration between members, advocates, Medicaid providers, and the Department of Health Care Policy and Financing (HCPF).

HCPF remains committed to Employment First and will continue to work to improve this system so that more individuals can access community-based employment. This will entail a continued collaboration with members, advocates, the Division of Vocational Rehabilitation, the Department of Education, and the Office of Employment First. HCPF also commits to its continued work with the Employment First Advisory Partnership to identify system improvements.

Introduction

Colorado Ended Subminimum Wage Employment as of July 1, 2023!

Prior to the year 2020, 500+ citizens of Colorado were being paid wages below the state's minimum wage. These employees were compensated at wages averaging a third of minimum wage, specifically impacting people with disabilities. Employers are allowed to pay subminimum wage through Section 14(c) of the Fair Labor Standard Act of 1938. An employer must apply for and receive what is called a 14(c) waiver from the federal government to engage in this practice.

In 2021, the Colorado Legislature passed [Senate Bill 21-039](#), "The Elimination of Subminimum Wage Employment," which called for the end of subminimum wage practices in Colorado by 2025. As of June 30, 2023, two years ahead of the legislative mandate, all waiver members have transitioned out of subminimum wage employment. This significant achievement places Colorado among only ten states as of July 2023 that have stopped paying members less than minimum wage (APSE, 2023). The state's success is attributed to its commitment to implementing Employment First policies and practices.

This report provides information on the Employment First legislation, the data regarding the transition from subminimum wage employment, including the technical assistance and resources utilized, and a description of new enhanced services. Additionally, the report underscores Colorado's significant strides in improving employment opportunities for all.

Background

Employment First Legislation

Colorado became an Employment First state when Governor Hickenlooper signed Senate Bill 16-077, "Employment First for Persons with Disabilities," in June 2016. Employment First is a framework centered on the premise that all people, including those with disabilities, are capable of full participation in employment and community life and that community-based employment at or above minimum wage is the preferred outcome for anyone utilizing a public benefit (Employment First | U.S. Department of Labor, n.d.).

Senate Bill 16-077 also directed the formation of a partnership between Supported Employment Stakeholders and multiple Colorado State Departments called the Employment First Advisory Partnership (EFAP). The initial goal of EFAP was to develop a set of recommendations whose implementation would lead to system changes within Colorado that would better support Employment First initiatives. The EFAP finalized its recommendations in a report titled [Expanding Employment Outcomes for Coloradans with Disabilities](#), submitted to the Colorado General Assembly in November 2017 (EFAP, 2017).

The 2017 EFAP recommendations went on to become the basis of Senate Bill 18-145, Implement EFAP Recommendations, which prompted the data collection and reporting of employment outcomes for individuals with intellectual and developmental disabilities within the Home and Community-Based Services Developmental Disabilities (HCBS-DD) and Supported Living Services (HCBS-SLS) Waivers.

Guided by Employment First principles, the EFAP garnered support from advocacy and stakeholder groups across the state in the legislative process to end subminimum wage employment. Three organizations took the lead: Alliance, Disability Law Colorado, and The Arc of Colorado. Many more entities supported the legislation, including but not limited to the Colorado Association of People Supporting Employment First (APSE), Colorado Cross-Disability Coalition, Ability Connection Colorado, Colorado Developmental Disabilities Council, Speaking for Ourselves Colorado, and Parent to Parent of Colorado.

In February 2020, House Bill 20-1263 was introduced to eliminate subminimum wage employment; however, it was tabled as attention was focused on the COVID-19 pandemic. Employment First efforts were renewed the following legislative year, and Senate Bill 21-039 Elimination of Subminimum Wage Employment, was signed into law in June 2021. The Department of Health Care Policy and Financing (HCPF) was tasked with providing progress data, technical assistance where needed, and enhanced services for all waiver members supported by the Home and Community Based Services Developmental Disability (HCBS-DD) and Supported Living Services (HCBS-SLS) Waivers.

Approach

Technical Assistance and Resources

Between July 2021 and June 2023, HCPF provided technical assistance, resources, and a collaborative learning environment to **employers holding a 14(c) waiver**, which allows the employer to pay less than minimum wage.

Collaborative Learning Opportunities:

- An Annual National Association of People Supporting Employment First (APSE) membership for employers holding a 14(c) waiver. Membership includes access to the Journal of Vocational Rehabilitation, Training Webinars, and Employment First Communities of Practice participation. As APSE members, the employers could send staff to the 2022 National APSE Conference in Denver at a discounted rate.
- Resources on best practices around eliminating subminimum wage employment from the Office on Disability and Employment Policy (ODEP), National Expansion of Employment Opportunities Network (NEON), and technical assistance with National APSE on transitioning out of subminimum wage.
- A collaborative partnership was created with the state of Oklahoma to learn about best practices for eliminating subminimum wage practices. Technical assistance included the utilization and recommended improvements to a National Guide on the Transformation Out of 14(c) Employment. The collaboration between Colorado and Oklahoma continues with bimonthly meetings, resource sharing, and peer training regarding transitioning away from 14(c) employment and into competitive integrated employment.
- HCPF partnered with the Colorado Division of Vocational Rehabilitation (DVR) to secure a grant for 18 Employment Specialists at nine employment agencies to become certified in Customized Employment. Training and Certification included Discovery as an alternative assessment, Person-Centered Career Planning, Customized Job Development, and Workplace Assistance and Systematic Instruction.
- HCPF partnered with DVR to provide ongoing technical assistance on sequencing and braiding of funding for HCBS providers and case managers, DVR vendors, and DVR counselors.

New/Enhanced Service Options

In addition to providing deadlines for eliminating subminimum wage, Senate Bill 21-039 mandated HCPF to promote employment for HCBS-DD and HCBS-SLS waiver members by implementing new services and tackling identified systematic barriers. The following highlights HCPF’s actions.

As of January 1, 2023, members enrolled in the HCBS-DD waiver joined the members of the HCBS-SLS waiver and can qualify for the Health First Colorado Buy-In Program for Working Adults with Disabilities. This option allows members to “buy-in” to Health First Colorado (Colorado’s Medicaid Program) if they have a job. Members can earn money beyond the typical income and resource limits related to Medicaid eligibility. By extending the Medicaid Buy-In option to HCBS-DD members, those members can become employed, take on more hours, or accept a promotion while continuing to get the supports they need. With Medicaid Buy-In being available to those in the HCBS-DD Waiver, all qualifying HCBS waiver members can now access this option.

As of July 1, 2023, Home and Community Based Services (HCBS) Supported Employment - Individual Services are no longer limited by the member’s Service Plan Authorization Limit (SPAL) in the HCBS-SLS waiver. This means that a member can choose individual employment services without changing or reducing other services due to their individual service budget.

Additionally, the HCBS-SLS and HCBS-DD waivers now include the new HCBS Benefits Planning service to help individuals make informed decisions about employment and its impact on other benefits. Furthermore, HCBS Workplace Assistance services have been added to these waivers, providing one-on-one support at the workplace for individuals with safety-related needs. HCBS Benefits Planning and HCBS Workplace Assistance became available in the waivers as of July 1, 2023.

Table 1

Medicaid Supported Employment System Improvement Timeline	
January 2023	July 2023
Medicaid Buy-In HCBS-DD Waiver	<ul style="list-style-type: none">• HCBS Supported Employment-Individual removed from SPAL• HCBS Benefits Planning Added• HCBS Workplace Assistance Added

Findings

HCPF tracked those employers with 14(c) certificates and the individuals being paid subminimum wages. The following highlights the progress made toward the elimination of subminimum wages in Colorado and the related outcomes.

As of July 1, 2021, the number of HCBS-SLS and HCBS-DD waiver members who received subminimum wages decreased by more than 60 percent, from 500 to 195. This high decrease was likely due to the COVID-19 pandemic and the subsequent steering away from congregant settings.

By June 30, 2022, more than half of the 195 workers receiving wages below minimum wage had transitioned out of subminimum wage employment, with the rest remaining fully transitioned by June 20, 2023.

By June 30, 2023, all nine employers wrote letters to the Department of Labor, Wage and Hour Unit to officially terminate their 14(c) certificates, and all members transitioned away from subminimum wage employment.

HCPF also tracked the 195 employees who were in subminimum wage employment from the inception of the legislation starting 6/30/2021 to the end of 14(c) employment in Colorado, 6/30/2023.

The table below shows the number of individuals who transitioned to Competitive Integrated Employment (CIE) as per Section 8-84-301C.R.S., and those who transitioned to a group employment setting that does not meet the definition of CIE. The average hours per week and average wages per hour for these individuals are also reflected. Additionally, the table shows the number of individuals who have transitioned to integrated activities related to their employment goals, including individualized Career exploration activities, as well as those who have transitioned to non-employment-related day services, retired, or passed away.

Table 2

Members who Transitioned to HCBS-Competitive Integrated Employment		
Individuals	Average Hours Per Week	Average Wage Per Hour
47	11	\$13.00

Table 3

Members who Transitioned to HCBS-Group Supported Employment (Not CIE)		
Individuals	Avg Hours per week	Avg Wage per Hour
49	14	\$12.56

Table 4

Members who Transitioned from Subminimum Wage Employment to another waiver service or provider.	
Individuals	Type of activity after transition
Less than 30	Another HCBS Supported Employment provider, not affiliated with the 14(c) Employer (unknown)
31	Integrated activities related to the individual’s employment goals, including Individualized Career Exploration Activities
41	Non-employment-related day services
Less than 30	Other including retirement

Identified Barriers

While waiver members, their support networks, and employers faced perceived barriers and challenges, the support and education provided through HCPF’s approach to ending subminimum wage was successful.

HCPF tracked issues reported by the 14(c) employers as they occurred from June 2021 to June 2023. The barriers reported include the following:

- The most common barrier noted is change. Members, guardians, and support networks often hesitate and dislike the changes, especially for those who held the 14(c) employment for decades.
- The fear of losing Social Security and Medicaid benefits was a significant concern.
- Employers needed to reevaluate their service delivery and consider new and different service models.
- Lack of workforce required to support all members that need 1:1 assistance from Employment Specialists.

- Transportation is limited, making it difficult for individuals to access new employment opportunities in new locations.
- Rural areas need more employers, making it easier for individuals to find employment.

Next Steps

While Colorado has made strides by eliminating subminimum wage jobs, there is still much work to be done in providing better employment options for individuals with disabilities. Any individual with disabilities can be employed at or above minimum wage and become an engaged and contributing member of their community in a way that is meaningful to them. HCPF is dedicated to partnering with all invested parties and Medicaid provider agencies to introduce new services effectively, pilot value-based approaches, and coordinate with DVR to ensure Colorado builds a Supported Employment system that is responsive to members and employers and increases Competitive Integrated Employment outcomes.

Conclusion

We are excited and proud of accomplishing the legislative goal of fully eliminating the subminimum wage practice in Colorado two years before the deadline. There is still much work to do; according to the U.S. Bureau of Labor Statistics, in 2022, only 21.3 percent of individuals with disabilities were employed. HCPF is committed to engaging in Employment First work to improve and expand Supported Employment services so that Coloradans with disabilities can access community-integrated employment, have a meaningful role in their communities, and realize a pathway out of poverty.

This work includes continued collaboration with members, advocates, and state agency partners. HCPF aims to develop and implement a seamless supported employment system that coordinates these services and resources between all the state agencies engaged in this work to develop and implement best practices. The vision is to move toward a time when people with disabilities have the same employment rates as those without disabilities, which in 2022, the U.S Bureau of Labor Statistics report was at 65.4 percent.

Appendices

Appendix A Glossary

1. Competitive Integrated Employment (CIE)

The Workforce Innovation and Opportunity Act (WIOA) defines competitive integrated employment as work that is performed on a full-time or part-time basis for which an individual is:

- a) compensated at or above minimum wage and comparable to the customary rate paid by the employer to employees without disabilities performing similar duties and with similar training and experience;
- b) receiving the same level of benefits provided to other employees without disabilities in similar positions;
- c) at a location where the employee interacts with other individuals without disabilities; and
- d) presented opportunities for advancement similar to other employees without disabilities in similar positions.

2. Day Habilitation

Day Habilitation is a category of waiver benefits that include assistance with the acquisition, retention or improvement of self-help, socialization and adaptive skills that take place in a nonresidential setting, separate from the member's private residence or other residential living arrangement, except when services are necessary in the residence due to medical or safety needs. The benefits under this category are Specialized Habilitation and Supported Community Connections.

3. Fair Labor Standards Act (FLSA), Section 14(c)

After receiving a certificate from the Wage and Hour Division, section 14(c) of the FLSA authorizes employers to pay subminimum wages - wages less than the Federal minimum wage - to workers who have disabilities for the work being performed.

4. Home and Community Based Services (HCBS) Waiver

Section 1915(c) of the Social Security Act permits a state to waive certain Medicaid requirements in order to provide an array of home and community-based services that promote community living for Medicaid beneficiaries and, thereby, avoid institutionalization. Waiver services complement and/or supplement the

services that are available through the Medicaid State plan and other federal, state, and local public programs, as well as the support that families and communities provide to individuals.

5. Home and Community Based Services Developmental Disabilities (HCBS-DD) waiver

The HCBS-DD waiver provides access to 24-hour, seven-days-a-week supervision through Residential Habilitation and Day Habilitation Services and Supports. Living arrangements can range from host homes settings with 1-3 persons, individualized settings of 1-3 persons, and group settings of 4-8 persons, as well as residential supports for participants who live in their own home or who live with and/or are provided services by members of their family.

6. Home and Community Based Services Supported Living Services (HCBS-SLS) waiver

The HCBS-SLS waiver provides necessary services and supports for individuals with intellectual or developmental disabilities so they can remain in their home and communities. The HCBS-SLS waiver promotes individual choice and decision-making through the individualized planning process and the tailoring of services and supports to address prioritized, unmet needs. In addition, this waiver is designed to supplement existing natural supports and traditional community resources with targeted and cost-effective services and supports.

7. Service Plan Authorization Limit (HCBS-SLS only)

The Service Plan Authorization Limit (SPAL) within the Home and Community Based Services Supported Living Services (HCBS-SLS) Medicaid Waiver sets an upper payment limit of funds available to purchase services to meet a waiver member's ongoing service needs within one (1) service plan year. Each of the six need-based support levels in the HCBS-SLS waiver is assigned a specific limit. HCPF determines the SPAL based on the annual appropriation for the HCBS-SLS waiver, the number of members in each level, and projected utilization. There are certain services that are not subject to the SPAL, such as Assistive Technology, Dental services, and Non-Medical Transportation.

8. Subminimum wage

Subminimum wage is covered in Section 14(c) of the United States Fair Labor Standards Act (FSLA). It authorizes employers, after receiving authorization from the Federal Wage and Hour Division of the United States Department of Labor, to pay wages at less than the federal minimum wage to workers who have disabilities for the work being performed. Each state can ban this practice in their state.

9. Supported Employment

Supported Employment is a category of waiver Supports and Services that include intensive, ongoing supports that enable a waiver member, for whom competitive employment at or above the minimum wage is unlikely absent the provision of supports, and who because of the waiver member's disabilities need support to perform in a regular work setting. The included benefits can be billed both individually and in group, and are:

- Benefits Planning
- Job Development
- Job Coaching
- Job Placement
- Workplace Assistance

10. Supported Community Connections

Supported Community Connections are services provided to support the abilities and skills necessary to enable the waiver member to access typical activities and functions of community life, such as those chosen by the general population, including community education or training, retirement, and volunteer activities. Supported community connections services provide a wide variety of opportunities to facilitate and build relationships and natural supports in the community while utilizing the community as a learning environment to provide services and supports as identified in a waiver member's service plan. These services are conducted in a variety of settings in which the waiver member interacts with persons without disabilities other than those individuals who are providing services to the waiver member.

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