

# BETWEEN THE LINES



COLORADO DEVELOPMENTAL DISABILITIES COUNCIL

FALL 2010

## Improving Access to Home and Community-Based Services

### Information Bulletin # 319 (8/2010)

Nearly five years ago, Congress amended Medicaid by adding Section 1915 (i), intending to increase community-based services instead of institutional Medicaid services by permitting greater flexibility than Waivers permit. Unfortunately, only a few states took advantage of this.

In enacting the Affordable Care Act (ACA) in 2010, Congress made a number of additional changes that are extremely important to the disability community. However, unless your State opts to take advantage of these changes, they will not happen. These amendments take away many excuses the States have used in the past.

On August 6, 2010, the Centers for Medicare and Medicaid Services (CMS) wrote a “Dear State Medicaid Director letter” encouraging States to take advantage of the ACA 2010 amendments. Here are the changes:

1.) The ACA strengthened Section 1915 (i) to remove the requirement that individuals had to meet an institutional level of care in order to qualify for home and community-based services. Unlike eligibility for Medicaid Waivers that require a person meet an institutional level of care, the 2010 amendments permit your state to provide community-based services for people who are not otherwise eligible for institutional care.

Heh—makes sense to provide services before a person loses more Activities of Daily Living (ADLs).

2.) Another big change is that the ACA amended this Section to permit States to provide community-based services to persons with chronic mental illnesses and/or substance use disorders. Services for this population are defined extremely

broadly. This is long overdue and will help a portion of the disability community that has been shortchanged too long.

3.) States now have the option to provide these community-based services to persons whose incomes are 300% of the Supplemental Security Income (SSI) income benefit.

4.) Benefits can be targeted either to specific population groups without violating Medicaid’s comparability requirements. Alternatively, States could target by functional needs. This permits States to have multiple programs, each targeted at specific populations, e.g., one for persons with physical needs and another benefit package targeted at persons with chronic mental illnesses. It permits your State to define populations’ needs with great precision and specifics.

5.) Services can be narrowly defined, e.g., personal care or home health aide, instead of the Waiver package of services. There goes a big excuse States have used with Waivers, i.e., they had to provide a broad range of services to everyone on the Waiver.



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6.) States have the option to offer consumers “self-direction.” In the 8/6/10 Dear State Medicaid Director letter, it states that, “CMS urges all States to afford participants the opportunity to direct some or all of their Home and Community Based Services (HCBS). Self-direction permits participants to plan and purchase their HCBS under their direction and control or through an authorized representative.” Well, how about that?

These changes become effective October 1, 2010.

You and your State Medicaid officials have to begin this process now! Let’s not let this slip away. There could be great financial savings if these provisions are used creatively.

*Steve Gold, The Disability Odyssey continues*

*Back issues of other Information Bulletins are available online at <http://www.stevegoldada.com> with a searchable Archive at this site divided into different subjects. To contact Steve Gold directly, write to [stevegoldada@cs.com](mailto:stevegoldada@cs.com) or call 215-627-7100.*



# Colorado 2010 Legislative Session

Jan 7 – May 12, 2010

## Wrap Up

By Sheryle Hutter

The Colorado 2010 legislative session was both rewarding and challenging as our legislators reviewed and acted upon more than 730 bills, resolutions and proclamations. Many of the bills would have or will impact people with disabilities and outcomes would have been much different without involvement of the Legislative & Public Policy Committee of the Colorado Developmental Disabilities Council.

The Committee met weekly through the 120-day session that ended on May 12, 2010. Sheryle Hutter gave weekly updates on bills, hearing schedules, and followed directives given by the Committee for future focus. Although we identified five critical bills (\*those with asterisks below\*) for the Council to focus on, through the effort of the Committee and a great lobbying team we were able to amend, defeat, and support the enactment of many bills.

## 2010 Bill Status

**\*HB10-1019—Accessible  
Parking—Enforcement  
Position: Support  
Status: Passed**

This bill will require much stronger enforcement of the proper use of the accessible parking placard and plate. We wrote letters, testified, communicated amendment language with the sponsor and are now able to celebrate the passage of the bill with signing by Governor Ritter on June 11, 2010.



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### (Disclaimer)

The views expressed by authors in *Between the Lines*, the quarterly newsletter of the Colorado Developmental Disabilities Council, are not necessarily those of the Council, its individual members or the staff. Letters to the Editor are encouraged, as are requests for correction of factual information. Please direct such to the newsletter editor at [marna.ares@state.co.us](mailto:marna.ares@state.co.us).







The Americans with Disabilities Act (ADA) is one of several Federal laws that ensure equal opportunity for people with developmental and other disabilities. Though the ADA, passed twenty years ago, most people know little or nothing about this important civil rights law. Five ADA Titles cover the following:

- **Title I—Employment:** all state and local government employers and private employers with 15 or more employees
- **Title II—State and local government,** including public school districts and public transportation
- **Title III—Private businesses**
- **Title IV—Telecommunications**
- **Title V—Miscellaneous Provisions**

In 1991, the National Institute on Disability Rehabilitation and Research (NIDRR), through US Department of Education, began funding ten regional comprehensive ADA resource centers. Disability & Business Technical Assistance Center (DBTAC) Rocky Mountain ADA Center provides confidential informal ADA guidance to callers throughout Colorado, Montana, North Dakota, South Dakota, Utah and Wyoming.

Operated by Meeting the Challenge, Inc. in Colorado Springs, CO, DBTAC Rocky Mountain ADA Center provides:

- **Education,**
- **Public awareness,**
- **Materials dissemination and**
- **Information and referral**

to architects, businesses, code officials, disability and rehabilitation programs, employers, people with

disabilities and their families, schools, state and local government agencies and many other entities with rights and responsibilities under the ADA.

After dialing the toll-free number **(800) 949-4232** between **8–5 weekdays**, callers are linked with qualified ADA Information Specialists. Typical calls to DBTAC Rocky Mountain ADA Center include:

- **Medical and dental practices** regarding their obligations to provide sign language interpreters for requesting patients,
- **Employees with disabilities** who feel they have experienced discrimination in the workplace,
- **Employers** with reasonable accommodation questions,
- **Universal design specifications** that comply with the ADA,
- **Service animal access** in businesses where pets are prohibited, and
- **Issues not covered by the ADA,** requiring referrals to where callers will likely receive the information they seek.

DBTAC Rocky Mountain ADA Center is available as an exhibitor and also provides customized ADA training. In-person, audio, video or web conferencing training that conforms to the time constraints and needs of the requesting organization. DBTAC Rocky Mountain ADA Center typically requests that organizations contribute 25% of training and travel costs. This nominal fee covers materials.

DBTAC Rocky Mountain ADA Center also provides two trainings in their conference room each month. A daytime training is offered from 10 a.m. to 12 noon, and an evening training is held from 6–8 p.m. \$15 per person covers two hours of training, materials and a meal. There is no fee for people with developmental and other disabilities.

For more information, please contact DBTAC Rocky Mountain ADA Center  
3630 Sinton Road, Suite 103  
Colorado Springs, CO 80907  
<http://www.adainformation.org>



# Sister Act Section



## The Legal Center for People with Disabilities and Older People

is Colorado's Protection and Advocacy System. This system protects and advocates the legal and human rights of individuals with developmental disabilities. The organization

- has the authority under federal law to pursue legal, administrative and other appropriate remedies or approaches to ensure the protection of individuals;
- has the authority to investigate incidents of abuse and neglect of individuals with developmental disabilities if the incidents are reported to the system or if there is probable cause to believe that the incidents occurred;
- provides information on and referral to programs and services addressing the needs of individuals with developmental disabilities; and
- annually must provide an opportunity for people with developmental disabilities and their representatives to comment on the priorities of the system.



## Examples:

In 2007, The Legal Center embarked on a wide-ranging initiative to eliminate the inappropriate and dangerous use of restraint and seclusion as a disciplinary measure for children with disabilities in Colorado's public schools. The initiative began in response to a growing number of anguished complaints from parents whose children were being tied to chairs for hours at a time, physically injured as they were held down or handcuffed, or placed in a locked room—one little girl was so scared that she urinated on herself. The parents' anxiety was exacerbated by the fact that the children's behavior grew worse rather than being improved by the restraint and seclusion, and their mental and emotional well-being deteriorated significantly. The longer their children were in school, the more complex their diagnoses became. Since beginning this effort, The Legal Center has conducted 40 investigations involving the abusive use of restraint in schools.



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**The Legal Center recently represented two individuals with developmental disabilities in employment discrimination cases. One case involved a grocery store and the other a town in rural Colorado. The first case is still in progress, but the second was resolved with our client getting a good reference from the employer, a monetary settlement, and finding a new job. He is happy.**

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Last year The Legal Center represented a student with disabilities on the western slope in a special education due process hearing. The school district was trying to send the student to a day treatment program instead of public school. At the time The Legal Center became involved the student was home without services due to a disagreement over stay-put (the student's placement until the hearing officer's decision). The hearing officer ruled that stay-put was the public school program and the case was resolved with the student attending public school in the least restrictive environment.

In recent years The Legal Center has taken the lead in trying to broaden the state definition of developmental disability. A few years ago The Legal Center was successful in a hearing finding an individual with Asperger's syndrome eligible under our state definition of developmental disability. As a result, there was an effort to narrow the state definition in our state rules. This resulted in the creation of a task force to review the state definition. The task force recommended broadening the definition and that work is still in progress.

Last year Governor Ritter decided to close the skilled nursing unit at the Grand Junction Regional Center

campus. The Legal Center has been actively involved in assisting the 32 residents and family members in the individualized planning process to ensure that individuals are offered community rather than nursing home placements, that they have a choice in the placement decision-making process, that their transition is well planned, and that the community placements provide the services the individuals need.

In addition to our direct legal representation of 493 people, last year The Legal Center provided short-term assistance to 744 people, information and referral services to 3,489 people and provided 34 educational programs that reached 1,585 individuals.



## Disability.gov Colorado Update:

### New Housing Information

A free housing service that helps people find a room, house or apartment that best suits their needs. Search by rent amount, accessibility features, housing vouchers and more. Also has information about moving costs, assisted living facilities, help for people who are homeless and financial assistance to help pay rent.

<http://www.disability.gov/state/colorado/housing>







**The White House  
Office of the Press Secretary  
For Immediate Release**

**July 26, 2010**

**Executive Order—Increasing  
Federal Employment of Individuals  
with Disabilities**

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to establish the Federal Government as a model employer of individuals with disabilities, it is hereby ordered as follows:

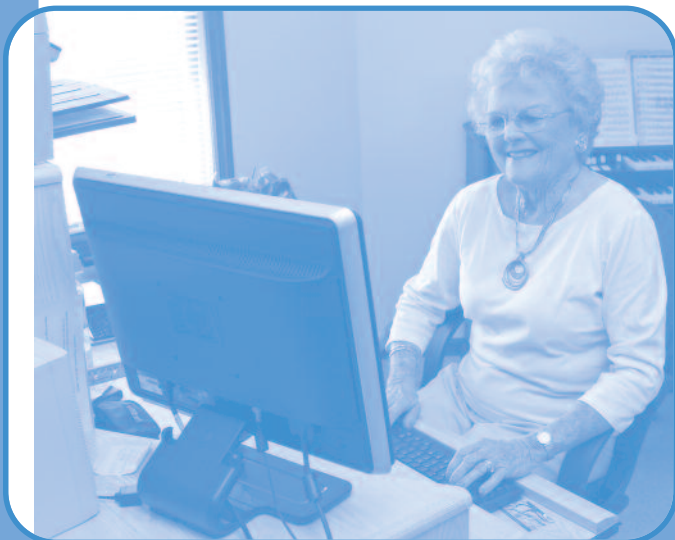
**Section 1. Policy.** Approximately 54 million Americans are living with a disability. The Federal Government has an important interest in reducing discrimination against Americans living with a disability, in eliminating the stigma associated with disability, and in encouraging Americans with disabilities to seek employment in the Federal workforce. Yet Americans with disabilities have an employment rate far lower than that of Americans without disabilities, and they are underrepresented in the Federal workforce. Individuals with disabilities currently represent just over 5 percent of the nearly 2.5 million people in the Federal workforce, and individuals with targeted disabilities (as defined below) currently represent less than 1 percent of that workforce.

On July 26, 2000, in the final year of his administration, President Clinton signed Executive Order 13163, calling for an additional 100,000 individuals with disabilities to be employed by the Federal Government over 5 years. Yet few steps were taken to implement that Executive Order in subsequent years.

As the Nation's largest employer, the Federal Government must become a model for the employment of individuals with disabilities. Executive departments and agencies (agencies) must improve their efforts to employ workers with disabilities through increased recruitment, hiring, and retention of these individuals. My Administration is committed to increasing the number of individuals with disabilities in the Federal workforce through compliance with Executive Order 13163 and achievement of the goals set forth therein over 5 years, including specific goals for hiring individuals with targeted disabilities.

**Section 2. Recruitment and Hiring of Individuals with Disabilities.** (a) Within 60 days of the date of this order, the Director of the Office of Personnel Management, in consultation with the Secretary of Labor, the Chair of the Equal Employment Opportunity Commission, and the Director of the Office of Management and Budget, shall design model recruitment and hiring strategies for agencies seeking to increase their employment of people with disabilities and develop mandatory training programs for both human resources personnel and hiring managers on the employment of individuals with disabilities.

(b) Within 120 days of the date the Office of Personnel Management sets forth strategies and programs required under subsection (a), each agency shall develop an agency specific plan for promoting employment opportunities for individuals with disabilities. The plan shall be developed in consultation with and, as appropriate, subject to approval by the Director of the Office of Personnel Management and the Director of the Office of



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Date on which HHS Assistant Secretary on Aging Kathy Greenlee released a statement to commemorate the 45<sup>th</sup> anniversary of the Older Americans Act, which Congress is expected to consider for reauthorization in 2011: **July 14, 2010**

On July 1, 2010 HHS launched an online resource to help people find out about what their options are for health insurance. Go to <http://www.healthcare.gov/index.html>

Nationally, the percentage of women in state legislatures: **24.2**

Percentage of women in Colorado's legislature: **37**

Nationally, the percentage of Latinos and African-Americans in state legislatures: **2.9 and 8.1**

Percentages in Colorado's legislature: **6.0 and 3.0**

(<http://www.ncsl.org/default.aspx?TabId=18248>)

Total number of executive orders President Obama has issued, to date: **64**

(<http://www.archives.gov/federal-register/executive-orders/obama.html>)

Date on which President Obama issued the Executive Order to increase the federal employment of people with disabilities: **July 26, 2010**

Date of the 20th Anniversary of the American with Disabilities Act: **July 26, 2010**

Date on which the US Department of Justice issued proposed new rules concerning Accessibility of Web Information and Services Provided by Entities Covered by the ADA: **July 29, 2010** (<http://www.ada.gov/>)



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