

## Funding Health-Related Vocational Rehabilitation Services: the Potential Impact of the Affordable Care Act

By Robert "Bobby" Silverstein

The Affordable Care Act (ACA) was passed into law in March 2010 (Affordable Care Act, 2010). Challenged by several states, the United States Supreme Court on June 28, 2012 upheld all of the provisions of the ACA, with the exception of provisions mandating Medicaid expansion, which are now voluntary, not mandatory (National Federation of Independent Business et al. v. Sebelius, Secretary of Health and Human Services, et. al., 2012). The ACA authorizes each state to establish a health care exchange where individuals and small businesses can purchase affordable health insurance (also called a "state-based exchange"). The ACA also directs the Secretary of Health and Human Services to establish and operate a federally facilitated exchange, or establish a state partnership exchange, in any state that does not elect to establish a state-based exchange (CCIIO, 2012).

The ACA includes significant new potential funding sources, both private health insurance and Medicaid, to pay for health-related vocational rehabilitation (VR) services and supports. For VR agencies in certain states, pursuing strategies that minimize expenditures for health-related VR services (including physical and mental restoration services, assistive technology devices and services, and personal assistance services) may increase the amount of funds available for other VR services, and may expand the number of clients served by the VR program.

For a full summary and detailed policy analysis of the impact of the ACA on VR, readers are encouraged to review *Funding Health-Related VR Services: The Potential Impact of the Affordable Care Act on the Use of Private Health Insurance and Medicaid to Pay for Health-Related VR Services*, available at [http://vr-rrtc.org/sites/vr-rrtc.org/files/Silverstein%20ACA\\_VR.pdf](http://vr-rrtc.org/sites/vr-rrtc.org/files/Silverstein%20ACA_VR.pdf). Readers are also encouraged to listen to an archived webinar, "The Impact of the Affordable Care Act on Funding of VR Services," at <http://vr-rrtc.org/node/7>. This companion brief translates that analysis into practical steps the Rehabilitation Services Administration can take nationally and that VR directors should consider in their state. This brief is not intended to advocate nor lobby for any particular solution.

### Rehabilitation Services Administration and State VR Agency Involvement in Modernizing Federal and State VR Policy Frameworks

The potential impact of the ACA and state Medicaid reforms on the responsibilities of state VR agencies to pay for health-related VR services is substantial. The current VR policy framework provides legal and policy bases for facilitating payment for many health-related VR services by private health insurance or Medicaid rather than by the VR agency. However, the current policy framework should be further clarified in regulation or through policy guidance to include specific references to the ACA. This will provide VR agencies with greater leverage with other state agencies to ensure that private health insurance and Medicaid are used to pay for these health-related VR services prior to payment by state VR agencies.

The Rehabilitation Services Administration and state VR agencies should consider providing regulatory or policy guidance to the federal VR policy framework by clarifying the applicability of the ACA, including Medicaid reforms, to the VR program. The policy

FY 2011 total expenditures for diagnoses and treatment of physical and mental impairments across all 80 state VR agencies was \$263,920,111. This equals 14% of the total amount of purchases services. This amount ranged from less than 1% (New Mexico Commission for the Blind) to 65% (Mississippi Department of Rehabilitation Services) of purchased services. Practical Steps to Consider Sooner Rather than Later

- ◆ Modernize the federal and state VR policy frameworks applicable to payment for health-related VR services
- ◆ Determine the scope of the benchmark package of essential health benefits and make other ACA implementation decisions
- ◆ Determine the Medicaid benchmark plan in Medicaid expansion states
- ◆ Ensure coverage of personal assistance services under the Community-First Choice Option in VR programs and employment

guidance to effectuate change should focus on:

- ▲ Spelling out specific written policies covering the benchmark package of essential health benefits provided by Health Care Exchanges and the relationship between the VR program and the Medicaid program. This should be consistent with the obligation under the VR policy framework to develop and maintain written policies (*State Vocational Rehabilitation Services Program, 2012*) covering the nature and scope of the specified VR services and the criteria under which each service is provided.
- ▲ The circumstances under which private health insurance made available in accordance with the ACA and Medicaid must be used prior to use of VR funds to pay for health-related VR services and supports. This should be consistent with the comparable services and benefits provision (*State Vocational Rehabilitation Services Program, 2012*) and the proviso regarding the limitation on the use of VR funds to pay for physical and mental restoration services (*State Vocational Rehabilitation Services Program, 2012*).
- ▲ Spelling out the specific policies and procedures for maximizing the use of private health insurance and Medicaid for funding health-related services authorized under the VR program. This should be consistent with the obligation to enter into interagency agreements (*State Vocational Rehabilitation Services Program, 2012*), including state VR agency agreements with agencies administering the Medicaid program, state insurance agencies, and agencies administering state health care exchanges.

## State VR Agency Involvement in ACA Implementation Decisions

### ACA AND THE PRIVATE INSURANCE MARKET

Effective in 2014, qualified health plans participating in health care exchanges will be required to offer essential health benefits that meet a minimum set of nondiscrimination standards promulgated by the Secretary of Health and Human Services. The ACA lists ten essential health benefit categories that must be covered by new individual and small group plans starting in 2014. These ten encompass the “essential health benefits package,” and many are services essential for VR applicants and clients, but are also not consistently covered in the current insurance market. State VR directors may want to cross-walk the essential health benefit categories with their expenditures on diagnosis and treatment of physical and mental health conditions. State VR directors may have a significant role in their respective states.

Because of the ACA, state VR agency directors have the opportunity to greatly enhance health care insurance coverage for VR applicants and clients with disabilities by impacting state decisions regarding ACA implementation. State VR agencies should thus develop strategies to work with their governor, state legislators, and state agency officials to develop policies regarding the benchmark package of essential health benefits and define the key terms applicable to the package of essential health benefits. For comprehensive guidance at the state level, see *Open Letter To States On Defining Essential Health Benefits Package*, prepared by several disability organizations. Many of the recommendations included in this section of the paper (including proposed definitions of key terms) are derived from this open letter.

#### VR agency leaders should become involved in the following ACA implementation decisions:

1. Choosing the **base-benchmark plan**.
2. **Defining key terms**, including *rehabilitative and habilitative services and devices, durable medical equipment, orthotics, prosthetics, low vision aids, augmentative and alternative communication devices, and hearing aids and assistive listening devices*.
3. Choosing the **essential health benefits (EHB)-benchmark**

### Ten Essential Health Benefit Categories Covered Under ACA

- 1) Ambulatory patient services
- 2) Emergency services
- 3) Hospitalization
- 4) Maternity and newborn care
- 5) Mental health and substance use disorder services, including behavioral health treatment
- 6) Prescription drugs
- 7) Rehabilitative and habilitative services and devices
- 8) Laboratory services
- 9) Preventive and wellness services and chronic disease management
- 10) Pediatric services, including oral and vision care

**plan by supplementing** the base-benchmark plan to ensure a) inclusion of categories of particular importance to VR applicants and clients, and b) compliance with non-discrimination provisions.

4. Determining plan coverage decisions, reimbursement rates, incentive programs, and design benefits consistent with **private insurance market reforms** (Patient Protection and Affordable Care Act; Health Insurance Market Rules Rate Review, 2012). Changes to private insurance include pre-existing conditions exclusions, premium ratings, annual lifetime limits, rescissions, coverage of dependents, waiting periods and preventative services, and immunizations and cost sharing.
5. Continuing to incorporate **existing state mandates**.
6. Defining **medical necessity** to include maintaining and preventing deterioration of physical and cognitive functioning, not just improved functioning.
7. Requiring an individual assessment, and basing coverage decisions on best available evidence (rather than simply lack of Level I medical evidence). This includes prohibiting the use of arbitrary visit limits or other limitations or exclusions that impede doctor-patient relationships or stop services prematurely.

## ACA AND MEDICAID EXPANSION

To the extent a state decides to participate in the Medicaid expansion, the state VR agency may want to participate in decisions regarding the “benchmark coverage” or “benchmark equivalent coverage.” This is because the

broader the scope of benefits covered from a disability perspective, the greater the likelihood that health-related services and supports will be paid for by Medicaid rather than the VR agency. A few key policy points:

- ▲ If expanding eligibility to individuals with incomes up to 133% of the federal poverty level, the Federal Government will provide 100% federal funding for the costs of those who become newly eligible for Medicaid for years 2014 through 2016, and then with incremental reductions each year until reaching 90% in federal funding for 2020 and beyond. States that have already expanded adult eligibility to 100% of the poverty level will receive a phased-in increase in the Federal Medical Assistance Percentages (FMAP) for non-pregnant childless adults.
- ▲ There is no deadline for a state to let the Federal Government know of its intention regarding Medicaid expansion.
- ▲ The ACA does not provide for a phased-in or partial expansion at the enhanced matching rate. Therefore, if a state expands eligibility to less than 133% of the federal poverty level, it will *not* be eligible to receive the enhanced matching rate. If a state proposes a partial expansion, Health and Human Services will consider such a “demonstration” proposal to the extent it furthers the purpose of the program, subject to the regular matching rate (Centers For Medicare and Medicaid Services, 2012).
- ▲ The Medicaid eligibility expansion group will *not* be entitled to the full array of state Medicaid benefits. Rather, those individuals will be entitled to “benchmark coverage” or “benchmark equivalent coverage.” All Medicaid “benchmark plans” must cover essential health benefits by 2014.

## ACA AND COMMUNITY FIRST CHOICE OPTION

The ACA adds the Community First Choice State Plan Option, under which states are authorized to establish a new state Medicaid plan option to provide home and community-based attendant services and supports. It is critical that states that choose to take advantage of these options include policies that authorize payment

## Non-Discrimination Provisions

- ◆ No discrimination in terms of age or expected length of life in benefits covered, payment rates provided, incentives built into the definition of Essential Health Benefits (EHB).
- ◆ The EHB benchmark plan must take into account the health care needs of diverse segments of the population, including women, children, and people with disabilities.
- ◆ The EHB-benchmark plan may not allow denials of benefits against individuals’ wishes on the basis of age or expected length of life, or of the individuals’ present or predicted disability, degree of medical dependency, or quality of life.
- ◆ The EHB-benchmark plan is also required to ensure an **appropriate balance** among the categories of EHB so that benefits are not unduly weighted toward any category (see **Patient Protection and Affordable Care Act; Standards Related to Essential Health Benefits, Actuarial Value, and Accreditation, 2012**).

for personal attendants to accompany and assist individuals with disabilities participating in VR programs as well as in the workplace, and that state VR policies specifically recognize these sources of funding.

## CONCLUSION

The ACA will change how health and medical services are paid for in every state. While there are key provisions and definitions, each state faces the challenge of applying the law and choosing among options. This brief is not intended to advocate for any specific action, but to inform state VR directors of their role, and of the potential impact on VR expenditures and ultimately on customers. The ACA provides a significant opportunity for state VR agencies to reduce the amount of VR funds used to pay for health-related VR services, thereby increasing the number of individuals with disabilities served by the program and/or enhancing the quality of services provided to current individuals served by the program.

### **We recommend that VR policy personnel consider these steps:**

- ▲ Evaluate and review your current and past expenditures related to diagnosis and treatment of physical and mental impairments, and cross-walk those with the list of Essential Health Benefits.
- ▲ Become informed about key aspects of the ACA, including essential health benefits packages, non-discrimination provisions, definitions, Medicaid expansion, and the Community First Choice Option.
- ▲ Get a seat at the table in your state, and engage in implementation designs.
- ▲ Review your state VR agency's policies, procedures, and interagency agreements for modification and amendment as necessary.

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## About the VR-RRTC

The VR-RRTC is a national center developed by ICI that builds the capacity of the public vocational rehabilitation (VR) program to improve employment outcomes for people with disabilities. VR-RRTC provides state VR agencies and others working in this area with, policy research, training and technical assistance. The VR-RRTC also functions as a national hub for policy and operations

[www.VR-RRTC.org](http://www.VR-RRTC.org)

