

**Kansas Employment First Oversight Commission  
2022 Recommendations to the Governor and  
Members of the Kansas Legislature**



The Kansas Employment First Oversight Commission was created by the same state law that requires competitive and integrated employment to be the first option when serving people with disabilities (KSA 44-1136 to 44-1138, also called the Employment First Initiative Act).

Under this law, the focus of the Commission is on making recommendations to increase the number of Kansans with disabilities in competitive and integrated employment. This is the Commission's annual report, making recommendations to the Governor, Legislature, and state agencies on strategies to increase the number of Kansans with disabilities in competitive and integrated employment.

## **Kansas Employment First Oversight Commission 2022 Report & Recommendations**

The Kansas Employment First Oversight Commission was established as part of the Employment First Initiative Act of 2011, and as amended in 2013 (K.S.A. 44-1136 et seq., as amended). The law establishes Employment First as the official policy of the State of Kansas. The purpose of the Act is to increase the number of Kansas residents with disabilities employed in competitive and integrated settings. Under the law, all state agencies, including their programs and services, must ensure that the policy of “Employment First” is effectively implemented. Employment First means that competitive and integrated employment must be the **first** and preferred option when serving Kansans with disabilities. For more information about the law, see the section below entitled “Requirements of the Employment First Law and the Accountability Mandated by the Legislature.”

Although Kansas was the first state in the nation to pass an Employment First law, this policy has still not been fully implemented in all state agencies, programs, and services. Kansas was the first state to promise to its citizens a new vision of Employment First. Unfortunately, eleven long years after the passage of the Employment First law, Kansas has still not fully delivered on that promise. Unfortunately, Employment First has not become an everyday reality for Kansans with disabilities.

The Commission is hopeful that the \$2 million Employment First Request for Proposal (RFP) will provide the tools and detailed plan to finally, fully, and faithfully implement the Employment First law. As you can see below, the Employment First law has several powerful requirements that, if fully implemented by state agencies, would effectively ensure that competitive and integrated employment is the first option.

### **Requirements of the Employment First Law and the Accountability Mandated by the Kansas Legislature:**

- “All state agencies shall follow this policy [the Employment First law] and ensure that it is effectively implemented in their programs and services.”
- “All state agencies shall ... ensure that state programs, policies, procedures, and funding support competitive and integrated employment of individuals with disabilities.”
- “All state agencies shall, whenever feasible, share data and information across systems in order to track progress toward full implementation of the act.”
- “State agencies are authorized to adopt rules and regulations to implement this act.”

The above language places strict requirements on state agencies and mandates that they make meaningful changes so that everything they do to support Kansans with disabilities (including all “state programs, policies, procedures, and funding”) must all “support competitive and integrated employment of individuals with disabilities.” This language is unambiguous. State agencies must do everything in their power to make competitive and integrated employment the first and preferred option in Kansas.

The law itself is not a barrier to implementing the Employment First mandate. Any law like this can, of course, be strengthened. However, the requirements of state agencies in the law are specific and meaningful. The problem is that the law still has yet to be implemented, well over 11 years after its passage. What is needed is a comprehensive, detailed, and fully executable statewide plan to implement the Kansas Employment First law. With such an implementation plan, Kansas can then finally deliver on the promise of competitive and integrated employment as the first and preferred option for Kansans with disabilities.

### **\$2 Million Employment First RFP – The Solution to Finally Implement Employment First:**

Thankfully, the Employment First RFP provides the mechanism to develop the comprehensive, detailed, and fully executable plan that is needed to implement the Employment First law. The Kansas Employment First Oversight Commission (KEFOC) commends the Kansas Department on Aging and Disability Services (KDADS) on their excellent work to create this \$2 million Employment First RFP and in getting the concept approved by The Center for Medicare and Medicaid Services (CMS). This \$2 million project was solely funded through federal dollars contained in federal Recovery Act legislation. The RFP is the single greatest opportunity to finally implement the Employment First law and create meaningful change in the 11+ years since Employment First was passed into law.

***The Kansas Legislature did its job over 11 years ago when it passed the Employment First law. The Commission recommends the Kansas Legislature continue to support the trailblazing Employment First law it passed and to continue to support this \$2 million project, funded entirely through federal dollars. The Commission also recommends that the Legislature take whatever steps necessary to eliminate the need for utilizing sub-minimum wage.***

***We also recommend that the State Board of Education/Kansas State Department of Education conduct training to better ensure that school staff interacting with transition-age youth understand the Employment First mandate that competitive and integrated employment must be the first option when assisting students with disabilities’ transition to adult life. We recommend that students who transition to competitive and integrated***

*employment count towards post-secondary success for KESA (Kansas Educational School Accreditation). Further, students who transition to non-competitive or non-integrated employment must not count towards post-secondary success for KESA (with the caveat that there may need to be flexibility for the Kansas School for the Deaf and Kansas School for the Blind regarding this policy). Underscoring this need, data from a recent survey of 1,700 Kansans with disabilities and their families found that 40% of transition-age youth said that their IEP (Individualized Education Program) calls for them to transition to a sheltered workshop.*

## **The Kansas Employment First Oversight Commission's Recommendations to KDADS to Ensure a Successful RFP:**

The following are recommendations made by the Kansas Employment First Oversight Commission to KDADS to include in its Employment First RFP. These recommendations directly build on and provide additional detail to the recommendations in our 2021 KEFOC report. These recommendations are all consistent with the KEFOC's 2021 Report, and we note which recommendation from the 2021 Report the recommendations below is building upon.

- **Create a Detailed & Fully Executable Statewide Implementation Plan** – The successful bidder will provide and support a comprehensive, detailed, and fully executable statewide implementation plan of the Kansas Employment First law to ensure competitive and integrated employment is the first and preferred option for Kansans with disabilities. This plan will focus on specific, actionable changes that must occur in order to finally, faithfully, and fully implement the Employment First mandate in Kansas. This requirement will include the successful bidder detailing how to operationalize necessary changes in programs, policy, procedures, and funding to implement Employment First. These changes must ensure that competitive and integrated employment is always the first and preferred option over other less inclusive settings.
  - **This builds upon Recommendation #2 in the KEFOC 2021 Report.**
- **Build Incentives in Managed Care Contracts to Implement Employment First** – The successful bidder for the RFP must make specific recommendations with exact language to be included in the RFP/contract renewals for the Medicaid Managed Care contracts. Such language needs to set benchmarks and place significant incentives in the Managed Care Organization (MCO) RFP/contract that have the net effect of ensuring that competitive and integrated employment is the first and preferred option for Kansans with disabilities. These incentives need to be designed to require MCOs to track and

make significant progress in increasing the numbers of Kansans with disabilities in competitive and integrated employment.

Additional provisions could include contractual incentives to ensure sufficient statewide coverage and funding of all the Medicaid services and supports that assist with competitive and integrated employment (e.g., job coaching, supported employment services on the Intellectual/Developmental Disability (I/DD) Medicaid Waiver, supported employment, other support services for HCBS Waiver participants – such as those served by PD Waiver/BI Waiver and other Waiver – or for Kansans with mental health needs, utilization of EPSDT and other services to transition students with disabilities to competitive and integrated employment, etc.). Additionally, the Commission would note that not all HCBS Waivers offer employment supports. We recommend that the bidder examine these gaps and make recommendations to fill them.

- **This builds upon Recommendation #2 in the KEFOC 2021 Report.**
- **Improve the Overall Rate Structure and Rates for Services Involved in Creating Competitive and Integrated Employment** – The successful bidder must make specific, executable recommendations to improve the entire rate structure and the rates for all services that sustain competitive and integrated employment (see list of services in prior bullet point, above). Additionally, the bidder needs to make recommendations regarding Vocational Rehabilitation/PRE-ETS rates set by Kansas Rehabilitation Services to ensure the rates provided to Vocational Rehabilitation (VR) vendors are an incentive for service providers to become vendors. The end goal is to make changes to the rates themselves, and the overall rate structure, to incentivize competitive and integrated employment, implement the Employment First mandate, and ensure vendors and businesses can build a successful and workable business model around that rate structure. The rates and rate structure should be based on existing studies, examination of rates in other states, Kansas' needs, and significant engagement with disability stakeholders.
  - **This builds upon Recommendation #2 in the KEFOC 2021 Report.**
- **Fix how Supported Employment Services can be Billed** – The bidder needs to make recommended changes in policy and procedure to ensure that supported employment services can be billed and funded in a thorough manner to obtain, maintain, and regain employment. This includes billing for pre, during, and post job placement services. It is a known problem that MCOs are inconsistent in how they allow, or disallow, providers to bill supported employment services. MCOs have greatly limited the ability to bill for needed supported employment interactions. The bidder needs to work with disability stakeholders to recommend specific, fully executable changes to address this problem.
  - **This builds upon Recommendation #2 in the KEFOC 2021 Report.**

- **Use Past Stakeholder Reports on Employment First as the Starting Point for Change –** The bidder will closely review reports issued by the Kansas Employment First Oversight Commission (KEFOC) and other stakeholder reports and recommendations regarding Employment First (Employment Systems Change Coalition, Kansas Council on Developmental Disabilities “Roadmap to Employment,” the Big Tent Coalition’s Recommendations, the Developmental Disabilities Coalition Recommendations, the State Board of Education’s Transition Workgroup, etc.). Thankfully, the systems change implementation plan sought by the RFP will not have to be developed from scratch. Dozens of reports have been issued over the last 11+ years detailing recommendations regarding Employment First. For ease of reference, the Employment First Oversight Commission’s 2020 report compiled all of the detailed recommendations made over the past ten years. If the past recommendations from the KEFOC and stakeholders were integrated into the implementation plan developed by the bidder, it would better ensure that Employment First would finally become an everyday reality in Kansas.
  - **This builds upon Recommendation #4 in the KEFOC 2021 Report.**
  
- **Stakeholders Must be Meaningfully Engaged –** The bidder will develop its recommendations through partnerships with stakeholders across the state. People with disabilities, family members, and disability advocates must be meaningfully and fully included as stakeholders in all activities of the successful implementation of this RFP. All recommendations from the bidder will be shared with stakeholders through this process to ensure meaningful stakeholder engagement. Additionally, as the bidder engages stakeholders, part of that engagement must include working with community partners to obtain support for Employment First. The above reports from the KEFOC and stakeholders should be the starting point to discuss implementation with stakeholders. Additionally, both cabinet-level Executive Branch agencies and the Kansas State Department of Education (KSDE) must be included in this process, as they are crucial to the success of implementing the Employment First mandate.
  - **This builds upon Recommendations #3 & 4 in the KEFOC 2021 Report.**
  
- **MOA on Collaboration Between Executive Branch and KSDE/SBOE –** The bidder will develop a draft Memorandum of Agreement (MOA) between the Executive Branch agencies and the KSDE/SBOE (Kansas State Department of Education / State Board of Education), which is responsible for the school-to-adult-living transition for high school youth with disabilities. This MOA will include how the agencies will work together to promote transition to competitive and integrated employment as the first option for transition-age students with disabilities. Like all of the deliverables in this RFP, the

bidder will work closely with disability stakeholders regarding what challenges and issues must be addressed in the draft MOA.

- **This builds upon Recommendations #2, 3 & 5 in the KEFOC 2021 Report.**
- **Initiatives and Pilot Projects to Prove how Changes can be Implemented** – The bidder needs to include recommendations to create many different initiatives, from wholesale changes to pilot projects, all designed to make Employment First an everyday reality. From what we heard from KDADS, implementing Employment First is a key part of the RFP. Part of that implementation is testing the recommendations through actual initiatives/pilot projects. These initiatives/pilots could include everything from enhancements and changes in provider rates and rate structures, as well as initiatives demonstrating how to build a successful business model that moves away from non-competitive and non-integrated settings. Instead of just “theories” and “ideas,” Kansas needs actual, meaningful, and replicable change to occur, thus finally and fully implementing the law and delivering on the promise of Employment First. Having workable initiatives/pilot projects is part of that implementation. Another idea for a proof-of-concept pilot project could be utilizing the STEPS program to test an enhanced rate structure in a selected geographic area and/or with selected Community Developmental Disability Organizations (CDDOs) to move individuals into community-based, competitive and integrated employment. All of the pilot projects/initiatives need to have measurable benchmarks and results (e.g., at least 20 individuals must be successfully employed in competitive and integrated employment through this pilot).
  - **This builds upon Recommendation #2 in the KEFOC 2021 Report.**
- **New Ongoing Collaboration Process on Disability Issues** – The bidder will make recommendations to create a new ongoing process to create meaningful collaboration on disability issues between the Executive Branch, Kansas State Department of Education and disability stakeholders. For more information and background on this process and why it is needed, see the Employment First Oversight Commission’s 2021 Report, Recommendation #5. As noted in that report, Secretary Laura Howard, who is both the Secretary of the Kansas Department of Aging and Disability Services (KDADS) and the Secretary of the Department for Children and Families (DCF), has pledged to the Commission to develop and implement such a cross-agency and cross-disability stakeholder engagement process. The KEFOC would note that there is a current group of State Agencies meeting on Employment First topics. It is known as the “Employment First Agencies Meeting,” and it is coordinated by KDADS. Although that is a good first step for having state agencies share information with each other, it is not an ongoing

process collaboration to create meaningful collaboration on disability issues between state agencies and disability stakeholders.

- **This builds upon Recommendation #5 in the KEFOC 2021 Report.**

- **Detailed Roadmap with Specific Policy Recommendations** – Bidder will create an overall roadmap to implement competitive and integrated employment as the first and preferred option for Kansans with disabilities in the future. Part of this roadmap must address the lack of an underlying infrastructure that fully supports employment for Kansans with disabilities. Each recommendation of this roadmap must be backed up with actionable steps to implement and operationalize the recommendations in the roadmap, including but not limited to specific recommended changes in programs, policies, procedures, and funding. This roadmap and the policy recommended should include but not be limited to:
  - HCBS Waiver policies that ensure competitive and integrated employment is the first and preferred option for Kansans with disabilities.
  - Changes to ensure that all Kansans with disabilities receive information to make an informed decision regarding how they engage with the different employment supports, such as Kansas Rehabilitation Service’s Vocational Rehabilitation (VR) program, KANSASWORKS (the American Job Centers in Kansas), Project Search, STEPS Program, Working Healthy / WORK Program, Ticket to Work, etc., during their annual service planning process.
  - Recommendations regarding a dollar amount pay increase and the appropriate number of VR Counselors statewide to be equitable with other neighboring states (e.g., Nebraska, Oklahoma).
  - Examine the possibility for models of supported employment that include “peer” mentoring services from Certified Peer Support Specialists as a reimbursable employment service under Medicaid and the Waivers. However, peer supports must not be a substitute for adequately paid and trained job coaching or supported employment services. Exploring peer support services is about looking at options to potentially enhance job coaching and supported employment.
  - Recommendations to increase public awareness and debunk myths regarding employment and disability benefits.
  - Actionable methods to leverage private sector solutions to help overcome obstacles faced by people with disabilities in obtaining competitive and integrated employment.
  - Adequate training and funding across all agencies and funding streams for job coaches, supported employment professionals, and others involved in competitive and integrated employment, increasing the professionalism of the workers. This will include addressing training and skills for these workers, including creating a more

effective career ladder that encourages employee growth, opportunities for advancement, and increased retention.

- Recommendations regarding the Final Settings Rule and how to ensure that Kansans with disabilities in non-competitive and non-integrated settings can have the services, supports, navigation, accountability, and processes necessary to benefit from the Employment First law. This can include , but not be limited to, working with all stakeholders (self-advocates, disability advocacy organizations, providers, etc.) to discuss the current mix of services and settings that run the gamut from highly competitive and integrated to non-competitive and non-integrated, and what changes need to occur to truly implement Employment First.
- Develop a plan to phase out the use of sub-minimum wage and piecework rates in I/DD Waiver settings over a 3-year period. This plan would also be coordinated with the Final Settings Rule implementation. We understand phasing out sub-minimum wage may be an extensive endeavor. While the creation of this plan does not necessarily mean that the State of Kansas will adopt it and eliminate sub-minimum wage/piece work rates, the majority of Commissioners believe that the time has come to develop a detailed plan to phase-out sub-minimum wage. However, in light of the Final Settings Rule, effective contingency planning requires such a step be developed and considered. Any consideration of this plan would be concurrent with obtaining feedback from the entire disability community, including but not limited to self-advocates, disability advocacy organizations, disability providers and their associations, experts in the field, and sheltered workshop providers.
  - For reference, the following states have eliminated subminimum wages for people with disabilities: Alaska, Maine, Maryland, New Hampshire, Oregon, Washington, Hawaii, Colorado, California, Delaware, Tennessee, South Carolina, and Rhode Island. Several other states are working to pass legislation, policy changes, or a process to eliminate 14(c)/subminimum wage, including but not limited to: Georgia, Illinois, Kentucky, Minnesota, New York, Ohio, Vermont, and Virginia.
- Recommendations to have KanCare adopt a policy that recognizes that the Employment First law applies to the Working Healthy program and that competitive and integrated employment must be the first option for that program. The bidder should work with Working Healthy program staff to better ensure that competitive and integrated employment is the first and preferred option.
- Recommendations regarding training for TCMs, VR Counselors, MCO Care Coordinators and others who touch the eligibility process. The training must: 1) stress that people can work and retain benefits while dispelling myths and, 2) teaches these entities how to assist individuals, families, payees, guardians, and others how to manage benefits when working (SSI Reporting, ABLE Accounts, etc.)

- Recommend changes in KDHE and Medicaid rates, policies, procedures, programs, and funding that ensure that competitive and integrated employment is the first and preferred option for all Kansans with disabilities. Like all the deliverables in this RFP, such recommendations should be built with stakeholder engagement and include detailed plans on how to implement and operationalize them.
- Recommendations in policy, procedure, programs, and funding to ensure that MCOs consistently deliver EPSDT (Early and Periodic Screening, Diagnostic, and Treatment) mandated Medicaid services, which will greatly assist transition-age (14-21) students accessing all EPSDT Medicaid services (behavioral supports, PCA services, “waiver-like” services funded under EPSDT, etc.). Additionally, the bidder should make recommendations to KDHE that will ensure that the state is fully and effectively fulfilling its oversight role (to quote the federal EPSDT Medicaid law) to “arrange for” all the services and supports needed by EPSDT beneficiaries. EPSDT services break down barriers to employment and enable beneficiaries to be employed in competitive and integrated settings.
- Recommendations regarding transportation policies and procedures to better support competitive and integrated employment.
  - **All of the above recommendations build upon Recommendations #2, 3 & 4 in the KEFOC 2021 Report.**
- **Recommendations to Improve Oversight** – The bidder will recommend solutions to provide the Kansas Employment First Oversight Commission (KEFOC) proper oversight functions through changes to existing law, HCBS waiver policies and procedures, creation of a new Executive Order from the Governor, or other means to accomplish greater oversight. There are successful models in other states, such as Colorado’s Office of Employment First.
  - **This builds upon Recommendations #2, 3 & 5 in the KEFOC 2021 Report.**
- **KDADS and KEFOC Collaboration on the RFP Implementation** – KDADS should have the successfully bidder reach out to and work with the KEFOC and create a meaningful process to ensure effective engagement between the KEFOC, KDADS and the successful bidder during the RFP implementation. The greater the collaboration between the KEFOC, disability stakeholders, and KDADS, the more successful the RFP implementation will be.
  - **This builds upon Recommendations #2, 3, 4 & 5 in the KEFOC 2021 Report.**