THE ARC AND UCP PUBLIC POLICY COLLABORATION

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Dependable Information for America's Disability Community

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House Passes Social Security Protection Act, H.R. 743

On April 2, the Social Security Protection Act, H.R. 743, passed the House of Representatives on a recorded vote of 396 to 28. This bipartisan bill would make improvements in the representative payee program for beneficiaries of the Supplemental Security Income (SSI) program and the Title II disability programs. It would also require that the Social Security Administration (SSA) issue written receipts and establish a centralized computer file for beneficiaries' reports of earnings or changes in work status. Details on the bill were included in the March issue of *Washington Watch*. The Arc and UCP have supported this legislation.

The provision that would close a loophole in Social Security law regarding government pensions offsets for Social Security benefits, known as the "Texas teachers" issue, remains in the bill.

On February 25, Senator Jim Bunning (R-KY) introduced a similar bill (S. 439) in the Senate. Senate Finance Committee staff have begun work on the bill, although there is no schedule yet for expected action in the Senate. The Arc and UCP Public Policy Collaboration will continue to work on S. 439 in the Senate.

House Committee Adopts IDEA Reauthorization Bill

The House Education and the Workforce Committee voted 29 to 19 on April 10 to reauthorize the Individuals with Disabilities Education Act (IDEA). H.R. 1350, titled the Improving Education Results for Children with Disabilities Act of 2003, garnered support from only 3 out of 22 Committee Democrats (Representatives Robert Andrews (NJ), Ron Kind (WI) and Denise Majette (GA). Every Committee Republican voted for the bill. The vast majority of the special education advocacy community, including UCP and The Arc, strongly oppose H.R. 1350 as reported out of the Committee. This bill poses the direst threats to the educational rights of students with disabilities since the enactment of Public Law 94-142, the predecessor to IDEA, in 1975.

In a press release, the Committee majority claims the bill is "hailed by school administrators as the best education policy revisions we've seen in decades". Many of these "revisions", from the parent perspective, represent unprecedented erosions of children's and parent's rights under IDEA. Under the guise of paperwork and litigation reduction, the bill guts the carefully crafted bipartisan discipline amendments created in 1997. During the markup, Committee Democrats strongly objected to the new discipline amendments but failed to restore important protections in the current law. Repealed are the vital manifestation determination and functional behavior assessments that provide important protections for students with disabilities who violate school rules. The bill would discipline special education students in the same manner as other students and school officials "may" consider the effect of the child's disability on the behavior. The Arc and UCP believe these revisions, if enacted into law, will lead to segregating many students with disabilities away from regular classes and schools and into alternative settings. Rather than reducing litigation, this provision will likely foster more litigation.

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H.R. 1350 also places significant restrictions and requirements on a parent is he or she chooses to pursue due process procedures. Further, the bill provides additional means of resolving disputes between parents and schools. Taken together, these provisions will likely serve to confuse, complicate, and stifle parents who want to register complaints regarding their children's education and/or pursue due process procedures. As a parent contemplates filing a complaint, the new requirements and options come into play, as follows:

Prior to filing a due process request, the parent will be required to meet with the school system to attempt to resolve the issues raised in a complaint.

If this meeting fails to resolve the issues, then parents must decide, in concert with the school system, whether to opt for voluntary mediation or a new process called voluntary binding arbitration to solve the problem (neither of these processes are mandatory).

Then, the parent can begin the filing of a due process request.

Throughout this complicated process, the bill would require the parents to be more specific in describing the problem(s) and suggested solutions. A one-year time limitation is placed on the issues to be raised and only issues raised in the complaint can be addressed during due process. Each of these requirements places additional burdens on the parents as they advocate for their child. Further limiting parents rights in H.R. 1350, due process hearing officials can only make decisions based on a free, appropriate public education, not allowing any other relevant issues to be raised. Governors would be required to set limits on fees to attorneys who successfully represent parents. Low fee limits could dissuade lawyers from representing parents.

The monitoring and enforcement of IDEA would be significantly altered by H.R. 1350. New sets of compliance sanctions are established for three stages of performance: 1) lack of progress; 2) substantial non-compliance; and 3) continued non-compliance. While these sanctions, if employed, may push states and local school systems to comply, the essential monitoring provision, called "focused monitoring", is seen by The Arc and UCP as falling far short of an effective monitoring process. For example, IDEA's "least restrictive environment" requirement, a cornerstone of IDEA since 1975 and a key determinant of a child's education, is a "permissive" not "required" indicator in the new monitoring system.

After rejecting an amendment to create mandatory full funding of IDEA, the House Committee established a seven-year authorization formula that increases special education funding from the current level of $8.9 billion to $25.2 billion in FY 2010. FY 2004 IDEA funding would increase by $2.2 billion ($11.2 billion) and in FY 2005 by $2.3 billion ($13.4 billion). This funding is still subject to the annual appropriation process and is thus not guaranteed. Various new uses of IDEA funding for educational purposes other than special education are also raising concerns. All of the uses have merit. However, the cumulative effect of the potential loss of funds for special education is seen as problematic since full compliance with IDEA has never been achieved in each state and IDEA funding should be used first to enhance special education services.

As in current law, local education agencies can use up to 20% of the annual increase in IDEA funds and apply them to educational purposes for students without disabilities served under the Elementary and Secondary Education Act (ESEA). A new provision would allow school systems to use up to 15% of their IDEA allocation for "prereferral services" to serve students not identified as needing special education or related services but who need additional academic and behavioral supports to succeed in the general education environment. This funding could be used from kindergarten through grade 12 with particular emphasis on younger children (kindergarten through grade 3).

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There are no time limits on the use of these funds for a particular child. IDEA funds can also be spent on "supplemental educational services" for children with disabilities in schools designated for improvement under the ESEA.

There are several controversial issues regarding the annual Individualized Education Program (IEP) process. Of most concern to parents is a phase-out in the school year beginning in 2005 of the benchmarks and short-term objectives contained in the IEP. Benchmarks and short-term objectives will be retained for those limited numbers of students who take alternative assessments. Another concern is a new option for the parents and the IEP team to develop a multi-year IEP, not to exceed three years, designed to cover the natural transition points for a child. Some advocates fear that, to cut costs and reduce paperwork, school systems could pressure parents into multi-year IEPs.

Congressman John Boehner, Chairman of the Education and the Workforce Committee, has made clear his intent to continue to modify H.R.1350 prior to final action on the House floor. Given the multitude of fixes required to garner the support of special education advocates, it is unlikely that support for the bill will come from any sources other than general education. UCP and The Arc will continue to oppose H.R.1350 until it is improved to represent sound policy for students and parents.

Meanwhile, staff of the Senate Health, Education, Labor and Pensions Committee continue to work in a bipartisan manner on a bill to reauthorize IDEA. A bipartisan bill is likely to be introduced soon after the Senate returns to work on April 28. Advocates have been promised two weeks to review the bill prior to a full Committee markup. The bill is not expected to address mandatory full funding or school choice "vouchers". Discipline provisions are still in negotiation and may or may not be included in the bill.

Fiscal Year 2004 Budget Resolution

In an attempt to pass a Fiscal Year 2004 budget resolution, several intra-party disagreements about the size of a tax cut blossomed into full public view over the last couple of weeks. The House-passed version of the budget called for President Bush's full $726 billion tax cut proposal. The Senate-passed budget, however, limited the tax cut to $350 billion. Twenty nine House conservatives wrote Speaker Dennis Hastert (R-IL) that they would not support a budget resolution with a tax cut less than $500 billion over ten years. On the Senate side, Senators Lincoln Chafee (R-RI) and John McCain (R-AZ) held firm in their refusal to support a tax cut of any size. Moderate Senators Olympia Snowe (R-ME) and George Voinovich (R-OH) also held firm in their support of a net tax cut no higher than $350 billion.

After a few long days and late nights of lobbying and deal-cutting, an unprecedented budget plan emerged. The budget resolution would instruct the House to write a tax cut of $550 billion, and the Senate to write a tax cut limited to $350 billion. When passed by both Houses of Congress, this budget resolution would provide certain parliamentary protections to future tax cut bills so that the bills cannot be filibustered in the Senate, and thus would only need 51 votes to pass. However, the budget resolution also specified that when each House completes its tax bills later this year, Congressional conferees could report out a tax cut as large as $550 billion. In other words, the budget resolution would protect $350 billion in tax cuts from filibuster the first time through the Senate, but would protect $200 billion more in the version to be presented to the President for his signature. The House, by a vote of 216-211, approved the Conference Report on the budget resolution in the early morning hours of April 11.

Senators Snowe and Voinovich, however, balked at supporting the Conference Report due to its provision for a final tax cut of $550 billion. The Senate's GOP leadership realized that it could not pass a budget resolution without their support.

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To resolve this dilemma, Sen. Charles Grassley (R-IA), Chairman of the Senate Finance Committee, made a commitment on the floor of the Senate that during the May debate on the final tax cut legislation, he would not support (in the Finance Committee, on the Senate floor, or in Conference) a net tax cut greater than $350 billion. This commitment appeased Senators Snowe and Voinovich, but angered House GOP leaders. The House had already passed the Conference Report earlier in the morning, unaware of Senator Grassley's commitment to limit the tax cut to $350 billion. The Senate then adopted the Conference Report by a vote of 51-50, with Vice President Dick Cheney breaking the tie. This outcome means that the Bush Administration's $726 billion tax cut proposal will likely be cut in half.

The Conference Report's $2.27 trillion budget for Fiscal Year 2004 also includes:

-no required cuts to Medicaid, SSI, or other entitlement programs
-discretionary spending limits of $784 billion -- $400 billion for defense, $384 billion for non-defense (levels similar to President Bush's FY 2004 Budget request);
-$400 billion President Bush has requested for Medicare reform, including a prescription drug benefit;
-a reserve fund for Medicaid reform, with sufficient funds to implement the Administration's block grant pro posal;
-a reserve fund to implement the Family Opportunity Act, if enacted;
-a reserve fund for the extension of expiring State Children's Health Insurance Program (SCHIP) funds;
-a reserve fund for the uninsured: $161 million in 2004 and $50 billion over 10 years; and
-$2.2 billion for FY 2004 and $2.5 billion for FY 2005 for IDEA state grants.

Days after the Congress passed the Conference Report of the budget resolution, President Bush acknowledged that he would not get the full tax cut he had originally proposed. During an April 15th speech, the President said that Congress must pass a tax cut package of at least $550 billion, 75% of what he originally wanted, but still much higher than the tax cut agreed upon by Senate leaders. The Administration plans to target about 10 moderate Democratic Senators to convince them to support a tax cut larger than $350 billion. However, this strategy appears to be an uphill battle.

Senate Passes Lifespan Respite Care Act of 2003

On April 10, the Lifespan Respite Care Act of 2003, S. 538, passed the Senate by Unanimous Consent. Senator Hillary Rodham Clinton (D-NY), lead sponsor, was joined by 11 Republican and Democratic co-sponsors.

The Lifespan Respite Care Act would authorize the Secretary of Health and Human Services to award grants or cooperative agreements to an agency or organization that is capable of operating on a statewide basis. After enactment, the Lifespan Respite program would be subject to the annual appropriations process.

The grants would be used to develop coordination of respite care programs. Respite care is defined as planned or emergency care provided to a child or adult with a special need in order to provide temporary relief to the family caregiver of the child or adult. Once statewide programs are in place, funds can be used for respite care services or training. The grants would be available for five years.

On the House side, the Lifespan Respite Care Act of 2003, H.R. 1083, was introduced by Representative James Langevin (D-RI) and now has 58 co-sponsors. UCP and The Arc have supported this respite care legislation since the last Congress when bills were first introduced and will continue to work for final passage of Lifespan Respite Care legislation.

Resolutions Introduced in House and Senate to Recognize Role of Direct Support Professionals

On March 13, resolutions were introduced in both the House and the Senate to recognize the important role of direct support professionals in providing services to people with mental retardation or other developmental disabilities.

The House resolution, H. Con. Res. 94, was introduced by Representatives Pete Sessions (R-TX) and Lois Capps (D-CA). The Senate resolution, S. Con. Res. 21, was introduced by Senators Jim Bunning (R-KY) and Blanche Lincoln (D-AR).

Each is a resolution "expressing the sense of the Congress that community inclusion and enhanced lives for individuals with mental retardation or other developmental disabilities is at serious risk because of the crisis in recruiting and retaining direct support professionals, which impedes the availability of a stable, quality direct support workforce."

The concurrent resolutions have not yet been acted upon by either the House or the Senate. If passed, the resolution would not be binding. However, the resolutions serve to bring important policy issues to the attention of the Congress. In the resolved clause, each states:

> It is the sense of the Congress that the Federal Government and the States should make it a priority to ensure a stable, quality direct support workforce for individuals with mental retardation or other developmental disabilities that advances our Nation's commitment to community integration for such individuals and to personal security for them and their families."

UCP and The Arc supported the introduction of the resolution and will continue to work to bring this critical policy issue to the forefront for Congressional action.

Social Security Administration Begins Revision Process for Mental Impairments Listings

The Social Security Administration (SSA) has announced its intention to revise to the "Listing of Impairments" for evaluating "mental disorders". These listings are used to determine disability for purposes of the Supplemental Security Income (SSI) and Title II Social Security disability programs. SSA plans to update and revise the listings for both children and adults. In an unusual step, SSA published an Advance Notice of Proposed Rulemaking (ANPRM) on March 17. Through the ANPRM, SSA is seeking comments and suggestions on the current rules before it drafts revisions and officially proposes changes.

Comments on the ANPRM are due on June 16, 2003. The Arc and UCP Public Policy Collaboration and numerous other member organizations of the Consortium for Citizens with Disabilities (CCD) will be drafting comments on the ANPRM.

The mental disorders listing includes the criteria for determining disability on the basis of mental retardation and mental illness. There are two parts to the listings: Part A is used primarily for adults and for some children, where appropriate, and Part B is used for children.

The listings are only one step in a several-step disability determination process. If an individual does not qualify at the listing step, then a functional capacity step comes next.

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However, the listings themselves, and particularly the mental disorder listings, include some functional assessment, as well.

SSA regularly revisits its listings for any changes that might be needed. The mental disorder listings are scheduled for expiration on July 2, 2003, unless extended or revised. Although SSA has made some changes to the mental disorders listing, most recently in 2000, the adult mental disorders listing has not been comprehensively revised since 1985 and the children's mental disorders listing has not been comprehensively revised since 1990.

Since this is an advance notice, SSA has indicated that it will not respond to the comments in writing. Once SSA reviews the comments it receives on this ANPRM, it will publish a regular Notice of Proposed Rulemaking (NPRM) for public comment. Following that, SSA will respond to public comments on the NPRM in the preamble to any final rules it publishes.

Details on how to submit comments on the current regulations can be found at:
http://www.ssa.gov/disability/newrules_mentaldisorders.htm or you may contact Marty Ford at
ford@ppcollaboration.org.

The ADA Notification Act

On April 8, the Subcommittee on Rural Enterprises, Agriculture and Technology of the House Committee on Small Business held a hearing on litigating via the Americans with Disabilities Act (ADA). Representative Mark Foley (R-FL) has introduced H.R. 728, the ADA Notification Act, and testified before the Subcommittee on behalf of the bill. H.R. 728 would amend title III of the ADA to require, as a precondition to commencing a civil action against a place of public accommodation or a commercial facility, that an opportunity be provided to correct alleged violations. The bill would allow a 90-day grace period for businesses to correct and become compliant with the ADA before an individual can file a civil suit.

Rep. Foley testified that this bill is necessary because a number of attorneys in a few states around the country have filed so-called "drive-by" lawsuits. According to Rep. Foley, these attorneys identify a particular business and harass them with an ADA complaint. Rep. Foley testified that these attorneys often cite miniscule violations, and coerce the businesses to settle for a fee. He testified that small businesses often don't know that they are not in compliance with the ADA, and if given the chance, they would make the modifications to become compliant.

Some of the Democratic Members of the Subcommittee expressed a number of concerns. First, they expressed concern that this bill was a major overreaction to a specific problem with a few unscrupulous attorneys and noted that state laws and bar associations already have tools to deal with these issues. They also maintained that the ADA only requires businesses to make readily achievable modifications in order to be compliant, not a particularly grueling standard, and that businesses have had 13 years to learn the law and how to comply with it. Moreover, they argued that the proposed legislation would not only deprive individuals with disabilities of the access to many vital services, it would change the entire focus of the ADA by shifting the burden of proving noncompliance to a person with a disability.

Representative Foley introduced the ADA Notification Act on February 13, 2003, and the bill was referred to the House Committee on the Judiciary.

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The Arc and UCP Public Policy Collaboration, along with other members of the disability community, met with the Chief Chairman Sensenbrenner (R-WI) to discuss our concerns regarding the ADA Notification Act. The PPC and others acknowledged the problem with the handful of lawyers who engage in "drive-by" lawsuits, and expressed our willingness to work with the Chairman to help come up with real solutions to this and other specific problems. However, we maintained that H.R. 728 - a bill that tramples the hard-fought civil rights of individuals with disabilities - is not the solution. Chairman Sensenbrenner's counsel informed us that generally, the Chairman supports the bill, but does not intend to bring it up before the Committee for action anytime soon.

The CARE Act of 2003

On April 9, the Senate, by a vote of 95-5, passed the CARE Act of 2003 (S. 476), a slimmed-down version of President Bush's "faith-based initiative." The bill provides tax incentives for individuals and businesses to make charitable contributions. S. 476 would allow non-itemizers who take the standard deduction on their tax return to deduct up to $250 per person for charitable donations above $250. This provision would expire in two years when Congress determines whether the deduction spurred an increase in charitable giving. The bill would also provide incentives to corporations to increase charitable giving.

In addition, the bill also authorizes a $1.4 billion increase to the Social Services Block Grant program (SSBG). Funding for SSBG has decreased significantly over the past two years, and this bill would restore the funding to its earlier levels. Both the White House and GOP leaders in the House of Representatives, however, strongly oppose the restoration of the funding. A White House statement noted that "these large increases . . . far exceed the President's request." Moreover, while a companion bill has not yet been introduced in the House, the Chairman of the House Ways and Means Committee is reportedly working with House leadership on developing a bill which is limited to tax deductions for charitable giving. According to the GOP leadership, the House legislation would not include the $1.4 billion increase.

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