CURRENT FEDERAL AND STATE NONDISCRIMINATION LAWS PROTECTING PERSONS WITH DISABILITIES

This paper provides an overview of the coverage of existing laws that prohibit discrimination on the basis of handicap. Part I contains information about Federal civil rights laws and contains brief summaries of the nature of obligations under these laws. Part II is a chart that contains a State-by-State summary of State laws that prohibit discrimination on the basis of handicap.

PART I: FEDERAL LAWS

A. Section 504 of the Rehabilitation Act of 1973

Since the early 1970's a growing number of Federal statutes have been enacted to provide civil rights protections to persons with disabilities. Many of these statutes are limited to a particular subject matter area, e.g., transportation, housing. Information about these laws is included in the subject matter areas that follow. Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, however, provides comprehensive civil rights coverage for persons with disabilities. It often overlaps and encompasses these other, more specific statutes. Because of its comprehensive reach, it is discussed separately at the outset, rather than being repeated in each of the subject matter areas below.

Section 504 prohibits discrimination on the basis of handicap in programs and activities that receive Federal financial assistance from a Federal agency and in programs and activities conducted by Federal Executive agencies. Section 504 covers all features of a federally assisted or federally conducted program, including the provision of services, buildings and facilities, and employment. It covers intentional discrimination as well as actions that are not intended to be discriminatory but have the effect of excluding persons with disabilities, e.g., buildings with steps but no ramps.

Section 504 encompasses three major nondiscrimination principles. It requires that recipients of Federal funds and the Federal government:

- Provide equal opportunity to persons with disabilities. Thus, a person with epilepsy cannot be excluded from a federally assisted library on the basis of the person's epilepsy.

- Take affirmative steps or provide special services if they are necessary to give equal opportunity to persons with disabilities. This notion recognizes that you may have to treat a person differently in order to give that person an equal opportunity. Examples include installing a ramp on a building, widening a door,

providing written materials in Braille or on audio tape, and providing special telecommunication devices for persons who are deaf or hard-of-hearing.

- Provide all services in the most integrated setting appropriate. Unlike civil rights statutes that prohibit discrimination on the basis of race, this notion recognizes that some separation or concentration of persons with disabilities may be allowable. Examples would include a special elementary school for children who are deaf and who receive special services and a national park that has made several, but not all, of its camping areas with accessible toilet facilities and showers.

Section 504, however, does not require any recipient of Federal funds nor any Federal Executive agency to take any action in its covered programs or activities that would result in a fundamental alteration in the nature of the program or activity or that would result in undue financial and administrative burdens.

Section 504 overlaps with the Architectural Barriers Act, 42 U.S.C. §§ 4151-4157, which requires that all federally constructed or federally leased buildings conform to accessibility design standards. The Act also covers some buildings that are not Federal buildings but that are designed, constructed, or altered with a Federal grant.

B. Education

The nondiscrimination mandate of section 504 applies to education institutions that receive Federal funds, including State education agencies, public and private elementary and secondary schools, colleges and universities, professional schools, and vocational schools. Because almost every public elementary and secondary school, almost every college and university, and most private educational institutions receive funds from the Federal government for educational programs, section 504 covers just about all educational activities in the United States.

In addition, Part B of the Education of the Handicapped Act (EHA), 20 U.S.C. §§ 1401-1420, contains specific requirements on the education of children with disabilities who are between the ages of 3 and 21. Section 504 and EHA together require that children must be provided with a free appropriate public education, regardless of the nature or severity of their handicap, that these children must be educated with nonhandicapped students to the maximum extent appropriate ("mainstreaming"), that educational agencies must undertake to identify and locate all unserved children with disabilities, that

evaluation procedures must be improved in order to avoid the inappropriate education that results from the misclassification of students, and that procedural safeguards must be established to enable parents and guardians to influence decisions regarding the evaluation and placement of their children. Public school systems must either educate children with disabilities in their regular programs or provide such children with an appropriate alternative education at public expense.

C. Health

Section 504 applies to all hospitals, nursing homes, mental health facilities, home health agencies, and other providers of health care services that receive Federal financial assistance. Because of the reach of funding of Medicare, Medicaid, and CHAMPUS (medical care for persons in the armed services), most institutional health care providers in the United States are subject to section 504. Because section 504 does not apply to Federal funds provided by way of a contract of insurance or guarantee, most health care providers who are individuals, such as doctors and dentists, are not covered.

In addition, the Public Health Service Act of 1944, as amended, contains provisions that prohibit discrimination in the treatment and admission of drug and alcohol addicts to hospitals and outpatient facilities. 42 U.S.C. §§ 290dd-2, 290ee-2. Another statute that provides protections for children with disabilities is the Child Abuse Prevention and Treatment and Adoption Reform Act of 1978, as amended by the Child Abuse Amendments of 1984. This legislation defines as medical neglect, and thus child abuse, the withholding of medically indicated treatment (including the withholding of food and water) from disabled infants with life-threatening conditions -- the "Baby Doe" issue. 42 U.S.C. §§ 5101-5103.

D. Employment

The Rehabilitation Act of 1973, as amended, establishes certain Federal protections against employment discrimination based on handicap. The applicable provisions are:

- Section 501, 29 U.S.C. § 791, which provides for affirmative action and, implicitly, nondiscrimination in Federal employment.

- Section 503, 29 U.S.C. § 793, which provides for affirmative action in the employment of individuals with handicaps under any Federal contract in excess of $2,500. It is estimated that this section affects more than 300,000 business entities that have Federal contracts.

- Section 504, 29 U.S.C. § 794, which prohibits employment discrimination in programs and activities conducted by the Federal Government or by recipients of Federal financial assistance. Recipients of Federal financial assistance include most State and local agencies, public transportation systems, elementary and secondary schools, colleges and universities, hospitals, nursing homes, and providers of social services.

Regulations implementing the Rehabilitation Act require employers to provide "reasonable accommodation" to the known physical or mental limitations of an employee or applicant, unless such accommodation would result in an undue hardship on the operation of the employer's program or business. See, e.g., 29 C.F.R. § 1613.704 (Equal Employment Opportunity Commission regulation implementing section 501); 41 C.F.R. § 60-741.6(d) (Department of Labor regulation implementing section 503); 28 C.F.R. § 41.53 (Department of Justice coordination regulation to implement section 504 for federally assisted programs). Examples of "reasonable accommodation" include making facilities accessible, restructuring jobs, modifying work schedules, modifying equipment, and providing readers or interpreters.

Nondiscrimination on the basis of handicap in employment includes the provision of insurance. Thus, if an employer makes health care insurance available to its employees, it cannot refuse to do so for employees with disabilities. Although most employers provide health care insurance to their employees, these health care plans routinely exclude expenses related to preexisting conditions.

Recent Federal studies have shown that the absence of health care plans that would cover persons with disabilities is a major disincentive for persons with disabilities seeking employment. This disincentive is particularly acute for those disabled persons who receive Federal subsidies because of their disability and who would have to forego receipt of health care through either the Medicare or Medicaid systems if they went to work and earned a minimal amount of money. Recent amendments to the Social Security Act have begun to ameliorate this problem for those disabled persons who receive subsidies under the Social Security Act. Further Federal legislative action may be appropriate in the health care area if the Federal government is to provide employment opportunities for persons with disabilities. Protections against employment discrimination may be enhanced for employees with disabilities if adequate health care coverage is available, perhaps by allowing disabled workers to use either the Medicare or Medicaid systems for the provision of health care.

E. State and Local Government

A significant portion of the activities of State and local governments is covered by section 504. Under the Civil Rights Restoration Act, Pub. L. No. 100-259, § 4, 102 Stat. 29, all the operations of a governmental department or agency are covered if any part of it receives Federal financial assistance. If any part of that grant is distributed to the department or agency by another entity of State or local government, all of the operations of the distributing entity are covered as well.

Most State agencies receive funds from the Federal government and thus must not discriminate on the basis of handicap. Very few State agencies (most likely State licensing agencies, State insurance agencies, and State motor vehicle departments) do not receive Federal funding and are thus not covered by section 504. The situation at the local level is quite different. With the end of funding for the Revenue Sharing Program, there is little comprehensive coverage of local government activities. Police and fire departments are most often covered, while the activities of mayors, city managers, and town councils are usually not subject to section 504's nondiscrimination mandate.

Covered activities must meet the requirements of the section 504 regulations issued by the Federal agency providing the assistance. See, e.g., 45 C.F.R. pt. 84 (Department of Health and Human Services). They include reasonable accommodation in employment, program accessibility in existing facilities, ready access to new facilities, and the provision of auxiliary aids to ensure effective communication.

F. Public Accommodations

Any public accommodation covered by the Civil Rights Act of 1964 with respect to race discrimination, such as a hotel, restaurant, theater, and any establishment containing such a facility may be covered by section 504 if the private entity that owns it receives Federal financial assistance. Under the Civil Rights Restoration Act all the activities of a private entity are covered if Federal assistance is extended to the entity "as a whole" or if the corporation is "principally engaged in the business of providing education, health care, housing, social services, or parks and recreation." In other cases, the coverage is limited to the "entire plant or other comparable, geographically separate facility" to which the assistance is extended.

Although some public accommodations are, therefore, covered by section 504, for example, a museum or theater would be subject to section 504 if it receives Federal assistance from the

National Endowment for the Arts -- the vast majority of public accommodations are not.

G. Housing

Section 504 of the Rehabilitation Act bans discrimination against qualified individuals with handicaps in federally assisted programs, including programs carried out by public housing authorities. The implementing regulation issued by the Department of Housing and Urban Development in 1988 requires recipients to provide, through retrofitting if necessary, adequate numbers of accessible units to meet the assessed needs of handicapped persons who are eligible for public housing. In addition, new construction must be accessible, i.e., in each project five per cent, or at least one, of the units must be accessible to persons with mobility impairments, and two per cent, or at least one, must be accessible to persons with hearing or vision impairments.

The Fair Housing Amendments Act of 1988, Pub. L. No. 100-430, expanded the protections of title VIII of the Civil Rights Act of 1968 to prohibit discrimination in the sale, rental, and financing of dwellings based on handicap. The prohibitions of the Act apply to public entities as well as private entities selling, renting, or advertising properties. (Except for the prohibitions relating to advertising, the Act generally does not apply to private individuals who own fewer than four single-family houses, or to owner-occupied buildings housing no more than four families.) While the Act does not require a landlord to modify dwelling units, it prohibits landlords from (1) refusing to permit, at the expense of a handicapped person, reasonable modifications to existing premises for the sake of accessibility, and (2) refusing to make reasonable accommodations in policies and practices in order to allow equal opportunity to use and enjoy a dwelling. It also requires that elevator buildings that have four or more units and that are first occupied after March 1991 have accessible entrances, common use areas, and doors, and that dwelling units have certain features of accessibility and adaptability (e.g., reinforcements in walls to allow for later installation of grab bars).

H. Voting

The Voting Accessibility for the Elderly and Handicapped Act, 42 U.S.C. §§ 1973ee to 1973ee-6, is intended to enable elderly and handicapped voters to participate in Federal elections. The Act requires State and local officials to ensure that a "reasonable number" of permanent registration sites for Federal elections are accessible to elderly and handicapped voters unless all voters are afforded the opportunity to register by mail or in their homes. All polling places for Federal elections must be accessible unless the chief election officer of

the State determines that it is not possible to provide an accessible polling place, and takes steps to ensure that any elderly or handicapped voter assigned to an inaccessible polling place is provided with an alternative means of voting on the day of the election. Registration and voting aids must be made available in the form of large print documents or information provided through the use of telecommunications devices for deaf persons; moreover, the voter is entitled to "assistance by a person of the voter's choice."

I. Transportation

There are four major statutes prohibiting discrimination against individuals with handicaps in the area of transportation, and a separate statute relating to air travel. The first four statutes, which apply to recipients of Federal funds from the Department of Transportation (DOT), are section 504; section 16(a) of the Urban Mass Transportation Act of 1964, as amended, 49 U.S.C. § 1612(a); section 165(b) of the Federal-Aid Highway Act of 1973, as amended, 23 U.S.C. § 142 note; and section 317(c) of the Surface Transportation Assistance Act of 1982, 49 U.S.C. § 1612(d). The four statutes are implemented by DOT's final rule prohibiting nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from Federal financial assistance, which was issued in 1979 and amended in 1986 to add new mass transit requirements. 49 C.F.R. pt. 27.

Subpart D of the regulation contains specific program accessibility requirements for airports, railroad stations, rail vehicles, and highways. Included are specific physical accessibility design standards that must be adhered to in newly constructed airports and railroad stations; other accessibility requirements for existing airports and railroad stations; a requirement that at least one coach car of each passenger train be accessible; provisions concerning assistance and service to rail passengers; and requirements that highway rest area facilities and pedestrian overpasses, underpasses, ramps and crosswalks be accessible. Subpart E, concerning mass transportation, permits recipients to choose a method of making their inner-city bus systems accessible. The rule also includes the general provisions concerning program accessibility and prohibitions against discrimination in employment that are contained in most agencies' section 504 regulations for federally assisted programs and activities.

The other law prohibiting discrimination against individuals with handicaps in the area of transportation is the Air Carrier Access Act of 1986, 49 App. U.S.C. § 1374(c), which prohibits an air carrier from discriminating against any otherwise qualified handicapped individual, by reason of such handicap, in the provision of air transportation. The law applies to all air carriers, whether or not they receive Federal financial

PART II: STATE LAWS

STATE	CREDIT	PUBLIC ACCOMMODATIONS	EMPLOYMENT	HOUSING	HOUSING ACCESSIBILITY
ALABAMA		1	2	1	
ALASKA	X	X	X	X	
ARIZONA		1	X		
ARKANSAS			2		
CALIFORNIA		1	X	1	X
COLORADO		X	X	X	X
CONNECTICUT	1	X	X	X	X
DELAWARE				X	X
D.C.		1	1	1	
FLORIDA	1	1	X	1	X
GEORGIA		3	X	3	X
HAWAII	1	X	X	1	
IDAHO		1	X		
ILLINOIS	X	X	X	X	X
INDIANA	X	X	X	X	X
IOWA	X	X	X	X	X

1 Physically handicapped only.
2 State Employment only.
3 Blind and deaf only.

STATE	CREDIT	PUBLIC ACCOMMODATIONS	EMPLOYMENT	HOUSING	HOUSING ACCESSIBILITY
KANSAS	1	1	1	1	
KENTUCKY	1		1	1	X
LOUISIANA	1	1	1	1	X
MAINE	X	X	X	X	
MARYLAND	X	X	X	X	X
MASSACHUSETTS		X	X	3	X
MICHIGAN	X	X	X	X	X
MINNESOTA	X	X	X	X	X
MISSISSIPPI		1	1, 4		
MISSOURI	X	X	X	X	
MONTANA	X	X	X	X	
NEBRASKA	X	1	X	1	
NEVADA		1	X		
NEW HAMPSHIRE		X	X	X	
NEW JERSEY		X	X	X	X
NEW MEXICO	X	X	X	X	

[4] Publically funded employment only.

STATE	CREDIT	PUBLIC ACCOMMODATIONS	EMPLOYMENT	HOUSING	HOUSING ACCESSIBILITY
NEW YORK	X	X	X	X	X
NORTH CAROLINA			X	X	X
NORTH DAKOTA	X	X	X	X	
OHIO	X	X	X	X	
OKLAHOMA		X	X	X	
OREGON	X	X	X	X	
PENNSYLVANIA	X	X	X	X	
RHODE ISLAND	X	X	X	X	X
SOUTH CAROLINA	X	X	X	X	X
SOUTH DAKOTA	X	X	X	X	
TENNESSEE	1		X		
TEXAS		X	X	X	
UTAH		X	X	X	
VERMONT		X	X		X
VIRGINIA		X	X	X	
WASHINGTON	X	X	X	X	X

STATE	CREDIT	PUBLIC ACCOMMODATIONS	EMPLOYMENT	HOUSING	HOUSING ACCESSIBILITY
WEST VIRGINIA	X	X	X	X	X
WISCONSIN	X	X	X	X	X
WYOMING		X	X		

In addition, the laws of sixteen States and the District of Columbia provide some coverage of transportation.

NOTE: There is a great deal of variance in the extent of coverage and the kinds of substantive guarantees found in each of these State laws. These State statutes differ in the types of facilities covered, in the degree to which reasonable accommodations are required, and in the availability and nature of enforcement procedures. Thus, for example, while every state but Delaware prohibits some form of employment discrimination, the scope and nature of that prohibition will vary.

LEGISLATIVE ANALYSIS

The Americans With Disabilities Act

S. 993/H.R. 2273 by Senator Tom Harkin
and Representative Tony Coehlo

May 24, 1989

89-68A

Americans With Disabilities Act

The Americans With Disabilities Act is intended to provide tough, enforceable standards to address all forms of discrimination against individuals and classes of individuals on the basis of disability.

The legislation was introduced on May 9, 1989, in the Senate by Senator Tom Harkin (D-IA) as S. 993, and in the House by Rep. Tony Coehlo (D-CA) as H.R. 2273. The Senate Labor Committee and its Subcommittee on the Handicapped have already held three days of hearings on the legislation, and Committee markup of S. 993 is expected to begin during the latter part of June. The House bill has been referred to several committees -- Education & Labor, Energy & Commerce,, Public Works and Transportation, and Judiciary. No House hearings have yet been scheduled, but it is expected that the first committee to take action on the measure will be the Education & Labor panel.

OVERVIEW

The ADA is divided into six titles -- a general prohibition against discrimination followed by individual titles dealing with employment, public services, public accommodations and services operated by private entities, telecommunications relay services and miscellaneous provisions.

Perhaps the most confusing segment of the bill is Title I which contains a series of sweeping prohibitions on discrimination aimed at services, programs, activities, benefits, jobs, and other opportunities. These prohibitions are taken generally from the regulations issued under Section 504 of the Rehabilitation Act, 29 U.S.C. § 706. There are no specific enforcement provisions attached to Title I, but it appears that -- to the extent they relate to employment -- these provisions may be enforced under the employment discrimination provisions of Title II, either through the EEOC or through a direct lawsuit under Section 1981. Title I is so vague and so broadly worded that it seems to have been included in the bill for throw away purposes in subsequent negotiations.

The term "discrimination" is specifically defined to include three situations:

(a) the failure to make reasonable accommodation to the known physical or mental limitations of a qualified individual with a disability unless the employer can demonstrate that "the accommodation would impose an undue hardship on the operation of its business;"

(b) to deny employment opportunities because of the need of an individual for reasonable accommodation; and

(c) the imposition of "qualification standards," tests, or selection criteria," that identify or limit, or tend to identify or limit," a qualified individual with a disability, or any class of qualified individuals with disabilities, unless justified by the employer.

Burden of Proof. The employer's burden of justification is also spelled out in subsection (c). That is, to defend such standards, tests, or criteria, the employer must show that they are "necessary and substantially related to the ability of an individual to perform the essential functions of the particular employment position."

Enforcement. The enforcement scheme of Title II is spelled out in Section 205. It makes available the remedies and procedures of Title VII of the Civil Rights Act of 1964 (Sections 706, 709, and 710). Title VII provides for an individual who has been the victim of discrimination to file a charge with the EEOC. The agency then investigates the charge and attempts through conciliation to bring the parties to a voluntary resolution of the matter. If conciliation fails, the charging party has the right to initiate a lawsuit in federal court to receive back pay and other appropriate remedies such as rightful seniority.

Super Remedies and Procedures. In addition, Title II of the ADA makes available the harsh remedies and procedures of 42 U.S.C. § 1981, a post-Civil War statute which provides for an extended statute of limitations, jury trials, and awards of compensatory and punitive damages. There is no requirement that an individual first exhaust the Title VII procedures before filing a Section 1981 lawsuit.

Telecommunications

Title V of the ADA requires those companies which provide telephone services to the general public to provide, within one year after enactment, telecommunication relay services so that individuals who use non-voice terminal devices or Telecommunication Devices for the Deaf (TDDs) will have opportunities for communication equal to those provided to customers who use voice telephone services.

Miscellaneous Provisions

Title VI contains several miscellaneous provisions which are important to employers. Specifically, Section 601(a) provides that nothing in the ADA shall be construed to reduce the coverage of the Rehabilitation Act or to apply a lesser standard of protection than required under the Rehabilitation Act. Similarly, Section 601(b) provides that nothing in the ADA shall be construed to limit any state or federal law that provides any greater protection for the rights of individuals with disabilities than the ADA. Section 602 contains a prohibition on retaliation, similar to that found in Section 704 of Title VII of the Civil Rights Act of 1964. Section 605 provides for an award of attorney's fees to the prevailing party in any action or administrative proceeding commenced under the ADA.

ANALYSIS

Differences Between ADA and Existing Law

At least 44 states have laws prohibiting discrimination against the handicapped. At the federal level, the Rehabilitation Act of 1973 addresses employment discrimination against the handicapped in the private sector two ways. Section 504 of the Rehabilitation Act prohibits discrimination by recipients of federal funds (federal grantees), and Section 503 requires federal contractors to take affirmative action to employ and promote the handicapped. The Rehabilitation Act also addresses discrimination against employees of the federal government itself. Section 501 prohibits discrimination by federal agencies against the employees of those agencies.

Proponents of the ADA have stressed that the primary differences between the ADA and the Rehabilitation Act are not differences of substance, but simply differences in scope, in that the ADA will apply to all employers, not just federal contractors and grantees. A careful reading of the provisions of the new ADA, however, indicates there are significant changes from existing law.

This language follows the wording of the reasonable accommodation provision in the Section 504 regulations issued by the Department of Health and Human Services at 45 CFR § 84.12. The standard as spelled out by the Supreme Court, however, has been that "accommodation is not reasonable if it either imposes 'undue financial and administrative burdens' on a grantee, ... or requires 'a fundamental alteration in the nature of the program.'" See School Board of Nassau County v. Arline, 107 S.Ct. 1123, 1131 n.17 (1987) citing Southeastern Community College v. Davis, 442 U.S. 397, 410-412 (1979). See also, Alexander v. Choate, 469 U.S. 287, 300 (1985).

To the extent that the ADA does not include the second prong of the standard (no fundamental alteration), it is inconsistent with existing Supreme Court interpretations. The drafters may have assumed, however, that courts or agencies interpreting the ADA would incorporate the entire standard, as restated in Arline. However, as Congress is presumed to be aware of existing Supreme Court precedent, the courts are likely to view the language of S. 933 as broadening the accommodation requirements. Accordingly, it would be essential to have the entire standard restated with the refinements necessary to indicate that the standard is being applied to "employers" and "jobs," rather than "grantees" and "programs."

May or Shall. The deviation between the ADA and existing law is much more obvious in Section 3(3) which defines the term "reasonable accommodation." In this definition, the drafters of the ADA have incorporated some familiar language from the Section 504 regulations. See Health and Human Services regulations, 45 CFR § 84.12. But, a very significant change has been made in that language. The term "may" in the Section 504 regulations has been changed to read "shall" in the ADA.

Thus, the Section 504 regulations provide that "Reasonable accommodation may include: ... job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices, the provision of readers or interpreters, and other similar actions." 45 CFR § 84.12(b) (emphasis added). The ADA, in contrast, incorporates each of these suggested items as part of the definition of reasonable accommodation, by stating that the term reasonable accommodation "shall include - job restructuring,... ." Emphasis added.

Before the ADA is acted upon by Congress, it would be useful to clarify whether this type of analysis, perhaps appropriate when the employer is a public agency operating with federal financial assistance, is to be followed when the employer is a private entity receiving no federal grants. The question is an important one because even the most expensive accommodations can be found to be "modest expenditures" on an individual basis if the point of comparison is the company's overall administrative or personnel budget.

Cost Not A Legitimate Factor (?). In examining this point, of course, it is fair to note that the general experience of many LPA member companies has been that many innovative and successful accommodations have been made with only minor expenditures. At the same time, however, it cannot be ignored that there are requests for accommodations which involve considerably more expense. It is legitimate for employers to be concerned about the open-ended nature of an analysis such as that found in the Nelson decision. The sponsors of the ADA have been sending mixed signals in this regard. Although Senator Harkin offered a list of accommodations that have been made, each of which cost less than $50, his response to the question of cost was similar to that made by Senator Weicker last year. That is, the ADA is a civil rights statute, and cost is not a legitimate factor to be considered in applying a civil rights statute. In addition, the sponsors have emphasized that whatever the costs of the ADA may be, those costs are justified because they will result in a reduction of the federal deficit as more individuals with disabilities move off of public assistance and into jobs.

Qualified Individual with a Disability

The employment provisions in Title II are framed in terms of prohibiting discrimination against a qualified individual with a disability, or qualified individuals with disabilities. The definition of such an individual as a person who can, with reasonable accommodation, perform the essential functions of the job is drawn from the regulations issued under Section 504. See, for example, the Department of Health and Human Services regulations at 45 CFR § 84.3(k). The ADA modifies the definition slightly to include individuals who can do the essential functions of the job without an accommodation.

Although the concept that "qualification" is related to only the essential functions of the job has been part of the regulations under Section 504, it was never included in the regulations issued under Section 503. The practical impact of the concept is closely related to the employer's obligation to provide reasonable accommodation by modifying certain aspects of an individual's job duties. A key factor in determining the extent of that obligation will be the definition of "essential functions," a term which is not defined in the ADA. It may be noted that when it issued the regulations containing the term "essential functions," the Department of Health and Human Services explained that term was used to assure that handicapped persons would not be disqualified simply because they "may have difficulty in performing tasks that bear only a marginal relationship to the particular job." See 45 CFR § 84, Appendix A. In view of the broad reach of the ADA, however, it would be essential for the drafters to specify how broad the obligation on private employers will be to modify or restructure jobs.

Conflict With Title I. This would be particularly true in view of the apparent overlap and possible conflict with Title I of the ADA. As noted above, the Title I prohibitions are drawn from language in regulations issued under Section 504. The Section 504 regulations, however, specifically protect "qualified handicapped persons." In incorporating each of these provisions into the ADA, however, the term "qualified" has been deleted. In fact, the term "qualified" appears nowhere in Title I. The plain language of Title I would seem to make it illegal for an employer to deny a job to an individual with a disability where that disability made the individual unqualified for the job.

Enforcement Provisions

Title VII Plus Section 1981. The employment discrimination provisions of the ADA would combine the enforcement procedures and remedies of Title VII of the Civil Rights Act of 1964 and a post-Civil War statute, 42 U.S.C. § 1981. The Title VII procedure, of course, is one focused on an investigation and conciliation efforts by the EEOC to promote voluntary resolution by the parties. If the EEOC process fails to resolve the dispute, there is the opportunity for a lawsuit as a final resort. Section 1981, on the other hand, is a far more punitive measure. It involves direct resort to the federal courts, with the opportunity for a jury trial and the potential of a verdict that includes a large award of compensatory and punitive damages, not available under Title VII.

Courts construing the Age Discrimination in Employment Act have recognized that claims for compensatory and punitive damages would interfere with statutorily-mandated conciliation. See e.g., Rogers v. Exxon Research & Engineering Co., 550 F.2d 834, 840-41 (3d Cir. 1977), cert. denied, 434 U.S. 1022 (1978). That court noted that introducing the "vague and amorphous concept" of pain and suffering damages into the administrative setting "might strengthen the claimant's bargaining position," but it also would "introduce an element of uncertainty which would impair the conciliation process." 550 F.2d at 841. The court also observed that "[t]he possibility of recovering a large verdict for pain and suffering will make a claimant less than enthusiastic about accepting a settlement for only out-of-pocket loss in the administrative phase of the case." Id.

The motivation behind combining these two distinct enforcement schemes of Title VII and Section 1981 appears to be simply a desire to assure that individuals with disabilities have available to them whatever rights and remedies might be available to other victims of employment discrimination. This simple logic has only superficial appeal, however. In fact, not all of the protected groups have access to Section 1981, which is a race discrimination statute that has been interpreted to include some forms of religious or national origin discrimination. But, it clearly provides no rights to a victim of sex discrimination, or age discrimination. In addition, the prohibitions on sex, race, national origin and age discrimination do not contain any requirement comparable to the "reasonable accommodation" aspect of the prohibition on disability discrimination which requires employers to respond on an individual basis. That unique aspect of the ADA would seem to dictate the need for a consistent administrative scheme, with courts playing a role only as a last resort.

A better approach would seem to be to proceed on the basis of the years of experience we already have, under Title VII as well as under the Rehabilitation Act, to assess what enforcement structure is most likely to be effective and efficient in producing the desired goals of this legislation. While there is currently an open issue in Patterson v. McLean Credit Union, (U.S. No. 87-107), with regard to whether Section 1981 properly applies to claims of private sector employment discrimination at all, few would maintain that Section 1981 has been the most effective law in our arsenal against employment discrimination. The remedies offered by Section 1981 may be attractive on an individual basis as a potential windfall for a plaintiff, but there is an inherent conflict between that law and the provisions of Title VII.

The combination of this new definition and the ADA's restriction on tests which "tend to identify" individuals with disabilities could arguably restrict employer drug screening practices. An individual screened out by such a test arguably would be able to challenge the exclusion and thereby put the employer in the position of having to demonstrate that the exclusion is necessary and substantially related to the ability of an individual to perform the essential functions of the particular job.

Conflict With Drug-Free Workplace Laws. This approach of the ADA also appears to be in conflict with the responsibilities placed on employers under the Drug-Free Workplace legislation passed by Congress last year. That law requires covered government contractors to certify that they are maintaining a drug-free workplace. A false certification, or failure to carry out the specific requirements of the law, can subject the contractor to debarment from future government contracts for up to five years. The ADA, however, appears to create a situation where a contractor who becomes aware of an employee's drug use can take no action to remove that employee from the job unless the employer can demonstrate that the employee poses a direct threat to others in the workplace.

Contagious Diseases

The ADA's approach to AIDS and other contagious diseases is the same as that explained above for drug and alcohol abusers. That is, the employer may adopt a qualification standard which requires that individuals with a currently contagious disease not pose a direct threat to the health or safety of other individuals in the workplace. The ADA, thus, would take an approach somewhat different from the Rehabilitation Act, which was amended last year to exclude from the definition of "individual with handicaps" any person whose currently contagious disease constituted a direct threat to the health or safety of others in the workplace. 29 U.S.C. § 706.

General Prohibitions

One of the most ambiguous segments of S. 933 is Title I, which is a series of general prohibitions on disability discrimination. The essence of these provisions is drawn from the regulations issued under Section 504 of the Rehabilitation Act. (See 45 CFR § 84.4). Title I provides that it shall be discriminatory to subject any individual or any class of individuals either directly or through contractual, licensing, or

that they intend to impose expansive vicarious liability, the plain language of the legislation says nothing to indicate that there are any limitations.

These prohibitions appear to be extremely open-ended and would give a plaintiff's lawyer fertile ground in which to develop novel legal theories. Further, there seems to be no limitation either on the types of suits that could be brought under these provisions or the types of persons against whom such suits would be brought. Accordingly, it would appear that Title I has been inserted in the bill only as a bargaining chip to be thrown away in subsequent negotiations, and that the sponsors have no real intention of seeing it enacted.

Disparate Impact

The provisions in Title I as well as language in Title II appear to envision the application of the disparate impact theory as a means of proving discrimination. In simple terms, the disparate impact theory which permits an individual to make out a prima facie case of discrimination simply on the basis of statistics, without any showing of discriminatory intent. This theory does not appear specifically in the language of Title VII of the Civil Rights Act of 1964, but was devised by courts as a means of scrutinizing the discriminatory impact of certain facially-neutral selection criteria -- such as a height requirement or a requirement that an individual have a high school diploma -- which did not specifically exclude women or minorities, but which did have a disproportionate impact on a protected group.

The manner in which the disparate impact theory has been incorporated into the ADA raises several concerns. First, unlike the disparate impact theory under Title VII, which applies to practices which disproportionately exclude women or minorities from job opportunities, the drafters of the ADA have applied the theory to standards, tests or criteria which tend to <u>identify or limit</u> any class of qualified individuals with disabilities.

The inclusion of the term "identify" is new. That term does not appear in the Section 504 regulations. What is a test which tends to identify individuals with disabilities? Is this provision intended as a subtle prohibition on the use of pre-employment physical examinations? Last year's version of the bill specifically prohibited such examinations. Does the language in this year's version also prohibit the use of post-employment physicals, used by many employers as a baseline examination? None of the explanatory materials provided by the sponsors discusses the term "identify."

Court was reluctant to rule that Section 504 embraced all claims of disparate impact discrimination. Is the language in the ADA designed to give the courts that signal? Are there any limitations on the disparate impact theory embraced by the ADA? The sponsors have not made their intentions clear.

Revision of Traditional Disparate Impact Theory. In examining the ADA's requirements with regard to proof of discrimination based on the effects of an employer's job criteria or tests, it should be noted that the burden of proof allocation in the ADA is not consistent with either the standard applied under the Section 504 regulations or the standard applied by the Supreme Court in race and sex discrimination cases.

Under the Section 504 regulations issued by the Department of Health and Human Services, for example, a recipient of federal funding has the obligation not to use any selection criterion that screens out handicapped persons, unless the recipient could show the criterion "to be job-related for the position in question." The burden of demonstrating the existence of alternative criteria with less discriminatory impact was placed on the enforcement agency (that is, the Director of the Office of Civil Rights At HHS). See 45 CFR § 84.13.

In transporting this theory into the ADA, several changes have been made. First, the burden on the employer is described not as showing that the criterion is job-related, but rather the employer is expected to demonstrate that it is "both necessary and substantially related to the ability of the individual to perform ... the essential components of such particular ... job." Section 101(b). Is the change from "job-related" to "substantially related" intended to increase the burden on the employer who must justify a selection criterion?

Second, the ADA shifts the burden with respect to alternative criteria, requiring the employer to demonstrate that "the essential components cannot be accomplished by applicable reasonable accommodation, modifications, or the provision of auxiliary aids or services." Section 101(b)(1). This shifting of the burden with respect to available alternatives is not only contrary to the Section 504 regulations, it is also a departure from the traditional theory of disparate impact discrimination as applied by the Supreme Court since 1971. See Albemarle Paper Company v. Moody, 422 U.S. 405, 425 (1975) ("it remains open to the complaining party to show that other tests or selection devices, without a similarly undesirable racial effect, would also serve the employer's legitimate interest... ."). The analysis of the bill prepared by the sponsors does not address this departure from established law.

No Preemption. Proponents of the ADA have argued that the 44 state laws vary so greatly from one to another that these state laws are no substitute for a comprehensive federal statute establishing national standards. Indeed, the proponents are correct in stating that there are significant differences among the various state laws in this area. But there is nothing in the ADA to protect employers from these multiple layers of enforcement or from simultaneous enforcement actions in different forums. Moreover, nothing in the bill assures a government contractor that the Department of Labor and the EEOC will both reach the same conclusion with respect to whether a particular accommodation is sufficient or insufficient. And, even when the employer has satisfied both the EEOC and the DOL, there is no assurance that the employer's accommodation will be accepted as satisfactory by a federal court in a private suit under the ADA, or by the state agency which also has jurisdiction over the same workplace. The unnecessary duplication created by having multiple agencies with overlapping jurisdiction means that resources are not being used as efficiently as they might be to promote opportunities and accommodations for individuals with disabilities.

CONCLUSION

A careful review of the new ADA indicates four major areas of potential controversy. First, the bill's emphasis on litigation reflects a preference for lawsuits, as opposed to conciliation and voluntary compliance as the preferred manner of achieving the bill's laudable goals. Second, the new draft of the bill does not simply take the law as it stands under the Rehabilitation Act, but rather seeks to make significant changes in that law by a series drafting changes in the commonly-understood interpretations of the Rehabilitation Act. Third, to the extent that the ADA does incorporate existing law from the Rehabilitation Act, it is adopting law which has been developed in the context of federal grant programs and applied to organizations which were the recipients of federal funding, not private sector workplaces. There are refinements which must be made in these provisions if they are to be practical, realistic standards for private employers.

Finally, the new draft of the ADA has not responded to the concerns about multiple layers of enforcement which were clearly expressed in response to last year's proposal. This year's version again seeks to impose a layer of enforcement on top of existing disability discrimination requirements without eliminating any of the burden, or seeking to assure consistent enforcement for those employers who would be subject to multiple enforcement schemes.

AGENCY COMMENTS ON THE AMERICANS WITH DISABILITIES ACT

The following summarizes the major concerns raised by agencies in response to OMB's request for their views on the Americans with Disabilities Act (ADA). Where an agency has declined or failed to respond, it is so noted.

Commerce

-- Has declined to respond formally.

-- Informally, acknowledges that the provisions of ADA may be costly, but must be balanced against the resulting social benefits.

Education

-- Notes that the ADA will result in overlapping requirements and potentially inconsistent standards, because, in addition to extending civil rights coverage to individuals who participate in, or attempt to participate, in non-federally assisted programs and activities, it would also apply to Federally assisted programs and activities already covered by Sec. 504 of the Rehabilitation Act. This could be extremely confusing and administratively difficult to implement.

-- The most serious problem arises with regard to overlap of provisions affecting State and local government (Sec. 302).

-- The ADA Sec. 205, which provides remedies for discrimination, is based on a subjective standard, and is inconsistent with remedies and procedures under other anti-discrimination statutes.

-- The ADA would cover certain drug users and addicts based on requirements that differ from the Rehabilitation Act, and also from the Fair Housing Act of 1988, resulting in three separate standards for some cases.

Health and Human Services

-- Supports the goal of extending protections like those in Rehabilitation Act sec. 504 to non-federally assisted programs but believes any broadening of the scope of those protections should be carefully considered for each area.

-- Is concerned about language in the ADA which deviates from other anti-discrimination statutes, because it will result in ambiguity and confusion.

-- Supports inclusion of contagious or infectious diseases,

drug addiction, and alcohol abuse in the definition of disability.

Housing and Urban Development -- has not yet responded with agency views.

Justice

-- Underscores that its principal objection to the bill is the expense it places on the private sector, and recommends two alternatives to address this consideration: (1) pass the costs onto society at large through tax credits; or (2) clarify that the bills' aim is to prohibit discrimination rather than require additional outlays, and define substantial expenditure as an undue burden.

-- Recommends that the bill clarify that no protections would be extended to illegal drug users.

-- Raises the question of whether mental impairments are or should be covered by the ADA's definition of disability.

-- Recommends that the defense of "undue financial and administrative burden" be available to private entities operating public accommodations as well as in the public transit area?

-- Raises the question of whether the cost defense should also be available to the FCC.

-- Recommends that the bill clarify that the telephone relay services be provided to the public at the same cost as regular telephone service.

Labor

-- Supports the objectives of ADA.

-- Believes the bill might have an enormous impact on the cost of maintaining private employee benefit plans, and might have an adverse employment effect on individuals with pre-existing medical conditions.

-- Notes that the anti-retaliation provision (Sec. 602) does not contain enforcement provisions.

-- Notes that the bill is unclear as to what extent its protections apply to individuals with drug or alcohol related impairment, and must be reviewed to determine whether it is consistent with the recently enacted drug-free workplace legislation.

-- Believes that the ADA could increase labor costs, which would fall most heavily on small businesses. In addition,

the requirement for job restructuring could be problematic for large businesses as well as small.

-- Believes that the bill's emphasis on barrier removal might exclude the needs of sight and hearing impaired.

Transportation raises the following concerns:

-- ADA Sec. 303's requirement that transit systems provide supplemental paratransit systems, in addition to requiring accessible mainline bus service, would result in duplicative transit systems, and is unreasonable, burdensome, and costly. DOT is not specific on Federal or local costs associated with these requirements.

-- ADA's requirement that key stations (mass transit facilities) be made accessible within 20 years is even more burdensome and costly than DOT's 1979 regulations under Sec. 504 of the Rehabilitation Act which were struck down as too burdensome by a Federal Court of Appeals. DOT estimates that the ADA requirement could cost more than $30 million/year for commuter rail alone.

-- ADA's Sec. 404 requirement that the Secretary issue within 180 days regulations for transportation services operated by private entities is too short, as it would require DOT to regulate areas not previously regulated.

Architectural and Transportation Barriers Compliance Board

-- Supports the principles of the ADA, and recommends changes to ADA to conform it to other statutes administered by the ATBCB.

-- Recommends that, to the greatest extent possible, overlapping jurisdiction by different agencies should be avoided. Instead, a single, consistent set of standards should apply.

-- Anticipates a need for an increase in its own resources in excess of $2 million a year, and 29 additional FTE.

-- Notes that there may be tax benefits to businesses resulting from applicable tax deductions for improving access, which might mitigate costs to employers.

Civil Rights Commission preliminary comments:

-- Support ADA's principles.

-- Note that ADA does not go far enough regarding discriminatory denial of medical treatment, particularly for children, and adult incompetents.

can this go further and huge expense?

-- Indicate that the ADA is flawed in that, like Sec. 504 of the Rehabilitation Act, it does not establish clear, enforceable standards addressing discrimination against individuals with disabilities.

Can one??

Council of Economic Advisers has not yet responded with agency views.

Equal Employment Opportunity Commission

-- Notes that the language regarding alcohol and drug abusers differs from other anti-discrimination statutes, and should not be construed to condone substance abuse.

-- The definition of employer does not clearly include State and local governments; it also should have a higher phase-in level for size of firms covered.

-- The bill fails to establish factors to be considered in determining whether an employer has demonstrated "undue hardship."

-- Objects to the 180-day timeframe for promulgation of regulations as unrealistic.

-- Is concerned that the ADA appears to limit EEOC's authority to issue regulations and guidance.

-- Believes the litigation authority should be given to the EEOC, not the Attorney General, together with authority to investigate, inspect records, etc.

-- Objects to the provision granting the private right of action as based on a subjective standard, which departs from other anti-discrimination statutes.

-- Believes the immediate effective date is too soon.

-- States that it would require additional resources for the EEOC to administer its role under ADA.

Federal Communications Commission

-- Informally estimates costs to the private sector exceeding $230 million/year to a singel carrier for service alone, without considering structural changes to existing telephones.

-- The bill would extend their juristiction into intrastae matters.

-- Does not anticipate a need for increased resources at FCC.

National Council on Disability has not yet responded with agency views.

Office of National Drug Control Policy has not yet responded with agency views.

Small Business Administration

-- Is concerned that ADA would apply to many more small businesses than are currently covered by the Rehabilitation Act requirements.

-- That the costly requirements would disproportionately impact on small businesses.

U.S. Department of Justice

DRAFT

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

Honorable Richard G. Darman
Director
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Darman:

This letter responds to your request for the views of the Department of Justice on Senator Harkin's draft legislation, "Americans with Disabilities Act of 1989." The proposed bill is a comprehensive effort to provide civil rights protections to individuals with disabilities that are similar in scope to those provided to individuals on the basis of race, sex, national crigin, and religion. It seeks to ensure equal opportunity for individuals with disabilities in employment, public accommodations and services (including mass transportation), and telecommunications.

In his acceptance speech at the Republican National Convention, President Bush vowed "to do whatever it takes to make sure the disabled are included in the mainstream." The Department of Justice shares this goal and the President's commitment to legislative action in this area.

Although we generally agree with the goals of this bill, we do have a number of concerns regarding it as currently drafted. Below, we identify problem areas that the Administration should urge Congress to address. As the legislation approaches a more final form, we will offer further specific suggestions.

We emphasize at the outset that careful consideration must be given to the allocation of costs inherent in this legislation. Because the requirements imposed would be federal, it may be necessary for the federal government to assume some of the costs generated by the bill. This could be accomplished by tax credits and tax deductions, especially for businesses attempting to comply with the obligations imposed by the bill.

Title I--General Prohibition Against Discrimination

Title I seeks to provide a general description of actions that are discriminatory under the Act. The prohibitions listed in section 101(a) are derived almost exclusively from current

regulations implementing section 504 of the Rehabilitation Act of 1973, as amended, in federally assisted programs. See, e.g., 45 C.F.R. 84.4 (Department of Health and Human Services). Title I also provides a number of "defenses" through a listing in section 101(b) of actions that do not constitute discrimination, such as the use of qualification standards that are shown to be "both necessary and substantially related" to the ability of an individual to perform, and the requirement that individuals who currently use drugs or alcohol or who have a contagious disease or infection not pose a direct safety threat to others.

Section 101(b)(2)(B) of the bill should be redrafted to clarify that the bill does not provide any protections to those who use illegal or controlled substances. We suggest that the language be changed to read:

"(B) QUALIFICATION STANDARDS. -- Qualification standards may include --

(i) requiring that the current use of alcohol or legal drugs by an alcoholic or drug user not pose a direct threat to property or the safety of others in the workplace or program;

(ii) prohibiting the current use of any illegal drug; and

(iii) requiring that an individual with a currently contagious disease or infection not pose a direct threat to the health or safety of other individuals in the workplace or program."

Because most of the activities covered by this bill involve only physical impairments -- unlike, for example, in the education context -- some consideration should be given to whether it is necessary to include mental impairments in the bill's definition of covered handicaps. For instance, there are many situations where an employer's decision not to hire someone who is mentally ~~ill~~ should not be unlawful.

The word "entirely" should be eliminated from Section 101(b)(1) of ~~the bill~~ as a modifier of "unrelated to handicap." It would impose an unnecessary burden of proof on defendants. In addition, the words "both necessary and" should be deleted from Sections 101(b)(2)(A) and 202(b)(1)(C). In both instances, it should be sufficient to show that the challenged conduct is "substantially related" to the ability of the individual to perform work or participate in a program.

As an overriding concern, we question the necessity and advisability of including general provisions such as those in title I when each of the other titles of the bill contains its

own complete set of definitions of discrimination and defenses. Although we recognize that section 101(a)(1) provides that the standards established in title I are "subject to the standards and procedures established in titles II through V" and that section 601(c) of the bill provides that "any apparent conflict between provisions of [the] Act shall be resolved by reference to the title that specifically covers the type of action in question," the relationship between title I and the other titles remains unclear.

For example, title IV provides a definition of the term "discriminated against" with respect to public accommodations which, like title I, would include the use of discriminatory eligibility criteria. However, unlike title I, title IV does not include a defense for criteria that are "necessary and substantially related" to the ability of the individual to participate. Title IV, though, does provide in section 402(b)(1)(B) that it is discriminatory to refuse to alter "rules, policies, practices, procedures, protocols, or services" if the modification would not "fundamentally alter" the nature of the privileges or accommodations extended. It is unclear whether the title I "necessary and substantially related" defense, the title IV "fundamental alteration" defense, or both apply to public accommodations. If, as stated in section 601(c), apparent conflicts are to be resolved in favor of the title relating to the specific subject matter at issue, then the title IV standards would prevail in a case involving public accommodations and the title I standard would be rendered useless. If, on the other hand, the provisions are not considered to be in apparent conflict and are therefore read together, unnecessary difficulty and confusion would result in the attempt to reconcile the two standards.

Another difficulty arises because title I contains standards that are not found in the more specific titles. For example, section 101(b)(2)(B) contains the defenses involving current use of alcohol or drugs and contagious diseases. These defenses, however, are not included in any of the other titles of the regulation. If this difference between title I and the other titles is viewed as an "apparent conflict," then under section 601(c) the conflict is to be resolved in favor of the more specific title. The result would be the unintended nullification of the defenses. Even if the absence of the defenses in the more specific titles were not viewed as being in conflict with title I, and the defenses were therefore regarded as being generally applicable, unnecessary confusion might result. The specific titles clearly contain enough detail to stand on their own, and the courts and the public should not have to speculate about what additional elements from title I are applicable in a particular circumstance...

We do not object in principle to the bill's establishment of a broad range of standards and defenses among and within the various titles. We are puzzled, though, by the prohibition of discrimination against a "qualified individual with a handicap" in titles II and III as opposed to the prohibition of discrimination against an "individual" on the basis of handicap in titles I and IV. In sum, we are concerned that, unless further refined, the general standards and defenses provided by title I may cloud the otherwise precise meaning of the standards and defenses found in the other titles.

Title II--Employment

Section 201(3)(A) of the draft bill incorporates title VII's limitation of coverage to those employers with 15 or more employees. We believe consideration should be given to whether a higher or lower number may be appropriate. For instance, given the rapid rate of job creation among small employers and the precedent established in the antidiscrimination provisions of the Immigration Reform and Control Act of 1986, 8 U.S.C. 1324b(a)(2)(A), consideration should be given to lowering this limit to four or more employees. On the other hand, compliance with this legislation may be more expensive than compliance with title VII, making a higher threshold more appropriate.

We agree that the obligation of employers to make reasonable accommodation should be explicitly stated in the bill. But the bill does not make clear when an "undue hardship" defense will be available. That defense could be interpreted in light of case law under section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, see, e.g., Nelson v. Thornburgh, 567 F. Supp. 369 (E.D. Pa. 1983), aff'd without opinion, 732 F.2d 146 (3d Cir. 1984), cert. denied, 469 U.S. 1188 (1985), or in line with the "de minimis" interpretation of "undue hardship" applicable in religious discrimination cases under title VII of the Civil Rights Act of 1964. See, e.g., Trans World Airlines v. Hardison, 432 U.S. 63 (1977). The standard in Alexander v. Choate, 469 U.S. 287 (1985), offers another possibility.

In light of the significant number of employment complaints expected to be filed under this title, Congress should be urged to give special consideration to the personnel needs of the Equal Employment Opportunity Commission that may result from enactment of this provision.

If the bill is to make available the remedies that are authorized by 42 U.S.C. 1981, it should make clear that these remedies apply only when there has been intentional discrimination.

Title III - Public Services

One of the key causes of unemployment of individuals with handicaps is the lack of accessible transportation. Nonetheless, title III may be too far reaching in its reversal of existing policy in the absence of an explicit defense based on the imposition of an undue financial and administrative burden. Requiring not only that all new buses and trains be accessible but also that key subway stations be made accessible will undoubtedly entail substantial costs. If an undue burden defense is not incorporated, then perhaps the only requirement should be for accessible new buses, which we believe is the most important of the provisions in title III.

We also suggest that the bill clarify whether title III coverage is limited to States or whether the reference to "political subdivision of a State or board, commission or other instrumentality of a State and political subdivision" was meant to cover local governments as well. Such coverage of local governments is especially important in light of the elimination of the Office of Revenue Sharing, whose section 504 regulations covered many local governments. Based on the summary provided with the bill, we assume coverage of localities was intended, and we suggest clarifying language to that effect, perhaps adopting the language of the Civil Rights Restoration Act, which specifically refers to a "State or local government."

Title III should also clearly exclude the provision of housing services from its coverage. As currently drafted, title III may be interpreted to require nondiscrimination in the provision of public housing despite the comprehensive treatment of that issue in the recently enacted Fair Housing Amendments Act of 1988, Pub. L. No. 100-430, 102 Stat. 1619.

Section 305 adopts the remedies, procedures, and rights set forth in section 505 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794a. However, section 505 provides two types of remedies: subparagraph (a)(1) contains title VII employment remedies to be used in section 501 employment cases brought by Federal employees, and subparagraph (a)(2) contains title VI remedies, which include fund termination and referral to the Department of Justice. It is unclear how the section 505(a)(1) employment remedies would be applied in a nonemployment context involving public transit authorities, and this should be clarified.

<u>Title IV - Public Accommodations and Services Operated by Private Entities</u>

Title IV concerns public accommodations and services operated by private entities. This title also requires some clarification. For instance, section 402(b)(1)(B) classifies as discrimination a refusal to make reasonable modifications to rules, policies, and practices, unless making such modifications

would "fundamentally alter" the nature of the privileges, advantages, and accommodations. This "fundamental alteration" standard, which is adopted from section 504 case law, is, presumably, quite difficult to meet. Paragraph (C) classifies as discrimination a refusal to take steps to ensure that individuals with handicaps are not discriminated against because of the absence of auxiliary aids and services, unless such steps would result in an "undue burden," another concept adopted from section 504 case law. Likewise, paragraph (E)'s reference to making alterations accessible "to the maximum extent feasible" is a standard already contained in the new construction sections of existing section 504 regulations. See, e.g., 28 C.F.R. 42.522(a) (Department of Justice). Paragraph (F)'s references to a refusal to make new facilities "readily accessible to and usable by individuals with handicaps," except where "structurally impracticable" are terms used in the Uniform Federal Accessibility Standards (UFAS), 49 Fed. Reg. 31528 (1984) (UFAS 4.1.6), the Architectural Barriers Act standards incorporated in section 504 regulations' new construction provisions. See, e.g., 28 C.F.R. 42.522(b). However, the structural impracticability defense in UFAS applies only when alterations, and not new construction, are involved. The variety of terms borrowed from Section 504 and federal accessibility standards constitutes tacit recognition of the costs of making public accommodations accessible. The absence of definitions for these terms in the bill makes it imperative for the legislative history to address and make very clear the meaning of these standards.

Problems of interpretation also arise in paragraph (D), which classifies as discrimination a refusal to remove structural architectural and communication barriers and transportation barriers if such removal is "readily achievable." The drafters appropriately intended to apply a more exacting standard to the removal of physical barriers than to mere changes in policies. However, much more guidance is needed on the meaning of "readily achievable," which, unlike the other standards in the bill, is a new term that does not currently appear in section 504 case law or regulations. Even with respect to those standards derived from section 504, more elucidation is needed to provide adequate notice as to what is required to comply with the Act. For instance, the UFAS term in paragraph (F), "structural impracticability," was developed in the context of alterations and requires adaptation for use with respect to new construction.

We also note that paragraph (A) concerns criteria that identify or limit, or tend to identify or limit, individuals with handicaps. The paragraph does not contain the "necessary and substantially related" defense set forth in title I as a way of justifying certain criteria that may discriminate on the basis of handicap. As noted in the discussion of title I above, the application of the general title I defense to this specific title

III section is unclear. Such a defense should, in all likelihood, be available.

Regarding the scope of the bill's coverage, we note that it extends beyond Title II of the Civil Rights Act of 1964 by reaching, for example, the offices of health care providers and office buildings in general. Consideration should also be given to whether Title IV should contain an exception for small providers in the range of employers of 25 or fewer employees. Such an exception would lessen the financial burden on small businesses. Consideration should also be given to the extent to which private establishments operated by religious institutions are to be covered by title IV. As currently drafted, the bill may be interpreted to cover such establishments in their entirety.

We also note that section 405 incorporates enforcement sections of the Fair Housing Act, which provide for only two methods of enforcement: an individual's right to file a private suit in court, or the Attorney General's authority to pursue pattern and practice cases. Thus, like title II of the Civil Rights Act of 1964, 42 U.S.C 2000a to 2000a-6, title IV provides no administrative remedy. Such a remedy might be considered.

Finally, this Title should contain a defense based on the imposition of an undue financial and administrative burden similar to that which should be added for public transit in Title III of the bill.

Title V - Telecommunications Relay Services

Title V provides for a telecommunications relay service to be implemented by all common carriers. We are somewhat unclear, however, as to how this requirement relates to the recently enacted Telecommunications Accessibility Enhancement Act, Pub. L. No. 100-542, 102 Stat. 2721 (1988), which specifically requires that the Federal Communications Commission complete an inquiry regarding an interstate relay system for users of TDD's.

We note that Section 504 regulations now require federal agencies to purchase TDD's in sufficient numbers to make the agencies accessible by telephone to persons who are deaf or hard of hearing. Any cost estimate for this Title of the bill should take into account the savings generated by the fact that federal agencies and other entities covered by Section 504 will not have to purchase TDD's.

The bill does not address closed captioning of television programs, unlike last Congress's Kennedy-Weicker bill. Consideration may appropriately be given to requiring captioning.

There is currently no cost defense in Title V. While the absence of such a defense may be appropriate, the FCC should advise whether the cost for compliance may be prohibitive. Finally, the bill should make clear that the telephone relay services must be available to the public at the same cost as regular telephone service.

Title VI - Miscellaneous Provisions

Section 604 requires the Architectural and Transportation Barriers Compliance Board (ATBCB) to establish minimum guidelines and requirements to ensure that buildings, facilities, vehicles, and rolling stock are accessible. It is unclear how these guidelines will relate to the regulations to be issued by the Secretary of Transportation under titles III and IV. Currently the ATBCB's guidelines are not enforceable, but serve as the basis for the Uniform Federal Accessibility Standards, which are the enforceable standards issued by the four standard-setting agencies under the Architectural Barriers Act. It would appear that the Department of Transportation is to base its regulations on the ATBCB's guidelines, and, in effect, become a new standard-setting agency. However, the relationship is unclear and needs to be explained.

To reiterate, the principal objection to this bill will be the expense that it imposes on the private sector. There are two general, non-mutually exclusive approaches to meeting this objection. The first is to ensure that any expense will be borne by society at large through the use of tax credits for any expenditures necessary to comply with the bill. The second is to clarify that this bill is concerned principally with prohibiting discrimination rather than requiring additional outlays; this approach requires clarification in the bill that any substantial expenditure is an "undue burden."

We look forward to working with the President and the Congress to realize the goal of providing individuals with disabilities the same opportunities enjoyed by others. We urge Congress to hold extensive hearings to ensure that the bill adequately addresses the problems facing individuals with disabilities without placing unnecessary burdens on government and business.

Sincerely,

Carol T. Crawford
Acting Assistant Attorney General

DEPARTMENT OF HEALTH & HUMAN SERVICES
Office of the Secretary

Washington, D.C. 20201

APR 11 1989

Mr. James C. Murr
Assistant Director for
Legislative Reference
Office of Management and Budget
Washington, DC 20503

Dear Mr. Murr:

This responds to your staff's request, made in connection with last week's meetings on draft bills by Senators Harkin and Hatch addressing discrimination on the basis of disability, for the Department's comments on policy concerns raised by those bills.

It is our understanding that the Harkin bill is being used as the starting point in an effort to draft a bill which Senator Harkin, Senator Hatch, and the Administration can all endorse. We therefore address our comments primarily to the Harkin bill.

Section 504 of the Rehabilitation Act of 1973 (hereinafter section 504) currently prohibits discrimination against individuals with disabilities in programs receiving Federal financial assistance. This bill would at the least extend those prohibitions to entities not covered by section 504. We strongly support an extension of the applicability of requirements such as those in section 504, which would significantly increase protections of disabled individuals against discrimination.

We are concerned, however, that in numerous instances it is unclear whether the Harkin bill merely extends current law to additional classes of entities, or whether it has a different and perhaps broader regulatory effect. This question arises where the language of the bill departs from the language of current civil rights law (including section 504, regulations thereunder, and judicial decisions with respect to the meaning of that law).

Where the intent of this bill is merely to broaden the area of application of section 504 protections, we would strongly recommend using section 504 language wherever possible. Use of this language will avoid ambiguity and prevent confusion by taking advantage of terms that have generally settled meanings.

We note with approval that the bill parallels existing section 504 policy by including within the definition of disability contagious or infectious diseases (including AIDS or HIV infection), drug addiction, and alcohol abuse. We believe this is the correct approach, both as a matter of public health policy

However, in E/t context -- keep exclusion for drug addict + alcohol abusers.

and as a matter of civil rights law. First, with respect to AIDS and HIV, this approach creates a climate of tolerance in which education and voluntary testing can occur. Because there is currently no cure and only limited medical treatment for AIDS, education and voluntary testing are our principal weapons for combating this epidemic. This approach also encourages intravenous drug abusers to seek treatment and facilitates their recovery, thereby helping to reduce the spread of AIDS. Second, we believe it is highly desirable as a matter of civil rights policy to afford the protections of law to all individuals with disabling conditions, and not to attempt to distinguish between groups of disabled individuals. We further believe that the nondiscrimination standards which this bill contains are compatible with Administration efforts to combat drug abuse. The bill parallels section 504 standards, which have been determined by previous legal analysis to raise no problems in this area. Accordingly, we support the approach of the bill for this reason as well.

If, however, it is the intent of this bill to differ in some cases from section 504, and perhaps to provide greater protection to the disabled (and on the other hand to set higher burdens on regulated entities) than section 504, that intent should be made explicit, and its implications for each affected area should be considered.

For example, as we read the bill it would apply to all health, life, and disability insurance, whether offered through individual or group coverage, and including insurance offered as an employment benefit. If the bill was intended to establish greater legal obligations on employers and others offering insurance than does section 504, we would be concerned with this result, which could conflict with the Administration policy of encouraging the availability of private sector insurance to the greatest possible number of individuals. For example, extending the bill's requirements beyond section 504 might unnecessarily discourage businesses which now provide insurance to their employees from continuing to do so, and might lead employers which do make insurance available to limit the coverage they would otherwise provide or otherwise limit the availability of insurance.

As another example, we believe that any intent to subject recipients of Federal financial assistance through HHS to different regulatory standards in the area of removal of architectural, communication, and transportation barriers should be made explicit so that it can be carefully examined. We note in this regard that the performance standard applied under section 504 that programs be accessible to the handicapped has worked well, and we therefore recommend that the section 504 standard be replicated in the Harkin bill. Use of that standard uniformly with respect to the new employment and public accommodation

provisions of this bill would assure that Federal grantees were subjected to only a single set of rules under all applicable provisions.

The foregoing comments made in this letter address potential concerns raised by elements of the bill that would affect programs or activities of direct policy concern to this Department. On issues that do not affect this Department's responsibilities, we defer to other agencies of the Executive Branch more directly concerned. This letter also does not address issues of a technical or drafting nature; any comments on such issues that we conclude are necessary will be made at a staff level.

Thank you for the opportunity to comment on this bill.

Sincerely,

Eleanor W. Kerr
Acting Principal Deputy
Assistant Secretary
for Legislation

F A X Transmittal Sheet

CIVIL RIGHTS DIVISION

Date 4/10/89

To: Name Ken Yale

Organization

FAX Phone # 456-2397

Office Phone # 456-6720

From: Name John Wodatch

Organization DOJ

FAX Phone # 202 - 724-6961

Office Phone # 724-2227

SUBJECT: Comments of DOJ on Harkin Bill

Number of pages transmitted (including this sheet) 2
(max. trans. 30 sheets)

Additional Comments of the Department of Justice on the Harkin Bill

In addition to the comments that the Department of Justice made at Friday's meeting, the Department offers these additional comments on the Harkin bill.

(1) Section 101(b)(2)(B) of the bill (p. 11) should be redrafted to make clear that the bill does not provide any protections to those who use illegal or controlled substances. We suggest that the language be redrafted to read:

"(B) QUALIFICATION STANDARDS.-- Qualification standards may include--

(i) requiring that the current use of alcohol or legal drugs by an alcoholic or drug user not pose a direct threat to property or the safety of others in the workplace or program;

(ii) prohibiting the current use of any illegal drug; and

(iii) requiring that an individual with a currently contagious disease or infection not pose a direct threat to the health or safety of other individuals in the workplace or program."

(2) Because most of the activities covered by this bill involve only physical impairments -- unlike, for instance, in the education context -- some consideration should be given to whether it is necessary to include mental impairments in the definition of disability on p.6. Obviously, there are many situations where an employer's decision not to hire someone who is mentally ill should not be unlawful.

(3) On page 10, lines 20-21, the phrase "both necessary and" should be eliminated from the bill. Similarly, the same phrase "necessary and" should be eliminated from p. 15, line 5. The remaining standard is an appropriate standard for standards and criteria. The word "entirely" should also be eliminated from p. 10, line 10.

(4) Section 403, on p. 28, should be revised to include an "undue financial and administrative burdens" defense. This defense should be similar to the one that would be applied to public transit in title III.

(5) There is currently no cost defense in Title V. The absence of such a defense may be appropriate, but the FCC should advise whether the costs for compliance in this area will be

prohibitive. The bill should make clear that the telephone relay services must be available to the public at the same cost as regular telephone service.

(6) We reiterate our concern that the principal objection to the bill will be the expense it places on the private sector. There are two general, non-mutually exclusive approaches to meeting this objection. The first is to ensure that any expense will be borne by society at large through the use of tax credits for any expenditure necessary to comply with the bill. The second is to clarify that this bill is concerned principally with prohibiting discrimination rather than requiring additional services; this approach requires clarification in the bill that any substantial expenditure is an "undue burden."

UNITED STATES COMMISSION ON CIVIL RIGHTS
WASHINGTON, D.C. 20425

OFFICE OF STAFF DIRECTOR

April 6, 1989

To: The Honorable Richard G. Darman
Director
Office of Management and Budget

Attention: Assistant Director for Legislative Reference

Subject: Committee draft of "Americans with Disabilities Act of 1989"

Attached is an interim response to your request for comments on the Committee draft, "Americans with Disabilities Act of 1989." This interim response is an overview of the general issues that Commission staff believe ought to be addressed by any new legislation, but that this bill fails to address.

In particular, though the bill is intended to "make clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities," it fails to do so.

I hope you find this background information helpful. I will have a final, detailed response to you by Monday, April 10.

MELVIN L. JENKINS
Acting Staff Director

UNITED STATES
COMMISSION ON
CIVIL RIGHTS

1121 Vermont Avenue, N.W.
Washington, D.C. 20425

April 5, 1989

MEMORANDUM FOR JOHN EASTMAN
Chief, Congressional and Public Affairs Unit

THRU: WILLIAM J. HOWARD
General Counsel

FROM: JEFFREY P. O'CONNELL
Assistant General Counsel

SUBJECT: OGC RESPONSE TO AMERICANS WITH DISABILITIES BILL

The Commission believes that it is in a position to offer significant advice on a civil rights bill on discrimination against people with disabilities. The Commission has undertaken several studies of discrimination of people with disabilities. In particular, it has undergone lengthy factfinding on medical discrimination against the disabled.

In the Commission's 1983 report, *Accommodating the Spectrum of Individual Abilities*, the Commission wrote:

> Handicapped people . . . face discrimination in the availability and delivery of medical services. While occasional denials of routine medical care have been reported, a much more serious problem involves the apparent withholding of lifesaving medical treatment from individuals, frequently infants, solely because they are handicapped.

The Commission believes that discriminatory denial of medical treatment, food, and fluids is and has been a significant civil rights problem for infants with disabilities. It is also persuaded that the available evidence strongly suggests that the situation has not dramatically changed since Congress' implementation of the Child Abuse Amendments of 1984.

In the course of its review of the medical discrimination against children, the Commission (a) received testimony from a wide variety of individuals, including medical specialists, persons with disabilities, ethicists, hospital administrators, Federal officials, parents, academicians, and representatives of disability groups; (b) engaged in independent research; and (c) employed consultants. The Commission approved a report on medical discrimination against children, which will be published shortly.

This discussion largely deals with medical discrimination against children because that is the subject of our report. The issues, however, are essentially the same for adults with disabilities. The Commission has concluded that Congress should address the very real problems faced by people with disabilities and their families. The Commission has also concluded that the appropriate committees of the Congress should schedule hearings to address questions of medical discrimination and civil rights protection.

Intent of Bill. The Committee draft of the bill submitted to the Commission (Bill) for comment, by its very words, is intended to "make clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities" and to "invoke the sweep of congressional authority . . . to address" this area. In doing so the Bill reaches state and local governments, common carriers offering telephone services, and public accommodations and services operated by third parties.

Despite a reference in the preamble to health services, the Bill fails to provide a "clear, strong, consistent, enforceable standard" on medical discrimination against people with disabilities. The lack of specificity in Section 504 has permitted the judiciary to frustrate the intent of Congress in enacting, and the Executive branch in enforcing, Section 504.

Congress has taken the lead in transforming the Nation's commitment to overcoming the problems of people with disabilities. The Bill should do no less and should provide a clear signal that the Federal government is committed to acting upon the special problems of medical treatment for people with disabilities.

Section 504. Properly, Section 504 of the Rehabilitation Act of 1973 has been used as the basis for the new civil rights statute. Section 504 has been called "the first major civil rights legislation for disabled people. In contrast to earlier legislation that provides or extends benefits to disabled persons, it establishes full social participation as a civil right and represents a transformation of federal disability policy." Modeled on legislation prohibiting race and sex discrimination by recipients of Federal financial assistance, section 504 was derived from companion bills introduced by Senator Hubert Humphrey and Representative Charles Vanik.

Under current judicial construction, however, Section 504 has not protected individuals with disabilities who are unable to make decisions for themselves. Without a clearer signal in the legislation, the Bill, like Section 504, will continue to leave many people with disabilities unprotected when decisions on life-preserving care are made for them.

The failure of attempts to enforce Section 504 is significant in discerning what the new legislation must do.

Reacting to the Infant Doe case and the widespread negative response to it, President Reagan in April 1982 sent a memorandum to the Attorney General and Secretary of Health and Human Services (HHS) concerning the enforcement of Federal laws prohibiting discrimination against individuals with a disability. The memorandum required HHS to issue an explanation to health care providers of section 504's applicability to the denial of treatment to newborn children with a disability. HHS was also to enforce section 504 to prevent the withholding of potentially lifesaving treatment from children with a disability that would normally be provided to children without a disability. In May 1982, the Office for Civil Rights of the Department of Health and Human Services sent hospitals receiving

Federal financial assistance a Notice to Health Care Providers which indicated that it was unlawful to deny nutrition or medical or surgical treatment to an infant with a disability if the denial was based upon the existence of a handicap and the handicap does not render treatment or nutritional sustenance medically contraindicated. Reflecting a concern that hospitals or their staff might attempt to do indirectly what could not lawfully be done directly, the notice stated that hospital "[c]ounseling of parents should not discriminate by encouraging parents to make decisions which, if made by the health care provider, would be discriminatory under Section 504.

In March 1983, HHS published an interim final rule, with its purpose to "acquire timely information concerning violations of Section 504 that are directed against handicapped infants, and to *save the life of the infant.*" (Emphasis in original.) In April 1983, a Federal district court judge invalidated the interim final rule on procedural grounds, holding that the Interim Final Rule should have been published for public comment.

Subsequently, a final rule was passed. In the controversial decision of *Bowen v. American Hospital Association*, the Supreme Court struck down the mandatory provisions of the Final Rule by a 5-3 vote. Only four Justices, however, joined in the opinion, making it a plurality, not a majority, opinion.

Section 504 is applicable to a hospital only because it received Federal funds. The plurality opinion focused on the lack of evidence in the administrative record sufficient to support a regulation which affected the hospital when there was a parental decision to withhold or withdraw medical treatment. This, perhaps the central point in the plurality opinion, stimulated the Commission to invite extensive testimony and undertake substantial research focusing on the interrelationship of parents and physicians in the making of treatment decisions.

The evidence demonstrates that in many instances in which lifesaving treatment is denied to children with disabilities, parents are only nominally making the decision to withhold treatment. The Commission believes that decisions nominally made by parents to deny treatment to children with disabilities often may be generated by health care personnel who act as the agents of health care facilities. In such cases, the Commission believes that health care providers who do not provide lifesaving medical treatment to children with disabilities that would be provided were it not for the disabilities violate section 504 despite parental acquiescence in the treatment denial. So long as Section 504 will not be enforced to protect individuals with disabilities, it is essential that new legislation specifically deal with the issue.

Parents of non-disabled children are under stress. Frequently, the birth of a child with a disability typically comes as a great shock. Feelings of depression, anger and guilt regularly occur. Because most new parents have had little or no interaction with people who have disabilities, their reactions are often dominated by a stigmatization of people with disabilities to which they have been pervasively and sometimes subconsciously subjected for most of their lives. Parents frequently turn to their health care professionals for advice under such trying situations. A doctor's presentation of the disability and his or her own prejudice and misunderstanding all contribute to the conclusion that decisions by parents that can be substantially affected by the health care profession. The Commission believes that there must be a recognition that, whatever rights that a parent has in medical treatment, there can not be a simple statement that parental decisions obviate responsibility by others.

As significantly, in protecting the civil rights of the child (or adult), no distinction between a decision made by (a) a parent (or other surrogate) and (b) one made by a hospital or its agent should exist. In popular debate, the question whether children with disabilities should be denied lifesaving treatment has frequently been couched as though the issue were whether the government should intrude into matters of parental discretion. The universally accepted law, by contrast, has been that when parents make treatment decisions that will lead to the death of their nondisabled children, the government will intervene to ensure the children's survival by mandating lifesaving medical care. Only when children have disabilities has the claim of parental autonomy been given serious sympathetic consideration by the judiciary. It is improper for the civil rights of the child to differ depending on whether he or she has a disability.

As a minimum, the statute should clearly provide for the protection of people with disabilities in medical treatment. This includes protection for both children, who are incompetent by law, as well as adult incompetents.

April 7, 1989

MEMORANDUM TO THE FILE

FROM: Lisa Fairhall

SUBJECT: Americans with Disabilities Act - FCC concerns per Steve Klitzman, Legislative Counsel (632-6405)

1. Section 502 (a) appears to expand the scope of FCC jurisdiction into intrastate matters. FCC currently has interstate jurisdiction , with only a very limited intrastate role.

2. Section 502 (a) also requires that telecommunications relay services provide opportunities for communications for individuals with disabilities that are equal to those provided to individuals who are able to use voice telephone services. This is an extremely stringent standard, with very high costs to implement.

3. FCC recommended that there should be consultation and coordination with phone companies in developing this legislation.

4. Finally, FCC noted that this legislation should be coordinated with other recently enacted or pending legislation on Telecommunication Devices for the Deaf.

LRD:L. Fairhall:gls:4-7-89

Costs - implement by creating an 800 # which would provide the special service.

(1) universal service $15 M per state = 210 M nat-p
for ATT only $15M/yr to operate each = $210 M/yr

(2) does not include structural improvement + all private lines

(3) doesn't include cost to all carriers

(4) FCC costs would be insignificant

United States
A·T·B·C·B
The United States Architectural & Transportation
Barriers Compliance Board

APR 14 1989

The Honorable Richard G. Darman
Director
Office of Management and Budget
Washington, DC 20503

Dear Mr. Darman:

The Architectural and Transportation Barriers Compliance Board is pleased to provide the attached comments on the proposed Americans with Disabilities Act.

The Board fully supports the principles of the Act and has provided comments designed to ensure that the Act is consistent with the Board's duties and responsibilities and is coordinated with other statutes on accessibility. We will be happy to provide any additional input your office may desire as the Administration develops its response to the bill.

Sincerely,

Lawrence W. Roffee Jr.
Executive Director

Enclosure

1111 Eighteenth Street, N.W. • Suite 501 • Washington, D.C. 20036-3894 • 202 653-7834

COMMENTS ON
AMERICANS WITH DISABILITIES ACT

The Architectural and Transportation Barriers Compliance Board (ATBCB or Board) endorses the principles of the Americans with Disabilities Act (ADA) and believes ensuring equal treatment for persons with disabilities is consistent with Administration policy.

The comments provided are intended to ensure that the ADA is consistent with the laws enforced by Board. To the maximum extent possible, overlapping jurisdiction by different agencies should be avoided and a single, consistent set of standards should apply to all design, alteration, construction, lease and purchase of buildings, facilities and vehicles intended for use by the public or in which a person with a disability may be employed. Some of the following suggestions should be accomplished by changes in the statutory language while others can best be accomplished by ensuring that regulations promulgated pursuant to the Act are appropriate.

Specific suggestions follow:

SEC. 101. FORMS OF DISCRIMINATION PROHIBITED.

(b) ~~DEFENSES~~ FORMS OF DISCRIMINATION PERMITTED

(2) STANDARDS AND CRITERIA

(B) QUALIFICATION STANDARDS.

(ii) requiring that an individual ... not pose a direct threat, as established by appropriate U.S. public health authorities knowledgeable about the disease, to the health or safety ...

DISCUSSION: The suggested additional language makes it clear that the danger must be recognized by an authority in the public health field, such as the Surgeon General or the Center for Disease Control, rather than a mere presumption of threat by the regulated entity. This provision is consistent with the proposed regulations by the Department of Transportation to implement the Air Carrier Access Act of 1988.

SEC. 201. DEFINITIONS.

(3) EMPLOYER.-

(B) EXCEPTIONS.-The term "employer" does not include-

(i) the United States, a corporation wholly owned by the government of the United States, or an Indian tribe;

DISCUSSION: Presumably, the U. S. government is currently covered by Section 504 of the Rehabilitation Act and yet we note that some Federal agencies have yet to promulgate regulations for Federally conducted programs. We also note that an entity such as the Tennessee Valley Authority would not be required by this Act to hire persons with disabilities and believe this should not be permitted to occur.

SEC. 202. DISCRIMINATION.

(b) CONSTRUCTION.-

(1) IN GENERAL.- As used in subsection (a), the term "discrimination" includes-

(A) the failure ... to make reasonable accommodations ... unless ... the accommodation would impose, after consideration of all tax deductions and other advantages, an undue hardship ....

DISCUSSION: While we are certainly concerned with hardship imposed on businesses, we believe that regulations implementing this bill should set forth clear guidelines on what factors should be considered in such a determination. For example, certain modifications to improve access are subject to a $35,000 tax deduction under IRS Code Section 190. Employers should be made aware of the availability of this deduction and any determination of cost of reasonable accommodation should be computed only after subtracting any eligible Federal or local tax breaks.

SEC. 303. ACTIONS APPLICABLE TO ~~MASS~~ PUBLIC TRANSPORTATION ...

(a) DEFINITION.- As used in this title the term "~~mass~~ public transportation" means ... provides the general public with general or special service, including charter service, on a regular and continuing basis.

DISCUSSION: The term "public transportation" more correctly identifies the activity intended to be covered by this Act. "Mass transportation" is more generally used to refer to regular, fixed-route service that transports large numbers of persons and frequently does not include paratransit or charter service, even if operated by the public transportation agency, and almost never includes inter-city bus, such as Greyhound, even though such service often is the only "mass transportation" available to persons in rural communities. The change of "mass" transportation to "public" transportation should be made throughout the document (but is not necessarily identified in the remainder of these comments).

The inclusion of charter service under the definition is important because it may be provided by the public transportation agency but not necessarily using accessible vehicles. Recent regulations promulgated by the Urban Mass Transportation Administration permit the public transit agency to engage in charter service or lease its accessible vehicles to private providers were the private company does not have accessible vehicles. To prevent continued difficulties in securing accessible charters, this Act should clearly encourage such providers to begin purchasing accessible vehicles.

(b) VEHICLES.-

(1) GENERAL RULE.- It shall be considered discrimination ... to purchase or lease a new ~~fixed-route~~ bus of any size ... if such bus or rail vehicle is not readily accessible ... in conformance with the standards required by section 404 of this Act.

(A) if an individual or entity contracts out all or any portion of its service to another individual or entity, it shall ensure, through contract provisions or otherwise, that the vehicles used to provide such service meet the standards of section 404 of this Act.

(3) RE-MANUFACTURED VEHICLES.- If an individual or entity reconstructs, remanufactures, renovates or rehabilitates a vehicle so as to extend its useful life for five years or more, such vehicle shall meet the standards for a new vehicle of the same type.

DISCUSSION: The section on vehicles should not be limited to only fixed-route buses as it currently reads; the statutory language should make it clear that the Secretary of Transportation should develop specifications for all types of vehicles which should be applied to all types new vehicles as appropriate.

Moreover, in accordance with the trend toward privatization, many transit agencies are contracting out portions of the service, sometimes one route at a time. In several cases, the contract has failed to specify the access features of the contractor's vehicles to be used in the service resulting in incompatibilities. For example, one type of wheelchair can be accommodated by the transit agency's vehicle but not by the contractor. As such replacement has become more common, whole segments of transportation systems have suddenly become inaccessible to various segments of the disabled population.

Finally, as transit budgets have become tighter, agencies have turned more and more to re-manufacturing existing vehicles rather than purchasing new ones. As used in the industry, re-manufacturing is far more than overhauling and simple replacement of parts. Instead, the vehicle is completely stripped to its frame, a new body constructed, and all new power train and components added. Such a re-manufactured vehicle bears little or no resemblance to the original and is substantially a new vehicle.

(c) COMMUNITY ~~WITHOUT FIXED ROUTE BUSES BUT~~ WITH A DEMAND RESPONSIVE SYSTEM.- If an individual or entity ... when viewed in its entirety, readily accessible to, ~~and~~ usable by and provides an equivalent level of service to, such individuals.

DISCUSSION: Many transit systems provide fixed-route accessible services exclusive of buses (e.g., the Bay Area Rapid Transit accessible rail system). These agencies should be allowed to count the contribution such accessible services, such as subways and light-rail systems, make toward providing over-all accessibility.

Since paratransit services are, in many ways, more sensitive to operational characteristics than fixed-route services, we believe it is important for such systems to consider how to provide a comparable level of service rather than only looking at vehicle accessibility. The Board has recently re-affirmed its commitment to the concept of service level equivalence and wants to emphasize that paratransit is not a viable substitute for main-line access.

(g) EXISTING FACILITIES ...

(2) INTERCITY, LIGHT, RAPID ~~RAIL~~ AND COMMUTER RAIL SYSTEMS.-

(A) IN GENERAL.-With respect to vehicles ... it shall be considered discrimination ... to fail to have, as soon as practicable but no later than five (5) years from the date of enactment of this Act, one car per train ... ~~in accordance with the time limits identified under subparagraph (B).~~

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~~(B)...~~ *[delete (i) and (ii)]*

(3)~~KEY~~ STATIONS.- For purposes of this Act ... it shall be considered discrimination ... to fail to make intercity rail stations and key stations in rapid rail ...

DISCUSSION: The text of section 302(g)(2)(A) lists intercity, light, rapid and commuter rail but the title did not. Also, sections (B)(i) and (B)(ii) on "time limits" implies that all vehicles must be accessible whereas the section (A) only requires one car per train. Deleting section (B) and inserting the wording suggested corrects this inconsistency. There is no rationale given for the different time frames for commuter and intercity, rapid and light rail compliance. Five years is consistent with normal delivery time-frames for rail vehicles and many such vehicles across the nation are already accessible. Interim changes can be made to stations, such as use of portable lifts at the station or carried on trains or mini-high platforms or operational changes, to make the system readily accessible to and usable by persons with disabilities. The regulations should set forth examples of acceptable actions, which the ATBCB would be more than happy to help DOT develop.

Furthermore, while regulations similar to those promulgated by DOT in 1979 should set forth criteria for "key stations" (44 Fed Reg 31442, at 31478), it should be noted that, for intercity rail systems, there is probably no feasible alternative to making stations accessible since there may be no convenient highway for a bus or paratransit "bridge" to the nearest accessible station. However, "bridges" would be acceptable as a short-term alternative under certain circumstances which should be clearly set forth in the regulations.

SEC. 304. REGULATIONS.

(b) SECRETARY OF TRANSPORTATION.-Not later than 180 days ... related to discrimination in ~~mass~~ public transportation, including requirements for meaningful and continuing participation by consumers with disabilities in developing plans, goals and timetables.

(A) Not later than 90 days after the promulgation of the minimum guidelines required by section 604, and in conformance with such guidelines, the Secretary, in consultation with the Architectural and Transportation Barriers Compliance Board, shall prescribe standards for the design, construction, alteration, purchase and lease of each type of vehicle used to provide public transportation to ensure wherever possible that persons with disabilities have ready access to, and use of, such vehicles.

DISCUSSION: Over the past several years, regulations issued by DOT have vacillated between requiring significant participation by persons with disabilities to allowing the transit agency to ignore such input. The Board believes such input is vital and should be more than allowing persons with disabilities to voice their concerns at a public hearing. We believe it is necessary to explicitly require such participation by statutory language.

A new section, (A), has been added because "regulations" and "standards" are not necessarily synonymous. It is critical that DOT issue detailed standards to prevent problems such as Metro in which the transit authority accepted rapid rail cars which did not match the platforms. The language suggested is parallel to that of the Architectural Barriers Act of 1968, as amended. Moreover, it clarifies the connection between regulations promulgated by DOT and the minimum guidelines promulgated by the ATBCB.

//

In the past, there has been dispute as to whether the standards required by the Architectural Barriers Act were required to meet the minimum guidelines required by Section 502 of the Rehabilitation Act (the section which created the ATBCB). Since the ATBCB is required by this Act to issue its minimum guidelines within 180 days of enactment, and the standards must conform to those guidelines, the standards are to be issued after the guidelines. If DOT consults with the ATBCB on those standards, so that it utilizes the information developed during the guideline process, it should have no difficulty meeting the 90 day deadline.

SEC. 402. PROHIBITION OF DISCRIMINATION BY PUBLIC ACCOMMODATIONS.

(b) CONSTRUCTION.-

(1) IN GENERAL.- As used in subsection (a), the term "discrimination against" includes--

(G) a refusal to ~~make vehicles (those vehicles~~ provide a level of service to persons with disabilities equivalent to that provided to the general public and purchasing or leasing a new vehicle that can carry in excess of 8 ~~12~~ passengers~~)~~ used by entities ...

DISCUSSION: Persons with disabilities should not have to make arrangements for transportation from an airport to a hotel, for example, which are more involved than the general public. Many hotels provide regularly scheduled shuttle services for which able-bodied passengers only need wait at the curb. Persons with disabilities should not have to make advance reservations or call from the airport and wait simply because they have a disability. The "equivalent service" provision means that entities which do not yet have enough accessible vehicles must make scheduling or operational changes sufficient to ensure nondiscrimination.

In addition, hotels and other entities intended to be covered by this section often use small vans which do not carry more than 12 passengers and yet are relatively easy to make accessible with lifts or portable ramps.

SEC. 404. REGULATIONS.

(a) Not later that 180 days ...

(b) Not later than 90 days after the promulgation of the minimum guidelines required by section 604, and in conformance with such guidelines, the Secretary, in consultation with the Architectural and Transportation Barriers Compliance Board, shall prescribe standards for the design, construction, alteration, purchase and lease of each type of vehicle used to provide public transportation to ensure wherever possible that persons with disabilities have ready access to, and use of, such vehicles.

DISCUSSION: The rationale for this provision is the same as under section 304, above.

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SEC. 604. REGULATIONS BY THE ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD.

(b) CONTENTS OF GUIDELINES.- The guidelines issued under subsection (a) shall establish additional requirements for the standards required by sections 304 and 404, consistent with this Act, ...

DISCUSSION: This language clarifies that the standards to be issued by DOT are required to comply with the guidelines.

EDUCATION

draft 4/10/89

Honorable James C. [illegible]
Assistant Director [illegible] Legislative Reference
Office of Management [illegible] Budget
Washington, D.C. 20503

Dear Mr. Murr:

I am responding to your request for the Department of Education's views on the proposed draft bill "Americans with Disabilities Act of 1989" ("the ADA").

As proposed, the ADA would prohibit discrimination against qualified individuals with a handicap in employment, public services, public accomodations and services operated by private entities, and telecommunications relay services. Among other things, the bill describes both generally and by category the forms of discrimination prohibited.

The ADA would expand civil rights coverage to qualified Americans with disabilities who participate, or attempt to participate, in programs or activities that do not receive Federal assistance. However, since most recipients of Federal assistance would be subject to the prohibitions against discrimination under both section 504 of the Rehabilitation Act of 1973 and the ADA, we believe it very important to avoid or limit the confusion and the administrative and litigation costs that could result because of overlapping requirements or potentially inconsistent standards in section 504 and the ADA.

Opportunities for such problems occur most seriously in section 302 of the ADA. Section 302 of the ADA states that no qualified individual with a disability shall be excluded from participation in, be denied the benefits of, or be subject to discrimination by a State or local government. Section 504, after passage of the Civil Rights Restoration Act of 1988, applies similar requirements to all, or virtually all, State and local agencies. This repetition could cause confusion and unnecessary new litigation burdens for States and localities and for the Federal government. There is no need to duplicate in the ADA a standard already applicable to States and localities under section 504. Therefore, we recommend that section 302 of the ADA either be deleted or, at a minimum, moved to a title with general applicability and amended to include a provision stating that the standards arre coextensive with those of section 504.

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We would also note [redacted] additional concerns. First, section 205 of the ADA (Employ[redacted]vides for remedies and procedures for any individual who [redacted] that he or she is "... about to be subjected to discrimination...." Discrimination [redacted] upon anticipation is very difficult to remedy; and, as a [redacted]andard, it is inconsistent with remedies and procedures afforded under other anti-discrimination statues. Secondly, the ADA would include coverage of certain drug users and addicts based on requirements (see section 101(b)(2) of the draft bill) similar to standards used in the Rehabilitation Act of 1973. The ADA language differs from the requirements in the Fair Housing Act of 1988 (P.L. 100-430) that specifically exclude the "...current, illegal use of or addiction to a controlled substance..." as a handicapping condition. Therefore private entities, particularly in the housing field, would, without an amendment to the Rehabilitation Act or the ADA, be subject to different standards.

We defer to other departments and agencies as to the specific scope of civil rights coverage in areas that are within their particular jurisdiction. However, where appropriate, we would be happy to provide technical and other comments on the draft proposal.

Sincerely,

Acting General Counsel

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TRANSPORTATION

DRAFT

DRAFT

The Honorable Richard G. Darman
Director
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Darman:

This is in response to your request for views of the Department of Transportation on the "Americans with Disabilities Act of 1989," a bill

> "To establish a clear and comprehensive prohibition of discrimination on the basis of handicap."

With respect to the Department of Transportation, this bill requires the Secretary to issue regulations, no later than 180 days following enactment, that would:

(1) Require public and private entities to lease or purchase new vehicles that are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs;

(2) Require public entities, operating fixed route bus systems, to provide supplemental paratransit services sufficient to provide individuals with disabilities, who cannot use fixed route public transportation and other individuals associated with them, a comparable level of service as is provided to individuals who can use fixed route transportation systems;

(3) Require that new public and private transportation facilities be readily accessible to and usable by individuals with disabilities;

(4) Require key stations in rapid, commuter and light rail systems to be made accessible within 3 years, except that the time limit may be extended up to 20 years for extraordinarily expensive structural changes to, or replacement of, existing facilities necessary to achieve program accessibility;

(5) Require intercity, rapid, light, and commuter rail systems to have at least one car per train that is accessible to individuals with disabilities in no less than 5 years;

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DRAFT

(6) Require communities operating demand responsive systems only, to purchase or lease vehicles that are readily accessible to individuals with disabilities unless the entity can demonstrate that the system, when viewed in its entirety, provides a level of service equivalent to that provided to the general public; and

(7) Require existing facilities, that are altered in a manner that could affect the usability of the facility, to be altered in a manner that, to the maximum extent feasible, service areas are accessible to individuals with disabilities.

The Department has concerns with some of the provisions of the bill, as follows:

Section 303(b) & (c) -- Supplemental Paratransit

The requirement for duplicate systems is unreasonable. This would impose unduly burdensome costs on transit providers. It would be extremely difficult for transit systems to meet the requirement of supplemental paratransit, in addition to the requirement of Section 303(b) for accessible mainline bus service, which we estimate to be about $20,000 per full-size bus, without massive additional federal financial assistance. Also, this requirement is an unequivocal mandate with no provision for evaluation on a case-by-case basis, or consideration of local area concerns. In 1986 the Department, in support of a final rule on transit accessibility, estimated that the cost of such a requirement could be up to $180 million a year, without an advance reservation requirement.

Section 303(g)(3) -- Key Stations

The Department's 1979 Section 504 regulations for public transit systems, which would have required modifications at only about 40 percent of existing mass transit stations spread out over 20 to 30 years, was found by a federal Court of Appeals to have imposed undue financial burdenson local transit systems. This bill's requirement that mass transit facilities be made accessible in no more than 20 years, would be more costly and could not be met on many transit systems without massive additional federal financial assistance. According to DOT estimates, this bill's requirement could cost more than $30 million a year for commuter rail alone.

DRAFT

Section 404(a) -- Regulations

This section directs the Secretary of Transportation to issue regulations within 180 days for transportation services operated by private entities. These regulations would affect some transportation services that the Department has never regulated before with respect to disability matters such as mass transportation services provided by privately operated entities. Thus, it would be unrealistic to expect the Department to develop a regulation within this short time period.

The Department of Transportation has long supported accessible, non-discriminatory transportation systems through research, financial assistance to demonstration projects, mass transit and paratransit systems, and promulgation of regulations responsive to legislative directives. We have, in furthering this objective, been mindful of court decisions concerning reasonableness of cost, while directing utilization of resources to maximize benefits for persons with disabilities.

In light of limited federal and state financial resources to support mass transportation, the excessive costs and unrealistic deadlines imposed by this bill would impair the viability of major segments of the nation's public transportation system.

This legislative proposal has been analyzed in accordance with the principles and criteria contained in Executive Order 12612. The Department's analysis indicates that this bill would require extensive financial outlays by the states.

Thank you for the opportunity to comment on this legislation.

Sincerely,

Rosalind A. Knapp
Deputy General Counsel

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U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C. 20416

OFFICE OF CHIEF COUNSEL FOR ADVOCACY

Fax 395-6148

MEMORANDUM Lisa Fayrhall OMB

To: Ben Yale
White House Domestic Policy Office

From: Frank S. Swain
Chief Counsel for Advocacy

Date: April 10, 1989

Re: Americans with Disabilities Act of 1989

Pursuant to our discussion on Friday April 7, 1989, I have researched further the issues and data relating to proposed legislation strengthening the legal protections accorded disabled individuals.

The "Americans with Disabilities Act of 1989" as drafted is intended to prohibit discrimination against individuals on the basis of handicap. Although Federal legislation, Title V of the Rehabilitation Act of 1973, as amended, already exists concerning discrimination against individuals with handicaps, the existing law is limited to programs or activities receiving Federal financial assistance, executive agencies or the U.S. Postal Service.

All Federal contractors and grantees are subject to the general prohibition against discrimination on the basis of handicap contained in Section 504, 29 U.S.C. 794. It was closely modeled on the Civil Rights Act, and is intended to offer handicapped individuals employment, educational, and recreational goals free of the additional handicap of discrimination against them. It is basically an antidiscrimination provision which imposes few, if any, affirmative requirements.

Section 503 of the Rehabilitation Act, 29 U.S.C. 793, requires all firms with Federal prime and first-tier subcontracts in excess of $2,500 to agree to "take affirmative action to employ and advance in employment qualified individuals with handicaps" as defined. Regulations interpreting and implementing the statutory requirements are at 41 C.F.R. Part 60-741. The regulatory requirements include "reasonable accommodation" to the physical and mental limitations of an employee or applicant

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"unless the contractor can demonstrate that such an accommodation would impose an undue hardship on the conduct of the contractor's business." [redacted] of the contractor's accommodation obligations are [redacted] by "(1) business necessity and (2) financial cost and [redacted]." 41 C.F.R. 60-741.6(d).

Implementation of the affirmative action requirement is in two tiers. First, all prime contracts and first-tier subcontracts in excess of $2,500 must include the basic affirmative action clause prescribed by 41 C.F.R. 60-741.4 and incorporated in the Federal Acquisition Regulation at 48 C.F.R. 52.222-36. Second, every government contractor or subcontractor (i.e. firms) holding a contract of $50,000 or more and having 50 or more employees shall prepare and maintain a written affirmative action program "at each establishment" setting forth the contractor's policies, practices, and procedures for complying with the substantive requirements, including "reasonable accommodation." 41 C.F.R. 60-741.5.

Based on an analysis of information from the Federal Procurement Data Center, we estimate that at least 50,000 prime contracting firms (representing in excess of 75,000 individual establishments) are presently subject to the substantive requirements of Section 503. Of these firms, approximately 45,000 or 90% are small businesses within the procurement size definitions of 13 C.F.R. Part 121. The EEOC estimates that the number of prime and subcontracting firms in the higher tier ($50,000 in contract receipts and at least 50 employees) is approximately 15,600 representing some 90,000 establishments.

By contrast, expansion of the substantive requirements contained in Title II of the draft bill to all firms having 15 or more employees would cover approximately 686,244 firms. If the coverage threshold were raised to 25 employees, approximately 428,024 firms would be covered. If the coverage threshold were raised to 50 employees, approximately 185,917 firms would be covered. Also, we note that although neither the Rehabilitation Act nor the draft bill contain the two-tiered approach to regulatory implementation, such an approach would seem to carry with it a significant savings in compliance, or at least paperwork burdens. Note that the present "$50,000 and 50 employee" tier exemption is quite broad. For example, a 45 employee firm with $500,000 in annual Federal contract receipts would still be in the lower compliance tier.

At this point, it is clear that a great number of small firms would be affected by the draft bill, although it is impossible to specifically calculate the costs associated with it, especially without implementing regulations. However, I do have a number of concerns about the impact on the small business community. First, this bill would cause small employers to make expenditures in the nature of direct capital costs and continuing maintenance costs. To our knowledge, no one has estimated these costs. Second, whatever the costs are, they

will be disproportionately significant to small employers. Small employers do not have the same base over which to spread costs as do large employers, nor do they have the same opportunities for flexibility in terms of job restructuring or employee movement within individual workplaces. Finally, small employers are apprehensive about increasing liability from employment litigation, and the draft language, by providing remedies beyond those currently contained in the Rehabilitation Act, could significantly increase the litigation liability of a small employer.

Please let me know if you would like further information or data concerning small employers.

cc: Susan Engeleiter

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
WASHINGTON, D.C. 20507

OFFICE OF
THE CHAIRMAN

APR 11 1989

Mr. Robert J. Pellicci
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Pellicci:

Pursuant to your request and on behalf of a majority of the Commissioners, I am submitting the U.S. Equal Employment Opportunity Commission's official agency comments on the "Americans with Disabilities Act of 1989".

The Commission will require a significant increase in funding to undertake the additional enforcement responsibilities imposed by this bill. Also, we would recommend revisions in several areas:

TITLE 1--GENERAL PROHIBITION AGAINST DISCRIMINATION

Section 101(b)(2)(B) permits covered entities including employers to require that "the current use of alcohol or drugs by an alcoholic or drug abuser not pose a direct threat to property or the safety of others..." and that persons with a currently contagious disease or infection not pose a "direct threat" to the health or safety of others. This language is similar but not identical to limitations contained in the definition of "individual with handicaps" in section 7(8)(B) & (C) of the Rehabilitation Act of 1973, as amended, 29 U.S.C.A. subsection 706(8)(B) & (C) (West Supp. 1989).

With respect to alcohol and drug abuse, the bill should make clear that employers are not obligated to condone the use of illegal drugs in the workplace nor misconduct caused by alcohol or drug abuse, regardless of whether an individual poses a "direct threat" to property or safety of others. This interpretation is consistent with existing case law interpreting section 501 of the Rehabilitation Act. See, e.g., Kimbley v. Bolger, 642 F.Supp. 481 (W.D. Tenn. 1986); Swann v. Walters, 620 F.Supp. 741 (D.D.C. 1984); Richardson v. United States Postal Service, 613 F.Supp. 1213 (D.D.C. 1985); Guerriero v. Schultz, 557 F.Supp. 511 (D.D.C. 1983).

TITLE II. EMPLOYMENT
(SECTION 201. DEFINITIONS)

The definition of "employer" in section 201(3), while clearly intended to include state and local governments, fails to

do so explicitly in contrast to section 701(a) & (b) of Title VII of the Civil Rights Act of 1964, 42 U.S.C. subsection 2000-e(a) & (b) (1982).

This section also proposes to cover employers with 15 or more employees immediately, similar to current coverage of Title VII. However, when enacting Title VII, Congress gradually phased in employer coverage, starting with those with 100 or more employees, who were given a year's notice, and extending coverage to smaller employers progressively, over a period of several years. In view of the significant new legal obligations to be established by the ADA, we would recommend a similar phase-in of employer coverage.

(SECTION 202. DISCRIMINATION)

In contrast to existing regulations implementing section 504 of the Rehabilitation Act, the bill fails to establish factors to be considered in determining whether an employer has demonstrated "undue hardship" (section 202(b)(1)(A)). Some definition or standard for undue hardship should be provided in order that people with disabilities, covered employers and EEOC can gauge whether an employer's denial of a particular accommodation is unlawful.

Unlike section 504, this legislation would apply to employers who receive no federal money as well as those who do. In Consolidated Rail Corporation v. Darrone, 465 U.S. 624 (1984), the Supreme Court indicated that Congress intended federal contractors and grantees to bear the costs of employing people with disabilities as a quid pro quo for the receipt of federal funds. Id. at 634 n. 13. Absent this quid pro quo, applications of section 504 standards may result in a weakened accommodation obligation.

Therefore, the Commission recommends that any potential diminution of the accommodation obligation should be avoided by establishing adequate undue hardship criteria making clear that employers are obligated to make needed accommodations unless the employer can demonstrate that it lacks the financial or other capacity to do so.

To assure consistency with standards established in Rehabilitation Act regulations, we would recommend revising line 12 of Section 202(b)(1)(C) to refer to essential "functions" rather than "components" of the particular employment position.

The Commission believes the inclusion of "reassignment" as a reasonable accommodation in section 202(b)(2)(B) is consistent

with the Commission's interpretation of Section 501 of the Rehabilitation Act in Ignacio v. U.S.P.S. (Petition No. 03840005 (September 4, 1984;) upheld, 30 M.S.P.R. para. 471 (Special Panel, 1986)).

(SECTION 204. REGULATIONS)

This section would require the Commission to issue implementing regulations 180 days after enactment of the legislation. We believe that the 180-day requirement is unrealistic and cannot be met, given the complex nature of handicap discrimination issues, requirements of the Administrative Procedures Act for publication of proposed and final rules for public comment, and additional requirements under Executive Order 12067 to circulate the rule at each stage to federal agencies for comment, prior to publication. We recommend returning to the one-year requirement proposed in the 1988 version of this legislation.

This section also directs the Commission to issue regulations to carry out the statutory employment requirements "consistent with the authority under Section 713 of the Civil Rights Act of 1964." Section 713 does not authorize the Commission to issue substantive regulations, but limits its authority to issuance of procedural regulations and interpretative guidance. A limitation of this nature could inhibit the Commission's ability to implement the Act effectively. Section 204 should be revised to provide the Commission with substantive rulemaking authority.

(SECTION 205. ENFORCEMENT)

Section 205 incorporates the remedies and procedures of sections 706 and 707 of Title VII and of the 1870 Civil Rights Act. Section 706 grants to the Attorney General the exclusive authority to litigate employment discrimination claims against state and local governments. The Commission believes this authority should be explicitly granted to the Commission.

The Commission believes that simply incorporating section 707, granting the Attorney General exclusive authority to bring pattern and practice litigation, is inappropriate as that authority was subsequently vested in the Commission pursuant to 707(c). Rather than incorporate Section 707 verbatim, the Commission should be explicitly granted pattern and practice litigation authority without reference to the Attorney General.

The bill fails to incorporate sections 709 and 710 granting the Commission needed authority to conduct investigations, inspect records, require recordkeeping and cooperate with state

and local fair employment agencies. Finally, incorporation of remedies and procedures of the Civil Rights Act of 1870 provides people with disabilities remedies parallel to those available to victims of racial discrimination. Unlike Title VII, however, the 1870 Civil Rights Act does not require exhaustion of administrative remedies and permits compensatory and punitive damages.

We are concerned about the provision in section 205 that enables filing of a complaint or a civil action by an individual who believes that he or she "is about to be subject to discrimination". This provision departs from the traditional legal concept of when a cause of action arises. We wish to emphasize the potential drain on Commission resources that could be caused by encouraging the filing of speculative complaints. We urge deletion of this provision.

(SECTION 206. EFFECTIVE DATE)

As drafted, the ADA would take effect immediately on enactment. This would not allow time for the Commission to develop regulations, establish complaint processing procedures, acquire needed staff and otherwise prepare for its new obligations. It could result in an "instant backlog". We have recommended a one-year period to develop regulations. This same period is needed, we believe, to develop other administrative procedures for effective implementation of the Act. Therefore, we recommend that, as with Title VII, this legislation take effect one year after its enactment.

MISCELLANEOUS COMMENTS

Because this Act is attempting to provide people with disabilities protections parallel to those included in the Civil Rights Act of 1964, it also should amend Section 501 of the Rehabilitation Act to parallel Section 717 of Title VII of the Civil Rights Act. We would, therefore, recommend that the first sentence of section 501(b), 29 U.S.C. § 791(b) be amended to read as follows:

> Each department, agency, and instrumentality (including the United States Postal Service and the Postal Rate Commission) in the executive branch and in those units of the legislative and judicial branches of the Federal Government having positions in the competitive service (other than the General Accounting Office), shall, within one hundred and eighty days after the date of enactment of this Act, submit to EEOC and to the Committee an affirmative action program for the hiring, placement, and advancement of individuals with handicaps in such department, agency, instrumentality

or unit. With respect to employment in The Library of Congress, authorities granted in this section to EEOC shall be exercised by the Librarian of Congress.

Finally we emphasize that EEOC would require a substantial increase in staff and budget to carry out its obligations under the proposed legislation, which we anticipate would have a great impact on the agency's inventory of complaints if enacted.

EEOC's investigative, legal and support staffs in agency field offices would increase with enactment of this legislation. Headquarters staff, to provide oversight and guidance on enforcement of the new provision as well as administrative support services for the additional personnel, also would increase. EEOC's investigative and legal staffs would require training in implementing the employment aspects of the Act. Office space in the agency's offices nationwide would need to be expanded to accommodate the additional personnel.

Although it is difficult to assess precisely the budgetary impact of this legislation on the agency because there are no available statistics on the number and complexity of complaints EEOC might receive, we note that any legislation imposing such a major increase in function would have to be accompanied by adequate staff and budgetary resources.

Sincerely,

Clarence Thomas

Clarence Thomas
Chairman

cc: All EEOC Commissioners
Charles Shanor, General Counsel
Deborah J. Graham, Director of Communications and Legislative Affairs
Richard Komer, Legal Counsel
Pamela Talkin, Chief of Staff
James Troy, Director of Program Operations

U.S. DEPARTMENT OF LABOR

SECRETARY OF LABOR
WASHINGTON, D.C.

The Honorable Richard G. Darman
Director
Office of Management and Budget
Washington, D.C. 20503

Dear Dick:

This is in response to your request for our views on the draft bill, "Americans with Disabilities Act of 1989." The purpose of this legislation is to provide a comprehensive national mandate to end discrimination against individuals with handicaps and to provide standards for addressing such discrimination which parallel in scope the protections enjoyed by minorities and others under various other anti-discrimination statutes, such as Title VII of the Civil Rights Act of 1964 and Section 504 of the Rehabilitation of 1973.

The Department of Labor supports the objectives of the proposed bill. However, we do have the following concern, comments, and technical changes regarding both the bill and the summary.

Beginning with the bill, we read several provisions of the draft legislation as raising some serious concerns based on their potentially enormous impact on the cost to plan sponsors maintaining private employee benefit plans, and, thus, their potentially negative impact on employment opportunities for individuals with pre-existing medical conditions. While we acknowledge the bill's attempt to address major concerns of employers by restoration of language limiting both the definition of "impairment" and the duty to make "reasonable accommodation," our comments specifically concern Sections 101(a)(1)(A), (B), and (C) of Title I and Section 202(a) of Title II, which we interpret as follows.

It would appear to us that the draft bill, which does not amend the Employee Retirement Income Security Act of 1974 (ERISA) directly, could nevertheless prohibit plans regulated under ERISA from excluding coverage of pre-existing conditions. It is common business practice for employee benefit plan sponsors to exclude from coverage under their disability or health insurance plans any pre-existing condition (e.g., medical conditions existing prior to employment with that particular employer). Because Section 3(1) defines a "physical or mental impairment" without respect to its cause or the point in time at which it arose, the draft bill could be interpreted to require plan sponsors to provide disability benefits or medical services for medical conditions that arose prior to the employment of a particular employee.

It would also appear that the draft bill could limit the ability of plan sponsors to select those types of medical services which would and would not be eligible for reimbursement under a plan. Employment-based health insurance plans typically define the medical services that are reimbursable under the terms of the plan. For example, a benefit plan may reimburse covered services for hospitalization due to surgery but not for psychiatric treatment, or reimburse expenses for the purchase of drugs related to hospitalization for acute illness but not for chronic conditions, such as diabetes or hypertension.

Under the broad language of Sections 101(a)(1)(B) and (C), prohibiting the denial of unequal or less effective benefits on the basis of handicap, described above, it could arguably be discriminatory for a plan not to reimburse medical expenses associated with a handicapping chronic condition even though the plan was intended only to insure against acute illness. We believe it is necessary to clarify the draft bill's intended effect with respect to the two issues identified above. In the event that these ambiguities are resolved in a manner that would preclude pre-existing condition provisions in plans, or limit a plan sponsor's ability to determine what types of medical expenses would be reimbursable under the terms of the plan, it would then be essential to determine the size of costs imposed on the employment-based health and disability systems before passage of the bill. In the absence of appropriate policy and cost benefit analyses to ascertain the magnitude of the bill's impact on private employment-based health and disability plans, we would have very serious reservations about enactment of these two provisions.

We note that Section 602, the anti-retaliation provision, which is virtually identical to Section 704(a) of the Civil Rights Act of 1964, apparently does not contain enforcement provisions. Since Section 602 was apparently taken from Section 704(a) of the Civil Rights Act of 1964, consideration should be given to also adding the other subsections of Section 704 which provide enforcement procedures and sanctions.

We note that the bill is also unclear as to what extent its protections apply to individuals with a drug or alcohol related impairment. The only mention of this kind of situation is in Section 101(b)(2)(B)(i), the qualification standards for defenses. This section seems to imply that the bill would make it illegal to discriminate against people with such impairments if the impairment did not "... impose a direct threat to property or the safety of others in the workplace or program." We believe that this provision should be further scrutinized to ensure that it is consistent with recent legislation to promote a drug-free workplace.

Section 5153 of Public Law 100-690, the Anti-Drug Abuse Act of 1988, requires Federal contractors to provide a drug-free workplace. Employees are to be notified that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance in the workplace is prohibited. Thus, the lack of a "direct threat to property or the safety of others" is not a defense in that situation. Similarly, such contractors can be suspended, terminated, or debarred from further contracts if a number of employees have been convicted of violations of criminal drug statutes occurring in the workplace. Consideration should therefore be given to whether the defense in the draft bill should be reexamined in light of the drug-free workplace requirements.

Similarly, another matter that we feel needs clarification in terms of "safety" issues regards sections of the bill that deal with the creation of criteria or standards that individuals with disabilities must meet in order to qualify for jobs or other activities, e.g., Section 202(b)(1)(C). It would be helpful if, either in the bill itself or the legislative history, specific mention is made of the fact that the safety and health of both the individual with the impairment as well as the safety and health of other individuals would also be a valid criterion for job eligibility.

Overall, we believe that this legislation has the potential to increase labor costs. While much of the increased labor cost to business would affect the transportation, public accommodations and telecommunications industries, any cost increases will fall most heavily on small business. In addition, the requirement of job restructuring could be problematic for large companies and certainly detrimental to small companies which are less able to reassign employees or to have a pool of workers from which to draw when restructuring jobs.

Because of this, we think that a further clarification of the term "reasonable accommodation" would be helpful. Under Section 202(b)(1)(A) employers and others are required to provide reasonable accommodation unless they can demonstrate that the accommodation "would impose an undue hardship on the operation of [the] business." While the bill (at Section 202(b)(2)) gives examples of reasonable accommodations, it nowhere explains how to assess "undue hardship." In our view, the concept of undue hardship should include consideration of at least the financial cost of the accommodation, and other legitimate factors of business necessity (cf., Department of Labor regulations implementing Section 503 of the Rehabilitation Act at 41 CFR 60-741.6(d)). Moreover, court decisions in other areas, such as occupational safety and health, could be of assistance in further interpreting this concept. For instance, that area of the law has been interpreted to include considerations of technological as well as economic feasibility. By analogy, in the handicap area employers

should be required to explore whether recent or emerging technology might provide a workable means of accommodating a handicapped employee or applicant.

Finally, we feel that the bill contains a somewhat narrow emphasis in the area of accessibility by focusing attention primarily on physical barriers imposed upon individuals with wheelchairs. Such a focus excludes individuals with hearing and visual impairments that may also limit accessibility. We note that Title III of the bill provides specific requirements in vehicular modes of ground transportation, such as buses and railway cars. It would appear that it was intended to cover "other modes of conveyance," see Section 303(a), but merely omitted a specific requirement for those other modes. We recommend that the other modes of mass transportation in section 303(a) be specifically covered.

With regard to the bill summary, we note that on page 3 under "Title III: Public Services," the first sentence states that Section 504 of the Rehabilitation Act of 1973 only applies to entities receiving Federal financial assistance. This statement is not entirely correct. That section also applies to Federally conducted programs as well.

In addition, we would make the following change to item 4 on page 4:

> In those communities with fixed route buses, there must also be a paratransit system to serve those individuals with handicaps who cannot <u>get to or</u> use fixed route buses. (Added language underlined.)

We are recommending amending the language in this sentence because some blind individuals have been denied use of paratransit systems in communities with fixed route buses. Our change recognizes that, although they can use fixed route buses, they may not be able to get to such buses. In view of this change, we would also recommend a corresponding language change in Section 303(c) of the bill, regarding paratransit as a supplement to fixed route bus systems.

Also, on page 5 of the summary under "Title IV: Public Accommodations and Services Operated by Private Entities," we suggest changing examples 2 and 3, as follows:

> (2) -a refusal to make reasonable modifications in rules and policies and procedures when necessary to afford meaningful opportunity unless the entity can demonstrate that the modifications would fundamentally alter the nature of the program[;] <u>or operations of the business;</u>

(3) a refusal to provide auxiliary aids and services unless the entity can demonstrate that such services would result in undue [burden] [;] hardship to the fundamental operation of the program or business;

We believe that the change in the second example accommodates the fact that the protections offered by the bill extend to situations involving Federal, State, and local government programs as well as to private employer businesses. The change in the third example makes the same point, and, in addition, substitutes undue "hardship" for "burden" to employ the term of art used in employment discrimination law and to track language used in Section 202(b)(1) of the bill concerning discrimination for failure to make reasonable accommodations.

Insofar as purely technical changes to the bill itself are concerned, in Section 3(2), in the main definition section, we note that "State" is not defined consistently with the term "State" as it appears in Section 201(4), the definition section of Title II, which provides that the terms have the same meaning as in Sections 701 of the Civil Rights Act of 1964. These definitions should be harmonized throughout the bill for consistency.

In Section 405 of the bill, the citation for Section 802(i) of the Fair Housing Act should be cited as 42 U.S.C. 3602(i).

The foregoing remarks represent the views of the Department on the initial draft of this bill.

With my warmest regards,

Sincerely,

Elizabeth Dole

United States
A·T·B·C·B
The United States Architectural & Transportation
Barriers Compliance Board

APR 11 1989

Mr. Barry White
Chief, Education Branch
Office of Management and Budget
Room 7019
725 17th Street, N.W.
Washington, D.C. 20503

Dear Mr. White:

On April 4, 1989 the Architectural and Transportation Barriers Compliance Board (ATBCB or Board), as requested, submitted comments to OMB on the proposed Americans With Disabilities Act (ADA). The Board indicated support for the concept of the Act and offered a variety of technical comments that would make the proposed legislation more consistent with the legislation and standards the Board is mandated to enforce. A copy of those comments is attached. In our previous comments we did not detail any additional staffing necessary or additional costs that the ATBCB would incur with the passage of the ADA. The purpose of this letter is to detail those additional costs.

As you are aware, if the Act were to become law the ATBCB would have the primary responsibility of developing, issuing and then maintaining minimum guidelines and requirements for accessible design of vehicles used to provide public transportation. Based on our experience with our current publication, "Minimum Guidelines and Requirements for Accessible Design," (MGRAD) we would need an additional staff of two permanent FTE positions at a GS 12 level to develop and maintain the standards. Additionally, based on our experience with MGRAD, we would require approximately $80,000 every other fiscal year to contract for technical research projects to keep the minimum guidelines up to date by incorporating new technical developments and fine-tuning of the design standards. It is also likely that the Board would require additional office space and equipment for the additional staff. In summary the Board would require approximately $90,000 additional funding beginning with the first fiscal year of the Act, and approximately $178,000 in later fiscal years.

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It should also be noted that with the passage of the ADA we expect the Board would be required to provide a significantly increased level of technical assistance to state and local governments and private organizations falling under the jurisdiction of the ADA. The ADA contemplates that in addition to the guidelines developed by the Board for transportation, local and private entities would follow the American National Standards Institute's accessible design requirements (ANSI 117.1-1986). In an effort to make private and Federal design criteria consistent the Board has recently incorporated ANSI design requirements into our MGRAD requirements. The Board is the only centralized national organization staffed to provide technical support and assistance on the design requirements. We currently respond to approximately 4000 requests for technical assistance each fiscal year. With the passage of the ADA we would expect this level to increase. We feel that we could adequately respond to this increase with the two additional staff.

In summary, if the Americans With Disability Act were to be passed, the Board would request an annual appropriation of $2.1 million in the first two fiscal years of the Act and $2.18 million in subsequent fiscal years. We would request a total FTE of 29.

Sincerely,

Lawrence W. Roffee, Jr.
Executive Director

The Americans With Disabilities Act: How Was It Developed?

When the National Council on the Handicapped recommended in its 1986 report to Congress that the legislative body enact a comprehensive equal opportunity law for people with disabilities, no one knew just what task lay ahead. Sandra Swift Parrino, chairperson of the council, anticipated that details of such legislation would be hammered out by congressional staffers. But when 1987 rolled around and nobody had begun to draft a bill, the council decided to take matters into its own hands.

"We recommended it and thought someone would write it, but nobody did," Parrino said. "We took a rather bold step. We said if nobody else is going to write it, then we will."

After consulting with former Sen. Lowell Weicker (R-Conn.), the council began the lengthy and arduous process of creating what is believed by many to be the most important piece of legislation ever introduced for people with disabilities. Lawyers were brought in to put into appropriate language the recommendations offered by the National Council in its 1986 report, "Toward Independence." Though the council was created in 1978 as an advisory board within the Department of Education, 1986 marked the first time it officially acted in its new role as an independent agency. Its new status was the result of the Rehabilitation Act Amendments of 1984.

The council's goal, as stated in "Toward Independence," was to create a bill that would be more comprehensive than existing laws and that would clear up other problems with current statutes. "A problem with existing laws," the report said, "is that their coverage is not nearly as broad as laws prohibiting discrimination on the basis of race, religion or national origin. Many types of activities, such as employment by agencies engaged in interstate commerce, public accommodations and housing, are covered by laws prohibiting other types of discrimination, but not by laws prohibiting handicap discrimination.

"Because of their narrow coverage, handicap nondiscrimination laws fail to serve the central purpose of any human rights law -- providing a strong statement of societal imperative. An adequate equal opportunity law for persons with disabilities will seek to obtain the voluntary compliance of the great majority of law-abiding citizens by notifying them that discrimination against persons with disabilities will no longer be tolerated by our society."

A Long Time Coming

The idea was not a new one. Parrino, who has been an advocate for people with disabilities ever since her disabled son was born more than 20 years ago, remembers people talking about the need for such a law even back then. Parents became frustrated when they realized they had no recourse for discrimination against their children with disabilities, that there was nothing they could do when a restaurant would not allow the child to eat there because "it might disturb the other patrons." Politicians were approached, Parrino said, but nobody was willing to take on the difficult task of proposing such a major piece of legislation. Later, when the Rehabilitation Act of 1973 was passed, the impetus for a larger, more comprehensive bill waned. It did not take long, though, for people with disabilities to realize that the Rehabilitation Act alone was not going to afford them protections in the private sector.

A 1986 poll entitled "Bringing Disabled Americans into the Mainstream," supported the argument that a comprehensive anti-discrimination bill was needed. Conducted by Louis Harris and Associates, the poll showed that people with disabilities encountered discrimination as part of their everyday lives. Respondents identified a variety of discriminations they had experienced, including workplace discrimination, denials of life and health insurance, denials of educational opportunities, lack of access to public buildings and public bathrooms, the absence of accessible transportation and various forms of social rejection.

But even with such statistical backing, there still were those who felt that a comprehensive anti-discrimination bill would be too big a step to take. "Some people told us the timing was wrong," Parrino said, "but we went ahead anyway. The measure, drafted with the help of Weicker's staff, was included in the National Council's follow-up report to Congress, "On the Threshold of Independence." The report, by way of introduction, noted that while "there have been some significant, albeit limited, legislative advances achieving some of the council's equal opportunity proposals ... the major efforts, especially regarding the enactment of a comprehensive equal opportunity statute, have only recently begun to gain momentum."

Task Force Gathering Evidence

At about the same time the ADA was introduced, in April, Rep. Major Owens (D-N.Y.) created a task force charged with investigating the scope of

discrimination against people with disabilities. Justin Dart, former commissioner of the Rehabilitation Services Administration, was appointed chairman of the Task Force on the Rights and Empowerment of Americans with Disabilities. Owens also appointed other leaders in the disability movement to serve on the panel, including Elizabeth Boggs, founder of the Association for Retarded Citizens; Paul Marchand, chair of the Consortium for Citizens with Developmental Disabilities; and I. King Jordan, the new president of Gallaudet University.

Dart and his task force began traveling around the country, gathering evidence of discrimination. By the end of September, more than 5,500 people with disabilities, families, advocates and service providers attending forums in 44 states had presented evidence that millions of Americans with disabilities are still subjected to discrimination in all significant aspects of life. In addition to collecting testimony, Dart also gave out instructions for writing letters describing such discrimination, as well as petitions to be passed around. The thousands of documents submitted by citizens and organizations are in the process of being analyzed, and the results will be compiled into a report that will be submitted to Congress in 1989 as proof that passage of the ADA is essential.

Meanwhile, the National Council on the Handicapped is beginning its own series of seminars designed to inform the public about the Americans with Disabilities Act. Although the council, under mandate, cannot officially "lobby" for the bill, Parrino envisions an intensive educational campaign. The council also will meet with groups that may oppose provisions of the bill, such as the Chamber of Commerce and the Jaycees, to explain the intent of the legislation. Beyond that, notes Parrino, there is little the council can do.

"We believe this should get down to the grass roots level," she said. "Then it's up to the states."

What Would the Act Do?

- The act would prohibit discrimination on the basis of handicap in areas such as employment, housing, public accommodations, travel, communications and activities of state and local governments.

- The act would cover employers engaged in commerce who have 15 or more employees; housing providers covered by federal fair housing laws; public accommodations; transportation companies; those engaged in broadcasting or communications; and state and local governments.

- The act would specifically define discrimination, including various types of intentional and unintentional exclusion; segregation; inferior or less effective services, benefits or activities; architectural, transportation and communication barriers; failing to make reasonable accommodations; and discriminatory qualifications and performance standards.

- The act would specify those actions that do not constitute discrimination. They include unequal treatment wholly unrelated to a disability or that which is that result of legitimate application of qualifications and performance standards necessary and substantially related to the ability to perform or participate in the essential components of a job or activity.

- The Architectural and Transportation Barriers Compliance Board will issue minimum accessibility guidelines. Other regulations would be issued by the Attorney General, the U.S. Equal Employment Opportunity Commission, the Secretary of Housing and Urban Development, the Secretary of Transportation, the Federal Communications Commission and the Secretary of Commerce.

- The act would not repeal Sections 503 and 504 of the Rehabilitation Act of 1973 and all regulations issued under those sections would remain in full force and effect.

- Enforcement procedures would include administrative remedies, a private right of action in federal court, monetary damages, injunctive relief, attorney's fees and cutoffs of federal funds.

Section-by-Section Summary

Section 1 -- Short Title

Provides that the law may be cited as the Americans with Disabilities Act of 1988.

Section 2 -- Findings and Purposes

Subsection (a) presents congressional findings about people with disabilities, their disadvantaged status in our society, the seriousness of discrimination against them, and the costliness of such discrimination to our country.

Subsection (b) provides a statement of the overall purposes of the act centering on the establishment of a clear and comprehensive national mandate for the elimination of discrimination against persons with disabilities.

Section 3 -- Definitions

Provides definitions of key terms used in the act, including "on the basis of handicap," "physical or mental impairment," and "reasonable accommodation." The former are defined consistently with their definition in existing regulations under Section 504 of the Rehabilitation Act of 1973. The definition of "reasonable accommodation" is drawn from Accommodating the Spectrum of Individual Abilities, a report issued by the U.S. Commission on Civil Rights.

Section 4 -- Scope of Discrimination Prohibited

Tells what persons and agencies are prohibited from discriminating against persons with disabilities. Provides broad scope of coverage in line with other types of civil rights laws. Includes, among others, the federal government, federal grant recipients, federal contractors and licensees, employers engaged in interstate commerce having 15 or more employees, housing providers covered by federal fair housing laws, public accommodations, interstate transportation companies and state and local governments.

Section 5 -- Forms of Discrimination Prohibited

Subsection (a) tells what actions constitute discrimination prohibited by the law. These include various types of intentional and unintentional exclusion; segregation; inferior or less effective services, benefits or activities; architectural, transportation and communication barriers; failing

to make reasonable accommodations; and discriminatory qualifications and performance standards.

Subsection (b) specifies that certain actions do not constitute discrimination. These include unequal treatment that is wholly unrelated to a person's disability or is the result of the legitimate applications of qualifications and performance standards that are necessary and related to the ability to perform or participate in the essential components of the job or activity involved. Also explicitly defined as not discriminatory are special programs designed for persons with particular physical or mental impairments or classes of impairments.

Section 6 -- Discrimination in Housing

This section provides standards regarding the application of non-discrimination requirements in housing. The standards are drawn from the current version of the disability portions of the Federal Fair Housing Amendments bill [passed by Congress in 1988]. Their primary focus is upon accessibility in future design and construction of housing.

Section 7 -- Limitations on the Duties of Accommodation and Barrier Removal

Subsection (a) provides that barrier removal or reasonable accommodations are not required to be made if to do so would fundamentally alter or threaten the existence of the program, business, activity or facility in question.

Subsection (b) permits a reasonable period of time, not to exceed two years, for making substantial modifications to existing buildings and facilities in order to remove barriers. This period may be extended up to five years through regulations governing particular classes of buildings and facilities.

Subsection (c) provides that regulations may permit a reasonable period of time, not to exceed 10 years, for making substantial modifications to existing platforms and stations of mass transportation systems.

Section 8 -- Regulations

Subsection (a) calls for the Architectural and Transportation Barriers Compliance Board to issue minimum guidelines for accessibility of buildings, facilities, vehicles and rolling stock. Other parts of the section call for federal agencies to issue regulations for implementing and enforcing the requirements of the act, including the following:

- Employment -- Equal Employment Opportunity Commission
- Housing -- Secretary of Housing and Urban Development
- Transportation -- Secretary of Transportation
- Public accommodations -- Secretary of Commerce
- Federal contractors and subcontractors -- Secretary of Labor
- State and local governments and coordination -- Attorney General
- Recipients of federal financial assistance -- The agency that provides the federal assistance

Subsection (i) provides that regulations issued under Section 504 of the Rehabilitation Act of 1973 shall remain in effect unless and until superseded by regulations under this act.

Subsection (j) provides that regulations under this act cannot provide less protection to persons with physical or mental impairments, perceived impairments, or records of impairment than now exists under existing Section 504 regulations.

Section 9 -- Enforcement

Establishes enforcement procedures for the requirements of the act. These include administrative remedies, a private right of action, monetary damages, injunctive relief, attorney's fees and cutoffs of federal funding.

Section 10 -- Effective Date

Provides that the act shall take effect on the date of its enactment.

(From the National Council on the Handicapped's
"On the Threshold of Independence," January 1988)

Present Protections -- Where Do They Fall Short?

In some ways, people with disabilities have come a long way in the past two decades. Slowly, the public has become more aware of the difficulties associated with blindness, or with using a wheelchair or with having mental retardation. Gradually, states have begun to pass laws and regulations addressing these difficulties. The federal government also has taken some action, but most would characterize it as sporadic and piecemeal. In 1973, for example, Congress passed the Rehabilitation Act, which for the first time took federal action on the issue of discrimination against people with disabilities. Section 504 of that act, however, applies only to the federal government and recipients of federal financial assistance. It does not bar discrimination against the handicapped by the private sector -- those who do not get any federal funding. Though Section 504 was and is considered a major statute for people with disabilities, it only addressed one small part of the problem.

Since 1973, little had been done by the federal government to prevent civil rights violations against the handicapped. In the last couple of years, however, momentum seemed to be picking up, peaking in 1988 with the protests at Gallaudet University. On the heels of that protest, which gained national attention, Congress passed the Civil Rights Restoration Act, restoring the broad scope of coverage for civil rights statutes governing recipients of federal aid, and the Fair Housing Amendments, prohibiting discrimination in housing against people with disabilities. Still, many areas are left open to discrimination -- employment in the private sector, private transportation, businesses. It is these loopholes that have served as the greatest impetus for Congress to pass the Americans with Disabilities Act. The bill would, for the first time, bring together the various statutes and bills and then add coverage in areas that until now have been neglected.

On the following pages, three of the most significant bills affecting people with disabilities are discussed: the Rehabilitation Act, the Civil Rights Restoration Act and the Fair Housing Amendments. Though they are important, it becomes clear that these measures only partially address the civil rights violations encountered by the disabled.

The Rehabilitation Act of 1973

Section 501

Section 501 of the Rehabilitation Act requires that federal agencies take affirmative action to hire, place and advance people with disabilities in employment. The Equal Employment Opportunity Commission (EEOC) coordinates compliance with Section 501. The EEOC also has the role of promoting employment of disabled persons in the federal government, reviewing and approving federal agency affirmative action plans for the handicapped, reporting to the president and the Congress on progress and making recommendations. In the fall of 1987, EEOC issued a directive to all federal agencies to prepare and submit their affirmative action plans for the disabled. The EEOC directive also encouraged establishment of agency committees to assist in affirmative action plan development and to promote employment of disabled persons within each agency.

Section 502

Section 502 of the Rehabilitation Act focuses on accessibility in federally constructed, operated and leased buildings. In addition, this section also addresses broader issues of communication access, transportation access and housing access for people with disabilities. Section 502 established the Architectural and Transportation Barriers Compliance Board (ATBCB). The board enforces the Architectural Accessibility Act of 1968, conducts studies and makes recommendations regarding architectural, communication, transportation and housing access for disabled persons and promotes the development of standards and guidelines for accessibility.

Section 503

Section 503 requires that federal contractors take affirmative action to hire, place and advance people with disabilities in employment; it applies to federal contracts in excess of $2,500. Moreover, Section 503 stipulates that affected employers must make the workplace accessible, must submit an accessibility plan to the federal government for approval and that, for "otherwise qualified handicapped" workers, they must provide "reasonable accommodation" so that the person can perform his job duties. Under Section 503, however, the president can waive the requirements when he determines that special circumstances in the national interest so require, and when he states in writing his reasons for such a determination.

Section 504

Section 504 protects disabled citizens from discrimination in programs that receive federal financial assistance and by federal agencies. Protections under 504 come into play only when federal dollars are received or used by the program or agency in which discrimination is alleged to have occurred. Further, to be eligible for Section 504 protections, an individual must be both "handicapped" in the meaning of Section 504 and "otherwise qualified" to be employed by or receive services from the affected program. Section 504 regulations promulgated by each federal agency set forth the types of discriminatory actions that are prohibited under this section. They also outline the types of measures that agencies must take to ensure that their programs are accessible to and usable by all people with disabilities.

Civil Rights Restoration Act

The Civil Rights Restoration Act became law March 23, 1988, when both the Senate and the House overrode President Reagan's veto of the measure, effectively restoring civil rights protections to several groups of people, including individuals with handicaps.

By passing the measure, Congress reinstated federal anti-discrimination laws that had been narrowed by a 1984 Supreme Court decision, *Grove City v. Bell*. In that decision, the high court ruled that federal discrimination laws apply only to those specific programs and activities that are recipients of federal financial assistance. Before the ruling, those laws applied to an entire institution even if only a single program within the institution received federal financial assistance.

The Grove City decison affected the four major civil rights laws: Title VI of the Civil Rights Act of 1964, which prohibits discrimination based on race, color or national origin; Section 504 of the Rehabilitation Act of 1973, prohibiting discrimination against people with disabilities; Title IX of the Education Amendments of 1972, prohibiting discrimination based on sex; and the Age Discrimination Act of 1975.

In the aftermath of the Supreme Court decision, numerous anti-discrimination cases were dropped by the Justice Department, including many based on Section 504. By passing the restoration act, supporters said, the "status quo" would be restored. Opponents characterized the measure as an intrusion of the federal government into the operations of colleges, churches and other institutions affected by the bill.

Lawmakers Break Deadlock

Since 1984, Congress had made several attempts to reverse the Grove City decision, arguing that the court had misread Congress's intentions, but the effort was hindered by arguments on abortion rights. This time, lawmakers broke the deadlock by attaching amendments to the measure declaring that neither the bill nor regulations to implement it will require hospitals or medical schools that receive federal funds to perform or pay for abortions.

The act also codified court rulings on the application of the Rehabilitation Act to persons with contagious diseases such as AIDS. It provides that

the anti-discrimination provisions relating to employment apply to those with a contagious disease. An employer, however, is free to refuse to hire or to fire any employee who poses a direct threat to the health or safety of others or who cannot perform the essential functions of the job if no reasonable accommodation can remove the safety threat. This provision also applies to alcoholics and drug addicts, who may be fired if they pose a direct threat to safety or cannot perform the essential functions of the job.

Fair Housing Amendments

The Fair Housing Act of 1968 prohibited discrimination in the sale or rental of housing on the basis of race, color, religion or national origin. In 1974, the law was amended to prohibit discrimination on the basis of sex. The law, however, was flawed in many ways from the very beginning. Not only did it not prohibit discrimination on the basis of disability, but it did not provide for an effective enforcement mechanism. Under the law, the only mechanism for enforcing the discrimination ban was to file a lawsuit, a costly legal procedure not available to many who encountered discrimination.

For decades, people with disabilities have been discriminated against in housing. Sometimes the discrimination is blatant, with exclusionary rules and practices keeping them out of certain buildings or homes. Other times, people with disabilities are excluded by the existence of barriers such as stairs, narrow doorways and inaccessible revolving doors. In a 1985 case, the Supreme Court noted that discrimination against people with disabilities is "most often the product, not of invidious animus, but rather of thoughtlessness and indifference -- of benign neglect" (*Alexander v. Choate*).

The Fair Housing Amendments of 1988 (Public Law 100-430) expand current law to prohibit discrimination in housing on the basis of handicaps. Specifically, the measure makes it unlawful to discriminate or otherwise make unavailable a dwelling because of a handicap of the buyer or renter, or someone associated with the buyer or renter. The bill also requires that certain multifamily construction meet minimal standards of accessibility effective 30 months after enactment. The requirements cover only multifamily housing with four or more units and only ground-level units in complexes that do not have elevators. The new standards include making hallways and doors wide enough and kitchens and bathrooms large enough to accommodate wheelchairs, providing reinforcements in bathroom walls to allow later installation of grab bars, and putting light switches at appropriate heights.

Reasonable Modification

P.L. 100-430 also makes it illegal to refuse to permit tenants with disabilities to make reasonable modification of existing premises, at their own expense, if the modification is necessary for those persons' full enjoyment of the premises. In addition, the law makes it illegal to refuse to make

reasonable accommodation in rules, policies, practices or services if necessary to permit a person with handicaps equal opportunity to use and enjoy a dwelling. The law excludes current illegal users and addicts of controlled substances from the definition of handicapped persons. It also specifies that nothing in the bill requires that a dwelling be made available to a person "whose tenancy would constitute a direct threat to the health and safety of other individuals."

The law also provides the Department of Housing and Urban Development (HUD) with authority, for the first time, to directly enforce the Fair Housing Act. HUD is required to conduct and complete an investigation of any complaint of discrimination within 100 days of the filing. During the period when the investigation is being conducted, HUD is also required to engage in conciliation with the two parties. If conciliation fails and HUD determines that there is "reasonable cause" that discrimination has occurred, the department must then file a charge against the party accused of discrimination. The case could be taken to an Administrative Law Judge, who could impose fines, or it could go directly to federal court.

Outlook

Though supporters seem confident that the Americans with Disabilities Act will become the law of the land next year, few people are willing to take anything for granted. Advocates are working furiously to shore up support for the legislation, and congressional staffers are already anticipating likely arguments against the bill. Congress may be out of session until January, but movement on the ADA has by no means stalled.

The ADA, as introduced, almost certainly will undergo some major changes before gaining congressional approval. One contentious issue will be whether or not to include people with AIDS or HIV infection as a group protected by the bill. As it's written currently, the measure does not specifically mention people with AIDS. It does, however, define physical impairment as involving impairment of any one of a number of systems of the body, including the hemic and lymphatic systems. It is generally understood that the National Council on the Handicapped did intend for people with AIDS to be covered, but several members of Congress, such as ultra-conservative Jesse Helms of North Carolina, are expected to oppose this.

"We anticipate it and we are readying ourselves for it," said David Bodenstein, a representative of the National Association of People with AIDS and a member of the Task Force on the Rights and Empowerment of People with Disabilities. "We've spent a lot of time trying to get people with AIDS to testify on the instances of discrimination . . . and we will make a very cogent argument."

Though Bodenstein noted that while the bill may encounter obstacles in Congress, he admits that were it not for the issue of AIDS, "it would zip right through next year."

Other provisions of the bill identified by supporters as potential hotspots include the sections affecting businesses and transportation systems. In the past, business and transportation groups such as the U.S Chamber of Commerce have balked at costs associated with making buildings or transportation systems accessible. Proponents of the ADA often downplay the potential opposition, saying that the measure will actually cost little to implement, but business groups already have begun to disagree. No official cost estimates have yet been released.

"[The ADA] would have massive new requirements," a representative of the U.S. Chamber of Commerce said in early November. She said that while

the group had not completed a thorough study of the bill, it does plan to get involved when the measure is reintroduced in January. "We'll either fight it or recommend changes, depending on what kind of changes are made between now and then," she said.

A spokesman for the National Association of Manufacturers, based in Washington, D.C., spoke in much the same tone. She said that while it still is too early for the organization to take an official stand on the bill, it does intend to follow the bill's progress and make some recommendations in late 1988 or early 1989. "Essentially there is agreement that it's a good bill, but there will be a lot of changes made," she noted.

Already, the task force has begun meeting informally with individual businesses to get reactions to the ADA. As of yet, no formal conferences with the powerful lobbying groups have been scheduled, but such official pow-wows are expected in the first part of 1989. Some businesses may be surprised to find this bill's requirements are not much different than current requirements under other statutes. Businesses that receive any federal funding or have an association with the federal government already are required, in most instances, to make their buildings accessible and not to discriminate against people with disabilities. Other businesses, however -- those not already affected by Sections 503 and 504 -- may not already be covered and therefore may fight harder.

Even with anticipated opposition, though, the Americans with Disabilities Act will probably pass Congress in 1989. It may not happen until late in the year, say congressional observers, but the outlook is good.

"It's going to be a matter of timing," said Pat Laird, a congressional aide on the House Select Education Subcommittee, "but we think it's doable."

The Americans with Disabilities Act will be reintroduced in January, when the 101st Congress convenes. The measure introduced will either be identical to the one introduced in 1988, or it will be a similar measure that incorporates some changes already identified as necessary. The ADA then will be referred to the Senate Labor and Human Resources Committee and the House Education and Labor Committee, which will then refer them to the Senate Subcommittee on the Handicapped and the House Subcommittee on Select Education. The subcommittees will schedule hearings on the measure, probably in March, April and May. Both proponents and opponents will be given the opportunity to talk about the bill and offer suggestions for improvement. Later, the subcommittees will hold "mark-ups"

of the bill; that is, they will make needed changes before giving it their stamp of approval. The bill will then go to the respective committees in the House and the Senate, which may make more changes.

Finally, after all the meetings, hearings and mark-ups, the ADA will be sent to the House and Senate floors, where more debate and changes probably will ensue. Then, if and when the ADA gains approval from both houses of Congress, it will go through a conference session, where differences between the two versions of the bill will be hammered out. The House and Senate must again give their stamps of approval to the compromise before the bill can be sent to the president for his signature. Only then, after almost two years of work, will the ADA become law.

A Petition for Equal Rights

Whereas there are more than 36 million individuals in this nation whose basic life activities are limited in some significant way by physical disabilities, mental impairments and/or the effects of age,

Whereas millions of these potentially productive persons are forced by traditional discriminatory, paternalistic attitudes and systems to exist in situations of unjust, unwanted dependency, segregation, extreme deprivation and second class citizenship,

Whereas disability is a universally common characteristic of the human condition, and there is a substantial probability that most human beings will experience significant disability at some point in their lifetime,

Whereas people with disabilities have the same inalienable rights and responsibilities as other people,

Whereas the forced segregation and dependency of millions of individuals with disabilities in this country constitute a gross violation of their constitutional and basic human rights, a devastating waste of productive potential, a totally unnecessary and increasingly unaffordable drain on public and private budgets, and a significant failure of the great American promise of liberty and justice for all,

And whereas individuals with disabilities form the nation's largest severely disadvantaged minority not specifically covered by federal legislation guaranteeing comprehensive civil rights protection and equal opportunities to participate in society,

Therefore, be it resolved that the undersigned advocates for justice in each of the fifty states, the District of Columbia, the U.S. territories and the Native American nations urge Congress to immediately enact, and the President to sign, legislation, such as the Americans with Disabilities Act of 1988, which will effectively guarantee all persons with disabilities against discrimination on the basis of handicap.

**The above is a petition drafted by the Task Force on the Rights and Empowerment of People with Disabilities. The task force is circulating the petition to gather as many signatures as possible. For information on circulating the petition, contact the task force.*

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- Senate Labor Subcommittee on the Handicapped, Hart Senate Office Bldg., Rm. 113, Washington, D.C. 20510. Phone: (202) 224-6265.

- Sen. Tom Harkin, Hart Senate Office Bldg., Rm. 317, Washington, D.C. 20510; Phone: (202) 224-3254.

- Sen. Edward Kennedy, Russell Senate Office Bldg., Rm. 113, Washington, D.C. 20510; Phone: (202) 224-4543.

- Rep. Major Owens, Cannon House Office Bldg., Rm. 114, Washington, D.C. 20515; Phone: (202) 225-6231.

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NOD
NATIONAL ORGANIZATION ON DISABILITY

Report

FALL 1992

INSIDE

EXPAND THE PARTICIPATION OF DISABLED CITIZENS AND ALL OF AMERICA GAINS. ISN'T IT TIME TO GET INVOLVED?

DISABILITY POLICY: IF I AM ELECTED PRESIDENT OF THE UNITED STATES

Governor Bill Clinton, Democrat

Bill Clinton and Al Gore have long recognized that people with disabilities are among the nation's greatest untapped resources. They believe that all persons with disabilities must be fully integrated into mainstream American society, so they can live fulfilling and rewarding lives. During their years in public office, they have compiled strong records of supporting public and private initiatives to enhance the independence and productivity of persons with disabilities.

As President and Vice President, they will continue their efforts. A Clinton/Gore Administration will actively involve people with disabilities in developing a national policy that promotes equality, opportunity and community for all Americans. Bill Clinton and Al Gore will ensure that children with disabilities receive a first-rate education that suits their needs. People with disabilities will be able to live in their own homes, in their own communities. Adults with disabilities will work alongside their peers without disabilities. And people with disabilities will have access to comprehensive health care and consumer-driven personal assistance services.

■ *Continued on page 3*

President George Bush, Republican

Disabled Americans must become full participants in American society. I will do everything I can as President to see that people with disabilities are no longer excluded from opportunities others take for granted.

One of the proudest days in my presidency was when I signed the Americans with Disabilities Act on July 26, 1990, and said, "Let the shameful walls of exclusion come down." I was a strong supporter of such legislation during the 1988 campaign. When I became president, I worked hard to see that such a proposal became a reality.

Enactment of the ADA means that no longer will our disabled citizens face discrimination when seeking jobs, using public transportation facilities, or seeking employment. The ADA also ensures that citizens with hearing or speech impairments will have telecommunications services suited to their needs.

I am fully committed to enforcing this historic law. I recognize that the promise of the ADA must be upheld so that people with disabilities are integrated into the productive mainstream. Their contributions will create millions of new jobs and customers, more profits for business, an increased tax base, and

■ *Continued on page 3*

Americans with Disabilities Act: *Why?... & What Now?*

Six Briefings Help Business

by Carolyn D. Gray
Epstein Becker & Green, P.C., Washington, D.C.

What were the reasons for the passage of the most sweeping civil rights legislation since 1964 - the newly effective Americans with Disabilities Act (ADA)? How should my business prepare to implement its mandates? Can we cut to the quick and discuss the practical application of seemingly vague definitions?

To help business owners and managers understand the available options in complying with the ADA and how to make their business accessible to new customers, clients and employees with disabilities, the Disability 2000 - CEO Council of the National Organization on Disability sponsored six national ADA briefings with CIGNA Special Benefits Companies and the national law firm of Epstein Becker & Green, P.C. The briefings held in Atlanta, New York, Los Angeles, Dallas, Chicago and Washington, D.C., discussed ADA's history, the demographic changes of the workforce projected through the 1990's and the resulting workforce diversity as companion ideas to understanding ADA's obligations.

These interactive briefings produced a feeling of "I understand" and "We can do." While the positive and not so positive attitudes underlying the participants' assumptions were power-

Continued on page 4

THE ADA: UPS SAYS FOCUS ON ABILITY

Here, in just 47 words, is how the Chief Executive Officer of UPS (United Parcel Service), Kent Nelson, recently defined the Americans with Disabilities Act:

"In effect, the ADA is mandating something that we in society - and especially in business - should have done in the first place, and that is to provide opportunity to people on the basis of what they can do, rather than deny it based upon what they cannot do."

Nelson is a member of N.O.D.'s CEO Council.

N.O.D. INDIVIDUAL, CORPORATE AND FOUNDATION CONTRIBUTORS— 1992 ($5,000 AND ABOVE)

The National Organization on Disability is grateful to the many supporters who make our work possible. We acknowledge below those individuals, corporations and foundations who so generously contributed at the level of $5,000 and above during the past year.*

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* September 1991—September 1992
** $25,000 and above

SEND A MESSAGE TO AMERICA

The first prestamped envelope ever to honor 43 million Americans with disabilities was issued in Washington on July 22, 1992, commemorating the second anniversary of the Americans with Disabilities Act.

The new envelope was conceived by the National Organization on Disability and created by the U.S. Postal Service.

The message on the envelope, "Count Us In!," reflects the objective of N.O.D.'s "Calling on America" campaign for the full participation and acceptance of people with disabilities in all aspects of American life. The campaign is led by Jim Brady, N.O.D. Vice Chairman.

The new envelopes can be ordered personalized with name and return address of organization or individual printed on them. Or they can be ordered without personalization. The envelopes come in #10 business size and #6-3/4 stationery size.

Both personalized and plain envelopes can be requested and ordered at post offices. Just ask for the order form for the Americans with Disabilities envelope.

If you wish to order *Personalized Envelopes only*, you do not have to go to the post office. **Just complete the Order Form shown here and mail it, with your check, to: Stamped Envelope Agency, U.S. Postal Service, P.O. Box 500, Williamsburg, PA 16693-0500.** Make your check or money order payable to Stamped Envelope Agency. Visa or MasterCard also may be used as shown on the Order Form. You can send this whole page to the Stamped Envelope Agency or clip out the Order Form only and mail it. Personalized, prestamped envelopes will be delivered to your door. Wonderful gift items. The cost of the twenty-nine cent pre-stamped stamp is included in the total price per box.

We encourage N.O.D.'s Community Partners to go to their local post offices and urge post offices to order the Americans with Disabilities envelope Order Forms. The Postal Service has advised post offices that they must request Order Forms but not all local post offices have done so, according to USPS. ■

Order Form

Americans with Disabilities Personalized, Stamped Envelope

STYLE	BOX QTY.	PRICE PER BOX	ITEM NO.	NO. BOXES	COST
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6 3/4	50	17.20	2679		
6 3/4	500	158.00	2678		
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Signature _____

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City _____

State _____ ZIP _____

Brady Calls on America's Communities To Carry Out Seven-Point Program

Jim Brady, Vice Chairman of the National Organization on Disability, challenged the mayors and leaders of small towns across America to carry out a seven-point program to bring about full participation of people with disabilities in all aspects of community life.

Speaking on September 9, 1992 before more than 900 members of the National Association of Towns and Townships, meeting in Washington, D.C., Brady said, "I have great admiration for you leaders of America's 30,000 towns, townships and small communities. I'm a small town boy myself."

Brady is leading a national "Calling on America" campaign in which he urges all Americans, disabled and non-disabled alike, to release the "tremendous human potential of Americans with disabilities." He is calling on towns, cities and counties to make a commitment and carry out local actions they consider important.

As part of his "Calling on America" campaign, Brady outlined a seven-point program for mayors and local leaders:

1. Hire people with disabilities and urge local organizations and businesses to do so.
2. Open educational opportunities for young people and adults with disabilities.
3. Help ensure people with disabilities are included and welcomed in the congregations of local churches and synagogues.
4. Make public and private buildings and facilities accessible so that people with disabilities can work, go to school, shop, vote, utilize professional services and take part in recreational, social and cultural activities.
5. Ensure that public transportation and housing are accessible.
6. Increase acceptance and improve attitudes toward people with disabilities by fighting prejudice and discriminatory practices.
7. Meet the spirit of the Americans with Disabilities Act (ADA) in your community by going beyond its legal requirements. Involve people with disabilities fully in the process.

The ADA requires communities to develop plans to assure that all people with disabilities have equal opportunity and access. It prohibits discrimination on the basis of disability in employment, in transportation, in services provided by state and local governments and in telecommunications.

Lothar "Butch" Wolter of Young America township, Minnesota, president of NAT&T was surprised by Brady who called him to the microphone and said, "Don't you all agree that a community named 'Young America Township' in Minnesota ought to be a leader in my 'Calling on America' campaign?" Smiling broadly, Wolter signed up his community as an N.O.D. Community Partner to the delight of the audience.

N.O.D.'s Community Partnership Program is a ten year old network of nearly 3000 communities across America which commit themselves to full participation of people with disabilities. They do just what the ADA requires They begin by forming a local action committee with strong representation from people with disabilities.

Jim Brady and Lothar "Butch" Wolter, Jr., president, National Association of Towns and Townships. Wolter, from Young America township, MN signs up to join the N.O.D. Community Partnership Program.

Following their organization, they set their own priorities based on needs they see in the community. Being part of the N.O.D. Community Partnership network, they are backed by the resources of N.O.D. and have access to information about what is being done in communities all across the nation.

An annual $25,000 awards competition funded by Westinghouse Electric Corporation is sponsored by N.O.D. to recognize communities for their disability programs. The top prize awarded to the first place community is $10,000.

Brady, speaking with reporters following his address to NAT&T, said, "You know, it's a funny thing about disability. Most of us think of it as something that happens to someone else - not to us. The truth is that disability knows no distinctions. It is completely non-partisan and bi-partisan. Just as quickly as it happened to me, it can happen to you or someone you love."

In response to a question about why small communities are important to his efforts on behalf of people with disabilities, Brady replied, "You hear a lot about what goes on in our major cities and what people in Washington are trying to do. But I think we all know, when it comes right down to it, the real action - the kind that lasts - is done by the folks on the front line - the people who live in America's towns and townships where just about every positive effort has positive results." ■

Editor's Note: *For information on how your town, city or county can join N.O.D.'s Community Partnership Program and Jim's campaign write to: National Organization on Disability, CPP, 910 16th Street, NW, Suite 600, Washington, DC 20006.*

Clinton

Continued from page 1

We must not rest until America has a national disability policy based on three simple creeds: inclusion, not exclusion; independence, not dependence; and empowerment, not paternalism.

THE CLINTON/GORE PLAN
- ✓ Americans with Disabilities Act
- ✓ Health Care for all Americans
- ✓ Improve educational opportunities for children with disabilities
- ✓ Expand employment opportunities for Americans with disabilities. ■

This statement was provided to REPORT by Clinton Campaign Headquarters.

Bush

Continued from page 1

reduced welfare costs. By working to uphold not only the letter but also the spirit of this law, my Administration will help persons with disabiltiies lead fuller, independent, and more productive lives. ■

This statement was provided to REPORT by Bush Campaign Headquarters.

ON THE RECORD

In August 1988, when then Vice President Bush accepted his party's presidential nomination, he pledged to "do whatever it takes to make sure" that people with disabilities are "included in the mainstream," because "they have been left out for too long." Following Bush's pledge, people with disabilities shifted their vote to him and thereby increased his margin of victory over Michael Dukakis in November 1988, according to a nationwide Harris Poll commissioned by N.O.D.

Disability Sensitivity Training At Gannett Broadcasting

N.O.D.'s Disability-2000 CEO Council consists of Chief Executive Officers of business organizations supporting the goal of expanded employment of people with disabilities by the year 2000. Council membership is now 318 CEO's and rising.

Council member Cecil Walker, CEO of Gannett Broadcasting, says "the biggest challenge we face in the era of the Americans with Disabilities Act is not compliance with the law's accessibility provisions, but overcoming attitudinal barriers."

Gannett is meeting this challenge in several ways. Diversity Committees were formed at each Gannett TV and radio station to foster an environment where all employees contribute to their greatest potential. Steps have been taken to ensure that local broadcasting reflects the diversity of the people the station serves. And disability sensitivity training seminars have been started. The Council has furnished Gannett with training materials, including a guide on disability-sensitive language. ■

DATEABLE: *Another Kind of Access*

by Todd Mullins

In 1990, a landmark piece of legislation became law. That legislation was the Americans with Disabilities Act (ADA). Although the ADA will go a long way in removing the physical barriers present in today's society, it will not necessarily change the attitudinal barriers faced by people with disabilities. Invisible barriers such as stereotyping, fear, prejudice, and just plain ignorance are things no Federal law can erase.

In 1987, an organization was formed to confront these invisible barriers and help overcome them. Dateable is a non-profit organization dedicated to helping people with disabilities live better lives. Serving the Washington metropolitan area since its conception five years ago and consisting of 200 active members, Dateable works primarily to better its members' social lives and improve their skills in this crucial area.

Working as a personalized matching service for single adults with and without disabilities, Dateable uses a unique matching process which gives each individual member one on one time with the staff. This process has resulted in five marriages and two current engagements, including the marriage of its Director, Robert Watson. Robert was married in April of this year to another Dateable member, Lynn Robertshaw, whom he met four years ago through this unique personalized matching process.

As Robert says again and again, "what good are ramps and elevators if the people they were meant for are too timid or afraid to use them." Dateable is here to empower its membership. Through support groups, self-help and self defense seminars, numerous parties and other special events such as beach trips and a monthly brunch club, Dateable is working to assist its members in becoming more independent and assertive. "We want each member to be able to do whatever they want, no matter what physical or social barriers exist for them," says Robert.

Dateable is planning to expand, opening chapters around the nation. A package is currently being assembled to instruct people on how to form these chapters. Its completion date is tentatively set for next Spring. People interested in knowing more about Dateable or its expansion plans can contact Dateable at Suite 205, Wisconsin Circle, Chevy Chase, MD 20815 or call 301-657-DATE (3283). ■

—Todd Mullins is national director of Dateable.

That All May Worship

Dear Friends at N.O.D.,

The response to N.O.D.'s interfaith publication, *That All May Worship,* has been overwhelmingly positive. The first 7,000 copies have already been distributed and a second printing of 15,000 copies has been completed.

We are so pleased by the response and the favorable attention to the publication in newspapers and magazines.

How grateful we are to the Scaife Family Foundation for funding this project!

Among the secular and religious leaders praising the handbook's common-sense advice and dramatic photographs are:

The Reverend Dr. Joan B. Campbell, General Secretary of the National Council of Churches; Rabbi Henry D. Michelman, Executive Vice President, Synagogue Council of America; Senator Bob Dole and Representative Steny Hoyer; the Reverend H. Michael Lemmons, Executive Director, Congress of National Black Churches; Cardinals O'Connor and Bevilacqua of New York and Philadelphia.

If you are interested in makin your church or synagogue mor welcoming to people with disabilities, please order *That All May Worship* from N.O.D. You'll not be sorry.

Sincerely,

Ginny Thornburgh

Ginny Thornburgh, Director
Religion and Disability Program

Disability Act

■ *Continued from page 2*

ful, their common commitment to individual rights and increasing their companies' productivity provided the basis for the speakers to develop the theme of profitable accessibility procedures.

What emerged from these sessions was a consensus from the participants that once exposed to reasonable explanations of the definitions, reasonable efforts by business people would minimize or eliminate much of the perceived threat of litigation.

For example: While the act does not define "reasonable accommodation," it does provide a broad, exemplary list which includes: part-time or modified work schedules, job reconstruction, acquisition or modification of equipment or devices, reassignment to a vacant position, the provision of qualified readers or interpreters and training materials.

For further information about those briefings, and the opportunity to purchase the ADA handbook *What You Absolutely Must Know About the ADA,* please contact CEO Council, (202) 293-1944. ■

At U.S. Department of Justice, dedicating the new Americans with Disabilities stamped envelope. From left, John W. Patten, publisher, BusinessWeek, Evan Kemp, Chairman, EEOC, Alan Reich, president, N.O.D., John R. Dunne, U.S. Assistant Attorney General, Civil Rights, Helen M. Bainsford, postmaster, Washington, D.C., Joseph J. Mahon, senior assistant postmaster general, Mary Jane Owen, executive director, National Catholic Office for Persons with Disabilities.

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Please check the mailing label on this issue of Report. If you are a Community Partnership Representative, the date tells you when your appointment expires. If you are past due for reappointment, please contact your mayor or chief elected county official and have him or her write a letter to N.O.D. confirming your appointment.

REPORT is a publication of the National Organization on Disability, a private, non-profit organization supported wholly by contributions and grants from the private sector. Tax-deductible contributions to N.O.D. are welcomed. Recorded copies of REPORT can be obtained upon request and materials may be reprinted without permission. Please credit the National Organization on Disability.

Mo West
Office of Senator Bob Dole
United States Congress
U.S. Capitol - S-230
Washington, DC 20510

17623

Volume 1, Number 17 September 30, 1992

NARF Rehabilitation Report

Newsletter of the National Association of Rehabilitation Facilities

Newsline

Industry Group Plans Electronic Claims System

The Workgroup for Electronic Data Interchange (WEDI) hopes to eliminate paper and postage from the Medicare claims system by 1997. **Page 4.**

GAO Testifies on Managed Care Before House Subcommittee

The General Accounting Office (GAO) reports that managed care can ease the financial strain on the Medicaid program, and also improve the ability of Medicaid recipients to gain access to care. **Page 5.**

Revisions Sought for Waiver Programs

NARF is working with several U.S. Senate offices to advance amendments that would remove restrictions under the Medicaid home and community-based waiver (HCB). **Page 6.**

Senate Passes Housing Bill

The U.S. Senate passed S. 3031, the National Affordable Housing Act Amendments of 1992, on September 10. **Page 7.**

NARF Plans State Use Conference for January

NARF will present "Strategies for Success: Effective Planning and Quality Assurance" as part of its Winter Training Conference in January 1993. **Page 8.**

New York Court Sets Precedent

A New York court has ruled that people with disabilities have a right to receive vocational services which allow them to "reach the highest achievable goal." **Page 8.**

Candidates Eye Voters with Disabilities

In the interest of stressing rehabilitation and disability concerns as issues for voters in November, the *NARF Rehabilitation Report* presents relevant portions of the Democratic and Republican Presidential platforms:

Clinton-Gore Position

"(We will) work to ensure that the Americans with Disabilities Act is fully implemented and aggressively enforced—to empower people with disabilities to make their own choices and to create a framework for independence and self-determination.

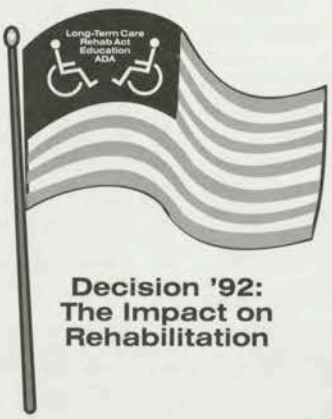
"(We will) provide all Americans with affordable, quality health coverage, either through their workplaces or through a government program, prohibit insurance companies from denying coverage based on pre-existing conditions, and contain costs by taking on the health care industries.

"(We will) expand long-term care choices for Americans with disabilities.

"(We will) work to ensure that children with disabilities receive a first-rate education, tailored to their unique needs but provided alongside their classmates without disabilities.

"(We will) support increased funding for special education services and work to improve the enforcement of laws that guarantee children with disabilities the right to a high quality public education.

"(We will) support increased efforts to integrate children with disabilities into their schools' regular activities, instead of sectioning them off in special programs where they cannot socially integrate with other students."



Decision '92: The Impact on Rehabilitation

Bush-Quayle Position

"President Bush signed into law the greatest advance ever for disabled persons—the American with Disabilities Act, a milestone in removing barriers to full participation in our country's life. We will fully implement it, with sensitivity to the needs of small businesses, just as we have earlier legal protections for the disabled in Federal programs. We oppose the nonconsensual withholding of health care or treatment from any person because of handicap, age or infirmity, just as we oppose euthanasia and assisted suicide.

"We support full access to the polls, and the entire political process, by disabled voters. We will ensure that students with disabilities benefit from *America 2000*'s new emphasis on testing for excellence and accountability for results.

"Promoting the rights of the disabled requires, before all else, an expanding economy, both to advance assistive technology and to create opportunities for personal advancement. That is another reason why Republicans are committed to growth."

Rehabilitation Calendar

American Board of Vocational Experts
Fall Conference
October 9-10, 1992
Bally's Casino Hotel, Las Vegas, Nevada
Contact: Marilyn Greeve, ABVE, 3500 SW Sixth Ave., Suite 100, Topeka, KS 66606-2806. (913) 232-9937

Spaulding Rehabilitation Hospital
The Use of Narcotics in the Management of Chronic Pain
October 10, 1992
Boston, Massachusetts
Contact: Katherine Smith, (617) 720-6826.

Int'l Association of Industrial Accident Boards & Commissions
78th Annual Convention
October 10-14, 1992
Statehouse Convention Center, Little Rock, Arkansas
Contact: George Harris, c/o Arkansas Workers' Comp Commission, P.O. Box 950, Little Rock, AR 72203-0950.

I-NABIR
Fall Training Conference
October 11-13, 1992
Tampa, Florida
Contact: I-NABIR, P.O. Box 15242, Washington, DC 20003.

ICAN/Illinois Association of Rehabilitation Facilities
17th Annual Conference & Exhibition
October 14-16, 1992
Ramada Renaissance Hotel, Springfield, Illinois
Contact: Janet Stover, (217) 753-1190.

British Columbia Head Injury Association
Pacific Coast Brain Injury Conference
October 15-17, 1992
Sheraton Landmark Hotel, Vancouver, British Columbia
Contact: Classic Consulting Int'l., 2249 LeClair Dr., Coquitlam, B.C., V3K 6P6. (604) 931-7600.

Continuing Medical Education
Lumbar Spine and Back Ache
October 16-17, 1992
Holiday Inn-East Towne, Madison, Wisconsin
Contact: Sarah Aslakson, CME, 2715 Marshall Ct., Madison, WI 53705. (608) 263-2856.

Moss Rehabilitation Hospital
Innovative Concepts in Neurological Rehabilitation
October 16-18, 1992
Philadelphia, Pennsylvania
Contact: Susan Tomlinson, (215) 456-9130.

National Association of Rehabilitation Facilities
Marketing to Insurance Carriers
October 21-22, 1992
Pittsburgh, Pennsylvania
Contact: NARF, P.O. Box 17675, Washington, DC 20041. (703) 648-9300.

Marketing to Insurance Carriers
October 21-22, 1992
Pittsburgh, Pennsylvania
Contact Donna Canterna at NARF, (800) 368-3513.

National Association of Rehabilitation Facilities
Internal Case Management
October 23, 1992
Pittsburgh, Pennsylvania
Contact: NARF, P.O. Box 17675, Washington, DC 20041. (703) 648-9300.

Internal Case Management
October 23, 1992
Pittsburgh, Pennsylvania
Contact Donna Canterna at NARF, (800) 368-3513.

Massachusetts Association of Rehabilitation Facilities
A Consumer Driven Network of Services
October 22, 1992
The Natick Inn, Natick, Massachusetts
Contact: Joan Newton, (617) 891-7327.

SUNY at Buffalo/NIDRR
State of the States in Head Injury
October 23-24, 1992
Adam's Mark, Kansas City, Missouri
Contact: Susan Vaughan, (314) 751-9003.

JFK Johnson Rehabilitation Institute
Hand Therapy Techniques for the General Practitioner
October 24-25, 1992
Edison, New Jersey
Contact: Kathy Gorman, (908) 632-1570.

Volume 1, Number 17 September 30, 1992

NARF Rehabilitation Report

Newsletter of the National Association of Rehabilitation Facilities

NARF Rehabilitation Report is published twice monthly by the National Association of Rehabilitation Facilities, P.O. Box 17675, Washington, D.C. 20041-0675. Calendar listings and employment exchange items may be mailed to that address, or FAXed to (703) 648-0346. Information on NARF membership and activities can be obtained by calling (703) 648-9300 or (800) 368-3513.

President: James S. Liljestrand, M.D.
Executive Director: Robert E. Brabham, Ph.D

Director of Publications: Mark W. Doyon

Postmaster: Please send address changes to NARF, P.O. Box 17675, Washington, D.C. 20041.

Washington Business Group on Health
6th Annual National Disability Management Conference & Exhibit
October 26-27, 1992
Crystal Gateway Marriott, Arlington, Virginia
Contact: WBGH, 777 N. Capitol St., NE, Suite 800, Washington, DC 20002. (202) 408-9320.

American Association of Homes for the Aging
31st Annual Meeting & Exposition
October 26-29, 1992
Boston, Massachusetts
Contact: AAHA, 901 E St., Suite 500, Washington, DC 20004-2037. (202) 783-2242.

Courage Center
Beyong the ADA: Disability Awareness for Employees
October 27, 1992
Minneapolis, Minnesota
Contact: Ann Roscoe, (612) 520-0210.

Florida Association of Rehabilitation Facilities
Annual Conference
October 28-30, 1992
Clarion Plaza Hotel, Orlando, Florida
Contact: Christy Parks, (904) 877-4816.

National Association of Rehabilitation Facilities
Consumer-Driven Program Evaluation and Quality Improvement for Vocational Rehabilitation Facilities
October 29-30, 1992
Chicago City Center, Chicago, Illinois
Contact: NARF, P.O. Box 17675, Washington, DC 20041. (703) 648-9300.

Consumer-Driven Program Evaluation and Quality Improvement for Vocational Rehabilitation Facilities
October 29-30, 1992 Chicago, Illinois
November 12-13, 1992 Dallas, Texas
Contact Donna Canterna at NARF, (800) 368-3513.

CARF and the Work Performance Center
Seminar on the Newly Published Quality Standards for Work Hardening Programs
October 29-30, 1992
Indianapolis, Indiana
Contact: Jan Elster, CARF, 101 N. Wilmot Rd., Suite 500, Tucson, AZ 85711. (602) 748-1212.

Academy of Psychosomatic Medicine
39th Annual Meeting
October 29-November 2, 1992
Pan Pacific Hotel, San Diego, California
Contact: Executive Director, APM, 5824 N. Magnolia, Chicago, IL 60660. (312) 784-2025.

Lourdes Regional Rehabilitation Center
Initiating the Rehabilitation Process in Acute Care
November 4, 1992
Camden, New Jersey
Contact: Tammy Feuer, (609) 757-3877.

Michigan Association of Rehabilitation Organizations
Rehabilitation: Empowering Persons with Disabilities
November 4-6, 1992
Radisson Plaza Hotel, Kalamazoo, Michigan
Contact: MARO, 417 Seymour Ave., Suite 5, Lansing, MI 48933. (517) 484-5588.

National Association of Rehabilitation Facilities
Consumer-Driven Program Evaluation and Quality Improvement for Vocational Rehabilitation Facilities
November 12-13, 1992
Harvey Hotel, Dallas, Texas
Contact: NARF, P.O. Box 17675, Washington, DC 20041. (703) 648-9300.

Consumer-Driven Program Evaluation and Quality Improvement for Vocational Rehabilitation Facilities
October 29-30, 1992 Chicago, Illinois
November 12-13, 1992 Dallas, Texas
Contact Donna Canterna at NARF, (800) 368-3513.

MPS Associates
ADA/New England: Strategies for Implementation
November 12-13, 1992
Royal Plaza/Best Western, Marlboro, Massachusetts
Contact: Marilyn Price Spivack, (508) 620-0916.

Courage Center
Mental Health Issues of Children with Physical and Neurological Disabilities
November 13, 1992
Minneapolis, Minnesota
Contact: Ann Roscoe, (612) 520-0210.

Kessler Institute for Rehabilitation
A Clinical Reasoning Institute: Patient Focused Team Approach
November 13-14, 1992
West Orange, New Jersey
Contact: Maria R. Anan, (201) 731-3600, ext. 757.

Crossroads Rehabilitation Center
Therapy and Educational Approaches for Children Prenatally Exposed to Drugs
November 13-14, 1992
Indianapolis, Indiana
Contact: Judy Otto, (317) 466-1000.

ACRM/AAPM&R
Annual Meeting: Confronting Our Future
November 13-17, 1992
Hilton Square Hotel, San Francisco, California
Contact: AAPM&R, 122 S. Michigan Ave., Suite 1300, Chicago, IL 60603-6107. (312) 922-9366.

Moss Rehabilitation Hospital
Feldenkrais Method: The Clinical Application of Motor Learning for Neurologic and Orthopaedic Rehabilitation
November 14-15, 1992
Philadelphia, Pennsylvania
Susan Tomlinson, (215) 456-9130.

AGS/AFAR
50th Annual AGS Meeting/14th Annual AFAR Meeting
November 15-19, 1992
Fairmont Hotel, New Orleans, Louisiana
Contact: AGS, (212) 308-1414.

American Speech-Language Hearing Association
Annual Convention
November 20-23, 1992
San Antonio, Texas
Contact: Frances J. Johnston, ASHA, 10801 Rockville Pike, Rockville, MD 20852. (301) 897-5700.

Bismarck State College
2nd Annual Workers Comp Conference
November 24, 1992
Radisson Inn, Bismarck, North Dakota
Contact: BSC Community Services, 1500 Edwards Ave., Bismarck, ND 58501.

American Hospital Association
22nd Annual Conference
December 6-9, 1992
The Pointe at South Mountain, Phoenix, Arizona
Contact: AHA Section for Rehabilitation Hospitals and Programs, (312) 280-6671.

To be included in **Rehabilitation Calendar**, submit your listing—including dates, location, and a contact name and phone number—to: **NARF Rehabilitation Report, P.O. Box 17675, Washington, DC 20041. FAX (703) 648-0346.**

Florida Court Prevents State from Imposing Fee Cap

Panama City Medical Diagnostic Limited and others recently sought a permanent injunction in U.S. District Court in the Northern District of Florida, preventing the State from enforcing a provision of the "Patient Self-Referral Act of 1992," and imposing a restrictive fee schedule on all providers of designated health services. Effective July 1, 1992, all clinical laboratory services, physical therapy services, comprehensive rehabilitation services, diagnostic imaging services, and radiation therapy services would be limited to charging 15% in excess of the current Medicare fee for services provided to all non-Medicare patients. Judge William Stafford had granted a preliminary injunction earlier in the month until the full hearing could be conducted on July 13.

At the hearing, Judge Stafford granted the permanent injunction and ruled that implementing the fee schedule would have caused irreparable harm to providers of these designated health services. In so ruling, he recognized the disparate treatment among healthcare providers. Under the Act, hospital and group practices were exempt from the fee cap whereas sole practitioners and others were subject to the cap. The Judge questioned the Act's uneven application since exempting hospitals and group practices would frustrate the overall purpose of decreasing healthcare costs.

This order does not affect other provisions of the Act, including the prohibition of healthcare providers from referring patients to a provider of healthcare services in which the referring provider has financial interest. *Panama City Medical Diagnostic Limited v. Williams*, No. 92-40198, U.S. District Court for the Northern District of Florida, July 13, 1992 (No written opinion).

[Article taken from *Health Law Digest*, August 1992, Volume 20, No. 8, p. 58.]

Group Maps Out New Claims System

Imagine using no paper Medicare claims, no postage and having access to patient information at the tip of your fingers by 1997. That's the target under the plan by the Workgroup for Electronic Data Interchange (WEDI), formed by the health care industry at the request of HHS Secretary Sullivan. NARF was one of the national organizations to comment on the draft proposal.

The WEDI plan would serve as a blueprint for private and government insurers in adopting a standardization system for electronic filing and payment of all health care claims. (Legislative action would be required to bring in Medicaid and Medicare.) While the plan is receiving cautious support from leading health care groups, concern remains over the cost for smaller health care providers such as solo physician practitioners.

Under the WEDI approach, the system for claims submission, payment/remittance advice, enrollment and eligibility would be standardized, said WEDI co-chairmen Joseph Brody of Travelers Insurance Co. and Bernard Tresnowski of the Blue Cross/Blue Shield Association. Standardization would eliminate the existing 400 electronic claims formats, and save $4-10 billion in health care administrative costs, they predicted. Allowing physicians to tap into patients' computerized treatment histories would save on inappropriate medications and services that could total $50 billion, Tresnowski added.

While hospitals and large group practices would benefit from automation, solo practitioners and physicians in rural areas may find the cost too great. "It's difficult to encourage smaller providers to make an investment in hardware and software," said an AMA spokesman. The American Society of Internal Medicine is calling for "technical assistance to help physicians who do not have the necessary computer technology to participate in such a system."

HHS is pushing faster reimbursement as an incentive for doctors to automate their billing systems. If HHS has its way in Congress, physicians who file claims electronically to Medicare would receive payment within two weeks. If they hold on to their paper claims, payment turnaround will take at least a month, say HHS officials.

WEDI—made up of representatives of communications firms, insurance companies and medical associations—also recommends tax incentives, said Tresnowski, "to facilitate the necessary initial investment by small or rural providers and small employers that may encounter financial hardship in acquiring EDI technology."

The goal is to have 95% of major public/private payers, hospitals, major employers and self-insured plans, pharmacies, clinics and group practices of 20 or more professionals implement WEDI's standardized system by the fourth quarter of 1994. By the fourth quarter of 1996, 85% of the remaining health care payers, practitioners, employers, self-insured plans, and pharmacies would implement EDI.

For information, contact WEDI, c/o BC/BS Association, **(312) 440-6161.**

Texas, Kansas to Hold Comp Seminars

The Texas Workers' Comp Commission announced a series of Medical Education Seminars. Topics include doctor rules, billing and reimbursement, and medical dispute resolution. They will be held in Houston on Oct. 20-21, El Paso on Nov. 3, Harligen on Nov. 19, and Austin on Dec. 8. Contact **Public Education-Seminars, Medical Review Div., TX Workers' Comp Commission, 4000 South IH-35, Austin, TX 78704-7491.**

The Kansas Dept. of Human Services announced a seminar with a marked rehabilitation focus. It will be held in Topeka on Oct. 7-8 at the Downtown Ramada, and Wichita on Nov. 9-10 at the Airport Hilton. It will include voc rehab workshops and presentations, and medical cost containment discussions. Cost is $40. Contact **Julie Barber, Office of Communications, Kansas DHR, 401 SW Topeka Blvd., Topeka, KS 66603.**

California Court Rejects Insurer's Effort to Fix "Mistake"

The California Court of Appeal recently handed down an important first-time decision for hospitals and other healthcare providers. City of Hope National Medical Center was sued by Western Life Insurance Company to recover money that it had paid by "mistake" for medical treatment the hospital provided to a patient insured by the company. Western Life sued City of Hope for a refund of $45,866, claiming that the treatment provided by the hospital was "experimental" and excluded from coverage under the terms of the Western Life insurance policy. The Court of Appeal, ruling in favor of the City of Hope, held that "if it's your mistake, you get to pay for it—unless the recipient misled you or accepted the payment knowing you didn't owe it." *City of Hope National Medical Center v. Superior Court (Western Life Insurance Co.*, Daily Journal D.A.R. 10728 (2d Dist. July 31, 1992)

City of Hope National Medical Center is a hospital devoted primarily to the treatment of cancer patients and to related clinical research. The cancer treatment at issue had been approved as safe and effective treatment in the clinical cancer centers, of which City of Hope is one, by the Food and Drug Administration and the National Cancer Institute of the National Institutes of Health. For that reason, City of Hope contended that the insurance payment for the treatment was entirely proper, since the treatment was not "experimental" under the Western Life insurance policy. The hospital treated the patient for cancer and then, pursuant to a customary assignment of insurance benefits to City of Hope signed by the patient upon admission to the hospital, billed Western Life for the cost of the treatment. Western Life paid the bill; however, seven months later, it demanded a refund of the entire payment. City of Hope had not received or seen the Western Life insurance policy until after it treated the patient for cancer and after Western Life paid the bill.

The ruling, in favor of City of Hope, follows cases from other jurisdictions which hold that an insurance company cannot recover a payment to a hospital when the hospital has rendered medical services in good faith and received payments from the insurer. The decision helps protect healthcare providers against insurance carriers who rethink their coverage limitations after payments have been made.

GAO Testifies Before Subcommittee on Health and the Environment

Managed Care Programs Reported to Ease Financial Strain on Medicaid System

The General Accounting Office (GAO) has released a report entitled "Factors to Consider in Managed Care Programs," that was presented on June 29 in testimony before the Subcommittee on Health and the Environment of the House Committee on Energy and Commerce. According to GAO, managed care or coordinated care can ease the financial strain on the Medicaid program and also improve the ability of Medicaid recipients to gain access to the health care system. The main problem with managed care, as opposed to fee-for-service arrangements, is the financial risk to which providers, especially small groups or individual physicians, are exposed. This risk factor can lead to service cutbacks significantly affecting quality of care, as well as to provider financial reporting disclosure, and solvency problems. However, the system can work if appropriate safeguards and oversight measures are implemented. GAO recommends that the states monitor financial arrangements between contractors and subcontractors and require plans to routinely disclose information on ownership and control.

To obtain a copy of this report, contact the **U.S. General Accounting Office, P.O. Box 6016, Gaithersburg, MD 20877. (202)275-6241.**

NARF Works with HCFA on TEFRA

NARF has written the Health Care Financing Administration to clarify how it will be implementing the OBRA '90 provision providing TEFRA relief to those PPS-exempt facilities which exceeded their limits in the cost reporting periods beginning on or after October 1, 1991. In a letter to the Director of the Hospital Payment Policy Division, NARF stated:

"As you know, OBRA '90 provides for cost sharing of a portion of Medicare operating cost in excess of TEFRA limits. Exempt facilities can receive 50% of the amount by which they are over their limits up to 110% of the limits. HCFA issued regulations to implement this provision as 42 CFR 413.40(d)(3)(iii).

"This provision is effective for cost reporting periods beginning on or after October 1, 1991. We have received a number of inquiries about two points. We would appreciate some guidance from you on them so that we may advise membership.

"First, are the cost report forms to be modified to reflect this provision? At present, TEFRA limits are applied and their effect calculated on Worksheet D-1, Part II, lines 54-60. Do you plan to amend this portion of the cost report form? If not, how should rehabilitation hospitals and units reflect the increased cost sharing in filing cost reports? This will be an issue within the next couple of months as this initial cost reporting period starts to end for a number of hospitals and units.

"Second, the same provision means that for hospitals and units over their limits, Medicare reimbursement will increase. Presumably this will be recognized in their interim rates. Have you issued any instructions to intermediaries about adjusting such rates? If not, will such instructions be issued soon?"

NARF is working with HCFA now in having these questions answered. As soon as HCFA makes its procedure clear, NARF will send a technical advisory to its members.

OSHA Offers Bloodborne Compliance Materials

NARF has received information on the availability of a **Bloodborne Pathogens Compliance Package** addressing OSHA's standard, effective March 6, 1992, that affects all employers with employees potentially exposed to bloodborne pathogens. The Package offers a description of what is required by the standard and provides a form-driven procedure to document employer compliance. Purchase of the Package at a cost of $99.95 also qualifies the employer for a toll-free compliance assistance information hotline and free compliance updates. The Package includes a Compliance Program Outline; a written exposure control plan for adaptation to each employer; and a policy and procedure manual including procedures for determining and documenting covered employees, forms for documenting fulfillment of the educational requirements, checklists to assure appropriate control methods, post-exposure procedure guidelines and forms, and audit forms to assure ongoing compliance with the standard. A 28-minute bloodborne pathogens education video, "Bloodborne Pathogens: Reducing the Risks" is advertised as providing required education to covered employees and is available for $89.95. Both products may be purchased at a combined cost of $169.95 plus shipping and handling. For more information, contact **University Research Park, 8701 Mallard Creek Road, Charlotte, NC 28262, (800) 767-5399.**

NARF members have requested that NARF serve as a clearinghouse for members' exposure control plans. Your assistance toward this end is appreciated. Please forward a copy of your exposure control plan to **Suellen Galbraith at NARF.**

Revisions Sought for Waiver Programs

NARF has been working with three Senate offices to advance amendments to remove current restrictions under the Medicaid home and community based waiver (HCB) and intermediate care facilities for the mentally retarded (ICF/MR) programs that prohibit Federal reimbursement for vocational and supported employment services. Senators John H. Chafee (R-RI), Bob Dole (R-KS), and Orrin G. Hatch (R-UT) have all expressed their support of amendments that would remove the current restrictions under one or both of the Medicaid-financed programs. The removal of these restrictions will eliminate significant inequities in current Medicaid policy to eligible recipients who would benefit from such services. States would be able to utilize Federal funds for these services and NARF members would be eligible for Medicaid reimbursement for providing needed vocational and supported employment services.

Currently, under Section 1915(c)(5) of the Social Security Act, states may request Medicaid authority to cover prevocational and supported employment services as part of their HCB waiver program, but only "with respect to individuals who receive such services after discharge from a nursing facility or intermediate care facility for the mentally retarded." The use of Medicaid funds is prohibited under Section 1905(d) of the Act for vocational and supported employment services to residents in ICFs/MR.

The revisions are expected to be proposed as technical amendments before the Senate Finance Committee. Due to the current Congressional budget agreement, new or revised legislation must be budget neutral, produce no increase in current domestic spending caps, or be accompanied by a revenue source. The Congressional Budget Office has established the needed budget neutrality of both revisions to the Medicaid statutes using the argument that the services proposed are no more costly than the habilitation services currently provided under the HCB waiver in the community and the "active treatment" services currently provided in ICFs/MR.

SSI Modernization Project Publishes Final Report

The Social Security Administration (SSA) has undertaken a comprehensive examination of the Supplemental Security Income (SSI) program by reviewing its fundamental structure and purpose. SSA published notice of the Project's final report with request for public comment in the *Federal Register* on September 4, 1992 (Vol. 57, No. 173, pages 40732-40790). Comments must be postmarked on or before December 4, 1992. NARF invites members to comment individually on the report as well as to contact NARF with comments on preferred options contained in the report.

The Project will determine whether the SSI program is meeting and will continue to meet the needs of the population it is intended to serve in an efficient and caring manner, recognizing the constraints in the current fiscal climate. For more than two years, the Project has been soliciting comments and identifying options, and will prepare an analysis of the options taking into account the experts' views and the public comments on this sixty-eight page report. The topics covered in the report include: raising SSI resource limits; needs-based issues; disability and work incentives; benefit payment issues; linkage of SSI program to Medicaid and Food Stamp Programs; and agency services issues.

For further information on the report, NARF members should contact: **SSI Modernization Project Staff, Room 311, Altmeyer Building, P.O. Box 17052, Baltimore, MD 21235, (410) 965-3571.** If members have additional questions on the *Federal Register* notice, please contact **Suellen Galbraith at NARF.**

Senate Passes Housing Bill

Although the Senate was unsuccessful in attempts to bring a housing bill to the Senate floor before its August recess, negotiations during and following the recess paved the way for an early September vote. By voice vote on September 10, 1992, the Senate passed S. 3031, the "National Affordable Housing Act Amendments of 1992," to reauthorize housing and community development programs for 1993 and 1994. Now that both the full House and Senate have passed bills leading to reauthorization of our nation's comprehensive housing legislation, the next step will be a conference committee composed of members from both houses to iron out differences in the two bills. Although House conferees have yet to be designated, Senate conferees on the housing bill will be Senators Christopher Bond (R-MO), Alan Cranston (D-CA), Alfonse D'Amato (R-NY), Bob Graham (D-FL), and Donald Riegle (D-MI).

As previously reported, a contentious aspect of the reauthorization process this year has been the drive to permit segregated housing on the basis of age as a remedy to alleviate the so-called "mixed housing problem" of younger persons with disabilities residing with elderly persons in public housing and Federally assisted housing programs. The House included provisions to allow age-distinct housing in H.R. 5334. The Senate, however, did not develop specific language in S. 3031 and will be relying on a "Sense of the Senate" resolution, colloquies, and other non-binding statements to direct Senate conferees on this issue when the bill goes to conference.

Senator Paul Simon (D-IL) has provided considerable Senate leadership on behalf of persons with disabilities by engaging in two colloquies during floor activity on S. 3031 and by requesting Senate colleagues to join with him in a letter to Senator Cranston, Chairman of the Subcommittee on Housing and Urban Affairs. NARF has been working with Senator Simon's staff and numerous other Senate staff in the past several weeks, urging support of the rights of persons with disabilities should the Congress authorize segregated housing.

NARF appreciates the response to its recent *Legislative Alert* to members on this issue. Section 811, Supportive Housing for Persons with Disabilities, remained a separate program in S. 3031 and was not consolidated with Section 202, Supportive Housing for the Elderly. In addition, the Section 811 program was not opened to competition by public housing authorities and will remain as the only source of Federal funds for NARF members and other non-profits to acquire, rehabilitate, and develop housing for persons with disabilities. Unfortunately, S. 3031 contains significantly lower authorization levels for Section 811 appropriations in 1993 ($209.5 million) and in 1994 ($216.2 million) than the current 1992 authorization level ($517), as well as a lower authorization level for 1993 as contained in the House bill for 1993 ($537 million). The conference committee will have to iron out the differences in authorization levels. NARF will keep readers informed of developments in the housing reauthorization.

HUD Focuses on Accessibility

The Department of Housing and Urban Development (HUD) recently held regional accessibility seminars throughout the country. Public and private housing sponsors, architects, developers, builders of Federally assisted housing, state and local government agencies and others attended the two-day seminars to become familiar with the legal requirements of the Fair Housing Act (FHA), Section 504 of the Rehabilitation Act, and the Americans with Disabilities Act (ADA) as they relate to the design, construction, accessibility, sale, and occupancy of public and private housing by persons with disabilities.

To reach HUD's new Fair Housing Information Clearinghouse (FHIC), call **(800) 343-3442**. To register as a Clearinghouse user and receive the *Fair Housing Update* and the *Fair Housing Alert*, contact the **Fair Housing Information Clearinghouse, P.O. Box 6091, Rockville, MD 20850.**

To obtain fact sheets on key requirements of 504, FHA, and Title II of the ADA from the HUD Seminars, contact **Suellen Galbraith at NARF**.

Harkin Proposes Amendment to FY '93 Appropriations

Senator Tom Harkin (D-IA) has offered a "transfer" amendment to the Departments of Labor, Health and Human Services and Education FY 1993 appropriations bill. The amendment seeks to transfer $4.1 billion dollars of appropriated but unobligated defense funds to fiscal year 1993 appropriations to increase funding for several domestic programs.

Although the transfer amendment would not increase overall Federal spending, the Senate has rejected other attempts to transfer funds from one budget category to another in the past. The proposed increases in domestic program spending come at a time when states are facing critical budgetary problems of their own. NARF is supporting the "Harkin Transfer Amendment." However, due to the Congressional five-year budget agreement which prohibits the transfer of funds outside of domestic, defense, and international budget categories (each with their own spending caps), this popular amendment may receive yet another Senate rejection to shifting funds.

16 Programs Represented

The following programs and increases (represented in millions) are included in Harkin's transfer amendment: Head Start ($600), Immunization/TB ($300), Maternal and Child Health ($100), Child Care Block Grant ($75), Healthy Start ($50), Community Health Centers/Infant Mortality ($100), Child Welfare Services ($100), Child Abuse/Family Violence ($100), Children's Mental Health ($25), Education ($1,350), Job Corps ($100), LIHEAP ($200), CDC Prevention ($150), Community Services Block Grant ($50), Ryan White ($100), Biomedical Research ($200), and Women's Health ($200).

Vocational/Developmental

NARF Plans State Use Conference for January

Mark your calendar now for the fourth annual State Use Conference, "Strategies for Success: Effective Planning and Quality Assurance." This conference promises to be of particular value to **vocational rehabilitation managers** because the sessions are calculated to teach you how to develop new products and finance new ventures. The conference will be held January 25-26, 1993, in Ft. Lauderdale, Florida. Meet and talk to some of the most successful rehabilitation managers and State Use executives in rehabilitation who will share the details of their successes. Your attendance could result in thousands of dollars in new business and employment opportunities for individuals with disabilities.

Session topics include:

The Vocational Provider Track

- How to Develop New Products
- The Entrepreneurial Approach
- How to Develop Computer Products
- Financing New Ventures
- Successful Products and Services
- Diversification: Working with NISH, NIB, State Use and Commercial Contracts
- Cost Accounting for Contracts
- Quality Assurance for Maintenance Contracts
- Strategic Planning for Vocational Services
- Customer Service: Responding to the Customer's Needs
- Developing a Janitorial Service Business

The State Use Central Non-profit Agency Track

- Marketing to Political Subdivisions
- Effective Resource Allocation (Sales & Marketing, R & D, QA)
- Information Management: Data Gathering Systems
- Strategic Planning for Growth of State Use CNAs
- TQM: How a CNA Controls Quality
- Developing a State Use Program
- Hot Topics
- Unfair Competition
- Unions
- Supported and Facility-based Employment
- Privatization
- CNA Director's Roundtable
- Successful Products and Services

In addition to the sessions, corporations which supply products and services for contracts will exhibit and demonstrate their products. Plan now to attend one of the most successful, financially beneficial conferences in rehabilitation. The cost will be $180 for the first registrant from each NARF member, and $125 for additional registrants from that member. Potential members may register for $200. Watch your mail for registration information which will be available shortly.

HCFA Grants TEFRA Adjustments

Good Samaritan Regional Medical Center of Phoenix, Arizona, a NARF member, has been granted adjustments to TEFRA target limits for its distinct-part rehabilitation unit for fiscal years 1988 and 1989. The adjustments authorize reimbursements for these years totaling approximately $436,000.

Adjustments were granted in recognition of increased levels of therapies and other ancillary services to Medicare patients in the years relative to the unit's TEFRA base year, including increased respiratory therapy, occupational therapy and speech pathology services.

J. Anthony Gochoco, Program Administrator of the Samaritan Rehabilitation Institute, was responsible for the matter at the hospital. Samaritan was assisted in the preparation of its application by Rehabilitation Facilities Services, Inc., a NARF subsidiary. For more information, contact **Jim Studzinski, (800) 368-3513.**

New York Court Rules on Vocational Rehabilitation Services

In a precedent-setting decision, the New York State Appellate Division unanimously established that people with disabilities have a right to receive vocational rehabilitation services which allow them to "reach the highest achievable vocational goal" (Polkabla v. Commission for the Blind and Visually Handicapped).

Ruling Overturns 1990 Decision

Overturning a 1990 decision of the New York State Commission for the Blind and Visually Handicapped (CBVH), the Appellate Division determined that a blind woman must be given the opportunity to receive partial tuition and other assistance to pursue a legal career.

The court rejected CBVH's reasoning that it was not obligated to assist people with disabilities in reaching their highest level of achievement, and that it was not obligated to assist Kathleen Polkabla to become an attorney because she was employable as a paralegal. The court said it used the "clear language" of the Federal 1973 Rehabilitation Act and its legislative history to determine that vocational rehabilitation agencies are mandated to help people with disabilities to "maximize their employability" and to, in fact, reach their "highest level of achievement."

The ruling prohibits New York state vocational rehabilitation agencies from telling people with disabilities that they are not eligible for services to assist them in pursuing their desired achievable goal because they are employable at some lower-level position.

For more information, contact, Ruth Lowenkron or Herbert Semmel at New York Lawyers for the Public Interest Inc., (212) 727-2270.

[This article was drawn from an article published in the September 1992 *I-NABIR Newsletter.*]

NARF Industrial Rehabilitation Meeting Raises Issues

In response to growing interest among NARF members, NARF held an industrial rehabilitation forum on July 3 at the NARF Annual Meeting in Chicago. The broad cross-section of attendees provided valuable input for staff to guide future work in this area.

NARF hired a full-time staff person, C. Todd Jones, Esq., for industrial rehabilitation and workers' compensation issues in November 1991. Since that time, Mr. Jones has worked with interested members to develop an agenda for change.

At the Chicago meeting, members expressed their views on a variety of subjects. Research proved one of the hottest topics of discussion. While members had previously expressed an interest in quickly starting work on medical outcome data, the general consensus at this meeting was for a more circumspect analysis.

As a result, NARF will conduct a membership survey this fall to glean facts about their industrial rehabilitation programs. Topics will include disciplines involved, number of personnel, percent and size of business, and educational, training, and publication needs.

There was also significant support for co-sponsoring a national symposium on workers' compensation and industrial rehabilitation, bringing together all of the parties interested in the subject: rehabilitation facilities and professionals, insurers, government officials, labor representatives, business organizations, and attorneys. The participants believed, however, that this represented a longer term goal.

The group appointed Jeanne Cranley as the member to lead this growing issue group. She was charged to work with NARF staff and advise the NARF Board of the group's interests. All agreed that further discussion was merited at the NARF Winter Conference in Fort Lauderdale after the survey had been completed.

Important Notice to NARF Institutional Members

Fees Keyed by All Urban CPI

At the Annual Business Meeting of the National Association of Rehabilitation Facilities held June 12, 1991 in New Orleans, Louisiana, members approved the following motion concerning association dues:

"That the Board approve for consideration at the 1991 NARF Annual Business Meeting the modification of the current membership fee structure and to increase the annual membership fees equivalent to the All Urban Consumer Price Index, not to exceed 7 percent per year."

The annual increase in the All Urban Consumer Price Index is 3.1%. Therefore, the dues schedule for 1993 (January 1 through December 31) is as follows:

Total Salaries	Dues
$0 - 30,000	$ 360
30,001 - 50,000	$ 507
50,001 - 80,000	$ 779
80,001 - 160,000	$ 1,052
160.001 - 240,000	$ 1,317
240,000 - 320,000	$ 1,588
320,001 - 400,000	$ 1,863
400,001 - 480,000	$ 2,125
480,001 - 1,000,000	$ 2,445
1,000,001 - 1,500,000	$ 2,814
1,500,001 - 2,000,000	$ 3,205
2,000,001 - 2,500,000	$ 3,717
2,500,001 - 3,000,000	$ 4,345
3,000,001 - 4,500,000	$ 5,070
4,500,001 - 8,000,000	$ 5,807
$8,000,001 & up	$ 6,538
Corporate Rate:	$1,000

Salaries must include all full-time and part-time facility/contract provider personnel salaries/wages paid (not including fringe benefits or client wages) at all program centers and satellites. This includes wages for professional staff, consultants, custodial, food services workers, drivers, clerks, etc. that are directly related or charged to rehabilitation programs.

Hearing Held on Medicare Fraud

The Honorable Pete Stark (D-CA), Chairman, House Subcommittee on Health, held a hearing on September 10 on health care fraud, waste and abuse. The hearing was part of the full Committee's oversight initiative on the efficiency and policy effectiveness of programs in its jurisdiction.

Invited witnesses included the Hon. Richard P. Kusserow, former Inspector General, U.S. Dept. of Health and Human Services (HHS).

The Office of the Inspector General (OIG) of HHS oversees health care procedures within the Department, including Medicare. The fraud and abuse staff within the OIG is responsible for investigating and making recommendations to the Congress and the Administration regarding appropriate use of program expenditures. In addition, the OIG has responsibility for pursuing violations of Medicare rules through civil monetary penalties, recoupments and other forms of settlements.

NARF Seeks Photographs

Contributions Needed for New Library

NARF is starting a photograph library for use in the publishing of its newsletters and books, as well as in the preparation of promotional materials for membership and training. Contributions of all kinds—shots featuring facility professionals, patients, equipment or procedures, for instance—are needed.

Please send your spare photographs—color or black & white—with captions, to: **Lisa Kochanski, *NARF Rehabilitation Report*, P.O. Box 17675, Washington, DC 20041-0675.**

Research

NARF Members Receive Grants from the Funding Partnership for People with Disabilities

The Funding Partnership for People with Disabilities, a consortium of 20 private grantmakers, has awarded $1.1 million to 35 community-wide coalitions working to improve the lives of people with disabilities. The 35 winners were selected from 615 entries nationwide to receive grants between $10,000 and $80,000 for projects fostering the integration of people with disabilities into all aspects of American life. Coalitions include consumer and business organizations, service providers, civic, professional, religious and trade groups, educational and vocational institutions, independent living centers, and government agencies. Projects focus on employment, education, health care, accessibility, public accommodations, transportation and communications.

The Funding Partnership includes the American Express Philanthropic Program, AT&T Foundation, Rose M. Badgeley Residuary Charitable Trust, Chase Manhattan Bank, Ira W. DeCamp Foundation, The Dole Foundation for Employment of People with Disabilities, William H. Donner Foundation, The William Randolph Hearst Foundation, Hoffman-LaRoche, The JM Foundation, The Robert Wood Johnson Foundation, Ronald McDonald Children's Charities, Milbank Memorial Fund, Mitsubishi Electric America Foundation, The National Federation of Independent Business, New York Community Trust, New York Telephone, The Pew Charitable Trusts, Seth Sprague Educational and Charitable Foundation and an anonymous donor.

The Chairperson of the Funding Partnership is Paul G. Hearne, President of The Dole Foundation.

NARF member grant recipients include:

- **Casa Colina Hospital for Rehabilitation Medicine, Pomona, California** — Partners in Pain Management Project;
- **ICD - International Center for the Disabled, New York, New York**—The Pediatric Functional Capacity/Pre-Vocational Assessment Program for disabled students in East Harlem;
- **The Institute for Rehabilitation and Research, Houston, Texas**—A Model for Municipal Compliance with the ADA;
- **Stout Vocational Rehabilitation Institute, Menomonie, Wisconsin**—The ADA Start Project for Small Business in rural Wisconsin.

The Funding Partnership is planning another grant competition in 1993 and an announcement will be forthcoming.

SSDI/SSI Booklet Published

A new booklet describing Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI) Program work incentives has been published by the Kessler Institute for Rehabilitation, Inc. The booklet contains clear information on program eligibility requirements, SSDI and SSI work incentives provisions—including Plans for Achieving Self-Support (PASS)—specific examples of work incentives for individuals and how work incentives remove barriers to employment. *These examples are based on New Jersey experience*. The booklet can be obtained from **Mary Eyles, Director of Education, Kessler Institute for Rehabilitation, Inc., West Orange, NJ 07052**. The booklet was produced through a grant from the Social Security Administration.

HCFA Sponsors National Medicare Electronic Environment Conference

Claims Processing Issues Addressed

On September 2-3, 1992, over 600 representatives from state and national provider associations, private insurers, vendors, and clearinghouses attended the National Medicare Electronic Environment Conference in Baltimore, Maryland. The conference, sponsored by the Health Care Financing Administration (HCFA), addressed issues related to the use of electronic claims processing. HCFA has adopted a goal to virtually eliminate the use of paper transactions between providers and the Medicare contractor that pays bills. By 1993, HCFA hopes 95 percent of institutional providers will send in bills electronically; by 1994, the Agency wants 75 percent of other providers, such as physicians and medical suppliers, to do business with Medicare electronically.

Issues discussed at the Conference included the ease of record keeping that electronic claims provide, fewer claim rejections due to fewer errors in electronic claims, and improvement of the process of verifying Medicare beneficiary eligibility information.

Participation Eventually to Become Mandatory

Participation in the Medicare Electronic Claims Transaction Initiative is voluntary. However, it is expected that providers will soon be required to submit claims electronically either through administrative regulations or Congressional action. For information on Electronic Media Claims (EMC), hospitals should contact their Medicare intermediary EMC department and physicians should contact their Medicare carrier EMC department.

Employment Exchange

REHABILITATION NURSE MANAGER

Meriter Hospital, a 517-bed acute care teaching facility located in Madison, WI, has an excellent full-time opportunity available for an experienced rehabilitation nurse in an established 31-bed CARF accredited rehabilitation unit. BSN with a minimum of 5 years related clinical experience required. Management experience and Master's Degree in a related field are strongly preferred. Please send resume to **Nurse Recruiter, Personnel Services, Meriter Hospital, 202 S. Park Street, Madison, WI 53715**. An EOE/Affirmative Action Employer.

PSYCHOLOGIST

Kaweah Delta District Hospital, a 301-bed acute care facility with a 14-bed rehab unit in scenic Visalia, is seeking a dynamic leader to guide our comprehensive Medical Rehab Center, provide psychological testing/counseling, inservice training and liaison consultation to our inpatient/outpatient services. Requires Ph.D. and rehab experience. Background in neuropsychological testing and psychomatic medicine preferred. Will lead to development opportunity at our new 60-bed acute/sub-acute rehab hospital to open October 1993. Excellent compensation/benefits. Call **Jeri Higdon (800) 332-2508,** or send resume to **Human Resources, 400 West Mineral King, Visalia, CA 93291**. EOE.

PEDIATRIC/TRAUMATIC BRAIN INJURY PROGRAM COORDINATOR

Excellent opportunity exists for a qualified clinician with 2-3 years previous rehab experience as a supervisor and/or program coordinator to assume the role of Program Coordinator for our comprehensive in-patient Pediatric and Traumatic Brain Injury Program. Qualified candidates will assume a leadership role in the development and program coordination for these two programs. Loma Linda University Medical Center is a regional tertiary care referral center with a large comprehensive rehabilitation program. Excellent benefits and salary for qualified candidates. Please send resume to **HRM, P.O. Box 2000, Loma Linda, CA 92354.**

Employment Exchange items are free to NARF members, and run for one month (two consecutive issues). Placements appearing for the final time are followed by a ✔. Items should not exceed 100 words, and may be edited for length. **Facilities may be limited to one placement per issue**. Submit to: **NARF Rehabilitation Report, P.O. Box 17675, Washington, DC 20041. FAX (703) 648-0346.**

SUPERVISOR/PEDIATRIC PHYSICAL THERAPY

Large, CARF Accredited, Comprehensive Outpatient Rehab Facility located in Wilmington and within reasonable proximity to Philadelphia and Baltimore has an exciting and challenging supervisor position for a therapist with at least 3 years of experience in Pediatrics. This is an excellent opportunity to refine the development of Pediatric Physical Therapy Services within a well established Pediatric Program. The program services include individual treatment, aquatics, and highly team oriented, multidisciplinary programs ranging from infant through preschool. For additional information please contact **Mary Ann Koziol (302) 656-2684 at Delaware Curative Workshop, Inc., 1600 Washington Street, Wilmington, DE 19802**. EOE.

DIRECTOR, REHABILITATION SERVICES

National Hospital for Orthopaedics and Rehabilitation, a general medical facility specializing in the treatment and prevention of musculoskeletal diseases, is seeking a Director for a 21-bed comprehensive inpatient rehabilitation program. The Director will be responsible for the management of the whole program — program evaluation, marketing, development, meeting accreditation and licensing requirements, establishing and meeting annual budget, and promoting a Total Quality Management approach consistent with hospital philosophy. Candidates will have five years managerial experience in rehabilitation, with a MPA, MHA, or MBA preferred. Qualified candidates should submit their resume to **Human Resources Department, National Hospital for Orthopaedics and Rehabilitation, 2455 Army Navy Drive, Arlington, VA 22206,** or FAX their resume to **(703) 553-3609.** EOE.

DIRECTOR

In charge of the financial aspects, A/R, budgeting, physical facility changes, relationships with insurance and client companies. Requirements: MBA/MPH, a nursing or clinical degree, experience in occupational/ambulatory medicine. Excellent compensation and benefit package offered with interview and relocation expenses. Contact **Mary Coursey at (219) 237-7408 or FAX (219) 237-6833, Saint Joseph's Medical Center, 801 E. LaSalle, P.O. Box 1935, South Bend, IN 46634-1935.** EOE.

PROGRAM COORDINATOR

Children's Hospital Medical Center (CHMC) is developing a new Pediatric Rehabilitation Unit. We would like to find the right seasoned Rehab Professional to assist with some of the administrative responsibilities of this new department. Responsibilities will include program development; Quality Improvement; Program Evaluation; and assisting in the coordination of parts of the program. The ideal candidate will be an OT, PT, SP, nurse, or other rehab professional with good interpersonal skills who enjoys: PE (WeeFIM) and QI; working with a computer; working independently. Pediatric experience preferred. We offer an excellent TQM work environment and a competitive salary and benefits. Please send resume and salary requirements to **Errick E. Woosley, Pediatric Rehabilitation, CHMC PAV-3, Elland & Bethesda Avenues, Cincinnati, OH 45229**. For more information call **(513) 559-7480**. Children's Hospital Medical Center is an Equal Opportunity/Affirmative Action Employer.

DIRECTOR OF PHYSICAL THERAPY

New England Rehabilitation Hospital, a freestanding, 200-bed, CARF accredited medical rehabilitation center in the Boston area, seeks a director for our 55 FTE impatient department. We want a visionary, experienced leader with fiscal management and staff development expertise to join our rehabilitation manager team, and help guide the expansion of our 15 specialty medical programs. If you have experience implementing innovative, cost-effective treatment methodologies and staffing models, we want to hear from you. Please send your cv to **Burton Silverstein, Ph.D., Vice President of Rehabilitation Services, New England Rehabilitation Hospital, 2 Rehabilitation Way, Woburn, MA 01801.** ✔

PROGRAM DIRECTOR

Vocational Rehabilitation Manager needed in Fayetteville, North Carolina to establish and operate a new supported employment program. Requires management experience in human services, budgeting, and administrative procedures. A graduate degree in relevant area is preferred, but experience may be substituted with a bachelor degree. Knowledge of NC vocational programs a plus. Competitive salary, retirement benefits, major medical, bonus plan, etc. Send resume to **Fairfax Opportunities Unlimited, 5510 Port Royal Road, Springfield, VA 22151, Attention: Faye.** ✔

CLINICAL MANAGER/ACUTE REHAB

United Hospital, the East Metro's premier health care provider, has a leadership opportunity for an experienced Rehabilitation

Nurse. This full time Clinical Manager (Head Nurse) will manage and provide clinical direction for the unit, maintain and coordinate total patient care and resources, ensure high quality, effective, and efficient delivery of care, and manage Human Resources development. Requirements are a minimum 1-2 years acute rehab experience, current MN RN license, BSN required, (MS preferred), previous management experience, strong interpersonal skills, rehab certified preferred. This 16-bed unit utilizes a team approach to patient care and provides services to a wide variety of diagnoses. Please send resume to **Sharon Becker, Human Resources, United Hospital, 333 N. Smith Avenue, St. Paul, MN 55102**. Call **(612) 220-8113**. United provides highly competitive compensation and an excellent flexible benefits package. EOE. ✔

PROGRAM DIRECTOR/ SPINAL CORD & ORTHO

St. David's Rehabilitation Center has a challenging opportunity for a Rehab Professional to lead its Spinal Cord Injury Program. The position reports directly to the Assistant Vice President Clinical Services and is responsible for determining the success of the program. Responsibilities include advanced development and enhancement of the existing program, external marketing, providing clinical leadership, and management of the program. We require a registered or licensed health care professional with at least a Master's degree and five years experience with three years as supervisor. Experience working with insurance companies is preferred. St. David's Rehabilitation Center offers competitive salary and benefits plans, as well as state-of-the-art equipment and a pleasant work environment. Submit resume to **Philip Brown, Human Resources, St. David's Medical Center, 919 E. 32nd Street, Austin, TX 78705. (800) 443-6615.** ✔

REHABILITATION NURSE COORDINATOR/CASE MANAGER

Experience RN to manage the nursing component of a 20-bed inpatient Rehab Center and be responsible for internal/external case management duties. Will work closely with outside referral sources, patients and their families and our Rehab team. Duties will include total responsibility for clinical and budgetary nursing operations, coordinating patient treatment plan with team goals, marketing to referral sources, and follow-up activities. A BSN, (MSN or CRRN with case management background preferred) with a minimum of 2 years supervisory experience required. Along with exceptional benefits, you will receive continuing education opportunities and a competitive salary. For further information contact **Maureen E. McVay, Administrative Director, The Rehabilitation Center at Frye Regional Medical Center, 420 North Center Street, Hickory, NC 28601. (704) 324-3603.** ✔

VICE PRESIDENT/HUMAN SERVICES

The Rehabilitation Center of Sheboygan, Inc., a comprehensive vocational rehabilitation facility, currently has a position available. A Master's Degree with a major in rehabilitation or a related field and at least 5 years supervisory/administrative experience is desired. Good communication and people skills are required. Program evaluation/CARF experience would be a definite plus. Responsibilities include the provision of individualized adult and infant rehabilitation services, residential services, and community-based services. Person must have a dedication to participatory management, consumer empowerment, and community-based services. Position responsible for hiring and maintaining personnel, development of cost-center and line-item program budgets, community rehabilitation networking, grantsmanship for expansion of services, and monitoring of individual consumer services. Salary range $25,000 - $35,000. Agency application required. Application deadline: September 30, 1992. Contact **Ronald L. Van Rooyen, President, RCS, Inc., P.O. Box 685, Sheboygan, WI 53082-0685, (414) 458-8261.** ✔

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NARF Rehabilitation Report

Newsletter of the National Association of Rehabilitation Facilities

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Assist./Disability Affairs
Office of Senator Robert Dole
141 Hart SOB
U.S. Senate
Washington DC 20510

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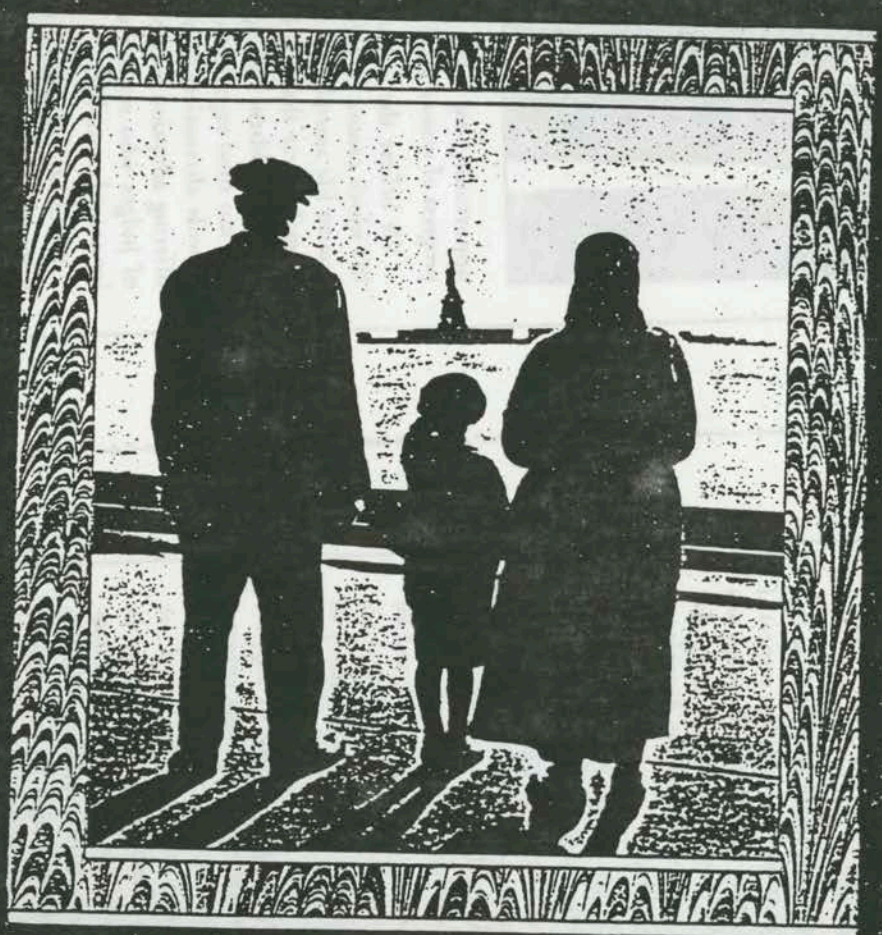
THE VISION STARTS



AMERICA: OUR CAUSE, OUR WORK

THE REPUBLICAN PLATFORM

1992

Handicapped persons must be admitted into the mainstream of our society...we pledge continued attention to the problems caused by barriers in architecture, communication, transportation and attitudes. In addition, we realize that to deny education and employment simply because of an existing disability runs counter to our accepted belief in the free enterprise system and forces the handicapped to be overly dependent on others...We advocate the elimination of needless barriers for all handicapped persons.

REPUBLICAN PLATFORM 1976

President Bush signs the Americans with Disabilities Act

NAFTA removes the incentive to cross the border illegally in search of work.

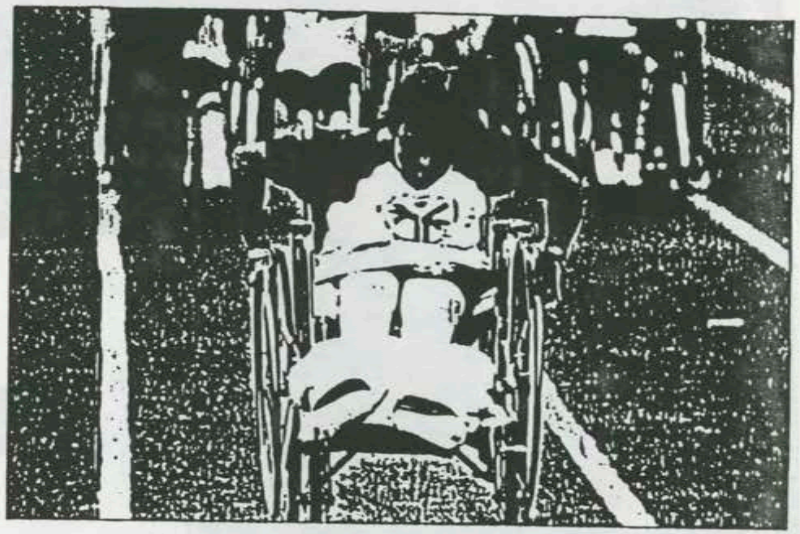
INDIVIDUAL RIGHTS. The protection of individual rights is the foundation for opportunity and security.

The Republican Party is unique in this regard. Since its inception, it has respected every person, even when that proposition was not universally popular. Today, as in the day of Lincoln, we insist that no American's rights are negotiable.

That is why we declare that bigotry and prejudice have no place in American life. We denounce all who practice or promote racism, anti-Semitism, or religious intolerance. We believe churches and religious schools should not be taxed; we defend the right of religious leaders to speak out on public issues; and we condemn the cowardly desecration of places of worship that has shocked our country in recent years.

Asserting equal rights for all, we support the Bush Administration's vigorous enforcement of statutes to prevent illegal discrimination on account of sex, race, creed, or national origin. Promoting opportunity, we reject efforts to replace equal rights with quotas or other preferential treatment. That is why President Bush fought so long against the Democrat Congress to win a civil rights bill worthy of that name.

We renew the historic Republican commitment to the rights of women, from the early days of the suffragist movement to the present. Because legal rights mean little without



opportunity, we assert economic growth as the key to the continued progress of women in all fields of American life.

We believe the unborn child has a fundamental individual right to life which cannot be infringed. We therefore reaffirm our support for a human life amendment to the Constitution, and we endorse legislation to make clear that the Fourteenth Amendment's protections apply to unborn children. We oppose using public revenues for abortion and will not fund organizations which advocate it. We commend those who provide alternatives to abortion by meeting the needs of mothers and offering adoption services. We reaffirm our support for appointment of judges who respect traditional family values and the sanctity of innocent human life.

President Bush signed into law the greatest advance ever for disabled persons: The Americans with Disabilities Act, a milestone in removing barriers to full participation in our country's life. We will fully implement it, with sensitivity to the needs of small businesses, just as we have earlier legal protections for the disabled in federal programs. We oppose the nonconsensual withholding of health care or treatment from any person because of handicap, age, or infirmity, just as we oppose euthanasia and assisted suicide.

We support full access to the polls, and the entire political process, by disabled voters. We will ensure that students with disabilities benefit from AMERICA 2000's new emphasis on testing for excellence and accountability for results.

Promoting the rights of the disabled requires, before all else, an expanding economy, both to advance assistive technology and to create opportunities for personal advancement. That is another reason why Republicans are committed to growth.

We reaffirm our commitment to the Fifth Amendment to the Constitution: "No person shall be...deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation." We support strong enforcement of this Takings clause to keep citizens secure in the use and development of their property. We also seek to reduce the amount of land owned or controlled by the government, especially in the western States. We insist upon prompt payment for private lands certified as critical for preserving essential parks and preserves.

Republicans defend the constitutional right to keep and bear arms. We call for stiff mandatory sentences for those who use firearms in a crime. We note that those who seek to disarm citizens in their homes are the same liberals who tried to disarm our Nation during the Cold War and are today seeking to cut our national defense below safe levels. We applaud congressional Republicans for overturning the District of Columbia's law blaming firearm manufacturers for street crime.

We affirm the right of individuals to form, join, or assist labor organizations to bargain collectively, consistent with State laws. We support the right of States to enact Right-to-Work laws.

A Republican Congress will amend the Hobbs Act, so that union officials will not be exempt from the law's prohibition against extortion and violence. We call for greater legal protection from violence for workers who stay on the job during strikes.

We support self-determination for Indian Tribes in managing their own affairs and resources. Recognizing the government-to-government trust responsibility, we aim to end dependency fostered by federal controls. Reservations and tribal lands held in trust should be free to become enterprise zones so their people can fully share in the Nation's prosperity. We

will work with tribal governments to improve education, health, economic opportunity, and environmental conditions. We endorse efforts to preserve the culture and languages of Native Americans and Hawaiians and to ensure their equitable participation in federal programs.

☆ ☆ ☆

JUSTIN DART, JR.
907 6TH STREET, S.W., APT. 516C
WASHINGTON, D.C. 20024
202-488-7684 (H)

I am honored to serve as Co-chair of the Bush-Quayle '92 Disability Coalition. **President Bush kept his promise to support, sign and implement the Americans With Disabilities Act**. This landmark, world-first law will lead to jobs and dignity for millions of people with disabilities, new customers and profit for business, and lower welfare costs for governments. The President set a record for empowering people with disabilities in his Administration. He presided over the end of the cold war and the supremacy of democracy throughout the world, paving the way to focus our human and economic resources on quality of life.

THE FUTURE - FULFILLING THE PROMISE OF ADA. The President will continue to work with the disability community to complete the edifice of empowerment, with the ADA at its foundation. President Bush knows that the ADA is a promise yet to be fulfilled in terms of real life equality, jobs, and prosperity for all Americans with Disabilities. He knows that it cannot be fulfilled simply by spending more money on traditional paternalistic programs that segregate services for people with disabilities. The President will provide aggressive leadership in developing empowerment initiatives that enable all Americans to take responsible control of their own services and destinies, to increase their productivity, to obtain good jobs, and to live lives of dignity and quality.

PROMISES OR RESULTS? More than any other President in history, George Bush has been a leader in elevating perceptions of people with disabilities from pitiful candidates for paternalistic charity to fully adult Americans with potential to be fully productive participants in the mainstream of our society. Unlike his opponent, he refuses to treat us as children, to tell us that he can solve our problems for us. Instead, he has extended the hand of partnership and empowerment. He has made fewer promises than his opponent, but offers a record of historic achievement.

AN ONGOING COMMITMENT. In his first acceptance speech at the New Orleans Republican National Convention on August 18, 1988, George Bush said "I am going to do whatever it takes to make sure that people with disabilities are included in the mainstream. For too long they've been left out. But they're not going to be left out any more." He continues that commitment today. Working with President Bush and his Administration, look what we together have achieved.

A PERSONAL NOTE. The bottom line is this. I know on a very personal basis that George Bush has laid his political career on the line for my right, and the right of my 43 million colleague citizens with disabilities, to be treated as adult human beings. He has been subjected to enormous pressure by powerful lobbies not to support, not even to mention, the ADA. Ahead or behind in the polls or the fund raising, he has never waivered. He has demonstrated a depth of commitment to principle that transcends politics. He has shown a quality of the heart and the soul that is beyond explanation in a brochure. When your life is on the line, when the American dream for your children is on the line, you'll be glad that President Bush is there.

BACKGROUNDER
Issues Office

BUSH QUAYLE 92

September 17, 1992

PRESIDENT BUSH'S AGENDA FOR AMERICANS WITH DISABILITIES

The Bush Administration is firmly committed to empowering people with disabilities in all aspects of their lives. Two years ago, President Bush kept his promise to the disability community when he supported, signed and implemented the Americans With Disabilities Act (ADA), the first comprehensive civil rights law for people with disabilities by any nation. He has appointed, and will continue to appoint, people with disabilities to high-level positions in his Administration. In his next term, President Bush will expand his commitment to make every aspect of our society accessible to people with disabilities and to ensure that they have the opportunity to participate fully in the mainstream of society.

Americans With Disabilities Act:

- The President will continue to work with the disability community, business, and government at all levels for the full and harmonious implementation of the ADA with minimal litigation, expense, and intrusive regulation, and maximal benefit to Americans with disabilities according to the 1990 schedules and regulations.

Education:

- In the first term, the President signed the Individuals With Disabilities Education Act Amendments of 1991, strengthening the law that ensures all children with disabilities a free, appropriate education designed to meet their unique needs. The President's America 2000 education strategy will create new opportunities for children and adults with disabilities to learn in the mainstream of society.

Employment:

- Employment of people with disabilities is among the President's highest priorities for the nation. He has recommended a $32 million increase in the budget of the EEOC to enforce the ADA, and has ordered all federal agencies to be models of employment for people with disabilities.

Empowerment:

- The President will continue to empower and support leaders of the disability community by appointing them to policy making positions within his Administration, and within all federal agencies.

-more-

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1030 15th St. N.W., Washington, D.C. 20005

Family Support:

- The President will continue his efforts to restore and double the size of the tax credit for adoption of children with special needs.

Health Care:

- The President strongly supports full access to health care for all people with disabilities, with coverage for preexisting conditions and no barriers to employment or to changing employment.

Personal Assistance:

- The President strongly supports measures that will enable people with disabilities to move out of institutions, to live in their homes and to work. The Department of HHS has established an interagency working group on personal assistance services.

Social Security Disability:

- The President is committed to removing all remaining disincentives and barriers to work for people with disabilities under the Social Security Disability Insurance and Supplemental Security Income programs.

# # #

BRIEFING PAPER

Issues Office

BUSH QUAYLE 92

September 20, 1992

PRESIDENT BUSH MEETING THE NEEDS OF AMERICANS WITH DISABILITIES

"I am going to do whatever it takes to make sure the disabled are included in the mainstream. For too long they've been left out. But they're not going to be left out anymore."

President George Bush
August 18, 1988

"[The Americans with Disabilities Act] will ensure that people with disabilities are given the basic guarantees for which they have worked so long and so hard. Independence, freedom of choice, control of their lives, the opportunity to blend fully and equally into the rich mosaic of the American mainstream."

President George Bush
July 26, 1990

Summary: Empowering Disabled Americans, Enriching America

- President Bush has long recognized that Americans with disabilities constitute a rich, yet too often untapped, national resource. He believes that each American should have an equal opportunity to be a fully participating, productive member of society.

- President Bush was the leading force in the passage of the Americans with Disabilities Act (ADA), a landmark piece of civil rights legislation that will extend to an estimated 43 million disabled persons new protections from discrimination in employment, public services, public accommodations and transportation.

- With his signing of the ADA on July 26, 1990, and his leadership in additional programs and initiatives empowering persons with disabilities, the President has kept his commitment to ensure full participation in our society by the disabled community.

- The President's signing of the ADA marked the world's first declaration of equality for people with disabilities, and made America the world leader on this issue.

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- President Bush is firmly committed to enforcing the ADA and other disability laws, and to employing qualified people with disabilities in the federal government.

- The Bush Administration has developed programs and policies that promote independence and productive involvement of people with disabilities in education, housing and health care.

Civil Rights -- The ADA

- The ADA provides to persons with disabilities:

  -- Protection from discrimination by employers covered by the Act;

  -- Access to public accommodations such as restaurants, hotels, shopping centers and offices;

  -- Expanded access to transportation services;

  -- Equivalent telephone services for people with speech or hearing impediments.

- The ADA got its start with the 1986 Report of the National Council on Disability. In the report, "Toward Independence," the Council proposed broad legislation to expand federal civil rights laws to include Americans with disabilities. Then-Vice President Bush accepted the Report on behalf on the Reagan Administration.

- During the 1988 Presidential campaign, then Vice-President Bush endorsed the need for legislation to extend to people with disabilities the same basic opportunity rights that are afforded to women and minorities.

Employment

- The ADA prohibits discrimination against qualified persons with disabilities, and requires employers to make reasonable accommodations for qualified applicants of employees, unless it would cause undue hardship.

- The Rehabilitation Act requires States to set up vocational rehabilitation agencies to identify a disabled person's needs, promote or purchase rehabilitation services, provide job counseling and training, and aid in finding employment.

- The President's Committee on Employment of People With Disabilities helps fund the Job Accommodation Network (JAN), an "800" telephone service that provides information and referrals on how people with disabilities can be helped by specific job accommodations.

- The General Services Administration (GSA) helps the employing agency identify appropriate electronic equipment to aid the disabled federal employees. For example, talking and Braille computers are available to visually impaired workers.

Women with Disabilities

- In recent years, more women with work disabilities have joined the labor force, rising from 23.5 percent in 1981 to 27.5 percent in 1988. Women with work disabilities are also increasingly likely to be employed full-time. The ADA protects these women against discrimination and assures them improved access to public accommodations, transportation, telecommunications, and government services.

- To ease the personal isolation of young women with disabilities and to help them achieve self-sufficiency, innovative programs like the Networking Project for Disabled Women and Girls, which was recently initiated in Philadelphia, bring physically disabled girls together with disabled women who are active in a broad range of careers.

Children and Education

- In 1991, President Bush signed the Individuals With Disabilities Education Act (IDEA) Amendments, strengthening the laws ensuring that all children with disabilities have a free, appropriate public education designed to meet their unique needs. For FY 1993, the President's budget proposes $2.1 billion for Part B of the Individuals with Disabilities Act, which includes the Grants to States program supplementing the education of 4.6 million children.

- IDEA also supports State efforts to coordinate comprehensive interagency programs of early intervention services to all children up to two years of age who have disabilities or are "at risk" of having developmental delays. The President's FY 1993 budget proposes $181 million for the Infants and Families program and these grants help States coordinate activity with 18 Federal programs, including Medicaid, that provide billions of dollars for needed services.

- Under IDEA, States would receive $320 million for additional services to an estimated 380,000 pre-school children.

- Funding for all IDEA programs for children with disabilities has increased 50 percent since 1989.

Public Accommodations, Government Services, Transportation, and Telecommunications

- The ADA requires access to a broad range of places of public accommodation, State and local government services, public and private modes of transportation, and telecommunications systems.

- In his FY 1993 Budget, President Bush ensured that funds would be available to meet ADA enforcement needs, including the hiring of additional Justice Department and Equal Employment Opportunity Commission employees.

  -- This budget request includes a $32 million increase in the EEOC budget, and the creation of an ADA technical assistance fund to provide technical assistance in complying with the ADA.

- The ADA requires every public entity which operates a fixed route bus system to purchase only new buses or rail vehicles that are readily accessible to and usable by individuals with disabilities.

- Intercity and commuter rail will be required within five years to provide at least one passenger car per train that is readily accessible to individuals with disabilities. Train stations are to be made accessible within 30 years, with the requirement for commuter, rapid, and light rail limited to key stations.

- The ADA requires closed captioning of public service announcements produced or funded by the Federal government.

- Telephone companies must provide, to the extent possible, relay services allowing hearing- or voice-impaired people to place and receive calls from ordinary telephones.

Housing

- In 1991, the President signed into law the Fair Housing Amendments Act which prohibits discrimination in housing. This legislation provides Americans with disabilities the same freedom to choose their places of residence as other citizens.

Health Care

- The ADA requires access to medical providers and facilities, and severely restricts differential treatment of disabled people by health and other insurers.

- The President's Comprehensive Health Reform Plan would further enhance access to affordable health insurance for people with disabilities, and in particular would address the problem confronted by many people with disabilities who are denied health insurance due to pre-existing conditions.

- The Bush Administration supported establishment of a new National Center for Medical Rehabilitation Research at the National Institutes of Health. The new Center is conducting important research on the health care and rehabilitative needs of people with disabilities.

Family Support

- President Bush has proposed to restore the tax credit for adoption of children with special needs, and to double the amount of the credit from $1,500 to $3,000.

- In 1991 President Bush signed the bill reauthorizing the Individuals with Disabilities Education Act which insures that all children with disabilities have a free, appropriate education that meets their unique needs. This education helps prepare students with disabilities for special challenges they will face in the future and relieves families of special education costs.

Veterans with Disabilities

- The President has developed several initiatives to benefit disabled veterans including establishing a national toll-free hotline to assist veterans who were exposed to radiation during their military service, and improving compensation for various veterans' illnesses related to war.

- President Bush has expanded veterans' benefits, signing into law a comprehensive benefits package for veterans of the Persian Gulf War and implementing a series of new employment and educational programs designed to assist veterans.

  -- President Bush proposed $12.3 billion in fiscal year 1992 to fund compensation payments for some 2.2 million disabled veterans. For FY 1993, the President proposed another $12.3 billion for the payment of compensation, pensions and burial benefits to veterans and survivors. Compensation is also paid to veterans for disabilities incurred in or aggravated during military service.

# # #

Disability Data for Disability Policy:

Availability, Access and Analysis

U.S. Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation, Office of Disability, Aging, and Long-Term Care Policy

DISABILITY DATA FOR DISABILITY POLICY: AVAILABILITY, ACCESS AND ANALYSIS

I. INTRODUCTION

This paper provides background information for a meeting on data sets containing information on health care and long-term supports for persons with disabilities. The primary purpose of the meeting is to inform the research agenda of the Office of Disability, Aging, and Long-Term Care (DALTCP). The meeting will be hosted by DALTCP in the Office of the Assistant Secretary for Planning and Evaluation in Washington D.C. on March 31.

We ask participants to assist us to:

1. assess disability-related national data sets pertaining to health and long-term supports, particularly as related to the policy issues discussed below;

2. identify useful state, area, private and international data bases, including data from large federally-assisted demonstrations of managed care, integrated health services, long-term care and welfare reform;

3. identify next steps in analyzing available disability data; and

4. propose priorities for DALTCP's research agenda regarding disability data.

Overview of Paper

The paper begins with two general sections: Conceptual and Policy Framework and General Orientation to Disability Data, the latter of which contains an overview of the Disability Survey (1994-1995 Supplements to the National Health Interview Survey).

There follow sections which discuss policy and research questions ASPE/DALTCP is addressing and a critique of available data on four populations of persons with disabilities: working age adults; persons under age 18; older adults; and special populations.

The concluding section poses key questions in considering a disability data strategy and identifies possible next steps in a

disability data strategy.

II. CONCEPTUAL AND POLICY FRAMEWORK

A. Definition of Disability

There are many ways to define "disability". The definition should be broad enough to cover all persons of interest, yet detailed enough that policymakers and program administrators can identify the target groups they try to serve.

For this paper, we consider a disability to be a limitation of activity due to chronic conditions. Such a definition, which is used by the National Center for Health Statistics, is "slanted" toward a health perspective. This is in keeping with the Department's mission, which -- with the departure of the Social Security Administration (SSA) -- is likely to place greater emphasis on health and long-term care policy as they affect persons with disabilities.

In the World Health Organization's (WHO) manual **International Classification of Impairments, Disabilities and Handicaps** (1980), impairments represent disturbances at the organ level; disabilities reflect the consequences of impairment in terms of functional performance and activity by the individual; and handicaps are concerned with the disadvantages experienced by the individual as a result of impairments and disabilities. WHO is currently producing a revision and updating of this classification.

The starting point for this paper should not obscure the difficulty of reaching a broad consensus on one or more definitions of disability or identifying all the variables required to view disability from a variety of policy and program perspectives. In the process of developing a disability data strategy, the full range of conceptual, methodological and definitional issues around disability must be examined thoroughly.

B. Basic Demographics

According to the 1990 SIPP, approximately 40.1 million Americans living in the community have one or more disabilities because of a physical or mental health condition. There are in addition about 2.6 million persons with disabilities who reside in institutions. This population is characterized in the first instance by its diversity. It includes the frail elderly, persons with mental retardation or other developmental disabilities (MR/DD), adults with physical disabilities or mental illness, children with disabilities and veterans. While the specific needs of these groups vary, they share common concerns and aspirations.

C. Policy Context for ASPE's Interest in Disability Data

The Office of the Assistant Secretary for Planning and Evaluation (ASPE) provides data and analyses to inform policies of the Department of Health and Human Services.

Within ASPE the Office of Disability, Aging, and Long-term Care (DALTCP) has a mandate from the Assistant Secretary for Planning and Evaluation to expand its research agenda on persons with disabilities of all ages, focusing on health services and long-term supports. We are conducting and planning a number of disability-related research projects.

In addition we have responsibilities regarding policy-relevant national survey data, including adding specific questions or entire sections to ongoing surveys (e.g. National Long Term Care Survey), reviewing surveys sponsored by agencies in the Department, and developing new surveys in cross-cutting areas such as the 1994-95 Disability Supplement to the National Health Interview Survey.

Given the cross-cutting nature of disability issues, we are coordinating our work with other departments and agencies, including the Departments of Education and the new independent Social Security Administration as well as with operating agencies in the Department of Health and Human Services and within ASPE itself.

National programs affecting persons with disabilities have developed considerably over the past quarter century. Currently many of these programs are undergoing scrutiny within the Administration and in Congress. Policy-relevant data are needed in a number of areas. Major disability-related initiatives which would benefit from more current data and data analyses include the following.

* President's Disability Policy Review

  The White House has undertaken a broad review of federal disability policy through a group chaired by Carol Rasco and Alice Rivlin. This group will review the direction of federal disability policy and provide guidance for the next steps. Specific Work Groups include: Guiding Principles, Accommodations, Children's Issues, Employment of Working-Age Adults, and School-to-Work Transition. Judy Feder and Robyn Stone of ASPE are convening the group on Children's Issues.

* Children with Disabilities on SSI

  Rapid growth in the number of children who are receiving Supplemental Security Income (SSI) because of a disability has generated concern and criticism at present. In consequence, a

National Commission on Childhood Disability has been mandated by the 103rd Congress. See below.

* Health Care Reform Initiatives

Access to health insurance is a major concern for persons with disabilities. States and private insurers are undertaking reform initiatives despite lack of a major federal health reform initiative. Proposals for universal coverage and a ban on exemptions from coverage due to pre-existing conditions offered great promise to persons with disabilities. However, this constituency has concerns about the consequences of managed care and various cost containment measures.

In ASPE's studies of the effect of managed care options on persons with disabilities -- both children and adults -- valid and reliable data have not been readily available.

* Potential Changes in Medicare and Medicaid

Many states are using managed care plans to serve their Medicaid enrollees. While people with disabilities have for the most part been carved out of these initiatives, a number of States are beginning to enroll their SSI (aged and disabled) populations in managed care plans.

There is serious consideration of placing a cap on federal Medicaid expenditures or turning the Medicaid program into a block grant. The Health Care Financing Administration (HCFA) expects a doubling of non-elderly disabled Medicare beneficiaries between 1980 and 2000. ASPE/DALTCP in conjunction with HCFA is examining changes in the Medicare home health benefit. In general we need data to project consequences of different scenarios of changes in these major programs for persons with disabilities.

* Long-Term Support Reform

Debate continues concerning the feasibility of a federal program to provide block grants to states for home and community-based services, including personal assistance services, for persons with disabilities. Of particular interest are issues around consumer-directed services. Perhaps a more probable initiative is enactment of tax incentives for private long-term care insurance. Data are needed regarding who buys such insurance.

Also of interest regarding home and community-based services are criteria for assessing state service-delivery "infrastructures" and needs for technical assistance.

In addition, State governments and the private sector are

developing assisted living and other housing-with-services options. This gives added importance to information on the living arrangements of persons with disabilities, along with their preferences. Such information is needed on the disabled population as a whole and various subpopulations of persons with disabilities.

* Welfare Reform Initiatives

Approximately one-third of women on AFDC either have a disability, have a child with a disability or may reside with another adult with a disability (Adler, 1993). Furthermore, Research reviewed by the Urban Institute (Acs and Loprest, 1994) gives some indication that women with disabilities (especially those with multiple disabilities) are less likely to exit from AFDC for paid employment within a year.

It is unclear the extent to which job training, if enacted as a part of welfare reform, will address the special needs of persons with disabilities. DALTCP has in progress an exploratory study of impacts on persons with disabilities of welfare reform initiatives in a small sample of states.

* Assessment of the Americans with Disabilities Act

As reported in Federal Implementation of the Americans with Disabilities Act, 1991-94 (West, 1994), the potential of the Americans with Disabilities Act for defending the civil rights of persons with disabilities has only partially been realized. DALTCP is particularly interested in access to health and housing facilities.

Our experience is that one cannot assume easy access to health institutions, even though many hospitals and clinics receive federal support and therefore have been required by the federal Rehabilitation Act to provide access. Accommodation of persons with disabilities in existing privately-owned rental housing is not required by federal law. These issues have special policy significance in today's political climate.

* The Changing Federal Role: (A) Devolution (B) Reinvention

A major theme of the current Congress is transferring responsibility for social programs to the states, generally by means of block grants. In the past there has been minimal federal monitoring of who receives which benefits, and even less information about program impacts. For example, there are few data on which age groups receive services under the Social Services Block Grant.

Although an increased federal awareness of disability is suggested by the ADA and the President's Disability Policy

Review, implementation of block grants potentially for nutrition, welfare, and Medicaid programs may substantially deter any Federal effort to track impacts on persons with disabilities unless provisions for so doing are explicitly incorporated.

The Reinventing Government effort -- that is making government "leaner" -- has implications for disability data. In an era of diminishing resources, there is consideration of how to consolidate surveys, establish standards for data collection and better organize data collection responsibilities within agencies. Undertaking new data collection initiatives in this environment will require considerable justification.

III. GENERAL ORIENTATION TO DISABILITY DATA

A. Federal Data Bases

The United States has a wide variety of data bases on persons with disabilities -- national, state and private. The collection of data on persons with disabilities has made considerable progress over the past decade.

In the near future, data sets will become available that will shed light on the characteristics, service use, expenditures and sources of payment for many groups of persons with disabilities. Most notable is the Disability Survey, which is being administered as a supplement to the Health Interview Survey in 1994 and 1995. This survey will serve as the "work horse" of disability analyses for the foreseeable future.

Even with such promising developments, a number of data problems persist. The Department's experience in examining health and long-term care reform options highlighted some of these problems.

(1) While much is known about the frail elderly and their use of services, relatively little is known about other groups of persons with disabilities such as children, working age adults and special populations (e.g. mentally ill, developmentally disabled) that cut across age groups.

(2) The Activities of Daily Living (ADL) provide reasonable measures of functioning for older persons with physical disabilities; however, we lack equivalent measures for persons with cognitive impairments or mental illness and for children regardless of their type of disability.

(3) More consistent policies on measures and data systems on persons with disabilities are needed. At the national level, the data systems are largely decentralized and there remain

significant gaps in coverage. Improved coordination, planning and priority setting among federal agencies are required to make possible the best analytic uses of the data bases.

(4) There should be development of longitudinal data bases (including panel studies) on the general population with disabilities and special subpopulations.

(5) Increased access is needed to subnational data bases, including state and local surveys, data from federally funded demonstration programs, and proprietary data systems.

(6) There should be more frequent and routine linkage of survey data with administrative records such as Medicare, Medicaid, and Social Security.

Other specific recommendations for improving disability data collection include:

(a) routine inclusion of disability measures in ongoing national data collection systems (LaPlante in National Council on Disability, 1992, p.35);
(b) in federal statistical reports, tabulation of findings by disability along with other standard demographic variables (e.g. age, race and income) (LaPlante, ibid.);
(c) increased focus on gaining congressional support for expanded data gathering on disability (LaPlante, ibid.); and
(d) reporting information in the Current Population Survey on labor force participation by persons with disabilities every month rather than only in March as is now the practice of the Bureau of Labor Statistics (Yellin, 1992, p.157).

B. Overview of the 1994/95 Disability Survey

The 1994/95 Disability Survey, the most comprehensive national survey on disability ever undertaken in this country, will provide information on research and policy issues related to disability. It is the first exhaustive survey of disability since 1978 and the first ever to collect national population-based data on children with disabilities and persons with developmental disabilities.

Data from the 1994/95 Disability Survey will enable us to understand more about people with disabilities -- their numbers, characteristics (e.g. demographic, socio-economic, health, participation in Federal programs), service use and expenditures, and aspects of their daily lives (housing, transportation, employment, personal assistance). In addition, the following policy questions can be addressed:

(1) What are the characteristics of people with disabilities who rely on DHHS programs?

(2) Why is growth in SSI and SSDI enrollment (and the companion Medicaid and Medicare programs) and costs so high?

(3) Why is employment among persons with disabilities so low and why do some people with the same disabilities work while others do not?

(4) What is the extent of disability among children and why is SSI growth so high, what role do recent changes in SSI eligibility (i.e. Zebley Supreme Court decision, new childhood regulations, expanded mental impairment criteria) play?

(4) How do persons with mental retardation and other developmental disabilities access community services and what is the role of Medicaid?

(5) How do access to health care, health care utilization, and public versus private health insurance coverage vary for people with disabilities?

(6) What is the impact of racial/ethnic differences in disability?

The 1994/95 Disability Survey grew out of a coordinated interagency and inter-Departmental effort at the Department of Health and Human Services (DHHS) to obtain timely and complete disability data.

Under an ASPE contract, Mathematica Policy Research, Inc. (MPR) produced a design for a national survey of persons with mental retardation or other developmental disabilities (MR/DD) as well as detailed measures and data collection instruments. A supplement to the Health Interview Survey was proposed as the vehicle for the MR/DD survey. This work served as the foundation for a more comprehensive Disability Survey.

The questionnaire was extensively reviewed by the Federal disability community, advocacy groups, and academics. In addition, the questionnaire was voluntarily tested by people with disabilities and their families at the NCHS Cognitive Questionnaire Lab. Finally, a pretest involving 250 households was also conducted in the Washington, DC area.

The 1994/95 Disability Survey is actually a two-year supplement to the National Health Interview Survey (NHIS). The NHIS has been collecting information on the nation's health since 1957. Samples are huge. About 100,000 households representing 240,000 people in the civilian non-institutionalized population will be interviewed.

The 1994/95 Disability Survey has two parts or phases, each of which consist of personal interviews in respondents' homes. Phase I is administered to the 240,000 respondents selected in the NHIS sample. Phase I interviews began in January 1994 and will continue through December 1995. Phase I contains many in-depth disability measures, as well as information on severity, onset, duration, and disabling condition.

Phase I disability measures include standard limitation of activity measures and detailed measures of sensory impairments, functioning of specific body systems, 6 separate ADLs, 6 separate IADLs, mental illness, assistive devices, childhood disability, and functioning for children under 5. People with mental retardation and other developmental disabilities (using the legislative definition) can also be identified.

Many disability measures are standard, while others -- notably those on children, mental illness, and developmental disabilities -- are new and were derived with this survey in mind. Besides information on disability, data on health care, demographic, socio-economic, health insurance, and program characteristics of people with and without disabilities are also gathered in Phase I.

Phase II is administered about 6 to 9 months after Phase I to about 40,000 respondents with serious disabilities. Phase II began in the Fall of 1994 and will end in Fall 1996. Phase II collects data on service use and expenditures, housing, long-term care services, home care, personal assistance, respite care, transportation, employment, accommodations, work history, vocational rehabilitation, relationships, family structure, family impact (for children) and child care (for children).

Information from the Disability Survey can be linked to administrative disability records at SSA and Medicare records at HCFA. Furthermore, while the Disability Survey is a one-time or snapshot survey, provisions can be made to follow respondents back and reinterview them for longitudinal studies. Final results could be released in early 1997 and preliminary results by early 1996.

IV. DATA ON WORKING AGE ADULTS

A. Key ASPE/DALTCP Policy Concerns

In developing the long-term care proposal in the Health Security Act and defining a benefits package, analysts in ASPE and elsewhere lacked data about working-age persons with disabilities and their use of services. We relied primarily on data from the National Long Term Care Survey and the model of service use and costs developed by Brookings and Lewin-VHI for projections of target populations and costs for persons aged 65 and over.

In general, we have limited data on working age persons with disabilities in regard to key DHHS policy concerns. These include:

- Use and costs of personal assistance services and related supports.

  Recent expert meetings confirmed our need for data on uses and

costs of personal assistance services and related supports (such as assistive technology or adaptations) and for certain basic health benefits such as maintenance rehabilitation.

- Impacts of increased reliance on managed care on persons with disabilities.

  Managed care is a centerpiece of most reform initiatives being implemented by many states (e.g. for their Medicaid programs) and by private insurers. While managed care holds promise of providing under one auspices an array of needed services by persons with disabilities, persons with disabilities and their advocates express a number of fears and concerns about potential disadvantages of managed care. These center on access to and receipt of appropriate services.

  There are few data to address key questions such as functional and demographic characteristics of persons with disabilities in managed care and the impact of managed care on access to needed services, affordability and costs, and on individual outcomes.

- Incentives or barriers to employment of persons with disabilities.

  Incentives and barriers to work for persons with disabilities include access to health insurance and to long-term supports. DALTCP has in progress research to determine what data are available on the use of personal assistance services and of assistive technology by workers with disabilities to answer questions such as:

  (1) What number and proportion of workers use PAS, assistive technology, and adaptations and to what extent are these used in the workplace?
  (2) To what extent do employers provide for personal assistance in the workplace or pay for AT and other adaptations?

- How persons with disabilities or parents of children with disabilities would be affected by proposed changes in the AFDC program.

  As mentioned above, DALTCP is sponsoring exploratory telephone interviews with officials in five states which have undertaken welfare reform initiatives. In addition ASPE is sponsoring an evaluation of state welfare reform initiatives. It is anticipated that data collection will include questions concerning AFDC recipients who have disabilities or who have children with disabilities.

B. Existing Data Sources

Numerous Federal surveys collect disability data on the working-age population (aged 18-64), but except for the 1994/95 Disability Survey, none focus primarily on disability. That was not always the case. SSA conducted the Surveys of Disability and Work every few years beginning in the early 1960's in order to measure the extent of disability in the working-age population and to examine the experience of disabled workers on SSDI and their families. The last Survey of Disability and Work was conducted in 1978 and there are no plans to repeat the survey.

Nowadays, data sources include either special surveys on disability (like the 1994/95 Disability Survey) or the addition of disability questions on non-disability surveys. Besides the 1994/95 Disability Survey, the major sources of information on the entire working-age population with disabilities include:

(1) 1990 Decennial Census,
(2) 1984, 1990-96 Surveys of Income and Program Participation (SIPP),
(3) 1957-95 National Health Interview Surveys (NHIS),
(4) 1987 National Medical Expenditure Survey (NMES), and
(5) Current Population Surveys (CPS).

In addition, the Medicare Current Beneficiary Survey covers SSDI beneficiaries eligible for Medicare -- a small but policy-relevant segment of the working-age population with disabilities.

C. Strengths and Weaknesses

The sheer size of the working-age population with disabilities is immense. Although disability rates are much lower among the working-age population (13.7 percent) than among the elderly (54.8 percent), more people with disabilities are in their working years (21.1 million) than in their elderly years (17.1 million).

The working-age population is not only large, but heterogeneous, and is in fact made up of many smaller groups, most of whom are too small to pick up in surveys. These small often policy-relevant groups can be based on condition (i.e. mental retardation, mental illness, multiple sclerosis, spinal cord injury), type of impairment (i.e. mental, physical) program participation (i./e. SSDI, SSI, VA), onset (congenital, childhood, early or late adulthood), age, gender, and race. Only the 1994/95 Disability Survey with its huge samples can hope to gather data on many of these small groups.

There are crucial but unresolved definitional and measurement issues among the working-age population. No equivalent severity measures and survey questions have been developed for physical

versus mental impairments. The standard functioning questions based on ADLs and IADLs often break down. Since mental illness and mental retardation are major disabling conditions in this age group, this is a critical gap.

The relationship between functional disability and work is also not well understood. Some people with the same level and type of disability work while others do not. Besides disability, a host of other factors are important in the decision to begin or return to work. These can include occupation (i.e. sedentary, manual labor), educational attainment, and age (those in their 60s may wish to stop work and retire early).

A small but important segment of the working-age population with disabilities are institutionalized (i.e. nursing homes, mental hospitals, prisons) or are homeless. Since few national surveys include this population and since the few surveys which focus on the institutionalized (i.e the National Nursing Home Survey) have very small samples of the nonelderly, we know little about this group.

Most Federal disability programs focus on the nonelderly and many of these pertain to people in their working years. These programs have administrative records which, if linked to national population-based surveys, could strengthen and expand our knowledge. However, administrative data is often not linked for reasons of confidentiality or simply because no such considerations were made.

V. DATA ON PERSONS UNDER AGE 18

A. Key ASPE/DALTCP Policy Concerns

A major policy focus for this age group concerns issues relating to benefits for children under the federal Supplemental Security Income (SSI) program. In 1994 almost three times as many children received SSI benefits (approximately 900,000 children) as did in 1989. This dramatic growth in the SSI program and the changing characteristics of the children who participate--most notably a presumed increase in children with mental impairments-- has caused scrutiny of the program by the Administration and the Congress.

By Congressional mandate, the National Commission on Childhood Disability is reviewing the SSI program and the needs of children with disabilities. DALTCP has been involved in developing a research agenda for the Commission. In addition ASPE and DALTCP staff are leading the task force on disability programs for children as part of the Administration's Disability Policy Review.

The Commission has authority to examine:

- causes of program growth;
- eligibility criteria and determination;
- relative merits of voucher rather than cash benefits;
- effects of SSI benefits on children and their families; and
- merits of alternative approaches to helping children achieve future independence and employment, including closer involvement of private organizations in providing services.

In addition the Commission's charge includes consideration of federal health assistance programs for children and the interactions of SSI with other public medical, special education, and case management programs.

Our plans to date for generating information for the National Childhood Disability Commission include analysis of early data from the disability survey; a synthesis of SIPP, census, and NHIS data, and studies of use of Medicaid-funded services by SSI recipients.

In addition to its work with the Commission and the Disability Policy Review, DALTCP and other ASPE programs are undertaking a program of research on children with disabilities. Projects include analyzing use of Medicaid services by children with disabilities, examining managed care programs for children with disabilities, and describing the extent to which school systems meet requirements for provision of related Services under the Individuals with Disabilities Education Act (IDEA) by using Medicaid benefits.

More broadly, the "reinvention" of the federal government and the shift toward consolidating categorical programs, establishing block grants and capping expenditures for major programs (e.g. Medicaid) could have significant impacts on children with disabilities.

We recently awarded seven research grants for projects which make use of available data sets. These include State and local data bases. Topics include assessment of policy implications of alternative functional definitions, patterns of service use and costs within several states, interactions of the AFDC and SSI programs with regard to children with disabilities.

B. Existing Data Sources

Little information exists on children with disabilities. The major sources of information are:

(1) 1994/95 Disability Survey,
(2) 1984-96 Surveys of Income and Program Participation (SIPP),
(3) 1957-95 National Health Interview Surveys,
(4) 1987-88 Survey of Families and Households, and
(5) 1987 National Medical Expenditure Survey (NMES).

Program records from SSI and the Special Education programs also contain disability data.

C. Strengths and Weaknesses

It is difficult to measure disability in children -- much more so than for adults. Furthermore, the younger the child, the harder it is to understand, articulate, and measure disability. In fact, disability a very different concept for infants, toddlers, preschool children, school-age children, and adolescents. Whereas play is the usual activity for children aged 3-5 and attending school for those aged 5-17, the usual activity of infants and toddlers (growing, developing?) is unclear and hard to measure. The lack of standard measures meant that new questions needed to be created for the 1994/95 Disability Survey.

Although children constitute about a quarter of the population, national surveys often include few children with disabilities in their samples. This is because the prevalence of children with disabilities is small (about 6 or 7 percent of all children) and because major surveys like the SIPP and the CPS are really focused almost exclusively on adults (people aged 15+ or 16+).

For example, SIPP has collected data on children's disability since its inception, but none on children's SSI participation, because SSI receipt is in the core set of questions designed solely for adults. (This will be remedied starting with the 1996 SIPP.)

While longitudinal data are universally scarce for people with disabilities, their lack is especially crucial for children, who change much more rapidly than adults in regards to disability and everything else. Finally, children live in families. While data on a child's disability is crucial, we also need to know about his or her family and their characteristics in order to gain an accurate understanding of the issues.

VI. DATA ON OLDER ADULTS

A. Key Policy Concerns

While data on older adults with disabilities is more extensive than for other populations, there are significant gaps.

- Modeling service use and costs

  Increases in the aging population, especially in numbers of persons over age 80 or 85 who are at greatest risk for needing health and long-term care services, dominates much debate over policies on older adults. A major emphasis of DALTCP's recent

work with regard to older adults has been modeling long-term care service use and costs by persons age 65 and older using primarily data from the National Long-Term Care Survey.

Use of the model greatly facilitated development and acceptance of the long-term care proposal for various health reform bills last year. We plan to extend this model to estimating acute care costs in order to project consequences for policy changes such as, for example, adding co-payments to Medicare home health benefits or increasing Medicare Part B premiums.

We would also expect to examine the impact of integrated acute and long-term care strategies on public and private expenditures. In addition we propose to extend our capability to understand impacts within states of changing use and costs of acute and long-term services, using Census data, the National Long-term Care Survey and the Disability Survey.

A key question is the extent to which increased life expectancy is accompanied by a longer period of disability and chronic illness. There is some evidence from earlier rounds of the National Long-Term Care Survey (NLTCS) that the prevalence of disability among the elderly is decreasing. Data from the 1994 NLTCS may provide further assessment of these trends.

- Changes in Medicare Home Health Care Benefits

Medicare home health and Skilled Nursing Facility expenditures have quadrupled in the past five years, from $2 billion to over $8 billion. We are undertaking research in collaboration with the Health Resources and Services Administration (HRSA) and HCFA to understand the nature of these increases and the extent to which Medicare home health benefits are changing from a post-acute care step down benefit into a source of long-term custodial care for the elderly.

We also hope to link the Medicaid Statistical Information Systems data set with the Medicare Current Beneficiary Survey to examine the mix of skilled and custodial home care benefits by persons dually eligible for Medicare and Medicaid.

- Sub-acute Care

Sub-acute care -- i.e. comprehensive, specialized services provided in settings other than hospitals -- has emerged as a policy concern for both the Medicare and Medicaid programs and to those involved in health reform. We are attempting to describe use of subacute care in both fee-for-service and managed care settings and its effects on acute (i.e. hospital) and other traditional post acute services. Expected and

achieved outcomes are also at issue. At this point data for such analyses are limited, so that we are undertaking case studies of four market areas.

- Long-term care Insurance

A key proposal of long-term care reform -- incentives for private long-term care insurance -- continues to be of interest to Congress and may be pursued separately from other health reform proposals. As noted above, data are lacking on the availability, coverage and use of such insurance. We are particularly interested in assessing the impact of state regulation on the affordability and quality of, as well as consumer satisfaction with various long-term care insurance products.

- Housing with Services

As the long-term care system evolve, more emphasis is being placed on combining housing and personal assistance services for the frail elderly in community settings. We are interested in examining a variety of housing with services options, including board and care homes, assisted living facilities, continuing care retirement communities and others.

There is a need for current and comprehensive data on such places in order to determine their appropriate role in the long-term care system.

- International Comparisons

ASPE has undertaken a project to strengthen collection, analyses and dissemination of comparable data about long-term care in Japan and the United States. This work involves collaboration with HRSA and the Leadership Center for Longevity and Society at Mount Sinai Medical Center. ASPE provides support for analyses of informal caregiving in several industrialized societies.

Other international efforts are underway as well, including working with WHO on the revision of the ICIDH, with special attention to how it affects disability policy.

ASPE also participates actively in the International Collaborative Effort (ICE) on Aging, sponsored by the National Center for Health Statistics. For example, in one project on the outcomes of nursing home care in five countries, the ICE on Aging researchers have highlighted the need for improved measurement and data collection comparability among nations (Van Nostrand et al., 1993).

B. Existing Data Sources

The major sources of data on the frail elderly include the National Long Term Care Surveys (1982, 1984 and 1989), the Longitudinal Study of Aging (LSOA), the Asset and Health Dynamics (AHEAD) of the Elderly Survey and the Medicare Current Beneficiary Survey (MCBS). The elderly are included in most general purpose surveys like NHIS and SIPP, but sample sizes for the frail elderly -- especially those at advanced ages -- are typically small.

C. Strengths and Weaknesses

For purposes of determining disability status among the elderly, surveys tend to focus on the ability of respondents to carry out the Activities of Daily Living and the Instrumental Activities of Daily Living. However, operational measures of these activities vary widely across surveys. There are discrepancies regarding the sources of assistance; some measures focus on active personal assistance, others include standby or supervisory assistance and still others cover assistive devices. The lack of consistent measures has contributed to a wide range of estimates of size of the frail elderly population.

Measures of cognitive disability have not kept pace with the measurement of physical disability. This is a major concern, in light of the policy focus on persons with Alzheimer's Disease and related dementias.

Existing sampling frames are inadequate for accurately and efficiently identifying places where frail elderly persons reside. The growth of housing-with services options means that elderly persons with disabilities can live in places other than their own home or a nursing home. These alternative living arrangements include board and care homes, assisted living facilities, continuing care retirement communities and other related group living arrangements.

The Census Bureau classifies places as households or group quarters, the latter being subdivided into institutional and non-institutional group quarters. Unfortunately, this classification means that assisted living facilities and similar arrangements can show up in any or all of these categories. This makes screening and sampling extremely expensive and inefficient.

Other problems include small sample sizes for persons aged 85 or over, inadequate coverage of minority elderly, insufficient geographic detail, obstacles to administrative record linkages, and paucity of longitudinal data for measuring transitions in old age. Most critically, we lack an appropriate conceptual framework with corresponding measures to study disability across the lifespan.

VII. DATA ON SPECIAL POPULATIONS

A. Key ASPE/DALTCP Policy and Research Concerns

In general it is important to note that proposed cutbacks in the SSI program, state and private health reform initiatives, and potential changes in Medicare and Medicaid are all policy issues which affect special populations of persons with disabilities. In addition racial, ethnic, and gender differences in service needs and use are increasingly important variables in designing programs, given the increasing heterogeneity of the U.S. population and increased incidence of disability among minority populations

An issue regarding special populations which is of particular concern to DALTCP is how well persons with serious mental illness or mental retardation are served by a "generic" system of home and community based services. For example, DALTCP is proposing to convene a meeting to address the long-term care needs of persons with developmental disabilities involving mental retardation and whether they are best served by separation from or integration with other long-term care programs.

One interesting concept involves identifying tracer "conditions", whereby persons with particular disabilities -- especially the more rare populations -- could be tracked in terms of service use, expenditures and payment sources.

Eligibility determination for a system serving multiple populations is a particular issue. For example, persons with serious mental illness are concerned not only about self-care functions but also with functioning in social and recreational settings as well as at work. This population is also concerned that bureaucratic gatekeeping based on ADL impairments would not offer eligibility to needed services for them.

Further, persons with mental illness often have periods of relative good health and functioning but argue that continued access to long-term supports during these times would be cost-effective in that health would be sustained over longer periods with supervision and other supports. The MR/DD population tends to need supervision or cueing to perform ADLs, as well as help with IADLs. Hence eligibility based on need for hands on help with self care activities is inappropriate.

A focus of the President's Disability Policy Review is the transition of young adults from school to work. Various policies and programs have an impact on readiness to work of a young adult with disabilities including not only special education interventions and the availability of suitable employment but also access to health insurance and needed personal assistance and assistive devices.

Other special populations, e.g. persons with with mental illness or developmental disabilities, are also concerned with linkages between long-term supports and social, recreational, and work settings.

B. Existing Data Sources

In light of a variety of policy and program concerns, data needs on special populations can be grouped into four categories: (a) prevalence data for the population as a whole and major subgroups; (b) data on socio-economic status, health status, functioning and related demographic characteristics; (c) data on service use, service needs, service costs; and (d) data on developments over time for special populations as they move from childhood to adulthood to old age.

Special populations with certain disabilities (e.g. MR/DD) are rare in the population as a whole, though they are significant from a policy perspective. Existing surveys often fail to include measures for identifying them. There are three nationally representative surveys with some information about special populations: SIPP, NHIS and NMES.

For some special populations, e.g. persons with developmental disabilities, there also exist State surveys and narrowly focused studies, covering participation in selected programs or particular living arrangements (such as large residential facilities). All are able to shed some light on special populations.

C. Strengths and Weaknesses

The principal limitations across the three national surveys include:

(1) inadequate flexibility in the data to distinguish between mild and moderate disability from severe disability;

(2) focus on federal program participation rather than comprehensive coverage of individuals' service needs; and

(3) insufficient coverage of non-medical family and community-based services, such as day care, supported employment, crisis intervention, assisted living and case management;

(4) small or non-representative sample sizes.

In addition NHIS and SIPP are limited to the non-institutional population, with SIPP beginning with respondents age 15 and over. NMES included persons in facilities, but tended to exclude those in small community-based residential settings.

More narrow surveys and studies provide a rich source of information about special populations. However, without a clear idea of the representativeness of the persons included in these studies, it is not possible to put the findings in context.

The Disability Survey, which is being administered as a supplement to the NHIS over a two year period, will go a long way toward remedying many of these concerns (though, as noted, it is household-based and excludes institutions).

VIII. A DISABILITY DATA STRATEGY

A. Key Questions

In developing a disability data strategy that meets ASPE's specific policy research agenda and at the same time serves the interests of the research community more broadly, a number of questions suggest themselves. We ask participants to consider the following questions as they provide feedback to us.

- Content:

  (1) What are the relative priorities on collecting data at the level of -
      (a) persons?
      (b) families and households?
      (b) providers?
      (c) environment?
      (d) specific programs?

  (2) Is there a need for a "minimum data set" of disability-related data elements that are routinely collected?

- Coverage:

  (1) Since many major national surveys cover only the civilian non-institutionalized population, how can coverage be extended to persons in institutions, persons in the armed forces and persons living abroad as part of an overall disability data strategy?

  (2) Should a higher priority be given in the future to separate disability surveys or inclusion of standard disability measures in existing surveys?

  (3) What would be needed to assure that standard disability measures are included in existing or planned surveys?

- Sampling:

(1) How can existing sampling frames, which are built around housing units and group quarters (institutional and non-institutional), be changed to identify more easily persons with disabilities who live in alternative housing arrangements (assisted living facilities, board and care homes, independent living facilities, etc.)?

(2) What are the key policy-relevant subgroups of persons with disabilities, for which sufficient sample sizes are needed for accurate estimation along critical dimensions?

(3) What strategies are needed to assure representativeness of key disability-related subgroups in sample surveys?

- Periodicity:

(1) What can be done to collect data on persons with disabilities on a more regular and predictable basis?

(2) Given budgetary realities, should the emphasis be on one time or occasional surveys that collect a lot of data or more regular and frequent surveys that collect less data?

(3) In light of budgetary realties, what relative priority should be given to (a) longitudinal surveys (b) panel surveys and (c) cross-sectional surveys?

- Access:

(1) What can be done to assure the timely production of useful and widely available public use tapes?

- Administrative records:

(1) What can be done to improve access to administrative records and link them to national survey data?

- Sub-national and International Estimation:

(1) To what extent should federal resources be expended to generate estimates at the state and sub-state level on the prevalence, incidence and types of disability?

(2) What role should the federal government, DHHS and ASPE play in promoting state and sub-state data collection on disability?

(3) What role should the federal government, DHHS and ASPE play in fostering expansion and comparability in international data collection on disability?

- Modeling:

(1) How can microsimulation models on financing and personal assistance services for persons with disabilities be developed and what would be the critical features of such models?

B. Potential Next Steps:

The following is a list of potential next steps for ASPE that could help articulate and support a policy relevant disability-related data strategy. We invite your reaction.

1. Exploration of accessing data from demonstrations and waiver programs (e.g. 1115 waivers) for analysis, with emphasis on the methodological and cost implications of this approach for related data collection.

2. Provision of technical assistance to states in their disability-related data collection efforts.

3. Support for expanded analyses of existing disability-related data by researches and policy analysts.

4. Encouragement of linkages of administrative records to survey data.

5. Promotion of the use of disability measures in general purpose surveys to help monitor the impact of new policies and programs (e.g. block grants) on persons with disabilities.

6. Hosting of a disability data conference, resulting in proceedings, special issue of a journal and/or a book.

7. Establishment of a federal interagency coordinating body on disability statistics (analogous to the Federal Interagency Forum on Aging Related Statistics).

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APPENDIX: NATIONAL DISABILITY DATABASES

Household and/or Person Based Surveys

- American Housing Survey (AHS)
- Asset and Health Dynamics Among the Oldest Old (AHEAD); Health and Retirement Survey (HRS)
- Current Population Survey (CPS); 1981-1993 March Supplements
- Decennial Census
- Disability Supplement to the Health Interview Survey
- Epidemiological Catchment Area Study (ECA)
- Longitudinal Study of Aging (LSOA I and II)
- Medical Exam Study
- Medicare Current Beneficiary Survey (MCBS)
- National Comorbidity Survey
- National Health and Nutrition Examination Survey (NHANES)
- NHANES I Epidemiological Followup Study (NHEFS)
- National Health Interview Survey (NHIS)
  - 1988 Child Health Supplement
  - 1989 Mental Health Supplement
  - 1990 Supplement on Assistive Devices
  - 1991 Supplements
  - 1994 Access to Care Survey
- National Long-Term Care Survey (NLTCS)
- National Medical Expenditure Survey (NMES)
- National Mortality Followback Survey (NMFS)
- National Organization on Disability/Harris Survey of Americans with Disabilities
- National Survey of Families and Households (NSFH)
- New Beneficiary Survey and Followup
- Panel Study of Income Dynamics (PSID)
- Supplement on Aging (SOA I and SOA II)
- Survey of Income and Program Participation (SIPP)
- Surveys of Disability and Work

Provider Based

- National Ambulatory Medical Care Survey (NAMCS)
- National Employer Health Insurance Survey (NEHIS)
- National Health Provider Inventory (NHPI)
- The National Home and Hospice Care Survey (NHHCS)
- National Nursing Home Survey (NNHS)

Administrative

- Medicaid Statistical Information System (MSIS)
- Medicare and Medicaid Files
- Rehabilitation Services Administration Case Service Report (RSA-911)
- Social Security Administration (SSA) Administrative Data

Other

- Area Resource Files (ARF)
- National Consumer Survey
- National Education Longitudinal Surveys
- National Longitudinal Survey of Youth (NLSY)
- National Longitudinal Transition Study of Special Education Students
- Survey of Disabled Veterans (SDV)
- Users' Responses to Assistive Devices for Physical Disability

NATIONAL DISABILITY DATABASES

A. HOUSEHOLD AND/OR PERSON-BASED SURVEYS

Title: **American Housing Survey (AHS)**

Contact: HUD User (800) 245-2691

Sponsor: Division of Housing and Demographic Analysis, Office of Policy Development and Research, Department of Housing and Urban Development

Frequency: National survey conducted in 1973-1981, 1983, 1985, 1987, 1989, 1991, 1993, 1995; metropolitan survey conducted annually since 1974.

Purpose: To provide a current series of information on the quality and quantity of the housing stock in America, as well the characteristics of its occupants.

Design: There are two components of the American Housing Survey: a national sample and rotating samples of metropolitan areas. Initial sample of housing units was drawn in 1973 and partly replaced in 1984 and 1994; updated continuously. Data collected through interview of unit occupants, or if vacant, informed persons such as landlords, rental agents, neighbors.

Content: Housing costs, physical condition and age of the unit, utilities used, residential mobility, neighborhood services available to residents, and needed housing improvements. Detailed demographic and income data are collected for household members.

Disability Measures: Health/disability status is not generally in the survey; although in the 1978 national survey and 1979-82 metropolitan survey there were special supplements containing disability data. The supplements included questions on difficulty getting around, health conditions causing difficulty, and housing modifications needed.

Coverage: Housing units from urban and rural areas.

Sample: Approximately 56,000 units in the national survey. Also samples 44 metropolitan areas throughout the U.S. on a four year cycle (11 areas annually).

Products: Public use data tapes, publications, CD-ROM.

Future: Ongoing.

Comments:
- data collection focuses on housing units, as well as individuals and families in the units. Survey regularly goes back to the same home to measure change.

Title: **Asset and Health Dynamics Among the Oldest Old (AHEAD)**

Contact: F. Thomas Juster, University of Michigan (313) 764-4207; Willard Rodgers, University of Michigan (313) 763-6623; Beth Soldo, Georgetown University (202) 687-6805

Sponsor: National Institute on Aging

Frequency: 1993, with biannual follow-ups for all respondents

Purpose: Monitor transitions in physical and cognitive capacity in advanced old age; relate changes in health and economic resources to intergenerational transfers; examine the relationship of late life changes in physical and cognitive health patterns.

Design: Piggybacking on Health and Retirement Survey (HRS) screening of 70,000 households; supplemental sample of 80+ from Master Enrollment File (HCFA); computer-assisted personal interviews (CAPI) for those 80+, computer assisted telephone interviews for those 70-79.

Content: Physical and cognitive health, economic status, family structure, demographics, housing, service use.

Disability Measures: ADLs, IADLs, use of devices, personal assistance, financial management abilities; tests of memory and acuity, Wechsler Adult Intelligence Scale, Dementia Test; quality of life scale, depression diagnosis and treatment; condition list.

Coverage: Sample from screen within Health and Retirement Study as well as the HCFA Master Enrollment File; civilian non-institutionalized population.

Sample: 8200 respondents age 70+; 2300 age 80+; oversamples African Americans and Florida residents.

Products: Public use data tapes; wave I data currently available.

Future: Proposed continuation of the survey from 1995-1999.

Comments:
- detailed ADL questions: if get help, how often, which devices are used, if have difficulty

Title: **Health and Retirement Survey (HRS)**

Contact: F. Thomas Juster, University of Michigan (313) 764-4207

Sponsor: National Institute on Aging

Frequency: 1992, re-interviews in 1994.

Purpose: To look at factors that affect the age at which people retire and the evolution of health and economic status during retirement.

Design: Baseline study in 1992, face-to-face interviews (6% by telephone); follow-ups by mail/phone every second year for twelve years.

Content: Health and cognitive conditions, retirement plans, attitudes and perspectives, family structure and transfers, employment status and job history, disability, demographics, housing, mobility, income, wealth, health insurance, and pension plans.

Disability Measures: Physical and cognitive functioning, physiological measurements of health and functioning, chronic conditions, job-related limitations, employment history, welfare disability applications, SSDI application, and benefits received.

Coverage: Wave I interviews of persons born between 1-1-31 and 12-31-41 and their spouses.

Sample: 7,600 households (12,600 persons).

Products: Preliminary data tape of Wave I is currently available, more complete data available in early 1995; data from Wave II available in spring of 1995.

Future: Proposed continuation of the survey from 1995-1999, with possible introduction of a new cohort in 1998.

Comments:

- detailed measures of functioning and cognitive impairment
- excellent source of information on the incidence of disability and impact on work status and employer response to disability

Title: **Current Population Survey (CPS); 1981-1993 March Supplements**

Contact: Jack McNeil (301) 763-8300

Sponsor: Bureau of the Census for Department of Labor's Bureau of Labor Statistics

Frequency: Monthly since 1942

Purpose: To obtain data on employment and unemployment.

Design: Longitudinal. Nine waves of interviews are conducted at four month intervals over a 30 month period for each panel. There is a standard core interview supplemented by periodic topical modules. All disability measures are found on selected topical modules.

Content: Monthly data on demographic and employment characteristics, with a March supplement on work disability, health insurance and program participation.

Disability Measures: Work disability for persons aged fifteen and older (prevented or limited in work, left job for health reasons, under age 65 and receiving Medicare or SSI, receipt of SSDI).

Coverage: Civilian non-institutionalized population.

Sample: Approximately 50,000 households annually.

Products: Publications, public use data tapes.

Future: Redesign for 1995 is underway.

Comments:
- only looks at work-related disability
- no disabling conditions

Title: **Decennial Census**

Contact: Jack McNeil (301) 763-8300

Sponsor: Bureau of the Census

Frequency: Every 10 years since 1790.

Purpose: To provide a basis for reapportioning seats in the U.S. House of Representatives.

Design: Every dwelling in the country receives either the short form with basic population and housing questions. A sample of 17% of households gets the longer form with additional questions, including those related to disability. The disability questions are about the ability to work, mobility, and self-care limitations. These questions are asked of the adult population aged 15 and over, and proxies may be used to answer these questions.

Content: Basic demographic and housing characteristics of the population.

Disability Measures: Persons are asked if they have a physical, mental, or other condition for at least six months that limits their ability to work or entirely prevents them from working, difficulty with activities such as going outside or shopping, and difficulty taking care of their personal needs.

Coverage: Households; Group Quarters - institutional and non-institutional.

Sample: All U.S. households.

Products: Books, Tables, CD-ROM, Diskettes, Public Use Tapes.

Future: Plans for Year 2000 in progress.

Comments:

- no questions concerning mental illness or mental retardation, assistive devices, or personal assistance, nor are there specific questions for children, working-age adults, or elderly persons
- measures of self-care have not shown reliability for the non-elderly
- no questions for children
- no questions on disability conditions
- includes both community and institutional residents
- can be analyzed at state, county, and national levels

Title: **1994/95 Disability Supplement to the National Health Interview Survey**

Contact: Michele Adler, DHHS/ASPE (202) 690-6443

Sponsor: National Center for Health Statistics

Purpose: To provide information on research and policy issues related to disability, including the prevalence of disability, the characteristics of people with disabilities (e.g. demographic, socio-economic, health, participation in Federal programs), their service use and expenditures, and aspects of their daily lives (housing, transportation, employment, personal assistance).

Coverage: Civilian non-institutionalized population.

Sample: 100,000 households or 240,000 over two years.

Design: Personal interviews and self-reports. Phase I (January 1994-December 1995) is asked along with the core interview given to the 240,000 NHIS respondents. Phase II (Fall 1994-Fall 1996) is administered about 6 months after Phase I to about 40,000 respondents with serious disabilities. Data linkages with SSA and Medicare records can also be made.

Content: Phase I collects data on the prevalence, severity, type, duration, and disabling conditions; the health care, demographic, socio-economic, health insurance, and program characteristics of people with and without disabilities. Phase II collects data on service use and expenditures and aspects of daily life (housing, long-term care services, home care, personal assistance, respite care, transportation, employment, accommodations, work history, vocational rehabilitation, relationships, family structure, family impact and child care).

Measures: Disability measures in Phase I include standard limitation of activity measures and detailed measures of sensory impairments, functioning of specific body systems, 6 separate ADLs, 6 separate IADLs, mental illness, assistive devices, childhood disability, and functioning for children under 5. People with mental retardation and other developmental disabilities (using the legislative definition) can also be identified.

Products: Public-use tapes/publications (late 1995 - 1997).

Comments:

- the only national comprehensive survey of children's disability and persons with developmental disabilities that has occurred in this country, the first such survey to have occurred on the working-age population since 1978, and the most complete disability survey on all ages
- disability definitions are exhaustive and state-of-the-art and sample sizes are quite large
- there is a potential for re-interviewing respondents with disabilities at some point in the future, if funds permit

Title: **Epidemiologic Catchment Area Study (ECA)**

Contact: William Narrow (301) 443-3774

Sponsor: National Institute of Mental Health

Frequency: One-time.

Purpose: To assess the prevalence of mental and addictive disorders and to estimate service use.

Design: Face-to-face interviews done twelve months apart (waves I and II); telephone interview (face-to-face in CT) six months after wave I; institutional residents interviewed in waves I and II only—no telephone interview; use of Diagnostic Interview Schedule (DIS).

Content: Use of health services: ambulatory specialty mental and addictive, general medical, and human services, as well as admissions to hospitals and residential treatment centers; diagnostic data.

Disability Measures: Receipt of disability compensation; having to give up regular activities; diagnosis of mental illness; symptoms used as indication of impairment; unable or limited in work because of emotional or mental impairment.

Coverage: Household and institutional residents aged 18 years and over in five areas: New Haven, CT; Baltimore, MD; Durham, NC; St. Louis, MO; and Los Angeles, CA.

Sample: 18,571 (household); 2,290 (institutional).

Products: National Technical Information System (NTIS) is contact for public use tapes; NIMH has list of 400+ publications.

Future: 10-year follow-up being conducted at Baltimore site; mortality follow-up at New Haven site.

Comments:

- largest and most comprehensive community-based epidemiologic study in the mental health field
- provides information on need and demand for mental health services
- allows for comparison of service use patterns by persons with different diagnoses
- not nationally representative
- permits ability to assess use of multiple facilities

Title: **Longitudinal Study of Aging (LSOA I and II)**

Contact: Julie Dawson Weeks, NCHS (301) 436-5979

Sponsor: National Center for Health Statistics
National Institute on Aging

Frequency: Baseline survey in 1984, and followup waves in 1986, 1988, 1990. LSOA II followup interviews will be conducted every two years starting 1996.

Purpose: To measure change in health status, physical functioning and living arrangements, including movement into and out of institutions, among a cohort of older Americans as they move into and through the oldest ages.

Design: LSOA I baseline data is from the 1984 Supplement on Aging; LSOA II repeats the study with a new cohort from the 1994 NHIS core questionnaire, the 1994 Disability Supplement and SOA II. Personal interview at baseline, telephone interview at followup.

Content: Information on key activities (NAGI, ADLs, IADLs), helpers, living arrangements, nursing homes use, health insurance, family support, and self-perceived health status obtained in all waves. Information on basic demographic characteristics, work history, conditions and impairments, community services, income and assets obtained at baseline.

Disability measures: Questions on difficulty performing 7 ADLs, 6 IADLs, and NAGI; help in performing ADLs and IADLs. Also questions on impairment, health related retirement, and prevalence of disabling health conditions.

Coverage: Civilian non-institutionalized persons age 70+.

Sample: 7,541 elderly persons.

Products: Public use tapes, CD-ROM, NDI/Medicare disk updates, publications.

Future: Original LSOA interviewing ended in 1990, but there will be ongoing record linking. Update on cause of death and Medicare coming in 1995. For LSOA II three follow-back waves will be conducted at two year intervals starting in 1996.

Comments:

- first longitudinal study of the community-based elderly population
- use of the LSOA I and II together will enable users to identify changes in functional status, medical conditions and impairments, living arrangements, and social supports across cohorts
- can be linked with HCFA Medicare files and National Death Index
- efforts are being made to include disability measures in LSOA II that allow for the ability to "crosswalk" estimates of prevalence of disability across surveys, e.g., NHANES III, AHEAD and NLTCS

Title: **Medical Exam Study**

Contact: Martynas Ycas (202) 282-7089

Sponsor: Social Security Administration

Frequency: 1996

Purpose: To determine the distribution of persons with physical disabilities and mental impairments in terms of Social Security standards.

Design: Personal interview.

Content: To be determined.

Disability Measures: Measures of physical disability and mental impairments. Specifics yet to be determined.

Coverage: National household population age 18 to 69.

Sample: To be determined.

Products: To be determined.

Future: Plans for one time data collection in 1996.

Title: **Medicare Current Beneficiary Survey (MCBS)**

Contact: Gerry Adler (410) 966-7938

Sponsor: Health Care Financing Administration

Frequency: Continuous panel since 1991, interviews approximately every four months.

Purpose: Originated from the need to provide valid estimates of health care spending by different age groups, to describe the effects of the Medicare program on its beneficiaries, and to model the effects of proposed program changes.

Design: Sample from HCFA's Medicare enrollment file.

Content: Utilization, sources of payments for services, health insurance coverage, health status and functioning, access and satisfaction.

Disability Measures: Disability related to duty in armed services; level of functioning in ADLs and IADLs; use of devices and personal assistance is also included. Only sample survey of Medicare disabled program beneficiaries.

Coverage: All Medicare beneficiaries; community and institutional residents.

Products: Public Use file for Round 1 and Round 4 is available (linked with Medicare claims); 1992 fully linked public use file will be available in 1995.

Future: Plans to follow some individuals for up to four years.

Sample: 12,674 (round one); 11,736 (two); 11,064 (three); 12,600 (four); approximately 16,000 (eleven); survey is supplemented annually and subject to rotation after round thirteen.

Comments:

- functioning questions indicate severity of impairment by asking if the person gets help, if someone stands by, or if special equipment is used
- data are linked to Medicare administrative files, providing information on services used
- because it has three rounds per year, facilitates analysis of changes in the beneficiaries and their use of services; follows individuals through different care settings
- surveys those who have Medicare coverage: (a) not nationally representative of individuals under age 65 who have a disability or of the potentially disabled population, but (b) is representative of the population age 65 and over
- no disability indicators for cognitive impairment, severe mental illness, or general emotional problems.
- longitudinal design permits observation of individual changes over time

Title: **National Comorbidity Survey**

Contact: Ronald Kessler, University of Michigan (202) 401-7733

Sponsor: U.S. Alcohol, Drug Abuse, and Mental Health Administration

Frequency: One-time survey, data collection 1990-1992.

Purpose: A congressionally mandated survey designed to study the co-morbidity of substance use and non-substance psychiatric disorders; the survey examines not only prevalence and incidence, but also risk factors.

Design: Stratified, multistage area probability sample; supplemental survey of nonrespondents.

Content: Affective, anxiety, substance use, and other psychiatric disorders; risk factor questions such as parental psychopathology, childhood family adversity, social networks and support, stressful life events and activities; utilization of services; unmet need.

Disability Measures: Disability days and work cutback days to mental disorders, substance use disorders, and other reasons; truncated set of ADL-type questions.

Coverage: Persons aged 15-54 in civilian, noninstitutionalized population in the 48 contiguous states; supplemental sample of students living on campus or in group housing.

Sample: 8,098 respondents

Products: Public use data tapes will be available in the next couple of years.

Future: Possible reinterview and a new cross-section of data for the year 2000.

Comments:

- first survey to administer a structured psychiatric interview to a national probability sample in the United States
- use of the Composite International Diagnostic Interview (CIDI), which can be administered by trained interviewers who are not clinicians (also used in the ECA)
- capability of studying regional variation and urban-rural differences
- relies on retrospective reports to assess prevalence of lifetime disorders; need for longitudinal data to meet this limitation
- diagnostic assessment based on a single structured interview

Title: **National Health and Nutrition Examination Survey (NHANES)**

Contact: Vicki Burt (301) 436-7080 ext. 116

Sponsor: National Center for Health Statistics

Frequency: 1971-1975 (NHANES I), 1976-1980 (NHANES II), 1988-1994 (NHANES III); a special study of the Hispanic population was conducted in 1982-1984.

Purpose: To assess the health status of the US population; to estimate the national prevalence and investigate trends in selected disease and risk factors; and to monitor trends in prevalence, awareness, treatment, and control of diseases.

Design: Respondents are interviewed at home, then examined, tested and interviewed again in a mobile examination center. NHANES III offered a home examination option for those unable or unwilling to come to mobile examination center.

Content: Data on health insurance; income and income assistance; family housing characteristics; physical and cognitive functional impairments; selected disabilities/conditions; and health and nutrition status.

Disability Measures: Measures in NHANES III include functional limitations (cognitive, physical and social), as well as the presence of selected health conditions. Questions asked of persons 17+ (60+ from 1988-91) regarding physical functioning, i.e., difficulty in performing certain physical activities, and need for assistance with ADLs and IADLs. Includes questions on use of assistive devices. Respondent are asked about receipt of Social Security benefits due to disability.

Coverage: Civilian, non-institutionalized population aged two months and older. (NHANES I covered persons aged 1-74 years; NHANES II covered persons 6 months to 74 years).

Sample: NHANES III has a total sample of 40,000 persons 2 months of age and over. Oversample of children age 2 months to 5 years, persons age 60+, black Americans, and Mexican Americans.

Products: Public use tapes, publications.

Future: NCHS will attempt to secure adequate funding for a full scale NHANES in 1988, or will conduct a scaled back NHANES in 1998 with limited subgroup coverage and examination.

Comments:

- use of direct testing rather than self-reporting
- records can be matched with the National Death Index and HCFA Medicare claims data
- useful for the study of the contribution of multiple diseases to disability in old age (NHANES III)
- ADL and IADL questions were asked only of the 60+ population from 1988 to 1991
- long intervals and variations in wording between surveys make comparisons in certain areas problematic

Title: **National Health and Nutrition Examination Survey I Epidemiological Followup Study (NHEFS)**

Contact: Christine Cox, NCHS (301) 436-5979 x115

Sponsor: National Center for Health Statistics
National Institute on Aging

Frequency: 1982-84, 1986, 1987, 1992.

Purpose: To measure changes in individual participants' characteristics between NHANES I and NHEFS; to track morbidity, mortality and institutionalization associated with suspected risk factors; and to provide a natural history of chronic disease and functional impairment.

Design: Personal interviews or telephone interviews are conducted with subjects or their proxies. Also collected are nursing home and hospital records of overnight stays, and death certificates of decedents.

Content: All waves were asked about specific diseases and medical conditions. Collects morbidity, disability, and mortality data; demographic information; medical history and health care facility stays; functional status; health habits and risk factors such as blood pressure, smoking, cholesterol levels, alcohol consumption, nutritional deficiencies, estrogen use, impaired pulmonary function, and weight.

Disability Measures: Extensive functioning measures. Questions on difficulty with ADLs, assistance with ADLs, and use of special equipment. Also questions on chronic diseases.

Coverage: The civilian noninstitutionalized population who completed a medical examination of NHANES I in 1971-1975.

Sample: 14,407 persons between the ages of 25 and 74 in 1971-1975

Products: Public use data tapes and documentation are available from the National Technical Information Service. Descriptions of the study methodologies are available in the NCHS Vital and Health Statistics Series I reports. Data from the 1992 study will be released in 1996.

Future: No current plan to reinterview subjects after the 1992 follow-up; however, there are plans to continue to follow passively through death certificates.

Comments:

- extensive data collection on individuals, including the non-elderly, for 20 years; an oversample of women age 25-44 in NHANES I supplies a large sample of nonelderly for the followups
- can follow incidence of disability as cohorts age
- all baseline NHANES I and NHEFS waves can be linked to each other

Title: **National Health Interview Survey (NHIS)**

Contact: Gerry Hendershot (301) 436-7093

Sponsor: National Center for Health Statistics

Frequency: Annually since 1957; survey is in the field continuously.

Purpose: To provide nationally representative data on the health status, health related behavior, and use of health services by the U.S. population.

Design: Core questionnaire on health and disability status. Periodic supplements on selected topics, e.g. 1994 and 1995 Disability Survey. Face-to-Face home interviews with trained Census personnel.

Content: Demographics, health and disability status, acute and chronic conditions, use of doctors and hospitals, income, health insurance, and program participation.

Disability Measures: The core questionnaire measures limitations at four levels: unable to perform major activity, limited in major activity, limited in nonmajor activity, and not limited in activity. Looks at prevalence of chronic conditions or impairments and restricted activity days.

Coverage: Civilian non-institutionalized population.

Sample: 50,000 households (125,000 persons) annually; in 1995 will include approximately 40,000 households and 100,000 persons.

Products: Publications (e.g. Advance Data Reports), public use data tapes, CD-Rom.

Future: Major redesign of questionnaire for 1996 is underway.

Comments:

- repeated cross-sectional, with capability for providing longitudinal information; can establish trends in prevalence of disability
- using core, cannot estimate how many ADL or IADL limitations a person has
- core interview does not have information on cognitive impairment; does include information about chronic and mental conditions; new design will include measures of depression
- only asked IADL questions in certain circumstances
- no measures of assistive devices within core, however, this subject was covered in 1990 supplement
- for those age 65 and above, core asks if need help with ADLs and IADLs, but not for each ADL and IADL individually; also asked of persons under age 65 who report limitations

While there are some gaps with disability measures in the core interview, many of these issues are addressed in the various supplements, such as those described below. For the special questionnaires, one adult is subsampled from the family; self-response is required. (In some supplements, questions are asked of everyone in household, and proxy responses are allowed.)

1988 Child Health Supplement:

Disability Measures: Various medical conditions, including missing limbs or permanent impairment, stiffness, or deformity of any limbs; asks questions about development, learning disabilities, and emotional or behavior problems lasting three months or more.

Comments:
- questions regarding development, learning, and behavior may give an indication of the number of individuals with such problems, but there is insufficient information regarding severity

1989 Mental Health Supplement:

Disability Measures: Diagnosis of major mental illness, ADLs, IADLs, social functioning, disability payment due to mental illness.

Comments:
- duration and severity of problems in functioning
- perhaps the best information currently available about the disabilities of adults with serious mental illness; however, it contains no reliable information on children with serious mental illness

1990 Supplement on Assistive Devices

Disability Measures: Sets of questions about specific devices for mobility, hearing, vision, and speech; special features in the home designed for disabled persons.

Comments:
- may slightly overestimate those with chronic illnesses or impairments who use devices such as wheelchairs, etc. which may be used due to acute conditions
- gives estimates of unmet need

1991 Supplements

Disability Measures: Hearing; difficulty in or help with ADL and IADL related measures; chronic and disabling conditions; mental health.

Comments:
- mental health questions do no relate to a specific diagnosis of illness; do not know what the reason is for certain emotions

1994 Access to Care Survey

Disability Measures: Focuses on unmet needs, particularly on the acute care side; asks what kinds of services were needed.

Comments:
- useful when used along side the core interview to gain a better picture of disability
- service need does not necessarily indicate severe disability

Title: **National Long-Term Care Survey (NLTCS)**

Contact: Larry Corder, Duke University (919) 684-6758; Ken Manton, Duke University (919) 684-6758

Sponsor: National Institute on Aging; ASPE

Frequency: Intermittent: 1982, 1984, 1989, 1994, 1999.

Purpose: To provide nationally representative data on the disability status and use of long-term care by the disabled elderly (age 65+).

Design: Separate questionnaires for disabled elderly in the community and those in institutions. Occasional supplements on informal caregiving (1982, 1989), healthy aging (1994), and decedents (1984, 1994). Household interviews were screened via telephone.

Content: Demographics, health and disability status, measures of physical and cognitive functioning; housing and neighborhood characteristics; use of medical providers and prescription medicines; use of formal and informal long-term care; health insurance; income and asset information.

Disability Measures: Institutional questionnaire looks at cognitive functioning and limitations in ADLs. Community questionnaire asks about limitations in ADLs and IADLs, cognitive functioning, who provides help, and use of devices and personal assistance.

Coverage: Medicare beneficiaries age 65+.

Sample: 5,000 to 6000 community interviews; 1300 institutional interviews.

Products: Publications; public use data tapes.

Future: Decision to be made about 1999 survey.

Comments:

- excellent source of information about disability in the older population
- provides large samples of the "oldest" old population
- currently have four points in time to use in longitudinal comparisons
- includes information on severity of limitations and use of assistive devices
- some questions are not asked in both community and institutional questionnaires, making it difficult to compare people moving from different care settings
- for persons in institutions, ADL questions are answered by a proxy which may or may not be beneficial

Title: **National Medical Expenditure Survey-Household Survey, Survey of American Indians and Alaska Natives, Institutional Population Component (NMES)**

Contact: Barbara Altman (301) 594-1400

Sponsor: Agency for Health Care Policy and Research (AHCPR)

Frequency: Decennial (approximately): 1987, 1977.

Purpose: To obtain information on health care utilization, expenditures, and sources of payment.

Design: Separate surveys for nationally representative samples of the civilian non-institutionalized population, American Indian and Alaskan Native population, and for residents of nursing homes and facilities for persons with mental retardation. Four or five rounds each survey year.

Content: Demographics; health status; health care access and utilization for the complete year; expenditures and sources of payment; insurance status; employment information; income and assets; facility information and institutional expenditures in institutional survey.

Disability Measures: Detailed ADL and IADL measures; duration and intensity of impairment; use of devices; indicators of work and activity limitations; modified indicator of physical functioning; yearly total of disability days; indicators of receipt of disability benefit; ICD-9 coding indicating individual conditions; separate question asks specifically about mental retardation, cerebral palsy, spina bifida, and autism.

Coverage: Civilian non-institutionalized population; institutionalized population in nursing and board and care homes and facilities for persons with mental retardation.

Sample: Approximately 14,000 households in civilian population and 2,000 households in the American Indian and Alaskan Native population; 810 nursing and personal care homes; 691 facilities for persons with mental retardation; 5,726 residents of nursing and personal care homes; 4,421 residents of MR facilities.

Products: Publications; public use data tapes.

Future: New survey planned for 1996 currently in pretest stage; will not include the mental retardation facilities or special data collection on American Indians or Alaska Natives.

Comments:

- institutional population sample tracks resident's movement between facilities and into the community
- cannot provide prevalence estimates for conditions associated with disability
- provides multiple measures of disability that allow for comparisons or creation of combination of measures
- provides possibility of analysis at the family level and at the individual level

Title: **National Mortality Followback Survey (NMFS)**

Contact: Jim Spitler (3010 436-7464
James A. Weed (301) 436-8952

Sponsor: National Center for Health Statistics and various co-sponsoring Federal agencies.

Frequency: Intermittent: 1961, 1962-63, 1964-65, 1966-68, 1986, 1993.

Purpose: To supplement information on the death certificate with information on important characteristics of the decedent that may have affected mortality.

Content: Demographic characteristics, socio-economic status, health status, lifestyle patterns, measures of physical and cognitive functioning, use of formal and informal long-term care, health insurance, income and asset information, cause of death, and lifetime nursing home use.

Design: Data collection instruments include: death certificates, next-of-kin informant questionnaires (primarily telephone interview), mail questionnaires to health care facilities used by decedent in last year of life, and medical examiner/coroner reports.

Disability Measures: Questions asked of next-of-kin concern memory impairment, decedent's need for assistance or special equipment to perform specific ADLs during last year of life, and presence of specific chronic conditions. The facility abstract record (FARS) collects data on diagnosis according to International Classification of Diseases (ICD) version 9, and the Clinical Modification (ICD-9-CM).

Coverage: For 1986 survey adults aged 25 and over who died in 1986. For 1993 survey, persons aged 15 and over who died in 1993.

Sample: Information is gathered on approximately 20,000 deaths selected from the Current Mortality Sample; a 10 percent sample of death certificates were received from the States.

Products: Publications, public use tapes. CD-Rom for surveys after 1986.

Future: Uncertain.

Comments:

- nationally representative sample
- includes institutionalized populations
- collects data on duration of specific conditions prior to death
- excludes children under age 15 who have died in 1993, and persons under 25 in previous surveys
- excludes data for Oregon in 1986 and South Dakota in 1993

Title: **National Organization on Disability/Harris Survey of Americans with Disabilities**

Contact: Martin Walsh (202) 293-5960

Sponsor: National Organization on Disability

Frequency: 1994

Purpose: To study the attitudes and experiences of Americans with disabilities in regard to quality of life, employment and social opportunities, political and religious participation, financial status, lifestyles, job discrimination, personal assistance and equipment needs, and access to health care.

Design: Telephone interview of approximately 25 minutes with persons with disabilities. Proxies used when person with the disability was unavailable or unable to be interviewed. Also a comparison group of a sample of 1,115 adults without disabilities were asked a number of the survey questions. Many questions from survey were also asked in a 1988 survey.

Content: Type/severity/impact of disability or health condition; life satisfaction, social impact; employment status; health insurance; health care access; trends and the ADA; religion; ability/willingness to work; technology and computers; person and household characteristics.

Disability Measures: Screens respondents as a person with a disability if a disability or health problem prevents the individual from participating fully in work, school or other activities; if respondent states that he/she has a learning disability, emotional/mental disability, physical disability, or a talking, hearing, or visual impairment. Also includes respondents who consider themselves as a person with a disability. Once screened in, the survey asks for medical diagnosis of disability or health condition.

Coverage: Non-institutionalized persons with disabilities aged 16 and over.

Sample: 1,021 sampled nationally.

Products: Summary of findings available through publication, tape and computer disk. Public use data tapes are available.

Future: National Organization on Disability will continue to survey attitudes about people with disabilities.

Comments:

- national survey to study the attitudes and experiences of Americans with disabilities
- this survey taken four years after the ADA reflects a similar landmark survey conducted by Louis Harris and Associates four years before the ADA

Title: **National Survey of Families and Households (NSFH)**

Contact: Larry Bumpass, University of Wisconsin (608) 262-2182

Sponsor: National Institute of Child Health and Human Development

Frequency: 1987-88, original sample reinterviewed in 1992-93.

Purpose: To measure the changing composition of families over time and interactions among family members.

Design: One adult per household was randomly selected to be the primary respondent, with a shorter self-administered questionnaire given to the co-habitating partner or spouse of this respondent.

Content: Demographics, family relationships and interactions, household composition, education and work, economic and psychological well being

Disability Measures: Asks who requires care or assistance in the household because of a disability or chronic illness, and which of these persons required the most care or assistance.

Coverage: Non-institutional population.

Sample: Interviews with 13,017 and main cross-section of 9,643.

Products: Series of NSFH working papers, public use data tapes.

Future: 1992-93 data should be available in late 1994 or early 1995.

Comments:

- not designed as a disability survey, but can look at the household as a unit rather than and individual person, thereby getting some idea of the level of disability and burden households are facing
- addresses the duration of disability by referring to care in past twelve months; also refers to continuing burden by asking if person is still receiving care
- ADLs and IADLs are addressed, though not as precisely as in disability focused surveys. IADL questions are asked of those over the age of fifteen; needs in personal care are asked of all who need assistance
- no distinction is made with sensory impairments and other disabilities; no specific questions are asked about mental illness, mental retardation, use of assistive devices; no specific questions addressing young children

Title: **New Beneficiary Survey and Followup**

Contact: Howard Iams (202) 282-7092

Sponsor: Social Security Administration

Frequency: 1982, followup in 1992.

Purpose: To represent the situations of living non-institutionalized persons in late 1982 who had begun receiving retirement or disability benefits under the Social Security program between mid-1980 and mid-1981.

Design: Listings of cash and non-cash beneficiaries (including Medicare-only individuals) drawn from SSA's Master Beneficiary Record. The 1992 Followup reinterviewed these persons as well as a new cohort of workers disabled in 1991.

Content: Demographic information; household composition; employment history; noncovered employment; health status; income and assets; marital history; child care; program knowledge; information on spouse.

Disability Measures: Work related disability, Social Security benefits received because of a disability, rehabilitation and other services received, and ADL and IADL limitations, recent long-term care experiences.

Coverage: Civilian non-institutionalized population.

Sample: 18,600 interviews; approximately 12,000 in follow-up.

Products: Publications, public use data tapes.

Future: Uncertain; no current plans for additional follow-up

Comments:

- includes detailed ADL and IADL questions: asks if get help from people, provides a scale of difficulty, and use of special equipment; however, detailed information on ADLs in not available at baseline
- lack of information on duration of the disability
- panel study; gives detailed information about individual changes
- looks at rehabilitation and other services used, which may or may not indicate disability
- only represents new beneficiaries from a one-year period
- follow-up is ten years after the original survey, making it more difficult to analyze changes in respondents

Title: **Panel Study of Income Dynamics (PSID)**

Contact: Sandra Hofferth, University of Michigan (313) 763-5131
Frank Stafford, University of Michigan (313) 763-5186

Sponsor: National Institute on Aging, National Science Foundation, National Institute of Child Health and Human Development/Department of Labor and ASPE/DHHS

Frequency: Annually since 1968

Purpose: Original purpose was to collect data on poverty and welfare dynamics. The study has become a general social science resource for longitudinal data on individuals and families.

Design: Interviews conducted in person 1968-72; by telephone since 1973. Ten percent or fewer of the interviews are conducted at the respondent's home. Respondent is the family head or spouse.

Content: Economic and demographic data, with substantial detail on income sources and amounts, employment, family composition changes, residential location. NIA-funded Supplements on health, parental health, long-term care, and intergenerational transfers.

Disability measures: Questions on health limitations, e.g., limitations on work, have been asked of adults since 1968. The 1986 survey contained substantial questions on ADL and IADL limitations, specifically questions regarding difficulty and assistance with specific tasks. In 1990 questionnaires with ADL, IADL and health questions were mailed to the 50+ population. Since 1992 the core questionnaire asks ADL and IADL questions of the 55+ population. 1995 survey included questions on learning disabilities and special education status of children.

Coverage: U.S. household population

Sample: 11,000 families in 1994. Oversample of African Americans and Hispanics.

Products: Public use tapes, CD-ROM, publications. Access to PSID Home Page through http://www.umich.edu/~psid using Mosaic program.

Future: Ongoing. NIA has funded housing supplement to predict situations of dependent care among individuals age 55+.

Comments:
- long-term time series data on health limitations
- disability questions in the 1990 surveys focus on the 55+ population only
- extent of family caregiving included in 1992 survey
- long term nature allows for study of antecedents of disability, intergenerational linkages, and other longitudinal aspects
- system can identify SSI recipients in family and link to disability

Title: **Supplement on Aging (SOA I and SOA II)**

Contact: Julie Dawson Weeks, NCHS (301) 436-5979

Sponsor: National Center for Health Statistics, National Institute on Aging

Frequency: 1984, 1994

Purpose: SOA, a supplement to the 1984 National Health Interview Survey, establishes baseline data (for LSOA) to study changes in functional status among the elderly, and the relationship between social and health factors and death. SOA II is intended to serve as a comparison cohort to the 1984 SOA cohort, and possibly as a baseline for a second Longitudinal Study on Aging (LSOA II). SOA II replicates SOA I to see if there are changes in the disability process, to study the healthy aging, to focus on unmet need, and to examine problems in elderly women.

Design: Cross-sectional national survey collected through household interviews. Interview was with sample person except in cases where the sample person was physically or mentally unable to respond. In such cases adult proxies were interviewed. All persons 70+ who screened in as "disabled" on Phase I will receive the expanded Phase 2 Disability questionnaire with the SOA II questions embedded within it; remaining sample of elderly persons will be administered a shorter questionnaire. SOA II was designed as a stand alone survey

Content: Housing and long term care services, transportation, social activity, work history, health insurance, assistance with key activities, family structure, living arrangements, conditions and impairments, and health opinions and behaviors.

Disability Measures: Questions include difficulty in performing 7 ADLs, 8 IADLs, NAGI; receipt of help/need of help from another person with specific ADLs/IADLs, condition that causes trouble with ADLs/IADLs, limitations in amount/kind of work, work-related disability, health related retirement, sensory problems, and use of special equipment.

Coverage: Civilian non-institutionalized population age 55+ taken from the 1984 National Health Interview Survey; age 70 years and older in 1994/1995.

Sample: 16,000 surveyed in SOA I. Approximately 10,000 elderly members of NHIS households in SOA II.

Products: Public use files, publications.

Future: NHCS and NIA is currently conducting the second Supplement on Aging (SOA II) to the NHIS.

Comments:
- SOA II collects detail on caregiver or service support, e.g., amount of time each helper spends in assisting the respondent with ADL and/or IADLs

Title: **Survey of Income and Program Participation (SIPP)**

Contact: Enrique Lamas (301) 457-3819; Jack McNeil (301) 763-8300

Sponsor: Bureau of the Census

Frequency: A new panel has begun every October since 1983.

Purpose: To obtain information on federal program participation and to describe the income distribution of the population (especially those with lower incomes).

Design: Longitudinal. Nine waves of interviews are conducted at four month intervals over a 30 month period for each panel. There is a standard core interview supplemented by periodic topical modules. All disability measures are found on selected topical modules. Provides detailed information on disability for all ages.

Content: Core interview collects information on Federal program participation, earnings, occupation, employment, and income. There are also periodic supplements to the core interview, referred to as "topical modules". Disability questions have been asked on topical modules beginning with the 1990 Panel. Other topical modules include history of welfare receipt, mobility, migration history, work disability history, employment history, taxes, assets and liabilities, savings, marital and fertility history, family relationships, real estate, education and training, retirement, support for non-household members, child care, and child support.

Disability Measures: Different questions on limitations by age groups; health conditions; ADLs and IADLs; utilization of health care.

Coverage: Civilian non-institutionalized population.

Sample: Varies from 12,000 to 20,000 households per panel.

Products: Publications, public use data tapes; some products from some waves of the 1993 panel are now available; latest panel file available is 1991.

Future: Redesign for 1995 is underway.

Comments:

- contains comprehensive information on disability, as well as related information
- questions on functional limitations were asked in 1984 and for children and a small subset of adults in 1988 and 1989; more detailed questions asked in 1984 and the years including and following 1990. Samples were much smaller in the latter years, making it difficult to measure prevalence rates
- disability questions were not repeated for the same respondent in 1988 and 1989 (not designed to measure individual changes over time)
- comprehensive disability data collected in 1990 (waves 3 and 6), 1991 (wave 3), 1992 (waves 6 and 9), and 1993 (waves 3 and 6)

Title: **Surveys of Disability and Work**

Contact: Martynas Ycas (202) 282-7089

Sponsor: Social Security Administration

Frequency: Intermittent through 1978.

Purpose: To measure the prevalence of disability in the working age population in the U.S. and determine its effect on persons and their families

Design: Interview with a sample of civilian non-institutionalized population with and without disabilities age 18-64. Interview of 9900 and noninterview of 1900.

Content: Demographic information: health care use; disability status and functioning; socio-economic status; family background; employment; program participation.

Disability Measures: All respondents are questioned about health conditions or illnesses (diagnosed by a doctor and not diagnosed); mobility limitations or inability to perform specific ADL activities; work limitations or inability to work due to health condition; use of assistive technology; and receipt of government benefits (for disability reasons). Question also asked regarding home modifications to accommodate health problems of anyone living in the household.

Coverage: Civilian non-institutionalized population.

Sample: Approximately 12,000 persons.

Products: Publications, public use tapes (of the 9900 interview cases only).

Future: No plans.

Comments:

- the only national survey on disability and work
- questions distinguish between temporary ill health and disability
- survey can be linked to SSA files
- survey lacks questions that directly address the work needs of persons with mental illness or mental retardation, especially in regard to personal assistance, queuing, job coaching

B. PROVIDER BASED SURVEYS

Title: **National Ambulatory Medical Care Survey (NAMCS)**

Contact: Catharine Burt (301) 436-7132

Sponsor: National Center for Health Statistics

Frequency: 1973, 1975-1981, 1985, 1989-present.

Purpose: To collect data on visits to physicians in office-based practices.

Design: One page Patient Record form completed by examining physician to record information about patient's office visits. Specially trained interviewers visited the physicians prior to their participation in the survey and instructed physicians and staff in the methods and definitions to be used.

Content: Patient, physician and visit characteristics. Includes physician diagnosis.

Disability measures: Physician diagnosis of patient (principle diagnosis and other) is the only measure to estimate disability. Up to three diagnoses are coded and classified according to the International Classification of Diseases, 9th Revision, Classical Modification (ICD-9-CM). The 1991-92 and 1993-94 surveys ask patients if they have one or more of a list of 4 or 5 specific conditions (e.g., asthma, diabetes, HIV, depression).

Coverage: Ambulatory patients seen in offices of non-federally employed office-based physicians.

Sample: Approximately 2,000 office-based physicians completed 34,606 Patient Record forms in 1992.

Products: Public use tapes, DC-ROM, publications.

Future: Ongoing.

Comments:
- one-time physician diagnosis; no indication of the onset or duration of condition or disability

Title: **National Employer Health Insurance Survey (NEHIS)**

Contact: Gail Poe, NCHS (301) 436-3874 ext. 166

Sponsor: Agency for Health Care Policy and Research, Health Care Financing Administration, and the National Center for Health Statistics

Frequency: 1994

Purpose: To produce state and national level estimates of private health insurance spending for National Health Accounts; provide baseline data for evaluating the effects of health care reform; describe the current employment-based health insurance system.

Design: Data collected by Computer Assisted Telephone Interviewing.

Content: Health insurance coverage for employees and their families; cost sharing provisions; characteristics of the plans including services covered, i.e., nursing home care, personal care in the home, home health care; and exclusions and waiting periods for pre-existing conditions.

Disability Measures: No clear disability measures. Survey includes questions regarding pre-existing health conditions, substance abuse and mental health.

Coverage: Private and public sector employers.

Sample: 33,000 employers. A minimum of 40 interviews in each state. Includes persons identified as self-employed with no employees in the 1992 NHIS.

Products: Data will be released in the Spring of 1995 in the form of published reports and electronic data products.

Future: Possible 1996 survey

Comments:

- focus is on employer-provided health insurance plans and their coverage policies, not individuals; no utilization data is collected
- collects data on the number of persons affected by refusal of coverage due to health problems or conditions
- data is being collected for the first time; no trend analysis or comparisons can be made with this survey alone

Title: **National Health Provider Inventory (NHPI)**

Contact: Al Sirrocco (301) 436-8830

Sponsor: National Center for Health Statistics

Frequency: 1991 only. Previously known as the National Master Facility Inventory (from 1967 every two years until 1982), and Inventory of Long-Term Care Places (1986)

Purpose: To provide national statistics on the number, type, and geographic distribution of health providers; to serve as sampling frames for future surveys in the Long-Term Care component of the National Health Care Survey.

Design: Mail questionnaire sent to health facility administrators with telephone follow-up after three rounds of unsuccessful mailings.

Content: Ownership, number of beds, certification status, staffing and other related facility characteristics. Questionnaire has two components: a survey of nursing homes (demographics, characteristics of residents) and a survey of home and hospice providers (types of services provided).

Disability measures: Identifies facilities that primarily serve persons with MR/DD, or other physical or cognitive impairments. Survey asks whether the facility provides its residents with assistance with specific ADLs and IADLs.

Coverage: Nursing homes, board and care homes, hospices and home health agencies.

Sample: 55,000 facilities and agencies total, approximately 15,500 of which are nursing homes and 31,430 board and care homes.

Products: Public use tapes, publications

Future: No funding for 1995.

Comments:

- questions inquire about facility characteristics, not individuals
- different data collection techniques between NHPI and earlier National Master Facility Inventory and the Inventory of Long-Term Places make trend reports problematic
- names and addresses of responding facilities and agencies provided in public use tapes offer a sampling frame for future researchers

Title: **National Home and Hospice Care Survey (NHHCS)**

Contact: Genevieve Strahan (301) 436-8830

Sponsor: National Center for Health Statistics

Frequency: 1992, 1993, 1994

Purpose: To collect baseline information about hospices and home health agencies.

Design: The NHHCS is a segment of the Long-term Care Component of the National Health Care Survey. Three questionnaires were used to collect data: the Facility Questionnaire, the Current Patient Questionnaire and the Discharged Patient Questionnaire. Personal interviews were conducted with facility administrators for agency data; staff members for data on patients.

Content: Agency characteristics; basic demographic characteristics; caregiver information; services utilization; and functional status of current and discharged patients.

Disability Measures: Medical diagnosis are recorded from patient medical records; questions on patient's use of personal assistance with six specific ADLs and six IADLs; one question on patient use of specific assistive aids.

Coverage: Current and discharged users of hospice and home health agencies, and agencies that provide home health and hospice (taken from the National Health Provider Inventory).

Sample: 1,500 home health agencies and hospices, 9,000 current patients, 9,000 discharged patients. Uses home health and hospice section of the National Health Provider Inventory to select sample.

Products: Public use tapes, publications.

Future: No plans for 1995.

Comments:

- linkage between NHHCS and the National Nursing Home Survey; although surveys not funded for the same years
- sampling frame of agencies in NHHCS is the same between years, but NHHCS does not follow the same individuals through the years of surveys (uses random sample)
- duration of functional impairment is not indicated; assistance with ADLs is asked for one point in time

Title: **National Nursing Home Survey (NNHS)**

Contact: Evelyn Mathis (301) 436-8830

Sponsor: National Center for Health Statistics

Frequency: 1973-1974, 1977, 1985. Followup surveys; 1987, 1988, 1990.

Purpose: To collect baseline and trend statistics about nursing facilities, their services, residents, discharges and staff in order to satisfy diverse data needs of those who establish standards for, plan, provide and assist with long-term care services. The National Nursing Home Survey Followup (NNHSF) is a longitudinal utilization study intended to trace the cohort of residents sampled in the 1985 NNHS in and out of nursing homes.

Design: Combination of personal interview and self-enumeration techniques: in-person interview of nursing home staff, telephone interview of next of kin, as well as mail questionnaires for patient data.

Content: Current Residents, Discharged Residents, and Next of Kin questionnaires collect data on demographics; health status immediately preceding/during stay; place of residence before/after stay; all prior/subsequent nursing home use; who paid/is paying for care. The Current Residents questionnaire contains information on hospitalizations during nursing home stay; services received in the month preceding interview.

Disability Measures: Data collected on sample residents include diagnosis (current and at admission); selected conditions (including MR), impairments (chronic health and memory), ADLs and selected IADLs, and use of assistive devices.

Coverage: Nursing home facilities, nursing home staff, current residents and discharged residents.

Sample: In 1985, 1,079 nursing homes, 5,243 current residents, 6,023 discharged residents, 9,134 next of kin.

Products: Public use tapes and publications.

Future: 1995 update is planned.

Comments:
- similarity of the procedures, questions, and definitions of the 1973, 1977, and 1985 surveys permit some trend comparisons
- data are available on timing of nursing home use over a lifetime as well as who pays for use
- possible to track lifetime patterns for persons with chronic conditions
- 1995 survey has been scaled down; the survey will not include Next of Kin or Discharged Residents questionnaires

C. ADMINISTRATIVE

Title: **Medicaid Statistical Information System (MSIS)**

Contact: Dave Gibson (410) 966-0068

Sponsor: Health Care Financing Administration

Purpose: To collect, manage, analyze, and disseminate person specific information on utilization and payment for services covered by state Medicaid programs.

Design: States participate voluntary; MSIS collects selected, standardized data elements on eligibility and paid service claims.

Content: Demographic, eligibility, medical payments and claims, inpatient service, and long-term care service information.

Disability Measures: Based on diagnosis and/or services received.

Coverage: 26 states (Florida and Colorado are in initial stages of participation): the data represent 100 percent of these states' eligible population and their Medicaid coverage.

Products: MSIS State Participation Procedures, Tape Specification and Data Dictionary, and Personal Summary Record File Data Description.

Future: New states will be added to the system.

Comments:
- not all data elements are available from all states
- no level of functioning measures; will only receive information abut types of impairments by looking at the type of claims paid (but categories are broad, and detailed utilization and payment analyses are not possible)
- data quality is highly questionable, although improvements are currently underway

**Note: HCFA has other data available, including: claims and utilization data; enrollment and eligibility data; other Medicaid data; and public use files data (which are the primary source of information for users that do not have access to HCFA files). The public use files include: utilization (institutional provider files); part B data (physicians, ambulatory surgical centers, supplier files); financial data files; institutional provider identification and certification files; beneficiary entitlement and demographic files; and diskette files. More information can be obtained by contacting HCFA's Bureau of Data Management and Strategy.

Title: **Rehabilitation Services Administration Case Service Report (RSA-911)**

Contact: Larry Mars (202) 205-9404

Frequency: Records collected annually.

Purpose: To provide information on the persons requesting services under the State-Federal Program of Vocational Rehabilitation.

Content: Sociodemographic characteristics; services provided (actual provider and referral source); method of payment for services; type of service received; cost of services; reason for case closure; employment; public assistance; insurance.

Disability Measures: Type and extent of disabling condition.

Coverage: All individuals using services of the State-Federal Program of Vocational Rehabilitation since the Rehabilitation Act of 1973 whose cases are closed.

Sample: Approximately 600,000 cases annually.

Products: Public use files can be obtained.

Future: Plans ongoing to continue a permanent linkage with SSA files.

Comments:

- a case is closed whether or not the case is rehabilitated, not rehabilitated, or not accepted for rehabilitation services
- to obtain information on individuals following the close of their case, can link this data with SSA data (Earning Summary Record and Master Beneficiary Record)
- can examine whether or not rehabilitated persons remain employed and for how long and can also obtain information on income and reliance on public support

D. OTHER SURVEYS

Title: **Area Resource File (ARF)**

Contact: Colleen Goodman (703) 352-7393

Sponsor: Office of Research and Planning/ Bureau of Health Professions/ Health Resources and Services Administration

Frequency: Since 1971; Expansion and maintenance of the basic ARF is performed on a continuing basis. Current release is February 1995.

Purpose: To consolidate many disparate data elements useful in analysis of health professions issues and developments on a geographic basis. Provides health and health related data available at the county level; provides data for descriptive and comparative analysis of the health care system.

Design: The Area Resource File (ARF) System has been designed to provide data that are geographically and longitudinally consistent. The data are available for each county in the 50 states, across time, permitting cross sectional and time series analyses. The system is comprised of the basic ARF county file and the ARF Health Professions Training File, as well as many detailed support files regarding health care facilities, health professionals, and demographic statistics. Support files are maintained at the county and sub-county levels and provide current as well as time series information.

Content: Principle types of data in the basic county file include health profession descriptors, health professions training, characteristics of health facilities, hospital utilization, health expenditures, morbidity and mortality, and demographic, economic and environmental characteristics. The Basic ARF contains over 7,000 data variables for each county.

Disability Measures: None.

Coverage: All counties in the United States.

Products: Printed reports (profiles, selected geographic resources state and county reports), copies of the basic ARF tape, and floppy diskettes containing extracts of the basic county data. Special requests can be provided. Annual updates available on tape.

Future: CD-ROM to be available in 1995.

Comments:
- a comprehensive longitudinal data set of county level information
- the basic file contains geographic codes and descriptors which enable it to be linked to many files

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Purpose: To provide information on the persons requesting services under the State-Federal Program of Vocational Rehabilitation.

Content: Sociodemographic characteristics; services provided (actual provider and referral source); method of payment for services; type of service received; cost of services; reason for case closure; employment; public assistance; insurance.

Disability Measures: Type and extent of disabling condition.

Coverage: All individuals using services of the State-Federal Program of Vocational Rehabilitation since the Rehabilitation Act of 1973 whose cases are closed.

Sample: Approximately 600,000 cases annually.

Products: Public use files can be obtained.

Future: Plans ongoing to continue a permanent linkage with SSA files.

Comments:

- a case is closed whether or not the case is rehabilitated, not rehabilitated, or not accepted for rehabilitation services
- to obtain information on individuals following the close of their case, can link this data with SSA data (Earning Summary Record and Master Beneficiary Record)
- can examine whether or not rehabilitated persons remain employed and for how long and can also obtain information on income and reliance on public support

Title: **National Consumer Survey**

Contact: Lynne Lau (202) 690-6589

Sponsor: Administration on Developmental Disabilities

Frequency: One time, 1987-1990

Purpose: To determine the state of service delivery and satisfaction of persons with developmental disabilities in achieving independence, productivity and integration.

Design: Phone screening, then personal interview. All surveys involved the consumer directly (except with young children). Questions are asked of both the consumer and surrogate if necessary.

Content: Demographics, education, services and satisfaction, independence, integration, productivity, and supports/services/assistance.

Disability Measures: In the screening subject is asked to indicate primary diagnosis/disability as well as other disabilities. The screening also contains a series of assistance questions, including how much assistance subject needs with ADLs, learning, decisionmaking, and living independently. In the core questionnaire more specific questions on need for supports include need for attendant care, home health aides, and adaptive equipment.

Coverage: Persons with developmental disabilities who have been identified by the state's Developmental Disabilities Council primarily through advocacy groups.

Sample: Over 15,000 persons with developmental disabilities.

Products: Individual state reports, summary of reports from Developmental Disabilities Councils.

Future: No plans.

Comments:

- only national consumer survey of persons with developmental disabilities
- involved consumers in all interviews (except children)
- no standard survey instrument in all states; five states used their own survey to complete the assessment
- each state prepared its individual results; not all states reported on all life areas

Social Security Administration (SSA) Administrative Data

Contact: Barbara Lingg (410) 965-0156; Martha Barnhill, (410) 965-0145

Administrative Data from the SSA is published in the *Social Security Bulletin;* comprehensive information is available in its annual supplement. The 1994 supplement includes more than 250 tables containing detailed information on income security programs; most of the information is on programs administered by SSA (OASDI and SSI). Data is available by diagnostic group for disabled workers and distributions are given by sex, age, and benefit level. Data is also available at the state level. This data is used internally to aid in the administration of SSA programs. Due to privacy restrictions, no public use files are available. Specific requests for information can be directed to the SSA's Freedom of Information Act Office, Ethel Burrows, (410) 965-3962. SSA data can also be linked with other files that can be used within the public domain. Requests on this subject can also be made to SSA.

Title: **National Education Longitudinal Surveys**

Contact: Jeff Owings, (202) 219-1728

Sponsor: National Center for Education Statistics

Frequency: 1972, 1980, 1988, 1990, 1992, 1994

Purpose: To collect data on the events, trends, and transitions of children in the educational system and beyond.

Design: Three surveys in the NELS: National Longitudinal Survey of the High School Class of 1972 (NLS 72), High School and Beyond (HS&B), and National Educational Longitudinal Survey of 1988 (NELS:88). Questionnaires (to school administrators, students, teachers, parents) and student records (transcripts, achievement tests).

Content: Of the three longitudinal surveys HS&B and NELS:88 contain variables most relevant to users interested in disability data. In general, HS&B contains data on high school experiences and events in the years following high school graduation, e.g., post secondary education, marriage, work. NELS:88 contains data on school, student and teaching staff characteristics, school policies and practices, student behavior and academic performance, family background of students, educational and career plans.

Disability Measures: HS&B and NELS:88 surveys ask questions of parents and teachers on a student's disabilities or health conditions that affect schooling. School transcripts indicate if student has an individualized educational plan under IDEA.

Coverage: NELS:88 samples 8th graders in 1988. HS&B covers high school sophomores and seniors enrolled in public and private schools in 1980. Does not include schools specific to students with disabilities.

Products: Data tapes, publications, CD-ROM

Future: Plans to survey in 1998.

Comments:

- surveys identify students with mild and moderate disabilities
- survey data allows users to compare cohorts in a time-lag basis, to view data for each cohort cross-sectionally, and to produce longitudinal analyses within a cohort

Title: **National Longitudinal Survey of Youth (NLSY)**

Contact: Paula C. Baker, Ohio State University (614) 442-7375

Sponsor: Bureau of Labor Statistics, U.S. Department of Labor; National Institute of Child Health and Human Development

Frequency: Annually 1979-present. Child health data collected biennially since 1986.

Design: Annual interviews of the 1979 youth cohort. In 1986 the survey began including biennial interviews of children whose mothers are part of the original youth cohort, as well as interviews with mothers about their children.

Content: Education; employment; training and family-related experiences of the respondents; physical, emotional or mental conditions. Since 1982 includes questions on pregnancy and post-natal histories, fertility and child-care usage.

Disability Measures: Child Supplement collects data on conditions that prevent regular school attendance, limits or prevents ability to do regular school work, limits or prevents usual childhood activities (e.g., play, sports), requires frequent attention or medical treatment, requires regular use of medicine, or requires use of special equipment. Specific condition and duration of condition is asked for children identified as having limitations. Original survey contains health measures of mothers, with a focus on ability to work.

Coverage: Individuals who were between the ages of 14 and 21 in 1979.

Sample: Over 12,600 individuals have been interviewed annually since 1979

Products: Data tape, CD-ROM, publications.

Future: Ongoing.

Comments:
- Child Supplement contains disability measures appropriate for children

Title: **National Longitudinal Transition Study of Special Education Students**

Contact: Scott Brown (202) 205-8117

Sponsor: Office of Special Education Programs, U.S. Department of Education

Frequency: 1987; followup surveys in 1989, 1990

Purpose: To provide longitudinal information on experiences of people with disabilities as they make the transition from secondary school to adulthood, focusing on education, employment and personal independence.

Design: Data on sampled students are obtained from telephone interviews with parents, school records, and school program surveys. First wave in 1989; second wave in 1990-1991.

Content: Sociodemographic characteristics; type and extent of disability; school achievement; employment; social integration; personal independence; school characteristics and policies.

Disability Measures: Disability category is based on the primary disability designated by the youth's school or district. Specific categories include learning disabled, mentally retarded, emotionally disturbed, speech impaired, visually impaired hard of hearing, orthopedically impaired. Survey also asks about limitations in self-care and functional skills.

Coverage: Students aged 13 to 21 years, enrolled in secondary school special education during the 1985-1986 school year.

Sample: At least 8,000 students; 1989 included a subsample of over 800 parents and/or their offspring who had been out of secondary school for 2 to 4 years and who were classified as having a disability.

Products: Publications and public use tapes. Public use tapes including the second wave is expected to be available by the end of 1995.

Future: No current plans.

Comments:
- longitudinal study; students in the 1987 wave were retained for follow-up in 1990

Title: **Users' Responses to Assistive Devices for Physical Disability**

Contact: Nancy Brooks, Wichita State University (316) 689-3280

Frequency: One-time survey from 1990.

Purpose: To explore social-psychological outcomes of disability.

Design: Used the American Association for the Advancement of Science's Resource Group of disabled scientists and engineers. Questions were mailed to a population survey of these individuals.

Content: Sociodemographic characteristics; type of disability; type of assistive devices used.

Disability Measures: Type of disability and type of assistive device(s) used; assistive devices broken into eight categories. Frequency of use in private and public settings was measured.

Coverage: American scientists and engineers with physical disabilities, age 19 to 88.

Sample: 595 (47.5% of questionnaires were returned).

Products: Paper of findings is available: Brooks, N. A. "User Responses to Assistive Devices for Physical Disability," *Social Science Medicine*, 32(12), 1417-1424, 1991.

Future: No follow-up survey.

Comments:
- Unique approach; examining the user's view of assistive devices in social settings
- Sample that was chosen for analysis due to the fact that scientists and engineers would likely use assistive devices in a variety of social settings

APPENDIX REFERENCES

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Future: No follow-up survey.

Comments:
- Unique approach; examining the user's view of assistive devices in social settings
- Sample that was chosen for analysis due to the fact that scientists and engineers would likely use assistive devices in a variety of social settings

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Special thanks to the contact persons listed for each survey and their assistance in providing the content for this appendix.

Directions to Holiday Inn

From Metro
Ride the Green, Yellow, Blue or Orange line to L'Enfant Plaza. Take the 7th Street/Maryland Avenue exit. From the escalator, walk straight to the corner of Maryland Avenue and 6th Street. Turn right. The Holiday Inn is one-half block down on the left (corner of 6th and C Streets).

By car
From 395 North: Exit onto 14th Street. Turn right onto Independence Avenue. Turn right onto 6th Street. The Holiday Inn is on the corner of 6th and C Streets.

From 395 South: Exit onto New York Avenue. Turn left onto 7th Street. Turn left onto Idependence Avenue. Turn right onto 6th Street. The Holiday Inn is on the corner of 6th and C Streets.

HEALTH CARE REFORM BILLS
DISABILITY REPORT CARD
Overall Pass/Fail Rating

ISSUE/BILL	SENATE LABOR & HUMAN RESOURCES	SENATE FINANCE	HOUSE WAYS & MEANS	HOUSE EDUCATION & LABOR HSA	HOUSE EDUCATION & LABOR SINGLE PAYOR	DOLE PROPOSAL	ROWLAND/ BILIRAKIS
UNIVERSAL COVERAGE	Pass	Fail	Pass	Pass	Pass	Fail	Fail
MANDATED COMPREHENSIVE BENEFITS PACKAGE	Pass	Fail	Pass	Pass	Pass	Fail	Fail
EMPLOYER MANDATE	Pass	Fail	Pass	Pass	N/A	Fail	Fail
INSURANCE REFORM	Pass	Fail	Pass	Pass	Pass	Fail	Fail
AFFORDABILITY	Pass	Fail	Pass	Pass	Pass	Fail	Fail
CONSUMER CHOICE AND PROTECTION	Pass	Fail	Pass	Pass	Pass	Fail	Fail
HOME AND COMMUNITY BASED LONG TERM CARE	Pass	Pass	Pass	N/A	Pass	Fail	Fail
OVERALL	Pass	Fail	Pass	Pass	Pass	Fail	Fail

Prepared By The Consortium for Citizens With Disabilities

Consortium for Citizens with Disabilities

CCD Health Task Force Co-Chairs:

Janet O'Keeffe (202) 336-5934
Peter W. Thomas (202) 466-6550
Kathy McGinley (202) 785-3388

THE NEED FOR UNIVERSAL COVERAGE

UNIVERSAL COVERAGE IS THE KEY TO REAL HEALTH CARE REFORM

The disability community demands that health care reform provide all Americans -- not 95 percent by some far off date -- but ALL Americans with the security of health coverage by a specific date. Proposals that would guarantee 95 percent coverage cannot guarantee that people with disabilities will be covered. How many of the uncovered 5 percent (15 million people) do you think will be people with disabilities? The wealthy and people on Medicaid will have coverage while working people with high health expenses and many people with disabilities will be priced out of the market.

- **Universal coverage is socialized medicine!?**

  RIDICULOUS! This scare tactic plays on people's fears. There is nothing more American than providing all American citizens with a basic right to health care.

- **Universal coverage is too expensive!?**

  UNTRUE! Universal coverage is the key to containing costs in the health system for two reasons. (1) An ounce of prevention is worth a pound of cure, and (2) most Americans needing emergency care receive it, insured or not. Why should the insured pay the costs of those who don't have insurance? Everyone must take some responsibility for their health care. Without universal coverage, people with disabilities will continue to face work disincentives because they will still have to worry about losing government health benefits if they get a job.

- **Can't we just reform the insurance industry?**

  NO! Insurance reforms without universal coverage won't work. If people are not required to have insurance but are guaranteed it whenever they want, many will only buy insurance when faced with expensive medical bills which will drive up costs for everyone else. Job-lock would also continue because not all employers would provide insurance to their workers.

SUPPORT REAL HEALTH CARE REFORM FOR ALL NOW!

Consortium for Citizens with Disabilities

CCD Health Task Force Co-Chairs:

Janet O'Keeffe (202) 336-5934
Peter W. Thomas (202) 466-6550
Kathy McGinley (202) 785-3388

WHY CONGRESS MUST DEFINE A COMPREHENSIVE BENEFITS PACKAGE

The purpose of health care reform is to assure that every American will receive the health services they need and will not be faced with financial ruin in the event of a serious illness or disability. Therefore, in addition to guaranteeing UNIVERSAL COVERAGE, health care reform must guarantee Americans the security that they will receive the services they need when they need them. A package of benefits that meets the needs of persons with disabilities will clearly meet the needs of all Americans.

- **Must a Benefits Package be Defined in Law?**
  YES! The American people cannot be asked to support and pay for health care reform without knowing what benefits they will receive. The best way to guarantee that people receive the services they need is to require coverage of a specified set of benefits defined in the law.

- **The Clinton-Style Benefit Package is too Rich!?**
  NONSENSE! Even if a benefit is listed in the standard package, it will not be covered unless it's medically necessary. Luxuries? Frills in the benefits package? Ask those who claim this to tell you which of the basic necessities that you require everyday should be dropped from the benefit package.

- **Is a Standard Benefit Package a One-Size-Fits-All Approach to Health Care?**
  NO! No one can anticipate all the health care services they may one day need. Insurance limitations are not often understood until individuals or their family members experience a serious illness, an accident, or a disability that requires a wide range of ongoing medical, rehabilitative, and support services. Would you rather have a set of guaranteed benefits laid out in black and white or let your employer decide what benefits are right for you?

- **Shouldn't Congress let a Special Health Board Define the Benefits Package?**
  NO! Congress -- NOT unelected health board officials -- must define the benefit package. If the Congress has the expertise to define a package of health benefits -- for older Americans through Medicare, for people with low incomes or disabilities through Medicare and Medicaid, for members of the armed forces and their families through CHAMPUS, and for veterans through the Veterans Administration -- then there is no reason why Congress should not be held accountable to do the same for ALL Americans.

SUPPORT REAL HEALTH CARE REFORM FOR ALL NOW!

Consortium for Citizens with Disabilities

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Janet O'Keeffe (202) 336-5934
Peter W. Thomas (202) 466-6550
Kathy McGinley (202) 785-3388

CONSUMER PROTECTIONS AGAINST RESTRICTIVE MANAGED CARE

People with disabilities and others with specialized or ongoing health care needs do not get all the services they need under restrictive HMO's and other managed care health plans. HMO's have built-in incentives to deny people with disabilities and chronic conditions access to specialists and the care they need to function and be independent. Health care reform must have consumer protections against restrictive managed care plans.

- **What can be done to preserve consumer choice and access to specialists in HMO's?**
  - Support a requirement that all HMO's allow you to get care from out-of-network providers for a slightly higher cost (a mandatory point-of-service option).
  - Support a requirement that all HMO's allow people with ongoing, specialized health needs to choose a specialist as a "gatekeeper" and continued access to specialists without gatekeeper approval when medically necessary.
  - Support requirements that HMO's contract with a wide range and an adequate number of health care providers to provide their members with the comprehensive benefits package.
  - Support protections for consumers so they can challenge denials of services, and support protections for health care providers so they are not dumped from an HMO network without proper procedures (consumer and provider due process protections).
- Some HMO's benefit people with disabilities by coordinating care and providing preventive care. This is good. But managed care can be disastrous for people with disabilities and chronic conditions unless consumers have protections for choice and access to specialists .

SUPPORT REAL HEALTH CARE REFORM FOR ALL NOW!

Consortium for Citizens with Disabilities

The Consortium for Citizens with Disabilities Long-Term Services and Supports Task Force is a coalition of over 50 national organizations working to assure the inclusion of significant long term services and supports in health care reform for people with disabilities and chronic illnesses, and their families.

For additional information on this document please contact:

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(703) 683-4202	(202) 785-3388	(202) 336-5934	(703) 716-4035

Talking Points on Long Term Services

Why Are Long Term Services Important?

Home and community based long term services are vitally needed by people with significant disabilities. The overwhelming desire of most people with disabilities of all ages is to remain in their own homes and communities, while receiving the support services necessary to remain as independent as possible. If I am able to leave you with only one message today, it would be this: It is absolutely critical that long term services be part of the reform of our national health care system.

Why Home and Community Based Services?

Any long term services program must have its emphasis on expanding access to home and community based services rather than institutional services. In general, home and community based services are more cost effective than institutional services and afford people with disabilities greater opportunities to become contributing members of society.

Who Should Be Eligible for Services?

The plan must cover people of all ages with all types of disabilities — cognitive, mental, sensory, and physical. Historically, other proposals have excluded people on the basis of one type of disability, such as mental illness; that is unacceptable. The plan also must allow eligibility for all income levels, thereby beginning to address the problem of people having to impoverish themselves in order to have the assistance they need to survive. It must also address the work disincentives issue, where people who are receiving needed services accept a job, lose their benefits, and yet do not earn enough money to meet their basic living needs and purchase their disability-related goods and services.

What Principles Will Make This Program Most Effective?

The proposal must contain empowering principles, including a commitment to consumer directed services, an option for the use of vouchers or direct cash payments, consumer involvement in planning the state long term services program, and individualized service needs assessments and plans of services.

Why Have Tax Credits In A Long Term Care Program?

Personal assistance service tax credits will help to offset the extraordinary expenses of living with a severe disability, and assist people with disabilities to enter the work force by giving them a measure of economic parity with those who do not need to pay these extraordinary costs.

ADA

POSITION BACKGROUND:

Senator Dole has earned national acclaim for his leadership to enhance the rights of people with disabilities. His commitment stems back to his days as a Member of the House of Representatives when his first floor speech spoke to the issue of disability. Senator Dole evidenced his commitment to strengthen all areas of policy that will integrate people with disabilities in the mainstream of this country as a key player in passage of the Americans with Disabilities Act (ADA).

Recognizing the comprehensive nature of this landmark law, Senator Dole secured an ADA technical assistance amendment to design a government-wide information dissemination program to educate people with disabilities about their rights and the business community as to their obligations under the law. Upon passage of the ADA, Senator Dole co-authored an amendment to expand the Tax Code to include a tax credit applicable to any ADA related expenditure incurred by a private entity in fulfilling their obligations under ADA.

KEY DEBATE POINTS:

Senator Dole is convinced that the vast majority of people with disabilities don't want handouts. They want the opportunity to work, to take part in their communities, and to pursue the Americans dream. However, barriers still prevent them from reaching that goal -- sadly, many of these obstacles only exist in the minds of those who are not disabled.

Bipartisan support in Congress with cooperative efforts from people with disabilities, business leaders and concerned American citizens made this historic legislation possible. As a result, this new law will ban discrimination in employment, public accommodations, transportation and telecommunications. While earlier legislation, such as Section 504 of the Rehabilitation Act of 1973, the Education for Handicapped Children's Act and the Fair Housing Act provided a broad range of access to specific programs for persons with disabilities, the ADA created a broad range of access in both the public and private sectors.

To reinforce the goals of the ADA and to move disability policy into the next century, it is critical to maintain a united and solid partnership between the disability and business communities. Recognizing this, Senator Dole has consistently ensured that many private sector entities under ADA jurisdiction have the needed information to answer their questions regarding compliance and applicable tax credits when providing access accommodations under the law.

DOLE LEGISLATION:

Authored and successfully secured a technical assistance amendment to the ADA that would assist with its implementation through information dissemination by the Equal Employment Opportunity Commission (EEOC) and the Department of Justice.

For the past two years Senator Dole has requested and secured a total of $10,000,000 to implement the ADA's Technical Assistance Program.

Authored Section 190 of the Internal Revenue Code providing a $35,000 (now at $15,000) deduction for disability related expenditures.

Co-authored an amendment to expand Section 190 of the Internal Revenue Code by adding a tax credit (in addition to the previous deduction) designed to assist the small business community with the cost of ADA compliance.

Sponsored in conjunction with the Small Business Administration and the Kansas Association of Centers for Independent Living -- three information seminars entitled "The ADA and Small Businesses: to provide those in the business community throughout Kansas specific information on the ADA and the needed linkages to sources of assistance for future questions.

Sponsored a two day conference --"Employment of People with Disabilities: Issues and Opportunities" with the Kansas Division of Continuing Education on implementation of the ADA's employment provisions.

Established the Dole Foundation for Employment of People with Disabilities, solely dedicated to the economic independence of people with all types of disabilities through the provision of grants to organizations that train and place people with disabilities in competitive employment.

DISABILITY POLICY

DISABILITY POSITION BACKGROUND:

All aspects of a person's life are affected by federal policy. Federal policy should be directed toward goals which encourage integration -- independence -- and productivity. Disability policy must encourage the inclusion of people with disabilities in all parts of society and should be linked to the more general policies for society as a whole. All of the policies Senator Dole has supported empower people with disabilities to claim their rightful place in society as full participating citizens.

KEY DEBATE POINTS:

EDUCATION:

Nearly 5 million students receive federally-assisted special education services annually and approximately 200,000 students graduate from special education each year. This represents a wise decision in public policy. Further efforts and supports should focus on providing schools with the resources to provide quality services to meet the special needs of all students with disabilities. Quality education will prepare the student with a disability for a productive and independent life in the work force and the community.

EMPLOYMENT:

People with disabilities must have a variety of occupational choices to empower them to pursue productive lives. Job training programs, including vocational rehabilitation programs must focus on achieving appropriate job placements and on providing the necessary on-going supports and assistive technology that people with disabilities may need in order to succeed at work.

TRANSPORTATION:

Transportation is a key to full independence, employment, and full integration in society. For a variety of reasons, including impairment and income, many people with disabilities do not own or have access to an automobile. Lack of accessible transportation remains a major concern for persons with disabilities. As author of the Air Carriers Access Act(P.L. 99-643), airline travel is now accessible by people with disabilities -- and with passage of the ADA all public /private modes of transportation must be accessible to people with disabilities.

HOUSING:

Appropriate, affordable and accessible housing is a major concern for people with disabilities. Even if you are self sufficient and can afford to buy a home -- finding an accessible home becomes the issue.

INCOME:

Over seven million individuals with disabilities receive Social Security Disability Insurance (SSDI) or Supplemental Security Income (SSI) payments and need these programs for basic support. The Harris Poll indicated that two thirds of all people with disabilities between the ages of 16 and 64 are unemployed, but that 66% of those people want to work. A major disincentive to work is that people with disabilities are often faced with discrimination and the possibility of losing other benefits (such as SSDI) -- yet their salary might be insufficient to meet their basic needs, especially in the area of health care. Removing the disincentives that prevent people from entering the work force has always a priority of mine.

HEALTH CARE:

Continued effort must be made to find the means to prevent disabilities and to implement and fund prevention initiatives. Health care reform and access to health care is not just an issue for people with disabilities. Elimination of preexisting conditions will expand access to health care.

DOLE LEGISLATION:

AUTHORED TWO PUBLIC LAWS ON DISABILITY:

P.L. 99-435, Air Carrier Access Act of 1986 which provides protections from discrimination in air travel.

P.L. 99-643, the "Employment Opportunities for Disabled Americans Act" which makes permanent the provisions of Section 1619 of the Social Security Act to enable disabled and blind individuals to continue their Medicaid (health) coverage, even after other cash SSI benefits have been terminated because of high earnings.

Authored Senate Res. 13 -- requiring that the Senate floor proceedings be closed captioned.

SUPPORTED PASSAGE OF THE FOLLOWING DISABILITY LAWS AND COSPONSORED SUBSEQUENT REAUTHORIZATIONS:

P.L. 100-336 -- Americans with Disabilities Act -- landmark civil rights legislation outlawing discrimination against people with disabilities in employment, public accommodations, transportation and telecommunications

Rehabilitation Act of 1973 -- authorizes support for training and placing persons with mental and physical disabilities into full-time, part-time or supported employment in the competitive labor market.

Section 504 of the Rehabilitation Act -- prohibits recipients of federal financial assistance from discriminating on the basis of disability.

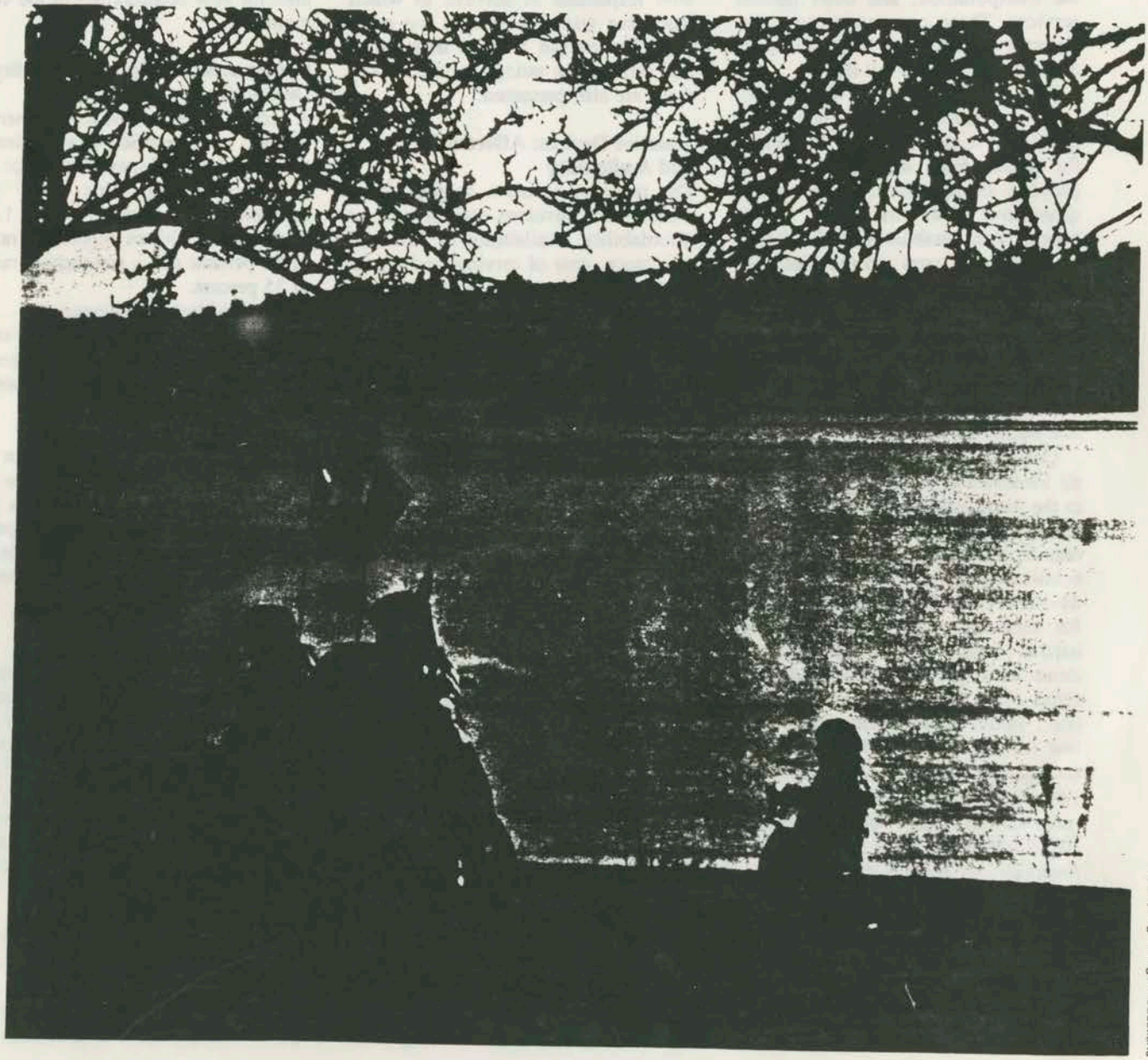
Individuals with Disabilities Education Act (formerly known as the Education of Handicapped Children's Act) -- requires States to provide students with disabilities a free, appropriate public education in the least restrictive environment, with opportunities for interaction with their nondisabled peers to the maximum extent possible.

Fair Housing Act Amendments of 1988 -- expanded protections against discrimination in housing to include people with disabilities in addition to setting forth standards of accessibility for the new construction of multifamily dwellings.

Voting Accessibility for the Elderly and Handicapped Act of 1984 -- requires that polling places be accessible to people with disabilities.

Common Concerns of Disabled Americans: Issues and Options

by Yolanda Suarez de Balcazar, Barbara Bradford, and Stephen B. Fawcett



Jeffrey Highs/Image Productions

Social Policy, 1988, 19 (2), 29-35.

The hallmark value of the disabilities rights and independent living movements is the assurance of equal access to all activities society offers, both work- and leisure-related. Over 30 million people with disabilities accept responsibility for their work, family, and individual lives. Their substantial contribution to society can be attributed both to personal competence and to the strengths of those communities that foster and support attempts to live independently. However, there are still many physical and social barriers that limit adequate jobs, housing, accessible transportation, and other needed services. These community problems thwart even the most heroic personal attempts to pursue a full life.

This article outlines the major problems in communities that limit independence. It also provides alternatives for action from the perspective of people with disabilities. It summarizes quantitative data from nearly 13,000 people with disabilities in 319 communities in 10 states and provides qualitative information about the issues and options they identified during local town meetings and public forums. This compendium presents common concerns of people with disabilities and their insights into what actions would help assure equality of opportunity.

Questionnaires were administered to all identified citizens with disabilities in the local community or state. Sponsoring organizations included independent living centers, state vocational rehabilitation agencies, and consumer advisory committees. Average scores for importance and satisfaction were used to identify relative strengths (i.e., items of high importance and high satisfaction) and possible problems (i.e., items of high importance and low satisfaction). Finally, qualitative information was obtained when the results of each survey were discussed in town meetings. Disabled citizens discussed major issues, identifying specific dimensions of issues and generating possible solutions.

YOLANDA SUAREZ DE BALCAZAR is research associate and BARBARA BRADFORD is training associate at the Research and Training Center on Independent Living, University of Kansas, where STEPHEN B. FAWCETT is research associate and professor in the department of human development. This article is adapted from a Research and Training Center publication.

MAJOR PROBLEMS IDENTIFIED BY DISABLED AMERICANS

This section provides a summary of 18 issues identified as major problems, which are organized alphabetically by category headings. Under each category, problematic aspects are noted as well as the total number of participants who responded to surveys in which that issue was chosen as a top problem. The overall average importance and satisfaction ratings for all respondents are also presented.

Assistive Devices: Affordability and Availability

The issue of assistive devices (e.g., wheelchairs) involves aspects such as affordability, availability of financial assistance, cost of services and repair, cost of rental, and price. Six related survey items were chosen by consumers and responded to by 6,355 people with disabilities in 6 different surveys. The issues received consistently high importance ratings, an average of 80 percent, and relatively low satisfaction ratings, an average of 42 percent.

Consumer-Identified Dimensions:

- Assistive devices, such as wheelchairs, are very expensive. Most people with disabilities do not have enough money to purchase devices.
- Rental of assistive devices is almost nonexistent. If rental is possible, consumers don't know where to go or get needed information.
- Medicaid and Medicare do not cover all assistive devices.

Consumer-Generated Alternatives:

- Change legislation regarding Medicaid and Medicare to cover purchase and repair of assistive devices.

Commercial Services: Accessibility

The issue of accessibility of businesses, particularly public restrooms, has been selected as a problem in three different surveys. Two related survey items were responded to by 299 consumers. The issues were rated with an average importance of 87 percent and an average satisfaction rating of 47 percent.

Consumer-Identified Dimensions:

- In many businesses and restaurants, the restrooms are inaccessible.
- The restroom doors are too hard to push, and the stalls are too narrow.

Consumer-Generated Alternatives:

- Make a list of accessible and responsive businesses.
- Survey businesses and provide feedback and suggestions.
- Write letters to local businesses about upgrading facilities.
- Consumers should keep informed about and review access plans and permits for new construction in the community.

Commercial Services: Availability of Discounts

A second issue related to commercial services and identified as a problem is the availability of special rates for disabled consumers. This issue was selected in one survey involving 1,185 respondents, with an importance rating of 82 percent and a satisfaction rating of 35 percent.

Consumer-Identified Dimensions:

- Disabled people do not get the same discounts and shopping privileges as senior citizens. Most disabled people are on a very low fixed income.

Consumer-Generated Alternatives:

- Independent living centers can sell discount cards to consumers for use with participating merchants, as was done by Westside CIL in Los Angeles.
- Have a group of disabled people discuss a proposal with local merchants.

Community Support and Responsiveness

This category includes issues related to family, community, and government support in meeting the needs of persons with disabilities. Five somewhat related items were chosen by 1,914 consumers in six surveys. They received consistently high importance ratings, with an average of 86 percent, and relatively low satisfaction ratings, with an average of 46 percent.

Consumer-Identified Dimensions:

- Families and communities do not encourage disabled members to be independent.
- The community does not provide opportunities or assistance for disabled

people to live independently.
- There are not enough support groups available for people with disabilities and their families.
- Sexuality counseling for people with disabilities is not available.
- Local governments are unresponsive to disability issues, especially if solutions cost money. For example, disabled citizens are discouraged from registering and voting by inaccessible registration sites, polling places, and lack of transportation.

Consumer-Generated Alternatives:
- Encourage community groups to organize support groups and events to involve disabled people and their families.
- Encourage churches to work with support groups, and include disabled people and their families in church activities.
- Use local media to feature stories about including people with disabilities in community activities.
- Ask city councils for help in organizing programs that will encourage independence for disabled people and their families.
- Independent living centers should provide training for their staff counselors in sexuality counseling or bring in professional counselors for a workshop and provide materials.
- Consumer groups should represent themselves at city council and county court meetings, become familiar with city budgets, and advocate for funds for access improvements and disability programs.
- Consumer groups should encourage and assist disabled citizens to register to vote.
- Use the American Civil Liberties Union to enforce existing access and registration laws.

Disability Rights and Advocacy
Issues related to involving disabled citizens in advocacy activities, increasing their knowledge about their rights, and training in self-advocacy were selected in four different surveys. Three related questions were chosen by 2,430 people with disabilities. They received an average importance rating of 88 percent and an average satisfaction rating of 45 percent.

Consumer-Identified Dimensions:
- People with disabilities are unaware of their legal rights.
- Most people with disabilities are unaware of what pending legislation at state and national levels they should support or oppose.
- People with disabilities need training in forming advocacy organizations.

Consumer-Generated Alternatives:
- Professionals and independent living centers can foster local and state leadership within the disabled community.
- People with disabilities need to inform themselves and attend advocacy meetings at all levels, get on mailing lists for disability groups involved in legislation, and obtain names, addresses, and numbers of elected officials.
- Disabled consumers should organize locally around identified issues and connect with state and national groups.
- Training in advocacy skills should be provided.

Employment Accommodations, Disincentives, and Training
Five survey items related to job accommodations in the workplace, work disincentives, and quality of job assistance and training programs were identified by 9,118 consumers as relative problems in six surveys. They received an average importance rating of 83 percent and an average satisfaction rating of 42 percent.

Consumer-Identified Dimensions:
- Many businesses do not provide reasonable accommodations in the workplace.
- Work disincentives still exist within the social security system. In addition to loss of economic benefits are losses or reductions in medical benefits, housing subsidies, food stamps, attendant services, etc.
- Disabled job hunters lack basic job-seeking skills and are unaware of incentives to employers and laws prohibiting discrimination.
- Blind people have lost their tax credit; other disability groups were never eligible.
- People with disabilities do not know where to go for job training or assistance in finding a job.

Consumer-Generated Alternatives:
- Consumer groups need to form a coalition to lobby legislators at federal and state levels for tax credits.
- VR could offer training in job-seeking skills.
- Consumer groups should develop guidelines on what constitutes reasonable accommodation in the workplace.
- Disseminate information about where to go for job training skills and job-related assistance.

Employment Discrimination
Two survey items related to job discrimination were identified by 9,314 consumers as top problems in eight surveys. They received an average importance rating of 86 percent and an average satisfaction rating of 41 percent.

Consumer-Identified Dimensions:
- People with disabilities are discriminated against because of their disability.
- Qualified disabled individuals are not given the same opportunity as nondisabled people.

Consumer-Generated Alternatives:
- Consumers need to teach disabled job seekers about proper attitudes and how to develop a businesslike demeanor when dealing with a potential employer. Disabled people must sell an employer on their abilities and not rely on sympathy.
- If a specific employer is perceived as insensitive, invite a representative of that company to speak to a disability group about employment.
- Independent living centers and advocacy groups need to encourage and assist disabled job applicants and employees to enforce laws and regulations prohibiting discrimination.
- Disabled individuals can contact the Job Accommodations Network or similar resources for help in locating jobs and training, marketing themselves to prospective employers, and obtaining reasonable accommodation.

Employment Opportunities
Two survey items related to employment opportunities were identified by 9,412 consumers as relative problems in 11 surveys. They received an average importance rating of 84 percent and an average satisfaction rating of 40 percent.

Consumer-Identified Dimensions:
- Job opportunities for people with disabilities are very limited.
- If there is a nondisabled person and a disabled individual applying for a

job, employers prefer to hire the nondisabled person.

Consumer-Generated Alternatives:

- Consumers should educate employers in tax credits, reasonable accommodation, and advantages of hiring disabled employees.
- Disability groups must keep a coalition going at the national level to lobby for reduction of work disincentives.
- Job placement people should know which employers routinely hire disabled applicants.
- Use publicity to inform the community about job needs, interests, and capacities of disabled people, similar to TV spots from Job Service on specific jobs.
- Talk with industries to design programs for people with disabilities similar to programs designed for immigrants.

Handicapped Parking

One survey item related to the issue of enforcement of parking ordinances was identified as a major problem by 8,607 people in 13 surveys. The item received an average importance rating of 83 percent and an average satisfaction rating of 41 percent.

Consumer-Identified Dimensions:

- There are not enough handicapped parking places close to shopping and workplaces.
- Many spaces are not wide enough to unload wheelchairs or put down van lifts.
- Some spaces are not well-marked with an upright sign.
- Police do not ticket violators as often as they should.
- Courts are lax in enforcing handicapped parking laws.

Consumer-Generated Alternatives:

- Review local statutes; seek state uniformity. Include private as well as public zones.
- Ask local mayors to publicize local ordinances.
- Consumer groups can conduct public awareness campaigns and letter-writing campaigns to local officials.
- Develop rapport with several police officers to assure better enforcement.
- Conduct study session with police, courts, and consumer groups to promote enforcement.
- Consumers can monitor violations and use data to advocate for compliance.
- Consumers can discuss parking problems with merchants where they shop.
- Consumer groups can distribute stickers to violators.
- Consumers can attend city council meetings and voice concerns to get adequate legislation.
- Consumers can advise businesses about adequate spaces and upright signs.
- Consumer groups can patronize businesses who provide and enforce handicapped spaces.
- Publicize how to get parking IDs.
- Increase fines to over $25 to put teeth into the law.
- Form coalitions among groups needing access and parking.
- Provide consumer consultation in design of spaces.
- Put parking places on end of row for van lifts. In Anderson, IN, violators get a "candid camera" treatment. In a cooperative effort between local consumers and the town's newspaper, a photo and brief statement by violators appeared on the front page of the local section.
- Some police departments have deputized local disabled consumers to ticket handicapped parking violators, paying their salaries from fines.

Health Care: Affordability and Availability

Six survey items were selected relevant to the availability and affordability of health care, including whether hospitals accept Medicaid and Medicare, regulations for Medicaid and Medicare, and sensitivity of health care providers to consumers. Items were identified as relative problems by 3,485 consumers in seven surveys. They received an average importance rating of 88 percent and an average satisfaction rating of 48 percent.

Consumer-Identified Dimensions:

- Increasing numbers of doctors are refusing to take Medicaid or Medicare, because payment is very late and inconsistent.
- There is no respite care for families caring for disabled and elderly family members.
- People with disabilities often cannot afford regular, nonemergency medical care and medications.
- Transportation to medical appointments is difficult, especially regular long-distance transportation, and transportation for rural citizens who go to large cities for dialysis or cancer treatment.
- Medical professionals are often insensitive in dealing with disabled patients, preferring to deal with family members rather than communicate directly with the disabled patient as a responsible adult.
- Medical professionals are often unaware of special medical or physical assistance needs imposed by a disability. Thus, discomfort and temporary setbacks can result or even life-threatening situations.
- The general public is unaware that existing programs do not provide adequate medical care for people with disabilities.
- Disabled consumers are often unaware of medical aspects of their own disabilities or good self-care habits. This occurs because they accept the public's definition of themselves as sick and needing to be cared for rather than healthy human beings responsible for their own well-being.
- Another problem is attendant care. If no state attendant care program is available (Wyoming has no Medicaid waiver or state-funded program), there is no paid attendant care for low-income disabled consumers. They must depend on family and friends or live in nursing homes.

Consumer-Generated Alternatives:

- Use local media to describe health problems of people with disabilities and solicit suggestions to solve these problems.
- Organize local volunteers, church, and civic groups for medical transportation.
- Consumer groups should educate medical professionals about the special needs of disabled patients. The Association for Retarded Citizens does this for people with developmental disabilities.
- Invite medical professionals to speak to meetings of consumers to increase their own sensitivity and educate consumers at the same time.
- Provide inservice training for medi-

cal professionals in the dignified, courteous treatment of persons with disabilities. This should be conducted by consumer groups and consumer-run agencies.

- Provide education to consumers in how they can advocate for themselves with health care providers.
- Form coalitions with other consumer groups to work on common health care objectives.
- Form a protection and advocacy organization to help disabled patients in cases of unfair treatment by health care providers.
- Educate medical professionals about treating different disabilities as part of medical and nursing school curricula.
- Use mutual support groups, counselors, and self-education to encourage good medical habits, nutrition, exercise, and prevention of illness.
- Locate sources of health care for persons with disabilities; make a directory of these resources.
- Arrange local medical fitness centers for people with disabilities. Provide outreach to commercial fitness centers and provide transportation to them for people with disabilities.
- Place people with disabilities as employees of health care providers (i.e., as social workers and patient advocates).
- Involve independent living centers in training and advocacy.
- Consumer groups at the state level could conduct a survey of health care facilities that covers disabilities served, access to offices and parking, acceptance of Medicaid and Medicare, and sources for financial assistance. This could be conducted through state medical and dental societies and updated periodically.
- Educate consumers about medical aspects of their own disabilities. Train them to advocate for themselves with medical professionals, and teach them to take personal responsibility for educating health care providers about their own appropriate treatment and needs.
- Write government and elected officials about health care issues.
- Attend city council meetings, and petition for city funds to help with medical expenses.
- Seek establishment of adult day care and home health services. Develop directory of doctors who accept Medicaid and Medicare payments for treatment of people with disabilities.
- Provide toll-free legal advice about legal matters relating to nonacceptance of Medicaid and Medicare or refusal of treatment to disabled consumers.
- Advocate for program changes to facilitate more timely and consistent payment of Medicaid and Medicare.
- Advocate for cooperative living arrangements with shared attendant care for those who need help.
- Consumer groups need to present need for attendant care and cost effectiveness data to state legislature.
- Support national groups lobbying for national attendant care programs.

Housing Affordability, Availability, and Accessibility

Six survey items related to the affordability, availability, and accessibility of housing have been identified as major problems by 4,127 consumers in 12 surveys. They received an average importance rating of 86 percent and an average satisfaction rating of 37 percent.

Consumer-Identified Dimensions:

- There is an extreme shortage of accessible, affordable housing for people with disabilities.
- Eligibility requirements and regulations keep some disabled consumers, especially the nonelderly who live with family members or attendants, from living in public or subsidized housing.
- Builders do not comply with existing laws, where laws exist, that require a certain percentage of accessible units.
- Builders are unaware of laws, access codes, and modifications necessary for accessibility.
- Managers and directors of public housing are unaware of, and often indifferent to, the needs of disabled tenants.

Consumer-Generated Alternatives:

- Talk to owners if the manager is uncooperative.
- Disabled and low-income people should lobby social service agencies for housing assistance.
- Disabled consumers should educate city officials on housing needs of people with disabilities.
- Local consumer groups can bring complaints to local housing authorities.
- Consumers can be educated to be aware of tenant rights and raise money to finance suits when necessary.
- Disabled residents should become familiar with codes, where to file complaints where codes don't exist, and how to introduce legislation.
- Groups can obtain 202 and other HUD loans for accessible housing and manage the housing units themselves.
- Examine eligibility requirements for subsidized housing; use net, not gross income.
- A consumer group in Los Angeles located two HUD projects in good neighborhoods; the Telephone Pioneers donated money and labor to upgrade the structure.
- Establish subsidized housing administered by occupants. Provide income subsidy within housing cooperatives.
- Some communities in Minnesota provide vouchers to subsidize rent for housing anywhere in the community.
- Establish a referral network for accessible, affordable housing.
- Enforce existing laws setting aside a certain number of units for people with disabilities.
- Consumers need to educate building professionals and make information available.
- Advocate for statewide legislation to encourage adaptability of units.
- Consumers need to lobby elected officials on lack of accessible housing.
- Disabled community members need to get on housing boards.
- Educate disabled homeowners about programs to help modify their homes for access and safety.

Insurance for Auto, Life, and Liability

This issue refers to the availability and affordability of auto, life, and liability insurance for people with disabilities. This item was selected as a major problem by 2,355 people completing two surveys. It received an average importance rating of 89 percent and an average satisfaction rating of 35 percent

Consumer-Identified Dimensions:

- Insurance premiums are more expensive for people with disabilities.

- Insurance companies discriminate based on disability.

Consumer-Generated Alternatives:

- Have a group of disabled people discuss possible solutions with insurance companies regarding adequate prices.

Insurance for Health Care

One survey question related to the affordability of health insurance was identified as a problem by 5,624 consumers in two surveys. It received an average importance rating of 86 percent and an average satisfaction rating of 38 percent.

Consumer-Identified Dimensions:

- Disabled consumers cannot buy health insurance because of their disability and/or pre-existing conditions.
- Disabled consumers cannot afford health insurance.
- Health insurance often does not cover supplies, equipment, regular medications, or therapies used by disabled consumers.
- Inability to purchase individual health insurance and exclusion from some group policies are serious disincentives to individuals with disabilities looking for work.

Consumer-Generated Alternatives:

- Consumer groups can advocate for national health insurance.
- Disabled consumers can set up health insurance cooperatives as they did in Los Angeles.
- Shared risk insurance is an option so consumers with disabilities and pre-existing conditions can get group insurance.
- Educate consumers about supplemental insurance available through groups such as AARP, professional associations, and credit card holders.
- Publicize the fact that laws in some states (such as Missouri and Kansas) prohibit insurance companies from discriminating against persons with disabilities.
- Independent living centers can train and assist consumers in filling out forms, challenge actions and policies of Medicaid, Medicare, and insurance companies, and assist in advocacy, complaints, and appeals processes.
- Get information from and make use of the state insurance commissioner's office.

Media Portrayal and Public Information

Three survey items related to media portrayal of people with disabilities and their access to information about services, benefits, and programs were selected as problems by 7,547 consumers in three surveys. The items received an average importance rating of 81 percent and an average satisfaction rating of 39 percent.

Consumer-Identified Dimensions:

- The media do not provide enough information about what is available for disabled citizens.
- The media portray people with disabilities in a negative and unrealistic way, preferring the sensational or pitiful to the everyday and human side of disability.

Consumer-Generated Alternatives:

- Consumer groups should bring accessibility and independent-living issues to the attention of the press.
- Consumers should monitor coverage of disability issues.
- Consumers should educate the media to correct negative portrayals and terminology.
- Consumer groups should meet with service providers about developing a directory of services and programs for people with disabilities that could be disseminated through the media.

Public Access

Issues related to safe access to public places, including availability of curb cuts, accessible entrances, and snow removal, have been selected as major problems. Two related survey items were chosen by 204 consumers in two different surveys, with an average importance rating of 81 percent and an average satisfaction rating of 48 percent.

Consumer-Identified Dimensions:

- Disabled citizens are forced to stay home or use the street, because curb cuts and sidewalks are absent or inadequate, or in some instances, snow is not removed promptly.
- Many public buildings are totally inaccessible or technically accessible with inadequate or unsafe access.

Consumer-Generated Alternatives:

- Discuss among disabled consumers key areas that need to be made accessible.
- Make up an annual priority list of access and safety issues.
- Describe problems in newsletters and solicit opinions from other disabled community members.
- Offer modification assistance to owners of inaccessible buildings and appropriate government and social agencies.
- Offer assistance to government agencies on ways to increase the safety of streets and sidewalks.

Social Services

Four survey items related to information social agencies provide to consumers about services and legal issues were selected as major problems in six surveys. A total of 3,581 consumers responded to these questions, with an average importance rating of 88 percent and an average satisfaction rating of 51 percent.

Consumer-Identified Dimensions:

- Social service agencies fail to inform disabled consumers about all services available to them through their own agency, other agencies, or the community.
- Benefits or services from one agency can limit benefits or services from another agency.
- Most social service agencies are unaware of services available at other agencies.
- Disabled people are referred from one agency to another, often encountering agencies unable to serve them or refusing services.
- Forms and policies of social service agencies are confusing.

Consumer-Generated Alternatives:

- Organize a consumer group to review forms used by social service agencies.
- Form a consumer network for information and referral.
- Create more support groups for mutual assistance.
- Provide corrective feedback and information to social service agencies that fail to inform clients about benefits to disabled consumers.
- Provide social service agencies with training on benefits available to disabled consumers.
- Consumers should demand that VR cases be reopened, if they have not been fully informed about all benefits

available.

- Independent living centers should train consumers in what benefits are available and how to access them effectively.
- Independent living centers or consumer groups could organize regular cooperative meetings involving representatives of all social service agencies in the community, or if such an organization exists, become active and advocate for services to people with disabilities.
- If consumers are referred to an agency unable to serve them, they should contact the referring agency and tell them the referral was inappropriate and why.
- Educate consumers to use the state CAP agency, Legal Aid, and other available legal help when services are unjustly refused.
- Set up courses in self-reliance that teach consumers to use social services such as the one used by the CIL in Anaheim, Calif.

Transportation: Availability and Affordability

Three survey items related to the availability and affordability of accessible transportation services were identified as major problems by 4,008 consumers in nine surveys. They received an average importance rating of 83 percent and an average satisfaction rating of 40 percent.

Consumer-Identified Dimensions:

- Disabled citizens are segregated from the rest of the community and forced to remain at home because of lack of transportation.
- In most areas, public transportation is not wheelchair-accessible, and paratransit is expensive or nonexistent. In rural areas, accessible transportation is available infrequently.
- Lack of transportation is the primary barrier to community participation, education, employment, recreation, adequate medical care, and independent living for people with disabilities.
- Weekend and evening transportation is a problem.
- Transportation between neighboring cities and from rural areas to cities is a problem.
- Ideally, a city should have accessible mainline transportation for those who can use it and paratransit for those who need it.
- Recreational events and facilities are sometimes inaccessible. Transportation to recreational events is unavailable.

Consumer-Generated Alternatives:

- Consumer groups need to work with existing community recreational facilities to make them accessible and usable for people with disabilities.
- Contact organizers of recreational events for transportation for disabled participants.
- People with disabilities need to become involved in the planning of community recreational events and active in interest groups.
- Form a local task force on transportation, decide what local consumers need and want, then fight for it.
- It is against federal law for paratransit to cost more than mainline transportation. Educate consumers about this law, how to make complaints, and how to ensure its enforcement.
- Develop a share-a-fare system as they did in Kansas City, MO, where 900 wheelchair users a month participate.
- Give testimony to state legislatures on transportation funding.
- Have lift buses operate at fixed rates and schedules as they do in Denver, a city with almost 100 percent accessible buses.
- Slow transit schedules to accommodate disabled riders. Drivers should call out stops ahead of time.
- Include disabled drivers in existing driver training programs.
- Develop car pools.
- Conduct public education on varied modes of transportation needed by disabled citizens.
- Submit formal complaints to transportation authorities concerning mainline wheelchair-accessible buses.
- Develop creative rural and small city alternatives. Examples include merging existing systems serving disabled riders (Morgantown, W.V.), ownership of a lift van by a consumer group or cooperative (Cuba, MO), and use of idle church or school lift-equipped buses.

Utility Bills

One survey question related to the affordability of utility bills was identified as a major problem in four surveys. A total of 1,611 consumers answered this survey item, with an average importance rating of 89 percent and an average satisfaction rating of 34 percent.

Consumer-Identified Dimensions:

- Disabled consumers on a fixed income cannot afford inconsistent and high utility bills.
- Because of their medical needs, many disabled consumers cannot survive without water, gas for heat, and electricity to operate their equipment.

Consumer-Generated Alternatives:

- Obtain help to establish programs for weatherization.
- Encourage landlords to weatherize units.
- Educate landlords and disabled homeowners about tax credits for weatherizing and solar installation.
- Encourage consumers to join annualized level payment plans.
- Consumer groups should maintain a list of agencies that help pay utility bills.
- Call local consumer affairs office for help if utilities are shut off.
- Consult local phone company about discounts for disabled consumers.
- Write elected officials describing problems with utility bills and ask for legislative solutions and assistance programs.

This report represents the comments and suggestions of thousands of Americans with disabilities. They have identified specific community features that inhibit independent living, including inadequate job opportunities, job discrimination, insufficient accessible and affordable housing, inaccessible public places, and unavailable and unaffordable service options. These community problems are counterproductive to achieving society's goal of independence.

The common concerns outlined here frame an agenda for public, private, and self-help initiatives. These consumer-generated alternatives feature many practical steps that can be taken at local, state, and national levels. Taken together, these issues and options pose a challenge to all who believe that justice requires equal opportunities to achieve independence. ■

U.S. Department of Justice
Civil Rights Division
Pubic Access Section

ADA TELEPHONE INFORMATION SERVICES

Department of Justice offers technical assistance to the public concerning title II and title III of the ADA.

ADA documents and questions	800-514-0301 (voice)	800-514-0383 (TDD)
Within Washington, D.C.	202-514-0301 (voice)	202-514-0383 (TDD)
Electronic bulletin board	202-514-6193	

Equal Employment Opportunity Commission offers technical assistance concerning title I of the ADA.

ADA documents	800-669-3362 (voice)	800-800-3302 (TDD)
ADA questions	800-669-4000 (voice)	TDD: use relay service

U.S. Department of Transportation offers technical assistance concerning the public transportation provisions of title II and title III of the ADA.

ADA documents and general questions	202-366-1656 (voice)	202-366-4567 (TDD)
ADA legal questions	202-366-1936 (voice)	202-366-0748 (TDD)
Electronic bulletin board	202-366-3764	
National Easter Seal Society "Project Action"	202-347-3066 (voice)	202-347-7385 (TDD)

Federal Communications Commission offers technical assistance concerning title IV of the ADA.

ADA documents and general questions	202-418-0190 (voice)	202-418-2555 (TDD)
ADA legal questions	202-634-1808 (voice)	202-632-0484 (TDD)

U.S. Architectural and Transportation Barriers Compliance Board, or "Access Board," offers technical assistance on the ADA Accessibility Guidelines.

ADA documents and questions	800-872-2253 (voice)	800-993-2822 (TDD)
Within Washington, D.C.	202-272-5434 (voice)	202-272-5449 (TDD)
Electronic bulletin board	202-272-5448	

National Institute on Disability and Rehabilitation Research has funded centers throughout the country to provide technical assistance concerning title I, title II, and title III of the ADA.

ADA technical assistance nationwide	800-949-4232 (voice & TDD)

President's Committee on Employment of People with Disabilities provides information on all titles of the ADA and funds the Job Accommodation Network, which provides information on the ADA and how to accommodate employees with disabilities.

ADA information	202-376-6200 (voice)	202-376-6205 (TDD)
Job Accommodation Network	800-526-7234 (voice & TDD)	

The U.S. Congress has established tax credits and deductions that may assist businesses in complying with the ADA. The Internal Revenue Service can provide information about these tax code provisions.

Tax code information	800-829-1040 (voice)	800-829-4059 (TDD)
To order Publication 907	800-829-3676 (voice)	800-829-4059 (TDD)

U.S. Department of Justice
Civil Rights Division
Public Access Section

COMMON QUESTIONS ABOUT TITLE II OF THE AMERICANS WITH DISABILITIES ACT (ADA)

1. Q: Do we have to retrofit every existing municipal building in order to meet the accessibility requirements of the ADA?

   A: No. Title II of the ADA requires that a public entity make its *programs* accessible to people with disabilities, not necessarily each facility or part of a facility. Program accessibility may be achieved by a number of methods. While in many situations providing access to facilities through structural methods, such as alteration of existing facilities and acquisition or construction of additional facilities, may be the most efficient method of providing program accessibility, the public entity may pursue alternatives to structural changes in order to achieve program accessibility. For example, where the second-floor office of a public welfare agency may be entered only by climbing a flight of stairs, an individual with a mobility impairment seeking information about welfare benefits can be served in an accessible ground floor location or in another accessible building. Similarly, a town may move a public hearing from an inaccessible building to a building that is readily accessible. When choosing among available methods of providing program accessibility, a public entity must give priority to those methods that offer services, programs, and activities in the most integrated setting appropriate.

2. Q: If we opt to make structural changes in providing program accessibility, are we required to follow a particular design standard in making those changes?

   A. Yes. When making structural changes to achieve program accessibility, a public entity must make those changes in accordance with the standards for new construction and alterations. See question #5.

3. Q: What is the time line for making structural changes?

   A: Any structural changes that are required to achieve program accessibility must be made by January 26, 1995. Each public entity with 50 or more employees was required to complete a transition plan by July 26, 1992, setting forth the steps necessary to complete the changes.

4. Q: Are there any limitations on the program accessibility requirement?

A: Yes. A public entity does not have to take any action that it can demonstrate would result in a fundamental alteration in the nature of its program or activity or in undue financial and administrative burdens. This determination can only be made by the head of the public entity or his or her designee and must be accompanied by a written statement of the reasons for reaching that conclusion. The determination that undue burdens would result must be based on all resources available for use in the program. If an action would result in such an alteration or such burdens, the public entity must take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with disabilities receive the benefits and services of the program or activity.

5. Q. What architectural design standard must we follow for new construction and alterations?

A: Public entities may choose from two design standards for new construction and alterations. They can choose either the Uniform Federal Accessibility Standards (UFAS) or the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (ADAAG). ADAAG is the standard that must be used for privately-owned public accommodations and commercial facilities under title III of the ADA. If ADAAG is chosen, however, public entities are not entitled to the elevator exemption (which permits certain privately-owned buildings under three stories or under 3,000 square feet per floor to be constructed without an elevator).

6. Q. Is the Federal Government planning to eliminate this choice and establish one design standard for new construction and alterations?

A. Yes. The Department of Justice is proposing to amend its current ADA Standards for Accessible Design (which incorporate ADAAG) to add sections dealing with judicial, legislative, and regulatory facilities, detention and correctional facilities, residential housing, and public rights-of-way. The proposed amendment would apply these Standards to new construction and alterations under title II. Under the proposed rule, the choice between ADAAG and UFAS would be eliminated.

7. Q: We want to make accessibility alterations to our city offices, which are located in an historic building listed in the National Register of Historic Places. Are we prohibited from making changes? Which rules apply to us? What if these alterations would destroy the historic nature of the building?

A: Alterations to historic properties must comply with the specific provisions governing historic properties in ADAAG or UFAS, to the maximum extent feasible. Under those provisions, alterations should be done in full compliance with the alterations standards for other types of buildings. However, if following the usual standards would threaten or destroy the historic significance of a feature of the building, alternative standards may be

used. The decision to use alternative standards for that feature must be made in consultation with the appropriate historic advisory board designated in ADAAG or UFAS, and interested persons should be invited to participate in the decisionmaking process.

The alternative requirements for historic buildings or facilities provide a minimal level of access. For example —

1) An accessible route is only required from one site access point (such as the parking lot).
2) A ramp may be steeper than is ordinarily permitted.
3) The accessible entrance does not need to be the one used by the general public.
4) Only one accessible toilet is required and it may be unisex.
5) Accessible routes are only required on the level of the accessible entrance.

8. Q: But what if complying with even these minimal alternative requirements will threaten or destroy the historic significance?

A: In such a case, which is rare, the public entity need not make the structural changes required by UFAS or ADAAG. If structural modifications that comply with UFAS or ADAAG cannot be undertaken, the Department's regulation requires that "program accessibility" be provided.

9. Q: Does a city have to provide curb ramps at every intersection on existing streets?

A: No. To promote both efficiency and accessibility, public entities may choose to construct curb ramps at every point where a pedestrian walkway intersects a curb, but they are not necessarily required to do so. Alternative routes to buildings that make use of existing curb cuts may be acceptable under the concept of program accessibility in the limited circumstances where individuals with disabilities need only travel a marginally longer route. In addition, the fundamental alteration and undue burden limitations may limit the number or curb ramps required.

To achieve or maintain program accessibility, it may be appropriate to establish an ongoing procedure for installing curb ramps upon request in areas frequented by individuals with disabilities as residents, employees, or visitors.

However, when streets, roads, or highways are newly built or altered, they must have ramps or sloped areas wherever there are curbs or other barriers to entry from a sidewalk or path. Likewise, when new sidewalks or paths are built or are altered, they must contain curb ramps or sloped areas wherever they intersect with streets, roads, or highways. Resurfacing beyond normal maintenance is an alteration. Merely filling potholes is considered to be normal maintenance.

10. Q: Where a public library's open stacks are located on upper floors with no elevator access, does the library have to install a lift or an elevator?

A: No. As an alternative to installing a lift or elevator, library staff may retrieve books for patrons who use wheelchairs. Staff must be available to provide assistance during the operating hours of the library.

11. Q: Does a municipal performing arts center that provides inexpensive balcony seats and more expensive orchestra seats have to provide access to the balcony seats?

A: No. In lieu of providing accessible seating on the balcony level, the city can make a reasonable number of accessible orchestra-level seats available at the lower price of balcony seats.

12. Q: Is a city required to modify its policies whenever requested in order to accommodate individuals with disabilities?

A: No. A public entity must make only "reasonable modifications" in its policies, practices, or procedures to avoid discrimination. If the public entity can demonstrate that a modification would fundamentally alter the nature of its service, program, or activity, it is not required to make the modification.

For example, where a municipal zoning ordinance requires a set-back of 12 feet from the curb in the central business district and, in order to install a ramp to the front entrance of a pharmacy, the owner requests a variance to encroach on the set-back by three feet, granting the variance may be a reasonable modification of town policy.

On the other hand, where an individual with an environmental illness requests a public entity to adopt a policy prohibiting the use of perfume or other scented products by its employees who come into contact with the public, adopting such a policy is not considered a "reasonable" modification of the public entity's personnel policy.

13. Q: Does the requirement for effective communication mean that a city has to put all of its documents in Braille?

A: Braille is not a "required" format for all documents. A public entity must ensure that its communications with individuals with disabilities are as effective as communications with others.

A public entity is required to make available appropriate auxiliary aids and services where necessary to ensure effective communication. Examples of auxiliary aids and services that benefit various individuals with vision impairments include magnifying lenses, qualified readers, taped texts, audio recordings, Brailled materials, large print materials, or assistance in locating items.

The type of auxiliary aid or service necessary to ensure effective communication will vary in accordance with the length and complexity of the communication involved.

For example, for individuals with vision impairments, employees can often provide oral directions or read written instructions. In many simple transactions, such as paying bills or filing applications, communications provided through such simple methods will be as effective as the communications provided to other individuals in similar transactions.

Many transactions, however, involve more complex or extensive communications than can be provided through such simple methods and may require the use of magnifying lenses, qualified readers, taped texts, audio recordings, Brailled materials, or large print materials.

14. Q: Must tax bills from public entities be available in Braille and/or large print? What about other documents?

A: Tax bills and other written communications provided by public entities are subject to the requirement for effective communication. Thus, where a public entity provides information in written form, it must, when requested, make that information available to individuals with vision impairments in a form that is usable by them. "Large print" versions of written documents may be produced on a copier with enlargement capacities. Brailled versions of documents produced by computers may be produced with a Braille printer, or audio tapes may be provided for individuals who are unable to read large print or do not use Braille. Brailled documents are not required if effective communication is provided by other means.

15. Q: Does a city have to arrange for a sign language interpreter every time staff members deal with people who are deaf or hard of hearing?

A: Sign language interpreters are not required for all dealings with people who are deaf or hard of hearing. A public entity is required to make available appropriate auxiliary aids and services where necessary to ensure effective communication.

Examples of auxiliary aids and services that benefit individuals with hearing impairments include qualified interpreters, notetakers, computer-aided transcription services, written materials, telephone handset amplifiers, assistive listening systems, telephones compatible with hearing aids, closed caption decoders, open and closed captioning, telecommunications devices for deaf persons (TDD's), videotext displays, and exchange of written notes.

The type of auxiliary aid or service necessary to ensure effective communication will vary in accordance with the length and complexity of the communication involved.

For example, employees can often communicate with individuals who have hearing impairments through written materials and exchange of written notes. In many simple transactions, such as paying bills or filing applications, communications provided through such simple methods will be as effective as the communications provided to other individuals in similar transactions.

Many transactions, however, involve more complex or extensive communications than can be provided through such simple methods and may require the use of qualified interpreters, assistive listening systems, videotext displays, or other aids or services.

16. Q: Do all city departments have to have TDD's to communicate with people who have hearing or speech impairments?

A: No. Public entities that communicate by telephone must provide equally effective communication to individuals with disabilities, including hearing and speech impairments. If telephone relay services, such as those required by title IV of the ADA, are available, these services generally may be used to meet this requirement.
Relay services involve a relay operator who uses both a standard telephone and a TDD to type the voice messages to the TDD user and read the TDD messages to the standard telephone user. Where such services are available, public employees must be instructed to accept and handle relayed calls in the normal course of business.

However, State and local agencies that provide emergency telephone services must provide "direct access" to individuals who rely on a TDD or computer modem for telephone communication. Telephone access through a third party or through a relay service does not satisfy the requirement for direct access.

17. Q: Are there any limitations on a public entity's obligation to provide effective communication?

A: Yes. This obligation does not require a public entity to take any action that it can demonstrate would result in a fundamental alteration in the nature of its services, programs, or activities, or in undue financial and administrative burdens.

18. Q: Is there any money available to help local governments comply with the ADA?

A: Yes. Funding available through the Community Development Block Grant program at the U.S. Department of Housing and Urban Development may be used for accessibility purposes, such as installation of ramps, curb cuts, wider doorways, wider parking spaces, and elevators. Units of local government that have specific questions concerning the use of CDBG funds for the removal of barriers should contact their local HUD Office of Community Planning and Development or call the Entitlement Communities Division at HUD, (202) 708-1577, for additional information.