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## THE 110<sup>TH</sup> CONGRESS STARTS WORK IMMEDIATELY

Under a new Democratic majority, the 110<sup>th</sup> Congress convened on January 4. The House and Senate have new leaders as the Democrats assumed the majority role, while the Republicans shifted to the role of the minority party after more than a decade as the majority party. Representative Nancy Pelosi (D-CA) was elected Speaker of the House, Steny Hoyer (D-MD) assumed the post of Majority Leader and James Clyburn (D-SC) is the new Majority Whip. In the Senate, Senator Harry Reid (D-NV) is the new Majority Leader and Senator Dick Durbin (D-IL) is the new Majority Whip.

On the Republican side, in the House, former Speaker Dennis Hastert (R-IL) chose not to be on the Republican leadership team, which is now headed by Minority Leader John Boehner (R-OH) and Minority Whip Roy Blunt (R-MO). In the Senate, former Majority Leader Bill Frist (R-TN) chose not to run for re-election. Assuming the key Senate posts are Minority Leader Mitch McConnell (R-KY) and Minority Whip Trent Lott (R-MS).

The Democrats have very narrow majorities in both Houses. Senate Democrats hold a two vote margin over Republicans, with two Independent Senators (Sanders (VT) and Lieberman (CT)) caucusing with the Democrats. The House Republicans are outnumbered 233 to 202.

Hoping to deliver on their many campaign promises, the Democratic leaders announced a work schedule that will have each House in session many more days than the previous Congress. Given that ethical and other scandals seemingly hurt the Republican Party in the 2006 elections, the Democrats made the first order of business the development of new ethical rules and lobbying restrictions.

Speaker Pelosi set in motion the “First 100 Hours” agenda, which included the implementation of the 9/11 Commission recommendations, a \$2.10 increase in the minimum wage, embryonic stem cell research, negotiated pricing for Medicare prescription drugs, lowered interest rates on student loans, and energy policy. The agenda was completed over six legislative days, without much input or cooperation from the Republican minority. The Senate, meanwhile, following its usual slower pace, spent over a week working on the minimum wage bill.

The majority/minority shift in both Houses also required substantial activity regarding Congressional committee appointments, elections for full committee and subcommittee chairs and ranking minority members, committee ratios, staffing and budgets. Senate committees generally give Democrats a one seat majority, while House committees generally have four to five additional slots for the majority party. It will be February before all of this activity is completed and committees and subcommittees are able to organize themselves and begin setting their agendas for the year. One anticipated change will be more congressional oversight of the executive branch, particularly around the Iraq war and other military spending and policy.

The Democratic leadership’s ability to achieve bipartisanship on most, if not all, policy will determine whether they can make progress on their goals. This will be particularly true in the U.S. Senate where the rules require at least sixty votes to shut off debate and finalize legislation. If all fifty-one Democrats and Independents work together, they will still need at least nine Republicans to move their agenda to completion. This will likely prove to be a very high, if not impossible, hurdle for some legislative initiatives.

The Democrats have voted to institute new so-called PAYGO rules, which could make it difficult to pass new spending initiatives. Under the PAYGO rules, all new tax and entitlement adjustments will need to be paid for through new revenues or offsetting cuts in other spending. For example, an expansion of Medicaid would necessitate new revenues or a concurrent spending reduction in order to become law. Congressional moderates and conservatives will most likely oppose tax increases, leaving cuts as the most probable avenue for expanding entitlement programs or creating new ones.

As always, Congress will need to have the White House on its side if it expects its legislative work to become law. President Bush has sent signals of his desire to work with the new Democratic majority, but true bipartisanship has been difficult to achieve in the past and may continue to be a challenge. In his first six years in office, with the Congress in control of his own party, the President vetoed only one bill. It would not be surprising if the President used his veto pen more often in his last two years in office.

The following two stories provide more details on the new ethics and lobbying provisions and the “First 100 Hours” agenda.

## **NEW CONGRESS ACTS ON LOBBYING REFORMS**

One of the first things the Democratic leaders of the 110th Congress did was to pledge to enact changes to the rules governing interactions among lobbyists and Members of Congress and their staff as well as to improve lobbyist reporting practices.

The House approved its new lobbying and ethics rules on January 5, 2007. The reforms were passed by Resolution (H.Res. 6) and apply only to the House itself. The Senate soon followed by passing both internal rules (applying only to the Senate) and *lobbying disclosure* provisions (applying to the entire Congress if approved by the House) on January 18, 2007.

### **In the Senate**

The Senate passed the Legislative Transparency and Accountability Act (S.1) on January 18. The bill amends rules that govern Senate conduct and procedure, as well including lobbying disclosure provisions that would amend statutes that govern disclosure of lobbying activity.

In addition to banning gifts and meals from lobbyists or from entities that hire lobbyists, the new rules restrict Senators’ travel paid by private entities. The travel provision was modified during Senate debate to allow trips sponsored by non-profit 501(c)(3) organizations that have been pre-approved by the Senate Ethics Committee. The Ethics Committee is required to consider the mission of the organization, its history of sponsoring congressional trips and other educational activities sponsored by the organization when deciding whether to approve the trip. The Committee will also issue regulations regarding the level of involvement by lobbyists in planning or organizing such trips which is intended to be minimal.

Other rule changes require Senators to identify earmarks by the name of the sponsor. Earmarks would increase funding for programs or create tax breaks for specific projects. A proposal to establish an independent Office of Public Integrity to investigate and enforce Senate rules was defeated.

The bill also amends the Lobbying Disclosure Act to require lobbyists to file disclosure reports more frequently (quarterly instead of semiannually) and to report campaign contributions over \$200 and any travel or events that they sponsor for Members of Congress. A provision that would have required additional reporting of grassroots lobbying was removed by a close vote of 55 to 43.

The primary provisions of interest to the nonprofit community in the Senate bill include:

## **Rules to apply only to the Senate**

### **Gifts and Meals Ban**

- Senators may not accept gifts or meals from registered lobbyists or entities that retain or employ lobbyists. (Previous rules permitted gifts from lobbyists below a \$50 limit per gift and \$100 cumulative per year.)
- Current exceptions, such as for awards for public service or meals provided at widely-attended events, may continue.

### **Travel**

- The legislation extends the current ban on trips paid by lobbyists to include trips paid by private entities that retain or employ lobbyists, unless the trip is either:
  1. For attendance or participation at a one-day event that is a meeting, speaking engagement, fact-finding trip or similar event that is in connection with a Senator's or staff's official duties; or
  2. Is sponsored by a 501(c)(3) organization that has been pre-approved by the Senate Ethics Committee.
- Trips may not be planned or organized by a registered lobbyist (except for minimal involvement), and registered lobbyists may not accompany the Senator or staff member on the trip.
- For permissible trips, Senators and staff must get pre-approval for trip reimbursement and disclose reimbursement within 30 days of the trip.
- All official trip disclosures will be posted on a publicly available Web site maintained by the Clerk of the House and the Secretary of the Senate.
- Senators must pay charter rates (as opposed to first class rates) for flights on private planes.
- The rules are effective 60 days after enactment.

### **Earmarks**

- Committees must disclose at least 48 hours before a bill or conference report is considered any earmarks, limited tax benefits and limited tariff benefits; including the Senator who sponsored the provision and the targeted beneficiary.
- Disclosures must be made available in a searchable format on the committee's Web site.
- Senators may not request earmarks that will financially benefit the Senator, the Senator's immediate family, the Senator's staff, or the staff's family.
- Senators may not include an earmark in exchange for another Senator's vote.

## Conference Reports

- Senators may challenge provisions included in conference reports that have not been committed to by either the House or Senate.
- The challenge may be waived by a three-fifths vote of the Senators.
- Conference reports must be publicly available at least 48 hours before consideration.

## Lobbying disclosure provisions to apply to the entire Congress (must be passed by House, too)

### Registering

Any organization that lobbies on its own behalf must register with the Clerk of the House and the Secretary of the Senate if its lobbying expenses are over \$5,000 in a quarter (current law is \$10,000 semiannually).

Lobbying firms (entities that employ one or more lobbyists on behalf of a client) must register if their income related to lobbying activities exceeds \$2,500 per quarter per client (current law is \$5,000 semiannually).

### Reporting

- Lobbying reports must be filed electronically every quarter. (Currently reports are filed semi-annually).
- All registered lobbying firms, organizations that lobby on their own behalf, and employees listed as lobbyists on lobbying reports must also file quarterly reports listing political contributions and gifts made by either the firm or organization, personally by the listed lobbyist, or a political committee established by the firm or organization including:
  - Aggregate political contributions of \$200 to a federal candidate within a year;
  - The date and amount of each contribution made within the quarter;
  - Political contributions collected or arranged by lobbyists of over \$200;
  - Fundraising events sponsored for a federal candidate;
  - Contributions for events to honor legislative or executive officials, for entities named for or established by such officials, or meetings or retreats held for such officials;
  - Any congressional or executive branch travel provided, directed, or arranged by a registered organization or its employees registered to lobby;
  - Gifts valued in excess of \$20 from a lobbyist to a legislative or executive member; gifts of over \$200 to a Presidential library.
- Disclosure of all past executive and congressional employment by lobbyists. (Currently only service within the past two years is reported.)
- The Secretary of the Senate and the Clerk of the House must maintain a publicly available searchable database of lobbying registration and reports, with direct links to FEC campaign donation reports.
- The quarterly lobbying report must include a certification that the lobbying firm or organization and each employee listed as a lobbyist has not provided a gift or travel to a Member of Congress or staff in violation of House or Senate rules.

## Increased Penalties

The penalty for knowing violations of the Lobbying Disclosure Act is raised to \$200,000 from \$50,000 per violation. A new criminal penalty is added of up to 10 years jail time for knowing, willful and corrupt violations. The same penalties also apply for providing gifts or travel to Members of Congress or staff with knowledge that the gifts violate the rules of the House or Senate.

## Self-regulation

The Senate recommends that the lobbying community develop proposals for self-regulatory organizations to provide standards for lobbying practices and reasonable fees, training on law, ethics and reporting requirements.

## In the House

On January 5, 2007, House members approved new lobbying and ethics rules in the form of a resolution (H. Res. 6) by a vote of 430 - 1. The approved changes to the House include a prohibition on travel by Members and congressional staff that is paid for, planned, or requested by lobbyists or organizations that employ outside or in-house lobbyists. An additional subsection makes an exception for higher education institutions and Member and, like the Senate rules, staff participation in one-day events.

The main provisions of interest to the nonprofit community in the House bill include:

### Gift and Meal Ban

- Bans gifts and meals from registered lobbyists or private entities (including nonprofits) that retain or employ registered lobbyists. Gifts falling under certain exceptions are still permitted, such as the gift of a meal at a “widely attended event,” an honorary degree, or a gift of nominal value, e.g. baseball hat.
- Requires that gifts of tickets to a sporting or entertainment event from a non-lobbyist be valued at face value.

### Travel

- Bans travel funded by registered lobbyists and private entities (including nonprofits) that retain or employ registered lobbyists, as well as any trip that “is in any part planned, organized, requested, or arranged” by a registered lobbyist, with two exceptions:
  1. Trips paid for by higher education institutions; (Sec. 205) and,
  2. Trips for Members and staff connected to their official duties to participate in one-day events (including an overnight stay), with the Ethics Committee authorized to approve a two-night stay. Registered lobbyists may only play a minimal role in the planning or organizing of such one-day event trips.
- Prohibits registered lobbyists from accompanying a Member or staff on any portion of a trip, except those sponsored by higher education institutions.
- Requires pre-certification and pre-approval for all travel.
- Bans members from using official, personal, or campaign funds to finance the use of a privately owned airplane.

*Monthly information related to mental retardation, cerebral palsy and other disabilities*

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## **Annual Ethics Training**

- Requires annual ethics training for officers and employees.

## **Conference Reports**

- Requires that all House conferees be given notice of conference meetings between the House and Senate and a reasonable opportunity to attend, and that all provisions at issue between the two houses be open for discussion.
- Requires that House conferees have access to a complete and final conference agreement at one time and in one place to record their signatures.
- Prohibits the consideration of a conference report that has been modified since being signed by conferees.

## **Earmark Reform**

- Requires committees of jurisdiction and conference committees to publish a list of all earmarks (and limited tax and tariff benefits) contained in all bills (reported and unreported), manager's amendments, and conference reports that come to the House floor. This list must also identify the Member who requested the provision. Committees must also report if legislation does not have any earmarks. The lists must be made available to the public through the Congressional Record prior to each bill's consideration.
- Prohibits the trading of earmarks (and limited tax and tariff benefits) for legislative votes.
- Requires Members to disclose all earmarks (and limited tax and tariff benefit requests) and to verify that they have no personal financial interest in the provisions. (Sec. 404)

Unlike the Senate, the House passed two significant budget process provisions as part of its Lobby and Ethics Bill:

## **Pay-As-You-Go**

- Imposes pay-as-you-go rules prohibiting consideration of any legislation affecting mandatory spending (also known as entitlement spending, e.g. Medicare, Medicaid, and Social Security) or revenues that would increase the deficit over either a five-year or ten-year period.

## **Reconciliation**

- Prohibits the consideration of any budget resolution, amendment, or conference report containing reconciliation instructions that would increase the federal deficit within either a five-year or a ten-year period.

In summary, the House-passed H. Res. 6 takes effect on March 1, 2007. The Senate-passed S. 1 would only apply to the work of the Senate. The Senate, however, rejected other budget process reforms. The Senate passed a broader lobby disclosure reforms that will amend the Lobbying Disclosure Act of 1995 and, therefore, require House approval as well. The Senate's rules changes

would go into effect after enactment of the entire package, and the lobbying disclosure changes would go into effect January 1, 2008.

## THE 110<sup>TH</sup> CONGRESS'S FIRST 100 HOURS AGENDA

### Minimum Wage

On January 10, the House of Representatives passed the Fair Minimum Wage Act of 2007 (H.R. 2) by a vote of 315-116. This bill would increase the federal minimum wage from \$5.15 to \$7.25 over two years. At first, the federal minimum wage would jump to \$5.85 an hour, kicking in 60 days after the bill became law. Then, an additional 70-cent increase would follow in each of the next two years.

H.R. 2 is a clean bill with provisions for only raising the minimum wage. In the Senate, however, a motion to vote on a clean bill failed and has been replaced with a substitute offered by Senate Finance Committee Chair Max Baucus (D-MT). Senator Baucus's bill has the identical proposal to raise the minimum wages as H.R. 2, but it also includes an \$8.3 billion small business tax package.

For workers with disabilities, the good news in the tax package includes a provision to extend the work opportunity tax credit for years. This tax credit would be available to employers who hire low-income workers. The tax credit is modified to make it available to employers of veterans disabled after the 9/11 terrorist attacks and workers with disabilities who were referred by employment networks. However, the bad news is that it creates a conflict with the House of Representatives.

On Wednesday, January 31, the Senate voted 88-8 to end debate on the bill. This means that the Senate will vote on the Baucus substitute rather than on a clean minimum wage bill, most likely on February 1, 2007. This will certainly result in a contentious debate during House-Senate negotiations before the president signs it into law (or vetoes it).

### Medicare Prescription Drugs

During its first "100 hours," the House of Representatives passed the Medicare Prescription Drug Negotiation Act of 2007 (H.R. 4), which would require the Secretary of the U.S. Department of Health and Human Services to negotiate with pharmaceutical companies for lower drug prices. Currently, the Medicare Modernization Act of 2003 prohibits such negotiation. The Arc and United Cerebral Palsy did not take a position on this legislation and most organizations in the disability community also did not take a position. When the U.S. Senate will move its own version of the legislation is unclear.

Rep. Fortney "Pete" Stark (D-CA), the new chair of the House Ways and Means Subcommittee on Health, plans to make oversight of the new Medicare prescription drug benefit his top priority. The Senate Finance Committee is also expected to conduct oversight hearings early in the session on the Part D benefit.

Advocates hope to secure passage of improvements to the prescription drug benefit, including elimination of the benzodiazepines and barbiturate exclusion as well as eliminating the asset test for low-income beneficiaries, which makes many non-dually eligible low-income Medicare beneficiaries

ineligible for “extra help” to pay for the prescription drug benefit. Like other initiatives, all proposals will be subject to PAYGO rules.

### **SEVENTEEN STATES RECEIVE FIRST ROUND OF MONEY FOLLOWS THE PERSON FUNDS**

On January 11, the Centers for Medicare and Medicaid Services announced that 17 states will receive more than \$23 million in grants for FY 2007 and up to \$900 million over 5 years for demonstration programs that will help build Medicaid long-term care programs to move people to the community and out of institutions. These are the first grants in the Money Follows the Person (MFP) “rebalancing” initiative, included in the Deficit Reduction Act of 2005 (DRA), that will eventually total \$1.75 billion over five years (2007-2011). An additional 21 states will be given the opportunity to improve their applications by responding to CMS questions. The first 17 states expect to move a total of 23,604 people from institutional settings to community-based services.

The first states to receive that funding and the amounts approved for Fiscal Year 2007 are:

<u>State</u>	<u>FY 2007 Award Amount</u>
WI	\$8,020,388
NY	\$192,981
WA	\$108,500
CT	\$1,313,823
MI	\$2,034,732
OK	\$3,526,428
AR	\$139,519
MD	\$1,000,000
NE	\$202,500
NH	\$297,671
CA	\$90,000
IN	\$860,514
TX	\$143,401
SC	\$34,789
MO	\$3,398,225
IA	\$307,933
OH	\$2,079,488

Through Money Follows the Person grants, the selected states will receive an enhanced federal match for one year for the community-based services provided to individuals who move from an institution to the community. The states are then obligated to continue to serve the individual in the community within its normal Medicaid matching rate. The enhanced match equals half of the difference between the state’s current match rate and 100 percent. For example, a state which currently receives a 60 percent federal match would receive an 80 percent federal match under Money Follows the Person [60% + 20% (1/2 of 40%)]. No state may receive more than 90 percent.

An additional 21 states had also applied for the funds. CMS indicated that those states have an opportunity to improve their applications and that most of the issues concerned the states’ plans for rebalancing their service systems towards more community-based services.

CMS has indicated that an executive summary of the states' proposals will be made available on its website in the near future. CMS has indicated that most states plan to begin transitions in the second year of the demonstration program. A chart showing the amounts awarded to each of the first 17 states and a breakdown on the number of persons to be served can be found at: [http://www.cms.hhs.gov/DeficitReductionAct/Downloads/States1st%20Tierweb\(2\).pdf](http://www.cms.hhs.gov/DeficitReductionAct/Downloads/States1st%20Tierweb(2).pdf).

## **RESTORATION OF THE AMERICANS WITH DISABILITIES ACT (ADA): MAKING THE LAW WORK THE WAY CONGRESS INTENDED**

*"Now I sign legislation which takes a sledgehammer to another wall, one which has for too many generations separated Americans with disabilities from the freedom they could glimpse, but not grasp.... I now lift my pen to sign this Americans with Disabilities Act and say 'Let the shameful wall of exclusion finally come tumbling down'."*

President George H.W. Bush (1990)

When it was passed by the Congress and signed by President George H.W. Bush in 1990, the Americans with Disabilities Act (ADA) had the stated intention of providing a "clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities." Americans with disabilities looked toward the day when the act would be fully implemented and the barriers that had always prevented access to full participation, inclusion, and equality of opportunity in American society would be gone.

In its more than sixteen years of existence, the ADA has brought a host of changes in access to community activities, services, transportation, communication, the workplace and other aspects of American life. And as people have sought the help of the courts to have their rights under the ADA upheld, there have been many lower court rulings and a few Supreme Court decisions that have clearly served to liberate people with disabilities (e.g. Supreme Court decisions in *Tennessee v. Lane*, *Martin v. PGA Tours*, and *Olmstead v. L.C.*).

Unfortunately, however, the ADA currently needs work. That is because a host of lower court rulings and some significant Supreme Court rulings have sent up a warning flag that the courts have allowed a retreat from the core principles of the ADA, and that the "shameful wall{s} of exclusion" have *not* "come tumbling down" for people with disabilities who want to work. Indeed, new walls have been built and old walls restored.

### **How do we know this?**

- The employment rate of people with disabilities has not improved.
- Courts decide against people who challenge disability discrimination 97% of the time, often before the person has even had a chance to show that the employer treated them unfairly.
- Two-thirds of people with disabilities who do not have a job indicate they would work if they could find employment.

The courts have created an absurd Catch-22. The employer can say a person is "too disabled" to do the job but not "disabled enough" to be protected by the law. The case is thrown out of court, and the individual is never even given the chance to prove s/he can do the job.

People with conditions like epilepsy, diabetes, HIV, cancer, hearing loss, or mental illness, for example, who manage their disabilities with medication, prosthetics, hearing aids, etc. – or “mitigating measures” – are viewed as “too functional” to have a disability and are denied the ADA’s protection from employment discrimination.

Likewise, people who have been denied a job or fired because an employer mistakenly believed that they could not perform the job or the employer just did not want “people like that” in the workplace are also denied the ADA’s protection from employment discrimination, because the Supreme Court has disregarded explicit statements by Congress that it intended to protect individuals who were denied opportunities based on the beliefs, prejudices, or fears of others.

### **What, exactly, has the Supreme Court done wrong?**

It all started on June 22, 1999, when the Supreme Court ruled in the case of *Sutton v. United Airlines* that severely myopic twins who had unsuccessfully sought jobs as pilots with United Airlines felt they had been discriminated against when they were not hired because of their weak eyesight, even though their vision was correctable by “mitigating measures,” eyeglasses. Thus the Supreme Court began its process of severely narrowing the definition of disability, in this case by upholding discrimination against individuals who were “regarded as” having a disability by the employer.

Likewise, in *Murphy v. United Parcel Service* that same year, the high court ruled against a UPS mechanic who was fired because his blood pressure exceeded health guidelines. The man had challenged his firing on grounds his high blood pressure was a disability, but the Supreme Court disagreed because the man could function normally with the help of blood pressure medication, another “mitigating measure.”

Then, in *Albertsons Inc. v. Kirkingburg*, also in 1999, a driver for Albertsons was mistakenly certified as meeting visual standards for truck drivers. When the error was discovered, Albertsons fired him and refused to rehire him even after he obtained a waiver from the standards. The court ruled the driver had not shown that the alleged disability affected a “major life activity.”

Along the same lines, in *Toyota Motor Mfg. v. Williams* in 2002, the Supreme Court said a Toyota assembly line worker with carpal tunnel syndrome who was fired because of her poor attendance record was not entitled to protection under the ADA because it was not clear that she had substantial impairment of a “major life activity.”

As one of the original Co-Sponsors of the ADA in 1990, Congressman Steny Hoyer (D-MD) said in 2002 that it was not the intent of Congress “that lawyers for businesses and individuals should spend time and money arguing about whether people can brush their teeth and take out the garbage” before being able to show unfair discrimination in employment.

In 2004, the National Council on Disability produced their report, “Righting the ADA” and opened with the words,

*“Like a boat blown off course or tipped on its side, the ADA just needs to be righted.”*

### **What can be done to fix this situation?**

Last year, in an effort to restore the ADA's original intent, Congressmen Jim Sensenbrenner (R-WI), Steny Hoyer (D-MD) and John Conyers (D-MI) introduced the Americans with Disabilities Act Restoration Act (H.R. 6258) which would have amended the ADA of 1990 to bar discrimination against anyone "on the basis of disability," a change from the current wording, which bars discrimination "against an individual with a disability," the very wording that has been so narrowly construed by the courts and has often resulted in judges throughout the court systems trying to decide whether someone actually has a disability that qualifies them for protection.

Under the definition of disability in the ADA, an individual with a disability is a person who "1) has a physical or mental impairment that substantially limits one or more major life activities; 2) has a record of such an impairment; or 3) *is regarded as* having such an impairment." The language in the 2006 ADA Restoration bill was consistent with the intent of the original language that says that even if a plaintiff's condition is not substantially disabling because of corrective, or "mitigating" measures, the individual is still protected by the ADA because he or she had a *record* of a disability or is *regarded* or *perceived* by the employer as being impaired.

A similar approach is currently under consideration in the 110<sup>th</sup> Congress, both in the House and the Senate, to pass legislation that would restore the right of an individual to be judged based solely on her or his employment qualifications.

### **What are the chances for success?**

As Congressional supporters and advocates attempt to return the ADA to the track that Congress meant for it to follow in 1990, the best strategy for passing the new legislation is still evolving. With no current bill either in the House or Senate, our Congressional champions, Senators Tom Harkin (D-IA) and Edward M. Kennedy (D-MA), as well as the disability community, are nonetheless busy making contact with key Members in the House and Senate, hoping to assemble the same kind of broad bipartisan and bicameral coalition that passed the original ADA.

At the same time, The Arc, United Cerebral Palsy and other disability groups are collecting stories of discrimination in the workplace in order to educate Congress and build the case for restoration in a way that is easily understood.

Another key ingredient in the recipe for success of the ADA Restoration Act is the President himself. As the son of the President who so strongly supported and signed the original act into law, and as the author of his own New Freedom Initiative for people with disabilities, George W. Bush, some might say, would have every reason in the world to reaffirm his father's belief in the rights of people with disabilities. The President, however, has been notably silent on the issue during his first six years in office, although he has had ample opportunity not only to enforce more aggressively the provisions of the ADA through his Administration, but also, to enhance its effectiveness through the programs in his New Freedom Initiative.

Restoration of the ADA is among the "critical" Legislative Goals for The Arc and United Cerebral Palsy. To learn more about ADA Restoration efforts, go to the Consortium for Citizens with Disabilities Web site, [www.c-c-d.org](http://www.c-c-d.org).

## UPDATE FROM REHABILITATION SERVICES ADMINISTRATION (RSA)

The Rehabilitation Services Administration (RSA) is required to complete an Annual Review Report on each state agency, containing information about the Vocational Rehabilitation clients and their outcomes. The reports also include changes that the state agency made to its state policies during the year, a summary of official guidance materials that the state agency issued, a summary of the activities of the State Rehabilitation Council, the state's VR goals and priorities and a summary of the progress made to achieve the Goals and Priorities.

RSA made the reports from Fiscal Year 2005 available online at [www.rsadev.net](http://www.rsadev.net). To locate the report, click on the link for "Annual Review Reports for FY 2005."

### RSA Monitoring Efforts

RSA is implementing a new monitoring program and seeking the involvement of stakeholder organizations. Each state will be monitored every three years, and below are the states and territories that will be monitored in 2007.

- Alabama
- American Samoa
- Arkansas (Blind and General Agencies)
- District of Columbia
- Hawaii
- Kansas
- Maryland
- Nebraska (Blind and General Agencies)
- New York (Blind and General Agencies)
- Pennsylvania
- Rhode Island
- South Dakota (Blind and General Agencies)
- Tennessee
- Vermont (Blind and General Agencies)
- Virgin Islands
- Washington (Blind and General Agencies)
- Wyoming

RSA has requested information from chapters of The Arc or affiliates of United Cerebral Palsy that might have state policy and implementation issues, and would like inform the agency prior to its review of the state program. The Disability Policy Collaboration's Julie Ward ([ward@thedpc.org](mailto:ward@thedpc.org)) can collect suggestions and forward them to RSA.

## THE ARC AND UCP LEGISLATIVE GOALS FOR THE 110<sup>TH</sup> CONGRESS UPDATE

The Legislative Goals for the 110th Congress were formally approved by United Cerebral Palsy's Professional Council and The Arc of the United States' Board of Directors, permitting The Arc and United Cerebral Palsy Disability Policy Collaboration (DPC) to pursue these legislative goals for people with disabilities and their families nationwide.

The detailed legislative goals, including a summary version, are available on The Arc's Web site, under the "What's New" section, at <http://www.thearc.org/> and on UCP's Web site at [http://www.ucp.org/ucp\\_generalsub.cfm/1/8/11875](http://www.ucp.org/ucp_generalsub.cfm/1/8/11875).

### The Partners and the Process

The goals were crafted by the ten-member DPC Steering Committee in partnership with the American Association on Intellectual and Developmental Disabilities (AAIDD), the American Network of Community Options and Resources (ANCOR) and the Association of University Centers on Disabilities (AUCD). These five leading national disability organizations have combined their resources in promoting and pursuing comprehensive changes to federal disability policy for the protection of disability rights, the expansion of the community-based service systems and the protection and expansion of benefits for our constituents.

The legislative goals are divided into two categories: fiscal policy and programmatic goals. The programmatic goals are further divided into three groupings: critical goals, priority goals and additional important goals. This article attempts to frame the critical and priority goals and provide an early prediction on what, if anything, the First Session of the 110<sup>th</sup> Congress might address regarding each goal. However, given that Congress has been in session for only a month, spending most of January organizing and dealing with internal rules on ethics, not much information on the agenda or schedule for disability policy is available.

The critical goals, which UCP and The Arc deem most important to our constituents, are: Medicaid, Direct Support Workers, Housing, Family Support, Education and Social Security. Priority goals are: ADA Restoration, Assistive Technology, Civil Rights, Developmental Disabilities, Emergency Preparedness and Response, Employment, Training and Wages, Health Care, Long-Term Community Services and Supports, Quality of Services, Tax Policy and Transportation.

Overriding these programmatic goals are goals related to Budget, Entitlements, Appropriations and Revenue Policy.

### Budget, Entitlements, Appropriations and Revenue Policy

The lynchpin for federal spending and revenue policy is the Fiscal Year Budget Resolution (BR) which creates the annual blueprint for spending and tax policy. The BR is scheduled to be adopted in the spring and is an internal product of Congress, which does not require White House action.

Last year, Congress did not reach an agreement on a BR, nor did they complete action on ten of the twelve Fiscal Year (FY) appropriations bills. All programs, except Defense and Homeland Security, are operating on a Continuing Resolution (CR) that funds them at the FY 2006 level and is set to expire on February 15. House and Senate leaders have announced that for the remainder of FY

2007, all non-defense and homeland security programs will be funded at FY 2006 levels, with a few exceptions, such as veterans' health care, military construction and education. These programs are in line for some increases under the CR, which also will be devoid of any earmarked funding.

On February 5, the Bush Administration will release its FY 2008 budget request and the House and Senate Budget Committees will begin drafting the FY 2008 Budget Resolution. If completed on schedule, the BR would be adopted by both the House and Senate in mid- to late April. The BR would set overall spending levels for discretionary programs (e.g. IDEA and Vocational Rehabilitation State Grant programs) and give reconciliation instructions to those committees with jurisdiction over entitlement programs (e.g. Medicaid and SSI) and tax policy.

With a high federal deficit and the PAYGO (Pay As You Go) provision, the BR is expected to meet some Democratic spending priorities, but not nearly all that they have promised given the political realities. PAYGO is the provision instituted at the beginning of this Congress that requires new spending on entitlement programs and tax cuts to be fully offset by spending cuts and/or tax increases. The PAYGO provision will make it more difficult for Congress to enact expansions of entitlements, such as Medicaid. The FY 2008 Appropriations process will begin in earnest after the adoption of the BR or, failing that, in May or June.

## **Critical Goals**

### **Medicaid**

Although the Medicaid Commission made its final recommendations to the President and Congress in December 2006, the change in Congressional leadership makes it unlikely that the Commission's recommendations will get much play on Capitol Hill this year.

In his State of the Union Address, President Bush mentioned Medicaid as one of the entitlement programs that need to be addressed, along with Medicare and Social Security. However, he gave no specifics.

Advocates are looking for significant Congressional oversight of the extensive waivers that the Administration has approved in several states which alter some basic Medicaid provisions. In addition, advocates hope to make important amendments to programs newly created by the Deficit Reduction Act of 2005, such as to the new home and community based services option, to make them work better for people with disabilities. All initiatives will face the PAYGO hurdle.

Advocates are also anticipating that the President's FY 2008 budget, which will be released on February 5, will contain provisions that negatively impact Medicaid. For example, like last year, the President could include a proposal to save \$9 billion in Medicaid by cutting back on reimbursements to school systems for certain administrative costs and transportation services to serve special education students.

### **Direct Support Professionals**

Rep. Lois Capps (D-CA) is planning to take the lead on the Direct Support Professionals bill, which would provide funds to states and enable them to increase the wages paid to these workers. The bill is expected to be introduced by the end of February, with the hopes that the House Energy and Commerce Committee will hold a hearing on the issue. The legislation would establish an incentive

program of increased Federal Medical Assistance Percentage (FMAP) for states that commit to eliminating the wage differential between workers in community services and workers in government-run Medicaid services by increasing the wages and benefits of the community workers. Advocates are still seeking a lead sponsor for this bill in the Senate.

## **Housing**

Increasing the production of affordable, accessible housing is one of our key priorities for the First Session of the 110<sup>th</sup> Congress. Rep. Barney Frank (D-MA), the new House Financial Services Committee chair, has publicly stated on several occasions that increasing the production of affordable housing will be his top priority. The National Housing Trust Fund Campaign, an initiative of the National Low Income Housing Coalition (of which The Arc and UCP are members), is working closely with Chairman Frank to introduce a bipartisan bill that would create a dedicated source of federal funding to support the production and preservation of 1,500,000 rental homes over 10 years, at least 75 percent of which will be affordable to extremely low income families.

Since it is expected that the Administration's FY 2008 budget proposal will contain significant cuts to housing programs, The Arc and UCP will be working to prevent cuts to the Section 811 Supportive Housing for People with Disabilities Program and the Section 8 Housing Choice Voucher Program.

## **Family Support**

In order to strengthen the ability of families to maintain typical lifestyles for themselves and their family member(s) with disabilities, and to address their unmet needs, we are looking to the 110<sup>th</sup> Congress to significantly increase funding and establish a separate authorization for the Family Support Program. Our chief co-sponsors, Senator Hillary Clinton (D-NY) and John Warner (R-VA), are already busy advocating with their Congressional colleagues for full funding for the newly authorized Lifespan Respite Care Act, passed in the final days of the 109<sup>th</sup> Congress.

We will also look to the Congress to restore funding to the Child Care and Development Block Grant (CCDBG) and to expand inclusive and appropriate services in the areas of child care and foster care.

## **Education**

The No Child Left Behind Act (NCLB) is scheduled for reauthorization this year. This law, controversial in many school systems, requires schools to achieve proficiency levels in math and reading for its students. Some special rules have been or are in the process of being promulgated by the U.S. Department of Education to provide certain latitude in the testing of some special education students and those with limited English proficiency. The NCLB was enacted with strong bipartisanship in 2001. President Bush is an ardent supporter of this law.

Since its enactment, NCLB has been under-funded, giving school systems and its Democratic supporters' ample opportunity to criticize the law's implementation. The intersection of NCLB and the Individuals with Disabilities Education Act (IDEA) is vital for students with disabilities. Most disability groups, including UCP and The Arc, strongly supported the principles embodied in the NCLB, particularly the notion that all children, including those with disabilities, be assessed to determine their academic progress. This provision is very much in line with the 2004 IDEA

amendments that allow access for special education students to the general curriculum to assist in their learning process.

Early indications are that the 110<sup>th</sup> Congress will take its time with reauthorizing NCLB, possibly even delaying final action until the 111<sup>th</sup> Congress and after President Bush completes his final term as President. Preliminary hearings are likely this year.

Of importance to The Arc and UCP is a briefing scheduled for February 1, sponsored by the House Education and Labor Committee and the Senate Health, Education, Labor and Pensions (HELP) Committee. The bicameral Capitol Hill briefing will explore the intersection between IDEA and NCLB. Other briefings are planned in the next few months.

### **Social Security/Income Maintenance**

The President continues to want to reform Social Security, indicating his willingness to negotiate with Democrats, who remain wary that he will resurrect proposals to privatize Social Security funds. In his State of the Union Address, President Bush reiterated his interest in taking on the “challenge of entitlements.” However, whether Congress deals with this issue in 2007 is unclear. One hurdle will be the 2008 elections: the longer Congress waits, and the closer the 2008 elections become, reaching agreement will prove increasingly more difficult, unless very strong bipartisan support exists. Depending on the type of reform, PAYGO may be another hurdle.

### **Priority Goals**

#### **Americans with Disabilities Act (ADA) Restoration**

Since passage of the ADA, problematic court decisions have had the effect of denying its’ protections, which were clearly intended by Congress, to people with disabilities. The 110<sup>th</sup> Congress is expected to address the most salient of these lost protections by passing legislation that would clarify the “definition of disability,” as originally intended by Congress.

Congressional champions, Senators Tom Harkin (D-IA) and Edward M. Kennedy (D-MA), are constructing the best strategy for passing the new legislation. The disability community is making contact with key House and Senate members, hoping to assemble the same kind of broad bipartisan and bicameral coalition that passed the original ADA.

#### **Assistive Technology**

Over the past decade, programs funded under the Assistive Technology Act have struggled to stay alive. Many of the services and supports provided by the Tech Act’s State Grant Programs have been severely diminished by a phase down of funding under the previous Tech Act’s sunset clause. Even though the clause was removed in the 2004 reauthorization, these programs are still under-funded. Since taking office, the President’s budgets have never recommended funding them, making even level funding a challenge.

Given the fiscal challenges this Congress is facing, it may continue to be a challenge to obtain any increases in funding for Tech Act programs. However, appropriators may be convinced to bring every state and territorial program to the minimum allotment level, as defined in the 2004

reauthorization, restore funding that has been lost in recent years, and maintain the other elements of the Act, National Technical Assistance and Protection and Advocacy.

### **Civil Rights**

The Genetic Information Non-Discrimination Act (GINA) is currently on the front burner in both the House and Senate and has the support of the President. The bill will ban discrimination in employment and insurance on the basis of information gained from genetic testing. It is expected to pass soon, which is an achievement for advocates working for nearly ten years.

Another issue on the agenda for disability advocates for nearly a decade is including the category of “disability” in the federal definition of a hate crime and providing enhanced funding to states for its enforcement. However, a level of commitment to civil rights issues, not evident in Congress for a long time, is evident this year. Senate Majority Whip Dick Durbin (D-IL) joined a conference call of civil rights advocates recently, emphasizing that the 110<sup>th</sup> Congress will hold the administration accountable on civil rights and not be a rubber stamp. He said, “For the first time in six years, Congress is involved and will play offense when it comes to civil rights” and “we will stop those that will do harm.” Senator Durbin pledged to pass hate crimes legislation, as well as a number of other civil rights priorities.

Several pieces of Voting Reform legislation are expected to play a significant role in Congress this year, primarily on the issue of security and reliability in voting technology and voting systems. Congress is also expected to address the issues surrounding deceptive practices in registration and voting processes as well as revisiting the Voter ID legislation passed by the last Congress. The Arc and UCP will work on each piece of legislation that comes up to ensure that, regardless of the voting reform, the interests and needs of people with all types of disabilities are addressed and that all voting systems and processes are fully accessible.

### **Developmental Disabilities**

Originally authorized in 1970, the Developmental Disabilities Assistance and Bill of Rights Act (DD Act) was reauthorized in 1975 and again in 2000. This year, the Act is up for reauthorization. The DD Act focuses on the needs of an estimated 4 million individuals with developmental disabilities. The Act authorizes State Councils on Developmental Disabilities (DD Councils); University Centers for Excellence in Developmental Disabilities Education, Research, and Service (UCEDD); Protection and Advocacy Systems (P & A); Family Support Programs and Projects of National Significance.

Due to 110<sup>th</sup> Congress’s workload, some in Congress say that the reauthorization may not actually happen until the Second Session. However, efforts are already underway to reach a consensus within the disability community about what improvements are needed in the Act. Some changes under discussion include the addition of a major focus on, and separate authorization for, self-advocacy organizations at the state level.

Family Support is also expected to be a focus in reauthorization of the DD Act. The disability community is building support for concentrated development of Family Support efforts in all of the states and territories and a separate and adequate authorization of resources to make Family Support viable and effective everywhere.

## **Emergency Preparedness and Response**

The Arc and UCP were extremely pleased that the 109<sup>th</sup> Congress passed specific provisions addressing the needs of people with disabilities during and after emergencies and disasters in the Post Katrina Emergency Management Reform Bill, when it was included as part of the FY 2007 Department of Homeland Security Appropriations bill (H.R. 5441). These provisions amended the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), and gave organizations like The Arc and UCP a significantly enhanced role in working with the federal agencies responsible for emergency management. The 110<sup>th</sup> Congress is already holding oversight hearings in the House and Senate on the implementation of the new law, including its disability provisions.

Additionally, improvements still need to be made to the Stafford Act, such as improved requirements for the type and amount of available accessible housing for immediate and long-term sheltering needs of people with disabilities and a requirement for disability-specific service coordination services. The 110<sup>th</sup> Congress is expected to continue addressing these issues, possibly passing further amendments to the Stafford Act or enacting other legislation.

## **Employment**

The reauthorization of the Vocational Rehabilitation Act and the Workforce Investment Act is expected to be a high priority for the newly renamed House Education and Labor Committee and the Senate HELP Committee. However, neither committee has indicated a specific timeline for their reauthorization, but it is expected that last year's bipartisan Senate-passed bill will be used as a starting point.

What additional provisions or changes the new House Democratic Committee leadership will make to the House bill is unclear. The Senate is not likely to make major changes to the bill that passed in the last Congress. However, some of the changes previously sought by the Administration, such as more block granting of the programs, are not expected to be included in the bills.

## **Health Care**

The required reauthorization of the State Children's Health Insurance Program (SCHIP) will consume much of the Senate Finance Committee and the House Energy and Commerce Committee's time. SCHIP is a federal/state program which provides health insurance to children whose parents earn more than Medicaid limits. Advocates hope to expand SCHIP funding, however doing so must comply with PAYGO rules. Congressional leadership hopes to complete the reauthorization by May 1.

## **Long Term Community Services and Supports for Individuals**

Senator Edward Kennedy (D-MA) has indicated the Community Living Assistance Services and Supports Act (CLASS Act) will be one of his top priorities for the 110<sup>th</sup> Congress. The bill would create a national, premium-based, long-term supports insurance program that will provide cash benefits to Medicaid eligible people to meet their needs without forcing them into impoverishment. The bill could take enormous pressure off the Medicaid system and allow more individual choice and direction in long term supports. Once the bill is introduced, Senator Kennedy is expected to hold hearings on the issue.

## **Quality of Services**

Any changes to existing programs could impact quality of services. We expect Members of Congress and advocates to raise issues regarding quality in every legislative setting, and in anticipated oversight hearings.

## **Tax Policy**

In this Congress, any changes to tax policy will most likely relate to the any provisions contained in the FY 2008 Budget Resolution and tax policy adjustments resulting from needing new revenue streams to fulfill PAYGO requirements. Hot button tax issues to be considered include the expanding impact on middle class taxpayers affected by the Alternative Minimum Tax (AMT), the estate tax and tax credits or deductions for expanded health insurance coverage.

## **Transportation**

The focus will be on funding the programs at the levels authorized by the Safe, Accountable, Flexible, Efficient Transportation Equity Act -A legacy for Users (SAFETEA-LU). SAFETEA-LU had authorized increases each year for transit programs in general and for the New Freedom and 5310 programs, which are of particular interest to the disability community. The House's FY 2007 Continuing Resolution does including funding at the authorized level, which is above FY 2006 funding. Disability advocates will continue to urge Congress to fund the programs at the authorized level.