

Volume 5, Issue 6
August 2007

IN THIS ISSUE.....

- **FY 2008 APPROPRIATIONS STILL HANGING: VETO THREATS EXAMINED** - As previously reported in *Washington Watch*, the President has threatened to veto FY 2008 appropriations bills that provide more funding than he requested in his February budget recommendations..... *page 1*
- **LEGISLATION TO RESTORE LOST ADA PROTECTIONS INTRODUCED** - On July 26, 2007, the 17th anniversary of the enactment of the landmark civil rights legislation the Americans with Disabilities Act (ADA) *page 8*
- **CHALLENGES LIE AHEAD IN RECONCILING HOUSE AND SENATE SCHIP BILLS: PEOPLE WITH DEVELOPMENTAL DISABILITIES WILL BE AFFECTED BY OUTCOME** - Shortly before leaving for their August recess, the Senate and House passed legislation to reauthorize the State Children's Health Insurance Program (SCHIP)....*page 10*
- **AT LAST, CONGRESS PASSES LOBBYING AND ETHICS LEGISLATION** - On January 3, 2006, lobbyist Jack Abramoff pleaded guilty to felony charges of conspiracy, mail fraud and tax evasion..... *page 12*
- **"VOICES FOR CHANGE" FROM THE TICKET TO WORK AND WORK INCENTIVES ADVISORY PANEL** - The Ticket to Work and Work Incentives Advisory (TW & WIA) Panel released its report, *Voices for Change: Beneficiaries Paving the Way to Work* on July 16 to coincide with the 17th anniversary of the ADA....*page 16*

FY 2008 Appropriations Still Hanging: Veto Threats Examined

As previously reported in *Washington Watch*, the President has threatened to veto FY 2008 appropriations bills that provide more funding than he requested in his February budget recommendations. Among the big targets is H.R. 3403, the bill funding the Departments of Labor, Health and Human Services and Education. Given that the President himself, in his Statement of Administration Policy (SOP) on the bill, has decried it as being “irresponsible” and containing “runaway spending,” and given that his own Director of the Office of Management and Budget recently described the Labor-HHS-Education bill as the “most problematic” of the appropriations bills, it may be the biggest veto target of all.

The Center on Budget and Policy Priorities (CBPP), a Washington, DC-based think tank focusing largely on human services issues, recently examined the validity of the President’s assertion that these bills contain irresponsible, runaway spending to determine whether funding for the Labor-HHS-Education bill - and for the 11 other appropriations bills - is excessive.

CBPP compared the funding levels that the pending appropriations bills contain for FY 2008 with the funding levels enacted for the years from FY 2002 through FY 2006, when Republicans generally controlled Congress and the President signed every appropriations bill presented to him. (They did not include emergency appropriations, such as those for the Iraq War or Katrina relief; and prior funding levels were adjusted for inflation and population growth to make them comparable with FY 2008 funding levels.)

CBPP also compared funding growth for the seven appropriations bills that the President is considered likely to veto (such as the Labor-HHS-Education bill) with funding growth for the five bills he has indicated he likely will sign. CBPP found that bills the President will likely sign cost considerably *more* overall in FY 2008 than those bills averaged in 2002-2006.

Table 1: Proposed discretionary funding for 2008 compared with average funding, 2002-2006 (in billions of dollars, with funding for 2002-2006 adjusted for inflation and population growth to be comparable with 2008 funding)				
	Average 2002-06	Proposed for 2008		
		<u>Bush</u>	<u>Senate</u>	<u>House</u>
Labor-HHS-Education total*	\$158	\$141	\$152	\$154
The 7 bills Bush is likely to veto (including Labor-HHS-Ed bill)*	377	348	372	372
The 5 appropriations Bush will likely sign	522	585	584	584
Note: Emergency funding (e.g. Iraq and Katrina relief) is not included in the above amounts.				
* Amounts reflect funding for the “program year,” which generally is a 12-month period spanning the latter part of the fiscal year shown above and the beginning of the following fiscal year, increasing the congressional levels by \$2 billion.				

The results showed that after adjusting for inflation and population growth, the appropriations bills the President is likely to veto - including the Labor-HHS-Education bill - would cost *less* in FY 2008 than the corresponding bills cost, on average, during FY 2002-2006. (Table 1)

Could a Labor-HHS-Education veto be overridden by Congress?

It takes a two-thirds vote to override a veto. If all 435 House seats are filled, it would require 145 votes to sustain a veto. The vote on Labor-HHS-Education bill, 276-140, was close, but enough Republican members who have voted against spending measures were absent for that vote. However, while House Republicans last month rallied behind President Bush’s vow to restrain spending with a signed pledge of support from enough lawmakers to uphold vetoes of appropriations bills, some of the 147 Republicans who signed that pledge have since said they won’t necessarily stand behind it if the programmatic impacts on constituents prove too drastic. Thus far, 62 lawmakers who signed the pledge have voted for at least one of the four FY 2008 spending bills that the President has threatened to veto. Four of the signers have voted to pass all four bills. Thus, given all of the above, a veto is quite possible.

Will there even be a bill to veto?

In the end, the Senate may save House Republicans from a veto fight with the President. Senate Majority Leader Harry Reid (D-NV) has already indicated that he is not planning to bring the Labor-HHS-Ed bill to the floor for a vote. The Senate has passed only one appropriations bill, making it increasingly likely that Congress will send the President one or more “omnibus” spending packages this fall. That would at least shift the focus from a veto

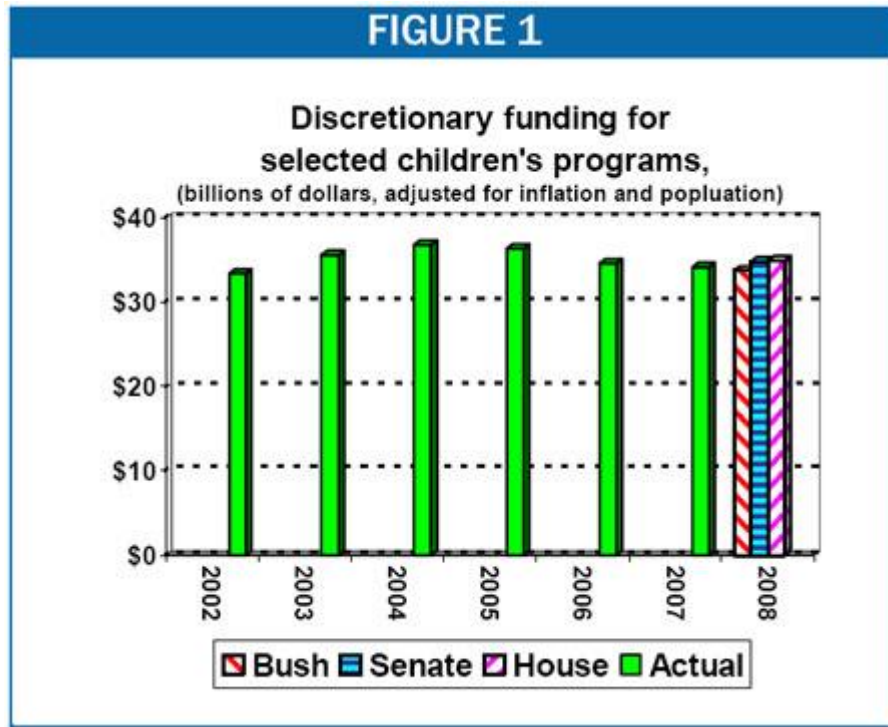
showdown on individual bills to a debate about overall spending. In any case, some appropriations analysts think that the President would be hard-pressed to veto a multi-bill package with impact across multiple government agencies.

What would a Labor-HHS-Education or a HUD-Transportation veto mean?

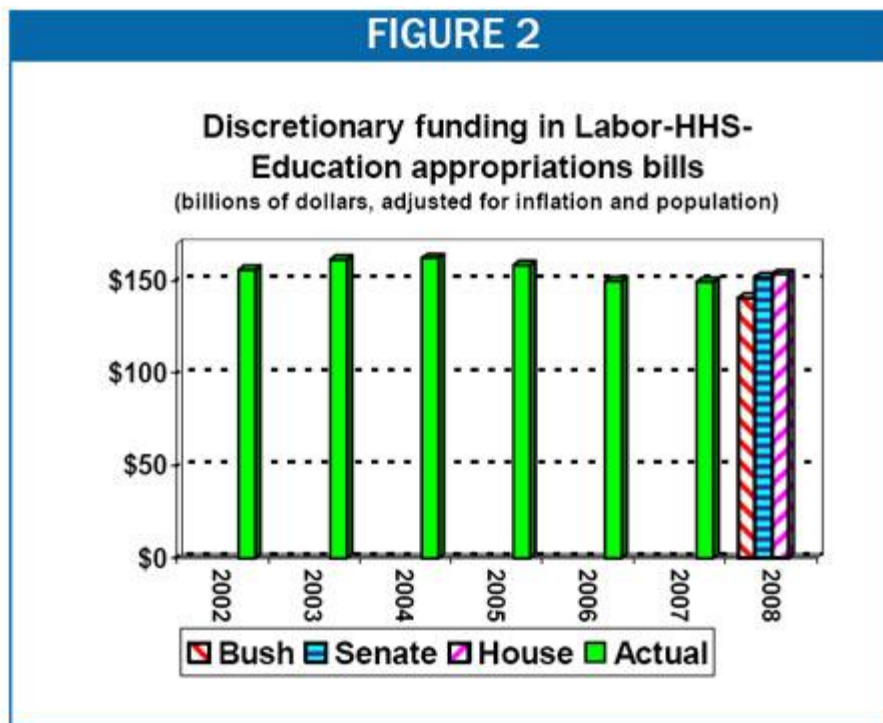
A veto would mean that the Congress would have to go back to the drawing board and try to come up with something that would meet the President’s approval. If funding for critical disability, education, health, housing, transportation and employment programs is again pared down, the result would be a step back in time – to level funding, at best, for a host of programs that have shown sadly stagnant funding and diminishing abilities to assist the people whom they are intended to serve.

For example, according to the CBPP study, looking at just a few children’s programs - including Title 1 education, special education, the child care block grant, and Head Start - funding averaged \$35.3 billion during 2002-2006, adjusted for inflation and population growth. The Senate and House bills for 2008 would fund these programs at levels - \$34.8 billion and \$34.9 billion, respectively - that are below the average for 2002 through 2006. The President argues that the funding for these programs is still too high and that he would decrease it further. (Table 2 and Figure 1.)

	Average <u>2002-06</u>	Proposed for 2008		
		<u>Bush</u>	<u>Senate</u>	<u>House</u>
Child Care (CCDBG)	\$2,401	\$2,062	\$2,062	\$2,137
Title I education for the disadvantaged	13,739	13,910	13,910	14,363
Special Education (for children with disabilities)	10,893	10,492	11,240	10,957
Head Start	7,750	6,789	7,089	6,964
Runaway & homeless youth; child abuse; child welfare	<u>558</u>	<u>495</u>	<u>517</u>	<u>505</u>
Total, above programs	\$35,341	\$33,748	\$34,818	\$34,926
<p>Note: Emergency funding (e.g. Katrina relief) is not included in these amounts. Amounts reflect funding for the “program year,” which generally is a 12-month period spanning the latter part of the fiscal year identified above and the beginning of the following fiscal year.</p>				



Taking the Labor-HHS-Education bill overall, CBPP found the same pattern of declining funding. Funding for the discretionary programs in this bill averaged \$158 billion over 2002-2006, in dollars adjusted for inflation and population growth, although by 2006, funding had declined to \$150 billion. The House bill for 2008 would set funding for these programs at \$154 billion. The Senate bill would squeeze this funding further, to \$152 billion. Nevertheless, the Administration is likely to veto the Labor-HHS-Education bill unless Congress reduces funding to \$141 billion, which would be the lowest level of funding for the programs covered by this bill in at least eight years. (Table 1 and Figure 2.)



What about Housing and Transportation funding?

The Administration has also signaled that the President is likely to veto H.R. 3074, the appropriations measure for the Departments of Housing and Urban Development (HUD) and Transportation (DOT) which passed the full House on July 24. The bill contains funding that is \$4.1 billion more than President requested and \$4.4 billion above the current year. For HUD Section 8 Tenant Based Vouchers, the bill contains \$16.3 billion, \$410 million above 2007 and \$330 million above the President's request, to renew approximately 1.9 million vouchers currently in use and provide 4,000 new, targeted vouchers for non-elderly people with disabilities and homeless veterans. The President's request would have forced between 40,000 and 80,000 families and individuals to lose their housing vouchers. The bill also provides \$6.5 billion, \$503 million above 2007 and \$667 million above the President's request for Section 8 Project Based Vouchers, to provide affordable housing to 1.3 million low and very low-income families and individuals, two-thirds of whom are elderly or have disabilities. HUD's Housing for the Disabled program is funded at \$236.6 million, the same as 2007 and \$111.6 million above the President's request, for grants to finance the acquisition, rehabilitation or construction of housing for people with disabilities.

The HUD-Transportation bill was passed by a vote of 268-153 – not enough to overcome the threatened veto. In his Statement of Administration Policy on H.R. 3074 the President said of the provisions for Tenant-Based Rental Assistance, “the Administration's request would aid significant numbers of additional families and renew approximately 1.9 million vouchers currently in use, without the Committee's addition of \$330 million in unrequested funds.” Housing advocates for people with low-income, including significant numbers of people with disabilities, say that this is completely inadequate. According to the DPC Housing specialist, Liz Savage, “Renewal of existing vouchers alone, gets us nowhere. There are thousands of people desperate for affordable housing who can get no rental assistance whatsoever. There has to be funding for new vouchers.”

In the transportation arena, the bill provides full authorization levels of funding for transportation programs for people with disabilities under the New Freedom Initiative and "Section 5310" programs for the elderly and people who have disabilities. The President has not specifically targeted these relatively small programs in the Department of Transportation, focusing his accusations of "excessive spending" instead on larger targets such as Amtrak and the Federal Aviation Administration.

Veto threats and politics

If, as the CBPP study shows, the President is likely to sign those appropriations bills whose costs are substantially increased, but is likely to veto appropriations bills whose costs are lower than they averaged in the past, are the veto threats really about restoring fiscal discipline and halting "runaway spending?" Or is the President simply staking out a position that might make Congress look ineffective and bolster the more "conservative" stance. It could also serve to strengthen the power of the Presidency, since veto overrides could be hard to come by.

To override a veto, both the House and Senate must amass two-thirds "super-majorities." Since the Democrats hold only 53 percent of the House seats and an even smaller share of Senate seats, the President can - by vetoing legislation - frustrate the policies of the new majority and strengthen claims that Congress has a poor track record of accomplishment.

House Majority Leader Steny Hoyer (D-MD) said of the President's threats, "The President's desperate attempt to somehow posture as fiscally responsible is transparent and a bit absurd, given his fiscal record over the last six years." Hoyer went on to strike a bi-partisan note, saying, "I believe the differences in our spending proposals are actually modest and hope the President will sit down with us to negotiate those differences, rather than trying to instigate an unnecessary budget fight."

The Bottom Line

The full House has passed all 12 appropriations bills, including Labor-HHS-Education and HUD-Transportation. The Senate has made less progress, with the Appropriations Committee having passed 11 of the 12 but only one having passed the full Senate, the bill funding the Department of Homeland Security.

Debate over appropriations legislation likely will dominate much of the autumn, since no FY 2008 bill has yet become law. With the end of the fiscal year looming on September 30, Congress will need to enact at least one Continuing Resolution, a stopgap measure to keep the government operating (usually at current levels) in the absence of approved appropriations. That may be followed by one or more omnibus bills funding the entire federal government through FY 2008.

Omnibus spending bills, while taking the veto pressure off individual bills, could open the door for a fight over increased federal spending and whether to extend tax cuts the Republican-controlled Congress approved several years ago. Senate Democrats, however, will point to their pay-as-you-go (PAYGO) budgetary rules and continue to make the case

for funding for domestic programs they contend were under-funded when Republicans controlled Congress.

What has the 110th Congress done in its first eight months compared to the 109th?

- ◆ The 110th Congress has been in session more days and has held more votes than the 109th Congress over a comparable period.
- ◆ Through the first seven months of the 110th Congress, the Senate has held 286 votes and has been in session 117 days. At the same point in the first year of the 109th Congress, there had been 220 votes over 100 legislative days.
- ◆ Standing Senate panels have held far more hearings. Senate committees have held 578 hearings, and panels have met to mark up legislation on 149 occasions. In the 109th Congress, there had been 167 markups and 504 hearings at a similar point.

LEGISLATION TO RESTORE LOST ADA PROTECTIONS INTRODUCED

“Every man, woman, and child with a disability can now pass through once-closed doors into a bright new era of equality, independence, and freedom.”

President George H. W. Bush, on signing the Americans with Disabilities Act (ADA), July 26, 1990

On July 26, 2007, the 17th anniversary of the enactment of the landmark civil rights legislation the Americans with Disabilities Act (ADA), House Majority Leader Steny Hoyer (D-MD) and Representative James Sensenbrenner (R-WI), along with Senator Tom Harkin (D-IA), led a press conference on the West Terrace of the U.S. Capitol in Washington, DC to announce the introduction in both the House and Senate of legislation to restore the full promise of the Americans with Disabilities Act. The ADA Restoration Act of 2007 (H.R. 3195 and S. 1881) was introduced in the House with more than 125 original co-sponsors and in the Senate by co-sponsors Harkin and Arlen Specter (R-PA).

“The landmark Americans with Disabilities Act has helped ensure American citizens no longer live in isolation but live as independent, self sufficient members of our communities.” *Congressman James Sensenbrenner, on introducing the ADA Restoration Act of 2007*



Noting that significant improvements under the ADA have allowed more people with disabilities throughout the U.S. to live life without limits, and to have access to thousands of

places and opportunities that people with disabilities were never before been able to enjoy, the Members also noted the sad fact that seventeen years later, the full promise of the law has not been fulfilled for too many people with disabilities who want to work and be treated fairly in their jobs. The Supreme Court and other court decisions over the past decade have narrowly interpreted the definition of "disability" under the ADA, making it more difficult, if not impossible, for people to defend themselves against discrimination in the workplace.

"This is not just absurd, it is wrong. And it flies in the face of clear, unambiguous Congressional intent. When we passed the law, there was common agreement on both sides of the aisle, and on the part of President George Herbert Walker Bush and his aides, that the law was designed to protect any individual who is treated less favorably because of a *current, past, or perceived disability*. This situation cries out for a modest, reasonable legislative fix, and that's exactly what I am doing, today, by introducing the ADA Restoration Act of 2007."

Senator Tom Harkin, on introducing the ADA Restoration Act of 2007

The bipartisan ADA Restoration Act of 2007 will amend the ADA to shift the focus from requiring individuals with disabilities to "prove" their disability to determining whether a person has experienced discrimination "on the basis of disability."

The Act, when enacted, will stop courts from considering "mitigating measures" and from requiring an individual to first prove that he or she cannot perform daily functions in order to challenge discrimination. The ADA Restoration Act restores the right to be judged based solely on one's qualifications for the job, bringing the ADA in line with other civil rights laws and requiring the courts to interpret the law fairly.

Will it pass?

Co-sponsors in both the House and Senate have named the ADA Restoration Act among their very top priorities and have set a goal for passage during the 110th Congress. Champions in the House say that the momentum in that chamber, with nearly 200 co-sponsors at Washington Watch press time, could lead to relatively swift committee hearings, but with four committees of jurisdiction (Education and Labor, Energy and Commerce, Judiciary and Transportation and Infrastructure), the trip to the House floor could be prolonged. With a packed schedule of appropriations and other priority legislation before them, the Senate is unlikely to consider the bill before next year.

"We knew that it would not topple centuries of prejudice overnight, but we believed that it could change attitudes and unleash the talents of millions of Americans with disabilities.

House Majority Leader, Steny Hoyer (D-MD), on introducing the ADA Restoration Act of 2007

Advocacy Efforts Underway

After a very successful introduction with more than 125 original co-sponsors in the House, disability advocates from coast to coast were energized. During the month of August, activists can expect a number of "alerts" and requests for them to meet with their

Representative and Senators while they are in their home districts on recess and ask them to cosponsor this vital piece of legislation.

Additionally, materials for advocates to use to educate Members of Congress and others are available at www.c-c-d.org --including talking points, court cases, stories, ideas for op-eds and letters to editors of local news media, as well as other strategies and information on the legislation, its background and progress through Congress.

**CHALLENGES LIE AHEAD IN RECONCILING
HOUSE AND SENATE SCHIP BILLS:
PEOPLE WITH DEVELOPMENTAL DISABILITIES
WILL BE AFFECTED BY OUTCOME**

Shortly before leavings for their August recess, the Senate and House passed legislation to reauthorize the State Children's Health Insurance Program (SCHIP). The program was established in 1997 to cover children who live in families whose income is above Medicaid eligibility levels. Currently, approximately 6.1 million children are enrolled in the SCHIP program or in SCHIP-financed Medicaid programs. Unless SCHIP is reauthorized by September 30 of this year – or is extended for one year – the program will expire. Therefore reauthorizing SCHIP has been the top health care priority for Congress this year.

In addition to providing significantly more funding to reauthorize SCHIP than the Senate, the House bill, (the Children's Health and Medicare Protection (CHAMP) Act of 2007 (H.R. 3162)) makes several important changes to Medicaid and Medicare. These differences present a great challenge for the House-Senate Conference Committee which will be appointed in September.

SCHIP

The CHAMP Act provides \$50 billion over 5 years to reauthorize the program. The Congressional Budget Office (CBO) estimates that this legislation will provide coverage to an additional five million children (including children with disabilities) who would otherwise be uninsured. The Senate bill – the State Children's Health Insurance Program Reauthorization Act (S. 1893) – provides \$35 billion over 5 years to reauthorize SCHIP which, in addition to covering currently enrolled children, will provide funding to cover an additional 3.2 million children. Both the House and Senate bills include an SCHIP dental care benefit and a mental health parity provision.

The Senate bill is financed by a 61-cent increase in the federal excise tax on tobacco products while the House bill is financed by a 45 cent increase in the tobacco tax and a decrease in reimbursements to Medicare Advantage (private managed care insurance). The Medicare Payment Advisory Commission (Medpac-an independent body which gives Congress advice on Medicare issues) has estimated that Medicare Advantage plan

reimbursement rates are approximately 12% more than traditional fee-for-service Medicare reimbursement rates.

President Bush has repeatedly threatened to veto either the Senate or House bill and said that the more modest Senate bill “goes too far in federalizing health care.” The Bush Administration has proposed to provide \$5 billion over 5 years to reauthorize SCHIP which the Congressional Budget Office has stated would be inadequate to cover currently enrolled children.

Medicaid

The House CHAMP Act contains several provisions which are important to people with developmental disabilities. For example, the bill includes:

- An option allowing states to cover children under SCHIP or Medicaid through age 21;
- Authority for states to continue providing habilitation or adult day health services approved under a Medicaid plan. This provision is needed to ensure that persons with developmental disabilities in certain states (AR, CT, IA, ID, IL, MA, ME, MI, MO, MS, NY, OH, RI, VA, WVA and WA) and the District of Columbia can continue receiving Medicaid adult day health services as envisioned by the Congress. In 1989, Congress prohibited the Secretary of HHS from disallowing Medicaid payments for habilitation and related services until the Secretary promulgates a regulation specifying which services may be covered. While the Congress previously imposed a moratorium on states adding adult day health services coverage under their Medicaid rehab option programs, it specifically permitted states that had been operating such programs to do so. This provision is needed to stop CMS from interfering with state efforts to continue operating these programs;
- A moratorium on certain payment restrictions. This provision establishes a one-year moratorium from the date of enactment that prohibits the Secretary of Health and Human Services from taking any action to restrict coverage or payment for rehabilitation services, or school-based administration, transportation, or medical services if such restrictions are more restrictive in any aspect than those applied to such coverage or payment as of July 1, 2007. This provision has become especially important because the Centers for Medicare and Medicaid Services have released proposed regulations on Medicaid’s rehabilitation option which will have a significant effect on habilitation services for persons with intellectual and other developmental disabilities.

Medicare

The CHAMP Act includes many provisions that will improve prescription drug coverage under Medicare Part D for individuals with developmental disabilities who are “dual eligibles” (those who receive Medicare and Medicaid). It is estimated that approximately 500,000 persons with developmental disabilities are dual eligibles. Specifically the CHAMP Act:

- Eliminate Part D cost-sharing for full-benefit dual eligibles living in community settings who, but for the provisioning of home and community-based care, would require institutional care;
- Allow Medicare Part D beneficiaries, beginning in 2009, to change Rx plans in the middle of the year if there is a “material” formulary change for a drug they have been prescribed. Many Medicare beneficiaries with developmental disabilities also have complex chronic health conditions requiring several medications. This provision will allow them to receive the medications they need; and
- Put into law special protections for six drug classifications (including anti-convulsants and antidepressants). Currently, CMS has a non-regulatory policy that requires Part D Medicare prescription plans to cover all or substantially all of the drugs in the six protected classes. This mandatory coverage policy is set year to year and can be abandoned at any point. The bill would make permanent the coverage requirements for the six classes. (Many people with developmental disabilities also have other conditions (such as epilepsy and/or mental illness and rely on anti-convulsants, antidepressants and other drugs covered in the six protected classes.)

In addition, the CHAMP Act contains a delay in the scheduled Medicare physician reimbursement cuts totaling 10% in 2008 and 5% in 2009 and replaces them with 0.5% increases in each of the next two years. Many physicians across the country have threatened to drop Medicare patients unless this reimbursement cut is restored.

Securing enactment of these important provisions for people with developmental disabilities is a high priority of the DPC staff and will require significant input from constituents.

At Last, Congress Passes Lobbying and Ethics Legislation

On January 3, 2006, lobbyist Jack Abramoff pleaded guilty to felony charges of conspiracy, mail fraud and tax evasion and shared with investigators specific details about a scheme to trade money, goods and favors for legislative action on behalf of the American Indian tribes and casinos he represented. After the plea was announced, Representative Tom DeLay (R-TX) stepped down permanently as House Majority Leader, and Congressional leadership vowed to change the way lawmakers work with lobbyists. But by the end of the 109th Congress, the only legislation to be enacted was a narrow House rules change requiring members to identify the earmarks (specific amounts of money to a specific entity) they insert into legislation.

Now, more than a year and a half after the Abramoff case, and a cascade of scandals related primarily to Republican members of Congress caught in the web of his dealings, both the House and Senate have passed a bill to increase disclosure for lobbying activities as well as for placing earmarks in legislation. Ironically, the Senate voted on the matter three days after

federal agents searched the Alaska home of longtime Senator Ted Stevens (R-AK) as part of a probe into alleged influence-peddling that involved legislative earmarks that benefited an energy company with which the Senator had ties.

At the heart of the Honest Leadership and Open Government Act of 2007 (S 1) are new reporting requirements for lobbyists' expenditures on Capitol Hill and conflict of interest provisions for Members of Congress. While the Act will give the public more information than ever before about contacts between lobbyists and Members of Congress, including the names of super-fundraisers whose "bundled" contributions to members' reelection campaigns can vastly exceed the \$2,300 limit on individual campaign donations. The House voted, 411-8, to pass the bill on July 31, and the Senate passed it, 83-14, on August 2. President Bush is expected to sign it.

Most of the provisions do not directly affect chapters of The Arc or UCP affiliates, but some do apply to non profit organizations, and all should be of interest to staff, board, volunteers and constituents.

Lobbying Disclosure

- ◆ Provisions that directly affect non profit organizations that advocate at the federal level include quarterly filing of disclosure reports of federal lobbying activities instead of the semi-annual ones now required.
- ◆ The bill requires that the reports be filed electronically in a public, searchable database.
- ◆ Civil and criminal penalties are increased for knowingly and corruptly violating lobbying disclosure rules.

Charity Events

- ◆ All charities, including those who retain or employ lobbyists, may continue to invite members of Congress, staff, and families to attend fundraising events free of charge, with the following conditions, the same ones that applied prior to January 2007.
 - The invitation to the event must come from the sponsoring charity and not another individual or organization.
 - The net proceeds of the event must benefit a charity.
 - Reimbursement of any related local transportation and lodging for the Member or Congressional staff must be paid by the sponsoring charity.
 - Members and staff still cannot accept entertainment collateral to the event or food or refreshments taken other than in a group setting with all or substantially all other attendees.

Campaign Contribution Disclosure

- ◆ Campaign committees for candidates must now file reports with the Federal Election Committee (FEC) listing lobbyists who gave \$15,000 or more in aggregated, or bundled, contributions during a six-month period.
- ◆ The FEC will have to provide access to the information in a form that can be searched and downloaded from the Internet.

- ◆ The FEC has to develop regulations six months after the law is enacted, and it will affect reports beginning three months after that.

Gifts, Events and Campaign Contribution Limitations

- ◆ The bill prohibits lobbyists and their clients from giving gifts, including free meals and tickets, to Senators and their staffs.
- ◆ The bill bars lobbyists and their private-sector clients from paying for multi-day travel trips by Senators and their staffs.
- ◆ Senators, candidates for Senate and presidential candidates will be required to pay charter rates for trips on private planes.
- ◆ House candidates are barred from accepting trips on private planes altogether.
- ◆ The bill prohibits Members of Congress from attending national political convention parties held in their honor and paid for by lobbyists or their clients.

Lobbying Restrictions for Former Congressional Members and Staff

- ◆ The legislation bars senators from lobbying colleagues for two years after they leave office.
- ◆ It retains the current one-year restriction for House members when they leave office.
- ◆ Senior Senate staff aides who are paid at least 75 percent of a member's salary (\$165,200) are barred from lobbying the Senate for a full year.
- ◆ House aides continue to be barred from lobbying the personal office, leadership office or committee where they formerly worked in the House for at least one year after becoming lobbyists.
- ◆ Former members who become lobbyists lose their "floor privileges," informal rules that allow former members to be on the floor while the chamber is in session.
- ◆ If a senator's spouse or immediate family member is a lobbyist, the bill requires the Senator to prohibit any "contact" with his or her staff. Currently, there is no restriction on lobbying activities by a spouse who married the Senator a year before the Senator joined the Senate or a year before the lawmaker's last election.

Earmarks and "Holds"

The bill will make lawmakers disclose more about their efforts to fund "pet projects" and projects that could help them raise money from lobbyists.

- ◆ It requires that all earmarks, including those in conference reports and their sponsors, be identified on the Internet at least 48 hours before the Senate votes.
- ◆ Provisions added in conference could be challenged through points of order that would need 60 votes to be waived.
- ◆ Senators' secret "holds" on legislation also would be banned. The "Senatorial Hold" is Senate custom, not part of actual Senate rules, which allows any Senator to delay legislation or a presidential appointment indefinitely. It can be done secretly, though the Senator's identity often is well-known, if not public.

Many in the Senate wanted stronger earmark provisions and claimed Senators could circumvent the requirements by saying prompt disclosure is not technically feasible, or by having the majority leader declare a bill "earmark-free."

Some of the bill's provisions took effect March 1 of this year in the House, which passed its internal version early this year. Other provisions (such as the lobbying disclosure provisions) do not take effect until January 1, 2008. The disparity in how some of the bill's provisions apply differently to the House and the Senate has raised questions about potential legal challenges by Senators or staff to protest the more stringent revolving-door restrictions for the Senate compared with the House. To see S. 1, go to <http://thomas.loc.gov/cgi-bin/query/D?c110:5:./temp/~c110etDZ9j>

What is an “earmark” anyway?

In the legislative appropriations process, Congress has within the powers granted under Article 1 Section 8 of the U.S. Constitution the ability to direct the appropriations of money drawn from the treasury. This includes the power to earmark funds to be spent on specific named projects.

Although the earmarking process is a regular part of allocating funds within the federal government, earmarks are a departure, over about the past decade, from the longstanding Congressional tradition of authorization and oversight. Moreover, they have exploded in number from a few hundred per bill to literally tens of thousands in some of the appropriations bills.

Each of the appropriations subcommittees has its own practices for determining whether and what kind of projects they are willing to earmark, and each sets rules for how earmark requests are to be received from Members, including setting deadlines and required format for submissions.

What are earmarks good for?

Allowing Members of Congress to earmark funds has a variety of purposes. For the Member of Congress, the earmark allows them to take credit for providing a project of interest to their constituents. Allowing earmarked projects is often a tool that Appropriations Committee chairs use to ensure that they can secure and hold the votes of Members of Congress to help their bill pass. An earmark directing specific projects to be funded allows agencies to bypass regulatory determinations over the matter, saving them administrative time and effort. Earmarks are frequently used to reward campaign donors, family members, and former staff, and can thus be at the center of Congressional scandals.

Isn't an earmark just an appropriation?

Earmarking differs from the broader appropriations process where Congress grants a lump sum to an agency to allocate according to the agency's legal authority, within the discretion allowed by law, according to the agency's internal budgeting process. Earmarks specifically direct the actions of federal agencies, obliging them to spend a portion of the budget on special projects as directed by Congress.

Earmarking is used for projects and spending directives large and small. The vast majority of earmarks are not controversial. Many non profit organizations receive earmarked funding for projects that benefit their local constituencies and those of the member of Congress who arranged the earmark. Some become controversial, however, for their cost, the perceived frivolous nature of the project or the perceived personal benefit to an individual.

While earmarks are a longstanding practice in Congress and will likely remain so, S.1 will have an impact on many of the traditions associated with earmarks, from how they are handled to how Members' home districts and pet projects might benefit. *Washington Watch* will keep you informed as the new law takes effect.

“VOICES FOR CHANGE” FROM THE TICKET TO WORK AND WORK INCENTIVES ADVISORY PANEL

The Ticket to Work and Work Incentives Advisory (TW & WIA) Panel released its report, *Voices for Change: Beneficiaries Paving the Way to Work* on July 16 to coincide with the 17th anniversary of the ADA. The report documents recommendations it received from beneficiaries of Social Security disability programs and/or Supplemental Security Income (SSI). This report marks one of the final efforts of the TW & WIA panel as set forth under the [Ticket to Work And Work Incentives Improvement Act \(TWWIA\) Of 1999](#).

History of TW & TWIA Program

The TWWIA was signed into law in 1999 after having been introduced in three successive Congresses. The law and the bills that preceded it resulted largely from Congress' growing concern with the increasing numbers of people with disabilities on the SSDI & SSI rolls. In addition, advocates had been continually pressing for changes to make it easier for people to work. Fortunately, the initial efforts that focused more on restricting eligibility for benefits gradually shifted towards focusing on the barriers to employment in the SSDI & SSI programs. This shift came about painstakingly only through the sustained efforts of the disability advocacy community.

TWWIA greatly advanced the employment agenda at the federal level for people with disabilities. The law introduced a number of substantive programmatic initiatives outlined in the table below.

Ticket to Work and Work Incentives Improvement Act Major Events Timeline

Activity	Year
Work Incentives Outreach Program	1999
Protection and Advocacy Services	
Medigap Suspension Protection	
Establish Work Incentives Advisory Panel	2000
SSA Report on All Income Disregards	
SSA Report on Demonstration Authority	
Premium-free Part A Medicare Extension Begins for people who go to work	

Activity	Year
State Medicaid Buy-in Authority Begins	
Medicaid State Infrastructure Grant Authority Begins	
Medicaid Demonstration Authority Begins	
Complete Ticket to Work Regulations/ Begin Ticket to Work Phase-In	
Work Incentives Advisory Panel First Report	
Ticket to Work Users Continuing Disability Review Protection from Work Activity	2001
Expedited Reinstatement of Benefits Authority Begins	
SSA Report on Demonstration of \$1 for \$2 Benefit Offset for Title II Beneficiaries	
Government Accountability Office Report on Substantial Gainful Activity Levels	
Full Continuing Disability Review Protection from Work Activity	2002
Government Accountability Office Report on Medicaid Options	
SSA Report on High Needs Beneficiaries	
HHS Report on Medicaid Potentially Severe Disabilities	
Work Incentives Advisory Panel 2004 Report	
Government Accountability Office Report on SSA Demonstration Effectiveness	
Government Accountability Office Report on Medicare Effectiveness and Cost	
Work Incentives Advisory Panel Terminates	2008
HHS Report on Medicaid Infrastructure Grant Continuation post 2011	2010

The Panel

Section 10(f) of the law authorized the TW & WIA Panel. This panel was created to advise the President, the Congress and the Commissioner of Social Security on issues related to work incentive programs, planning and assistance for individuals with disabilities, and the Ticket to Work and Self-Sufficiency Program established under the law. The panel consists of a bipartisan group of twelve private citizens, four of whom were appointed by the President, four by the Senate and four by the House of Representatives. They represent a cross-section of individuals with diverse racial and ethnic backgrounds and with diverse experience and expert knowledge as recipients, providers, disabled veterans, employers and employees in the fields of employment services, vocational rehabilitation and other disability related support services.

On February 6-7 of this year, the panel convened a summit in Atlanta, Georgia to obtain direct, unfiltered feedback from beneficiaries about Social Security programs and how they could be improved. Delegates to the summit were selected to represent all 50 U. S. states, the District of Columbia, Puerto Rico, U.S. Virgin Islands, American Samoa, and the Commonwealth of Northern Mariana Islands

What is the DPC's perspective on the beneficiaries' recommendations?

We strongly support the beneficiaries' recommendations. They are generally in line with our [Legislative Goals for the 110th Congress](#) and are consistent with policy recommendations we have been promoting for a number of years. There are, however, a few caveats and explanatory comments that we have included under several of the beneficiaries' recommendations where we believe additional information is needed.

What did the beneficiaries recommend?

The recommendations fall under three broad categories: I) Employment and work incentives, II) Health care and long term services and supports and III) program communication, procedures, and delivery. For this article, we present only the recommendations under the first two categories and excerpts on background information provided in the report.

I Employment and Work Incentives

- I.1 People with disabilities should be able to work and retain access to their health care and other necessary benefits.**
- I.2 Develop and implement a Work Support Program (WSP) that would:**
- Be voluntary
 - Have no income or asset limits
 - Provide a health care buy-in
 - Provide transitional cash benefits
 - Involve beneficiaries in the development and implementation of any new program, including the WSP.
- I.3 Raise the SSI resource limit to today's dollars (at least double - \$7,000 to \$10,000), indexing it with a cost of living adjustment (COLA), with more asset exclusions (allow asset development, savings, and retirement).**

Current Policy: In general, eligibility for the SSI program is limited to individuals with no more than \$2,000 and couples with no more than \$3,000 in assets. There has not been an increase in these resource limits in more than a decade, while the cost of living has increased dramatically.

- I.4 Change the SSDI extended period of eligibility (EPE) to not be time-limited if the beneficiary continues to be medically disabled.**

Current Policy: The SSDI extended period of eligibility (EPE) is a period of 36 consecutive months following the end of a trial work period (TWP). The current rules allow disability benefits to be reinstated during the EPE without a new application for any months in which the beneficiary is unable to work at the SGA level. The beneficiary must continue to have a disabling impairment in addition to having earnings below SGA for that month. Effectively, if the individual is not medically recovered, and does not work above SGA throughout the EPE and thereafter, he or she is eligible for benefits, but if they work above SGA they will lose those benefits. The problem is that many disabilities are episodic or recur at unpredictable times.

DPC Comment: The DPC is in agreement with the desired result of this recommendation but not the method to achieve it. We recommend enacting an earnings offset for Title I beneficiaries and streamlining the program so that it operates

more like the SSI program to ensure that beneficiaries remain protected when their income fluctuates. This includes elimination of the TWP and the EPE.

I.5 Remove the SSI marriage penalty.

Current Policy: There are several aspects of SSI that result in a marriage penalty. In general, when a person who is eligible for SSI benefits lives with a spouse who is not eligible for SSI benefits, SSA counts some of the spouse's income in calculating the SSI benefit. The government may reduce SSI benefits or end them if the beneficiary, the spouse, or anyone contributing to their support has significant income or resources. If the person becomes ineligible for SSI, Medicaid may also be terminated, which ends coverage for needed medical care and supports such as personal assistance. Benefits for a married couple, both of whom receive SSI and have no other income, amount to about 25 percent less than the total they would receive if they were living together but not as husband and wife.

DPC Comment: The DPC fully supports this recommendation and goes further in recommending that the marriage penalty also be removed from the Title II (OASDI) program beneficiaries. Many OASDI beneficiaries qualify as disabled adult children (DACs) who receive a percentage of their parent's income when they are single. If they marry, they may lose their DAC status which cannot be reinstated.

I.6 Raise the Substantial Gainful Activity (SGA) to \$1,200, and index it to provide a cost of living adjustment (COLA).

Current policy: Rules took effect on January 1, 2001 that increased SGA for people with an impairment other than blindness to \$740 a month and establishing that SGA will be automatically adjusted annually based on increases in the national average wage index. For 2007, the SGA amount is \$1,500 for people who are blind and \$900 for people with other significant disabilities. The SGA amount is used by SSA to determine whether or not an individual is considered to be disabled, and eligible for benefits.

DPC Comment: The DPC supports raising the SGA and continuing to index it to the cost of living. However, we support raising it to the same higher level (\$1,500) for people who are blind. The DPC supports uniform SGA levels for persons with significant disabilities, regardless of the type of disability.

I.7 Impose a statute of limitation on overpayments (e.g., 12 months or “no fault” if reported).

Current policy: Benefit eligibility and payment amounts for SSI and SSDI beneficiaries are determined by factors such as an individual's income, resource levels, and living arrangements. Individual circumstances often change, requiring reassessment. In many cases beneficiaries have experienced overpayments, despite accurate reporting of income, because of the unwieldy nature of program administration. In some cases, amounts and demands for repayment have been extreme. SSA already considers overpayments to be a significant problem and has

focused some efforts on reducing overpayments.

I.8 Create a short-term disability status that provides wage replacement when a prior beneficiary temporarily loses or reduces employment (possible enhancement to the expedited reinstatement (EXR) for SSI/SSDI)

Current policy: Effective January 1, 2001, an SSI or SSDI recipient who loses benefits due to wages can apply for reinstatement and have benefits reinstated (without a new application), if they apply within 60 months of the last month of eligibility, and they meet all eligibility requirements. EXR permits up to six months of provisional benefits while the request is processed.

DPC Comment: The DPC agrees with this recommendation in principle. However, we believe there are more viable options than creating a short term disability status. We oppose time-limited eligibility because it would require reapplication for benefits which can be particularly challenging for people with disabilities. We believe that improvements could be made to the EXR, such as removing the time limit. In addition, we promote changes to ensure that cash benefits are responsive to the fluctuating needs of a person as is the case with Title XVI (SSI) programs but not yet for Title II programs (OASDI).

I.9 Improve the Plan for Achieving Self-Sufficiency (PASS) Program:

- **Federal or State matching funds.**
- **Allow continuation of a successful PASS when completed, enhancing it to work toward greater self-sufficiency and expanded business opportunity.**
- **Better communication between PASS specialists and applicant during application (appeal/denial) process.**
- **Increase the number of trained PASS specialists available.**
- **Increase communication with youth about work incentives including PASS.**
- **Simplify and streamline PASS application forms and process.**

Current policy: The PASS is a work incentive that SSI beneficiaries can use to set aside income and/or resources for a specified time for a work goal. The PASS can be used to fund college degree programs, technical training, equipment purchases, starting or equipping small businesses, etc. It is very underutilized at present. Today, when the education or business goal of the PASS is completed, the PASS ends. For SSI beneficiaries, the PASS allows income to be applied toward the goal and protects resources (such as gifts toward college tuition), avoiding the loss of benefits due to exceeding income or resource limitations.

I.10 Involve beneficiaries in the development and implementation of any new program, including the proposed Work Support Program (WSP)

II Health Care and Long Term Services and Supports

- II.1 Offer payments, tax deductions and/or credits for family caregivers who provide personal assistant services and other supports for a person with a disability to go to work, to recognize the economic hardship on a family of a spouse or parent not working or working reduced time.**

DPC Comment: We strongly support this recommendation and believe it must also be extended to the general population in making preparations for possible disability in the future. This could be accomplished through a national long term care insurance program. The [Community Living Assistance Services and Supports \(CLASS\) Act of 2007 \(1758\)](#), which we have been actively pursuing, would create such a program. Eligible individuals could use the cash benefit to purchase community living assistance services, such as personal care assistants.

- II.2 Ensure that beneficiaries have access to a health care package that they can take to work, including self employment.**

- II.3 Remove the 24-month waiting period for Medicare.**

Current Policy: Under current law, people with new disabilities who qualify for SSDI must wait an additional 24 months before becoming eligible for Medicare. They have already waited the five month waiting period for SSDI. Many beneficiaries' SSDI benefits and resources do not allow them to qualify for SSI and Medicaid, and they are unable to obtain other health care coverage at an affordable price or at any price. Lack of insurance comes at the very time when they need it most, and many people are forced to delay treatment, skip medications, or otherwise compromise their recovery. Often, getting timely medical treatment is a stepping stone back to work.

What will happen with these recommendations?

The beneficiaries' recommendations are only suggestions for the President, the Congress, and SSA. There is no mandate for their implementation.

The next step would be to get legislative proposals (i.e. bills) introduced that incorporate the recommendations. After bills are introduced, they are usually assigned to one or more committees of jurisdiction. These committees would decide which bills to send out to the Congressional Budget Office (CBO) for cost estimates, a process known as "scoring." Scoring is basically the process of predicting what something will cost.

Not all bills are scored since it is a costly and time consuming process. A great deal of data must be compiled and analyzed to come up with sound estimates of the true cost of implementing a piece of legislation. For example, scoring Recommendation I.3 (Raise the SSI resource limit to today's dollars, etc), would entail getting valid estimates of the number of people with disabilities whose assets are valued between the current and proposed limits,

among numerous other calculations. The bottom line is that scoring is a very complex methodological process that, unfortunately, presents its own set of problems.

So what's the problem with the scoring?

CBO actuaries (statisticians who compute insurance risks and premiums) do not take into account certain cost offsets. For example, they would only look at the increased costs of providing greater benefits, not the money received as income tax from people with disabilities joining the workforce. This is because, according to their reasoning, *someone* will fill a given job and pay taxes, whether or not it is a person with disabilities.

Another problem is the “woodwork effect” assumption. Their assumption is that the better Congress makes SSA programs, the more likely people will “come out of the woodwork” to quit their jobs and collect benefits. Disability advocates question the validity of these assumptions about human behavior and point to the value of participating in the work force expressed by the majority of persons with disabilities.

Do the recommendations stand a chance of being adopted?

Proposals which are scored to cost a significant amount will face major hurdles in a Congress attempting to reduce the federal deficit. Many of the beneficiaries' recommendations have received high costs estimates in the past. However, despite their high cost and the unlikelihood of changes in CBO's scoring practice, some of the beneficiary recommendations stand a chance of being implemented if constituents are sufficiently mobilized, determined and persistent in their advocacy efforts.

To read the Panel's full report, see:

http://www.ssa.gov/work/panel/panel_documents/FINAL-Summit-Report-with-Photos.pdf