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SOCIAL SECURITY ADMINISTRATION FACING HIRING FREEZE AND OFFICE CLOSINGS; CONTINUES TO WORK ON DISABILITY BACKLOG

The Social Security Administration (SSA) is operating with its lowest staffing level in over 30 years and continues to face growing workloads at a time when aging baby boomers are beginning to retire and reach their most disability-prone years. Combined with years of Congressional appropriations that have fallen short of what the President and the SSA Commissioner have requested, the result is a hiring freeze across the agency. The only part of SSA exempted from the hiring freeze is the Office of Disability Adjudication and Review

(ODAR) where new Administrative Law Judges and support staff are needed to work on the backlog of disability cases on appeal.

Why Can't SSA Meet the Backlog of Hearings?

Even with the increased funding it received for Fiscal Year 2008, SSA will have limited resources to maintain its current level of services and drive down the hearings backlog. SSA must pay mandatory cost increases, such as rent, guards, postage, pay raises, and employee benefits, throughout SSA's 1,400 field and hearing offices. As some smaller office leases have come up for renewal in 2007, SSA has closed or consolidated 15 field offices.

If SSA Can't get Sufficient Funds, How will the Agency be able to Reduce the Backlog?

SSA is attempting to make up for some of these budget restrictions by making improvements in **efficiency**. The agency reports that it has increased overall productivity by an average of 2.5 percent per year since 2001.

What is SSA Doing to Improve Efficiency?

Commissioner Michael Astrue announced on October 9 that SSA had made progress toward making faster decisions on disability claims through the following:

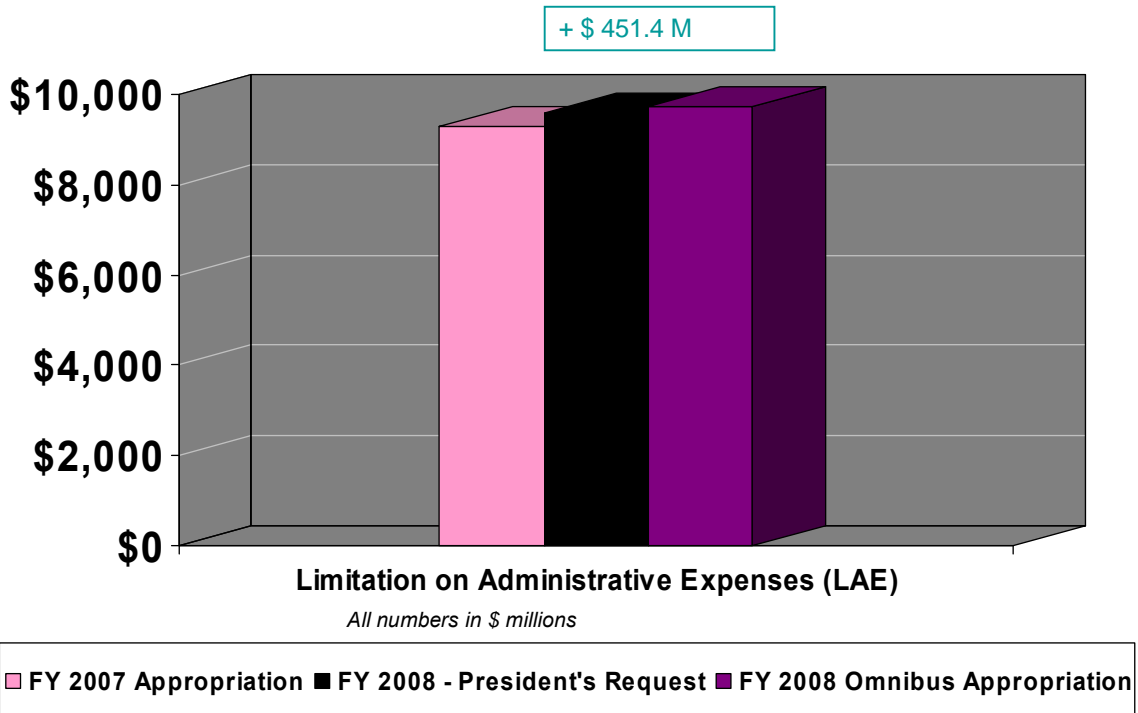
- **Issuance of a final rule on September 5, 2007 extending nationwide its Quick Disability Determination (QDD) process.** Under QDD, a predictive model analyzes specific elements of data within the electronic claims file to identify claims where there is a high potential that the claimant is disabled and where evidence of the person's allegations can be quickly and easily obtained. In New England, where the process was being tested, about 3 percent of all new cases were identified as QDD cases and processed in an average of 11 days. To date, Arizona, New Jersey and North Dakota have started using QDD as part of a staged national roll-out that will be completed early next year.
- **Elimination of virtually its entire backlog of FY 2007 "aged" disability hearings cases by using a special cadre of ALJs.** "Aged" cases, defined as cases pending 1,000 days or more, were reduced from 63,770 cases at the beginning of FY 2007 to 108 cases at the end of September. To build upon this progress, SSA will redefine "aged" cases as cases pending for at least 900 days and will again attempt to resolve all of these cases by the end of the fiscal year.
- **Reduction in the time it takes to process initial disability claims** by 6.3 percent from 88.4 days in FY 2006 to 82.8 days in FY 2007. This was accomplished through a number of actions, including increasing use of electronic files.
- **Establishment of a National Hearing Center (NHC)** so that a centralized cadre of Administrative Law Judges (ALJs) can use video hearing technology to hear cases in the most backlogged parts of the country. The technology now is in place, and the recruiting process for the first NHC judges has begun. SSA also plans to hire about 150 ALJs and some additional hearing office support staff in the spring of 2008.

“Our goal is to build upon this year’s achievements and, with the support of Congress, continue to improve the service we provide to millions of disabled Americans,” said Commissioner Astrue. “Without adequate support from Congress, however, we will not be able to make further progress – and we may even lose ground.”

How Much Money Did SSA Receive for its Administrative Needs?

The Arc and UCP worked in coalition with other advocates and with key Members of Congress over the last year to ensure that SSA receive the funds it needs for FY 2008. SSA received nearly \$9.75 billion in funding in the FY 2008 appropriations bill to fund the agency’s administrative budget ó this is \$451 million over the FY 2007 level. The increase is expected to cover necessary annual increases in staffing, rent, and security costs as well as hiring additional Administrative Law Judges and support staff to address the backlog crisis in disability cases waiting decisions on appeal.

SSA Funding



What Happens Next?

With the appropriations bill for FY 2008 now signed into law, the broad-based coalition has now turned its focus to appropriations for FY 2009. President Bush will unveil his FY 2009 Budget Request on February 4.

THE NEW BATTLEFRONT – REGULATORY POLICYMAKING IN THE BUSH ADMINISTRATION

Disability advocates often see legislation as the main vehicle to protect and advance the interests of people with disabilities, their families/caregivers, and service providers. There is, however, an equally important vehicle that tends to receive less attention from advocates ó **regulatory reform** ó which can be used for or against our interests.

What is the Administration Trying to Accomplish?

As the Bush Administration winds down in its final year, it is seeking to accomplish through regulatory reform what it has not been able to achieve through legislation. One of the Administration's main objectives has been to cut costs for the \$346 billion federal/state Medicaid program. It has sought to do so by limiting program eligibility and reimbursement for services for the 50 million citizens with disabilities and/or low income enrolled in the program. The Administration states that it is seeking regulatory changes to the Medicaid program in order to curb abuses and to require states to pick up a greater share of the tab.

Why is the Administration Using the Regulatory Strategy?

The Administration is taking this backdoor regulatory reform approach to cost cutting because it is far easier than through legislative reform. To begin with, the federal legislative process is more transparent and better understood by the public than is the regulatory process. Congressional hearings, press conferences, and other media events can bring attention to legislation in a way that does not happen for regulations. Such public attention often brings greater advocacy efforts and results in Members of Congress opposing legislation that would harm their constituents.

While most disability advocates' attention has recently been focused on the high profile bills like the State Children's Health Insurance Program (SCHIP) reauthorization, the Disability Policy Collaboration's staff has also been fighting the battle of regulatory change waged by the Bush Administration.

Which Proposed Regulations Should we be Most Concerned About ?

Two particular proposed regulations have been the focus of our efforts:

1 – The so called “rehab option” regulation. On August 13, the Centers for Medicare and Medicaid Services (CMS) published a notice of proposed rulemaking (NPRM) that would amend the definition of Medicaid rehabilitation services to prohibit payment for habilitation services. The Administration is seeking to save \$2.2 billion over 5 years by cutting habilitation services.

CMS indicates that it will work with states to transition habilitation services to other authorities in the Medicaid program, such as the Section 1915(c) Home and Community Based waivers or the new Section 1915 (i) Home and Community Based option. However, the problem with shifting these services to other authorities such as these is that services could then be capped and means tested, and states could be allowed to maintain waiting lists. The proposed rule appears to prohibit people with mental retardation and related conditions from receiving any services through the rehabilitation option.

This “rehab option” regulation will hit some states much harder than others. For example, Massachusetts could lose more than \$100 million a year and make it harder for tens of thousands of people with disabilities and other low-income groups to get health care, according to state officials, analysts, and advocates. This is because some states, like Massachusetts and New York, fund critical habilitation services for community living such as day habilitation, behavior development, and sensorimotor training, while other states do not.



Between 11 and 19 states will be affected if this proposed regulation takes effect. Potentially affected states are those that covered habilitation services in 1989 when Congress imposed a moratorium on CMS disallowing coverage of habilitation through the rehabilitation services option in Medicaid - AR, CT, DC, ID, IL, IA, MA, ME, MI, MO, NY, OH, RI, VA, WA, and WV.

2 - The school based administrative and transportation costs regulation. This NPRM issued on September 7 is the other Bush Administration Medicaid regulation of great concern to us. This proposed regulation restricts schools from being reimbursed for **certain** administrative and transportation costs for students with disabilities.

The Administration is seeking to save \$3.6 billion over 5 years by cutting these services. The DPC strongly opposes this draconian approach to reducing a few school districts inappropriately billing Medicaid. The vast majority of school systems affected by these cuts will have only one option to reduce services to the children, since school systems don't have funding to replace the lost Medicaid dollars. We believe that CMS should instead focus on enforcing its current rules against the relatively small number of school districts that engage in fraudulent billing practices.

What can Congress do about the Administration's Proposed Regulations?

Fortunately, Congress has the authority to delay the implementation of regulations through a legally authorized postponement known as a “**moratorium.**” A moratorium buys Congress time to review the regulations closely and propose needed revisions through legislation before the regulations go into effect.

Are the Administration's Proposed Regulations Limited to Medicaid?

No. The Administration's regulatory policy making is not limited to the Medicaid program and it is being taken even further by federal agencies. There have been numerous instances of agencies inserting language into regulations that substantially impacts programs, drawing increasing ire from Congress. For instance, the Senate Judiciary Committee recently held a hearing on federal agencies' practice of inserting into regulations language that removes consumers' ability to sue under state law those corporations whose products cause harm. Witnesses provided examples of federal agencies inserting preemption language into regulations, thereby usurping both expressed congressional intent and state law. Among the witnesses was the President of the National Conference of State Legislatures who provided several examples of CMS trying to change Medicaid statutory intent by issuing rules without Congressional authorization or consultation with state and local governments

What has the Disability Policy Collaboration Done to Help?

The Disability Policy Collaboration staff has taken a three-pronged approach to restricting the Administration's proposed regulations. They have:

1) Drafted comments to CMS in concert with our coalition partners outlining our concerns with the proposed regulations. These comments were shared with the chapters of The Arc and affiliates of UCP to provide guidance in development of comments.

These comments are posted at:

<http://www.thearc.org/NetCommunity/Page.aspx?&pid=209&srcid=183>

2) Worked with Members of Congress and their staff to ensure that the moratoria on the proposed regulations are included in legislation that gets signed into law before the regulations have a chance to take effect. This was just accomplished through the enactment on December 29, 2007 of the Medicare, Medicaid, and SCHIP Extension Act of 2007 (P.L. 110-173) which includes a moratorium through June 30, 2008.

(Unfortunately, this is just a temporary victory. For example, many school systems will begin preparing for the regulations to go into effect as they cannot count on the moratorium being extended or a new law fixing the problem to go into effect before the moratorium expires this summer.)

3) Worked with the staff of the Senate Health, Education, Labor and Pensions (HELP) Committee Chairman Ted Kennedy (D-MA) to draft a bill that would correct inappropriate Medicaid billing practiced by school systems. Senator Kennedy introduced [S. 578, the Protected Children's Health in Schools Act](#) in February. The House has a similar bill ([H.R. 1017](#)) sponsored by Energy and Commerce Committee Chairman John Dingell (D-MI).

What Can our Grassroots do to Help?

“Too often, such program changes are tried with little or no regard for the hurt it will cause the recipients of services. In the matter of the two current proposed rules under consideration, both will have a devastating impact on children and adults with intellectual and developmental disabilities” said Paul Marchand, the Staff Director of the The Arc and UCP Disability Policy Collaboration. “Parents and advocates must always remain diligent and active in protecting the services and supports we have worked so hard to achieve. Challenges like this surface all the time and we must never waver or be caught off guard.”

HIGHER EDUCATION BILL MOVING FORWARD INCLUDES GROUNDBREAKING PROVISIONS FOR STUDENT WITH DISABILITIES

The House Education and Labor Committee on November 14th and 15th marked up [H.R. 4137, the College Opportunity and Affordability Act of 2007](#). Like the Senate higher education reauthorization bill that was passed earlier this summer, H.R. 4137 includes groundbreaking provisions for students with intellectual disabilities such as including access to federal financial aid and new demonstration programs to expand the number of programs for students with intellectual disabilities.

What are the Key Provisions of the Bill?

I Improving Access to Higher Education for Students with Disabilities

- Model demonstration grants to ensure quality higher education including effective transition practices, distance learning and accessibility of education, including universal design for learning.
- A definition of universal design for learning.
- A national technical assistance center to provide information and technical assistance to improve post-secondary recruitment, retention and completion rates.
- An advisory commission on accessible instructional materials
- A national study on higher education access and success

- Model demonstration programs to support improved access to post-secondary instructional materials.
- Pell Grant and other need based scholarships.

II Preparing Special Education Teachers and General Education Teachers to Work with Students with Disabilities

- Title II Partnership grants requiring the mentoring component of the program to include instructing students with disabilities and implementing positive behavioral supports.
- Title II Partnership grants including the preparation of general education teachers in teaching students with disabilities, including how to participate as a member of an IEP team.
- Title II Pre-Baccalaureate Partnership grants which may focus on highly qualified special education teachers.
- Title II Recruiting Teachers with Math, Science of Language Majors which may focus on new special education teachers. Funds may be used to upgrade curriculum so all teacher candidates can differentiate instruction for students with disabilities.

III Preparing New Special Education Faculty

- The Graduate Assistance in Areas of National Need (GANN) program, which requires the Secretary to establish as a priority post baccalaureate study related to teacher preparation and pedagogy in special education and support of dissertation research.

How Many Post Secondary Programs are there for Youth with Intellectual Disabilities?

The legislation builds on exciting developments happening across the country. There are now over 120 postsecondary programs for youth with intellectual disabilities. The majority of the programs support students who are dually enrolled in high school and college, though a growing number support adults.

These programs help students with intellectual disabilities grow in a number of areas including academic and personal skill-building, employment, independence, self-advocacy and self-confidence. For more information about these programs see <http://www.thinkcollege.net/> or http://www.communityinclusion.org/article.php?article_id=178&type=topic&id=7

What Happens Next with the Higher Ed Bill?

The Senate bill (S. 1642) was passed in July and includes many similar provisions. The House and Senate need to appoint conferees to resolve the differences between the two bills.

HATE CRIMES BILL STALLED IN CONGRESS

Legislation to expand the hate crimes law to include people with disabilities has been introduced in each Congress for the last near decade. The language of the bill has remained virtually unchanged since it was first introduced in the 105th Congress. It has passed in the House and Senate in the last three Congresses, only to fail in conference committee each time.

What is a Hate Crime?

A hate crime differs from other crimes by the underlying motivation of the perpetrator against his or her target of aggression. If the victim is intentionally targeted because of a specific characteristic (such as race or religion) then a hate crime has been committed.

What's in the Hate Crimes Bill?

The bill contains two key provisions:

- 1) Federal funding to States, local jurisdictions, and Indian tribes to prosecute hate crimes; and
- 2) The addition of four categories of people (‘‘protected classes’’) to be covered by the hate crimes law. The hate crimes law allows for federal criminal charges to be brought against perpetrators who commit crimes of violence against individuals due to the individuals’ characteristics listed below.

Groups covered under the existing hate crimes law	Groups that would be added to the hate crimes law under the bill
Persons who are victimized due to their: <ul style="list-style-type: none">▪ race▪ color▪ religion▪ national origin	Persons who are victimized due to their: <ul style="list-style-type: none">▪ gender▪ gender identity▪ sexual orientation▪ disability

What Happened to the Hate Crimes Bill This Congress?

The House passed its stand-alone version of the bill, the Local Law Enforcement Hate Crimes Prevention Act of 2007([HR 1592](#)), in May by a 237-180 margin. As of the date of this publication, it had 171 cosponsors in the House.

The Senate added its version ([S. 1105](#)) to its reauthorization bill for the Department of Defense (DOD). The hate crimes provision was then stripped out of the DOD reauthorization bill in conference committee.

Why was the Hate Crimes Bill Put in the Defense Department Reauthorization Bill?

The Senate has considerable flexibility in how it crafts legislation. It may include seemingly unrelated provisions in a piece of legislation. Despite its looser rules, Senate supporters of the hate crimes bill felt strongly that this bill was relevant (or germane) to the Department of Defense due to the large number of veterans who have acquired disabilities from their service in Iraq and Afghanistan. They sought protections for veterans from hate crimes bill contained in the DOD reauthorization bill. Knowing that defense reauthorization was of the highest priority for President Bush, Senate leadership believed inclusion in the DOD bill offered the best chance to get the hate crimes bill passed.

The House, on the other hand, is not allowed to include provisions that are not directly relevant to a given piece of legislation (the "germaneness rule"). Despite strong Senate support for the bill, House leadership did not include the hate crimes bill in the House DOD reauthorization bill after determining that it would not likely pass the germaneness test and that they lacked sufficient votes to override a Presidential veto.

Why Does the Administration Oppose the Hate Crimes Bill?

There are three aspects of this bill that made it particularly vulnerable to Presidential veto:

1. The President has not been favorable of any legislation which offers perceived "rights" to gay and lesbian individuals.
2. Questions were raised regarding the incidence of hate crimes and people with disabilities. Administration officials questioned whether law enforcement or disability agencies had data indicating that this was a wide-spread occurrence.
3. The White House generally opposes further federalizing of law enforcement and stated that there was "no need to federalize such a potentially large range of violent crime enforcement."

What are the Bill's Prospects in 2008?

While House Speaker Nancy Pelosi (D-CA) has stated that she remains committed to the issue, Senators Ted Kennedy (D-MA) and Carl Levin (D-MI), two of the bill's biggest Senate supporters, did not offer much optimism about its prospects in 2008. This bill remains a polarizing issue and is therefore unlikely to resurface in this election year.