

Volume 6, Issue 3
May - July, 2008

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MEDICAID REGULATIONS MORATORIA BILL PASSED

In a huge victory for the disability community, the recently enacted Emergency War Supplemental Appropriations bill contains moratoria on six Medicaid regulations. Three of the Medicaid regulations affect health care providers (e.g. public hospitals) and nursing homes and three affect services for people with disabilities.

Which of the Medicaid Regulations Affect People with Disabilities?

Regulation	Description	Changes would impact
Rehabilitation Services (Rehab) Option	Narrowed scope of rehab services. See comments to CMS	<ul style="list-style-type: none"> ② Day habilitation such as independent living skills training and communications skills training
School-Based Administration and Transportation Services	Prohibited all Medicaid payments for school-based administration and most transportation services. See Comments to CMS	<ul style="list-style-type: none"> ② Transportation ② Occupational therapy ② Physical therapy ② Speech/language therapy
Case Management and Targeted Case Management	Restricted coverage of transitional case management. See Comments to CMS	<ul style="list-style-type: none"> ② Transition from institutional care to the community

How Long Do the Moratoria Last?

The moratoria are in effect until **April 1, 2009**. This means that the Centers for Medicare and Medicaid Services (CMS) at the U.S. Department of Health and Human Services cannot take any action to implement these rules or deny states claims for reimbursement for services covered by these rules. The next Congress will now have time to carefully consider the proposed rules and develop responsive legislation, if necessary.

What Would Have Happened if the Medicaid Regulations Had Gone Into Effect?

Had these moratoria not been enacted, there would have been **significant cuts in services** for Medicaid beneficiaries with intellectual and other developmental disabilities as described below.

Rehabilitative Services (“rehab option”) Habilitation services (a variety of services that enable an individual to maximize independent living skills) would have been transferred from the rehab option to the waiver program. Since waiver programs are capitated (i.e., States can limit the number of people receiving them) fewer people would have received habilitation services. In addition, since eligibility criteria for the rehab option differs from eligibility for the waiver, there would have been some people who would have lost services if habilitation was covered only through the waiver.

**School-based
Administrative
Services/
Transportation**

The education and disability communities believed that this rule would have had a devastating impact on school systems across the country. The rule eliminated Medicaid reimbursement for administrative costs such as those associated with enrolling school aged children in Medicaid. School administrators estimated that these cuts would have forced them to severely reduce related services (e.g. physical, occupational and speech and language therapies) and classroom aides provided to students with disabilities in special education.

**Case
Management/
Targeted Case
Management**

This rule made it significantly more difficult for individuals transitioning from institutions to the community by reducing federal reimbursement for transitional case management from the last 180 days of an individual’s institutional stay to the last 60 days. In many cases, due to the lack of affordable and accessible housing and challenges in securing support services, it is difficult to impossible to transition to the community in 60 days.

What’s Next?

The disability community, including The Arc and UCP, will monitor the moratoria and evaluate what steps are needed to ensure that services are not cut in the future.

**NEW MEDICARE LAW INCLUDES MANY IMPROVEMENTS
FOR BENEFICIARIES WITH DISABILITIES**

July 15, 2008 marked an important milestone for the Medicare program. The House and Senate successfully overrode the President’s veto of the [Medicare Improvements for Patients and Providers Act of 2008 \(H.R. 6331\)](#).



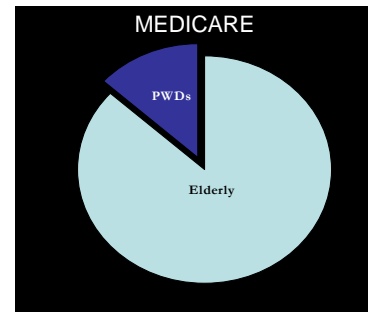
Despite broad bi-partisan support on the initial vote to pass the bill, President Bush vetoed the legislation on July 15. Three hours later, the House of Representatives overrode his veto by a vote of [383-41](#). Shortly thereafter, the Senate overrode the veto by a vote of [70-26](#), making the bill law.

Why Did the Bill Have Such Strong Support in Congress?

The primary purpose of the legislation was to avoid a 10.6% cut in physician reimbursements which would have taken effect on July 1, 2008. The law freezes physician payment rates at 2008 rates and will increase reimbursement by 1.1% for 2009. Two very powerful constituencies which would have been most affected by the cut in physician reimbursement – physicians and the elderly – worked hard for the bill’s passage.

How Many People with Disabilities are in the Medicare Program?

About 5 million Americans under age 65 qualify for Medicare coverage because they are severely disabled. People with disabilities (PWDs) account for 15.3% of total enrollment in the Medicare program and this percentage is expected to grow significantly in coming years. They are more likely than the elderly to live in poverty, to be in poor health, and have few options other than Medicaid for obtaining needed health care.



What Provisions of the Law are Most Important to People with Disabilities?



Extension of Exceptions Process for Therapy Caps.

- ② Extends the exceptions process for 18 months and also separates out speech/language and physical therapy so now there is an \$1,810 cap on each of the three therapies. In 1997 a cap of \$1,810 per year was enacted for occupational physical, speech, and language therapies. A few years later, an exceptions process was enacted that has allowed Medicare beneficiaries to get the therapy services they need *most* of the time. The exceptions process was set to expire on July 1, 2008.



Delay in Competitive Bidding for Durable Medical Equipment (DME).

- ② Delays the roll-out of CMS' competitive bidding program for durable medical equipment (e.g. power wheelchairs), prosthetics, orthotics, and supplies for 18 months. The program's roll-out began in ten metropolitan statistical areas on July 1, 2008. The disability community, including The Arc and United Cerebral Palsy, was very concerned that the competitive bidding program would adversely affect access to and quality of services for people with significant disabilities who use power wheelchairs and complex rehabilitation devices ("high end" power wheelchairs). The law also permanently excludes complex rehabilitation devices from the bidding program.



Parity in Co-Insurance for Outpatient Mental Health Services.

- ② Brings mental health coinsurance to parity with other services by decreasing co-insurance by 5% each year until it reaches 20%. Thus, in the first year, the coinsurance will be 45% and Medicare will pay 55%; in the second year the beneficiary's coinsurance will be 40% and Medicare will pay 60%. Parity (i.e. 80-20%) will be reached in six years. (Prior to enactment of H.R. 6331, Medicare beneficiaries were required to pay 50% coinsurance for outpatient mental

health services - unlike the 20% coinsurance they pay for other Medicare outpatient services.)



Part D Prescription Drug Benefit.

- ⑦ Codifies the Secretary of the U.S. Department of Health and Human Services (HHS) current guidance relating to coverage of the six “protected classes” of drugs. The six protected classes are: anticonvulsants (used to treat epilepsy), antidepressants, antineoplastics (cancer drugs), antipsychotics, antiretrovirals (HIV drugs) and immunosuppressants (for organ transplants). Every year, since the inception of Part D the HHS Secretary has used his discretion to require Medicare prescription drug plans to cover six protected classes in their formularies (drugs covered by the plan). Up to now, his decision has been discretionary and not enforceable. H.R. 6331 strengthens this policy by giving it the force of law.
- ⑦ Covers Benzodiazepines and Barbituates (for certain conditions). The original Part D benefit excluded coverage of these drugs which are often used by people with epilepsy and mental illness. As of January 1, 2013, Benzodiazepines will be covered for all beneficiaries and Barbituates will be covered for the treatment of epilepsy, cancer and mental health disorders. Implementation of this coverage was delayed until 2013 because of the benefit’s cost.
- ⑦ Prohibits certain sales activities of Medicare Advantage and Part D drug plans, including door-to-door sales, cold calling, free meals, and cross selling of non health-related products, effective for the 2010 plan year. It also requires the Secretary of the U.S. Department of Health and Human Services (HHS) to limit co-branding, gifts and commissions, and requires plans to abide by state appointment laws affecting agents and brokers.



Special Needs Medicare Advantage Plans.

- ⑦ Limits cost sharing for dual eligible (those who receive Medicare and Medicaid benefits) beneficiaries enrolled in specialized Medicare Advantage plans to what they would have otherwise paid under Medicaid.



Prevention

- ⑦ Authorizes the HHS Secretary to cover new preventive services under the Medicare National Coverage Determination process that are recommended by the U.S. Preventive Services Task Force.
- ⑦ Makes improvements to the "Welcome to Medicare Visit," including waiving the deductible and extending eligibility for the physical from 6 months to 1 year.

Other Provisions

- ⑦ Increases funding for State Health Insurance Assistance Programs (SHIPs), Aging and Disability Resource Centers, and other programs to help enroll potential Medicare beneficiaries with low-incomes in programs that can assist



them (such as the Part D prescription drug benefit and the Medicare Savings Plan which assists low income individuals in paying Medicare Part B premiums).

- ② Sets up incentive payments for e-prescribing (medical provider to pharmacist via electronic mail) with reductions in payment beginning in 2012 for those who do not adopt e-prescribing. Health and budget experts believe that e-prescribing, by reducing medical errors, will improve quality and reduce costs. A Government Accountability Office (GAO) study is also required to evaluate data mining and its impact on the privacy and security of personal health information.

How Much Will the Medicare Law Cost and How Will It be Financed?

The entire bill costs approximately \$20 billion over five years. Much of the cost will be offset by reductions in payments to Medicare Advantage plans (private fee-for-service plans). The law reduces payments to the plans by about \$14 billion over five years.

Why did The President Veto the Bill?

In his veto message, President Bush wrote that although he supports delaying the reduction to physician fees, the bill would reduce "access, benefits and choices for all beneficiaries" because of the cuts to Medicare Advantage plans. However, the Medicare Payment Advisory Commission (MedPAC), an independent Congressional agency, has stated that Medicare Advantage plans are over reimbursed by 12% as compared to traditional Medicare reimbursement. This means that the federal government pays Medicare Advantage plans roughly \$1,000 more per beneficiary per year than it would cost to cover the same person through traditional Medicare.

APPROPRIATIONS PROCESS STALLED

In a rare occurrence during a Presidential election year, the U.S. Congress passed its [FY 2009 Budget Resolution \(BR\)](#) in early June. The Resolution would spend approximately \$24.5 billion more than the Administration on discretionary spending. President Bush, in his State of the Union Address, threatened to again veto any appropriations bill that would spend above the amount he requested in his Budget Request.

Passing the BR prompted the House and Senate Appropriations Committees to begin work on the twelve FY 2009 Appropriations bills to fund federal agencies and programs. The Senate was on track to complete markups of all of its appropriations bills in full committee before the summer recess.

The Labor, Health and Human Services, Education and Related Agencies (L-HHS-Ed) and Transportation and Housing and Urban Development (T-HUD) appropriations bills were both passed by their respective House Subcommittees. The House process, however, ground to a halt when the Appropriations Committee Chairman, David Obey (D-WI), summarily cancelled the full Appropriations Committee mark up on the L-HHS-Ed bill when Republicans tried to add amendments related to oil drilling.

There are no further mark ups scheduled, placing the entire FY 2009 appropriations process in jeopardy. The status of the two appropriations bills of greatest interest to the disability community is shown in the table below.



Appropriations	House Approvals			Senate Approvals			Conference Approvals			Public Law
	Committee Report	Committee Vote	House Vote	Committee Report	Committee Vote	Senate Vote	Conf. Report	House Vote	Senate Vote	
Labor/HHS/ Education S3230				S.Rept. 110-410	6/26/08					
Transportation/ HUD S3261				S.Rept. 110-418	7/10/08					


Given the White House veto threats and the stalemate in the House, it appears that the new fiscal year starting on October 1 will require a Continuing Resolution (CR) to keep the federal programs operating.



What Happens to Disability Program Funding under a Continuing Resolution?

Under a CR, most programs are frozen at current FY 2008 levels. This actually represents a 4% cut due to the rate of inflation. The CR would be in effect until at least March, 2009 when the 111th Congress and the new President would attempt to resolve the FY 2009 appropriations issues for the remainder of the fiscal year. The result of a CR would be to freeze the following programs at their “FY 2008 Actual” levels shown below.

Appropriations Recommendations for FY 2009 (in \$ millions)

PROGRAMS BY FEDERAL AGENCY	FY 2008 Actual	FY 2009 President	FY 2009 House*	FY 2009 Senate	FY 2009 DPC
 DEPARTMENT OF LABOR					
Workforce Investment Act					
Adult Employment	850.0	712.0	861.5	864.2	987.9
Youth Activities	924.0	891.0	924.1	930.5	1,093.4
Office of Disability Employment Policy	26.7	12.4	20.9	26.7	47.5
Work Incentives Grants	14.0	0	20.2	14.4	28.0
 DEPARTMENT OF HEALTH AND HUMAN SERVICES					
Health Resources and Services Administration					

PROGRAMS BY FEDERAL AGENCY	FY 2008 Actual	FY 2009 President	FY 2009 House*	FY 2009 Senate	FY 2009 DPC
Maternal & Child Health Block Grant	666.2	666.2	675.0	664.3	850.0
Universal Newborn Hearing Screening	11.8	0	14.0	11.8	12.0
Autism and other Developmental Disorders	36.4	36.4	42.0	42.0	18.0
Administration for Children and Families					
Developmental Disabilities Act Programs					
Basic State Grants – Councils on DD	72.5	72.5	74.2	74.5	80.0
Protection & Advocacy Systems -- DD	39.0	39.0	40.0	40.0	45.0
University Centers for Excellence in DD	36.9	37.0	36.9	38.9	41.0
Family Support	7.2	7.2	7.2	7.2	17.0
Other Projects of National Significance	7.0	7.0	7.0	7.0	7.0
Grants to States to Remove Barriers to Voting	12.2	12.2	12.2	12.2	25.0
Protection & Advocacy for Voting Access	5.3	5.3	5.3	5.3	10.0
Centers for Disease Control and Prevention					
Birth Defects, Developmental Disabilities, & Health	127.3	126.	133.7	133.9	144.4
National Institutes of Health					
Natl. Institute of Child Health and Hum. Development	1,254.7	1,255.9	1,299.1	1,290.9	1,341.0
Natl. Inst. of Neurological Disorders & Stroke	1,543.9	1,545.4	1,598.5	1,588.4	1,611.5
Lifespan Respite Care Act	0	0	5.0	0	53.3
Social Services Block Grant	1,700.0	1,200.0	1,700.0	1,700.0	1,700.0
Nat'l Family Caregiver Support Program	153.4	153.4	153.4	155.0	250.0
 DEPARTMENT OF EDUCATION					
Individuals with Disabilities Education Act					
State and Local Grants Part B	10,947.5	11,284.5	11,551.5	11,424.5	12,560.0
Preschool Grants	374.1	374.1	374.1	374.1	944.0
Early Intervention Part C	435.7	435.7	435.7	443.2	770.0
Part D National Programs					
State Personnel Development	22.6	48.0	22.6	48.0	159.5
Technical Assistance and Dissemination	48.0	48.0	48.0	49.0	159.5
Personnel Preparation	88.2	88.2	88.2	93.2	180.0
Parent Information Centers	26.5	26.5	26.5	27.5	95.7
Technology and Media	39.3	30.9	36.9	40.3	106.0

PROGRAMS BY FEDERAL AGENCY	FY 2008 Actual	FY 2009 President	FY 2009 House*	FY 2009 Senate	FY 2009 DPC
Rehabilitation Services Administration					
Rehabilitation State Grant	2,874.0	2,874.0??	2,974.6	2,974.6	3,120.0
Client Assistance Programs	11.6	11.6	11.6	11.6	16.0
Rehabilitation Training	37.8	37.8	37.8	37.8	42.7
Demonstration and Training Programs	10.2	8.8	7.4	8.9	28.1
Recreational Programs	2.5	0	2.5	2.5	3.0
Protection & Advocacy for Individual Rights	16.2	16.2	17.0	17.2	22.0
Projects with Industry	19.2	0	19.2	19.2	50.0
Supported Employment State Grant	29.2	0	29.2	29.2	50.0
State Assistive Technology Programs and TA	25.6	25.6	32.0*	25.6	32.3
Protection & Advocacy for Assistive Tech.	4.3	0	**	4.3	6.0
National Institute for Disability & Rehabilitation Research	105.7	105.7	105.7	107.7	120.0
Higher Education					
Demonstration Projects-Disability	6.8	0	6.8	6.8	10.0
 SOCIAL SECURITY ADMINISTRATION					
Limitation on Administrative Expenses	9,745.0	10,327.0	10,427.0	10,377.0	11,000.0
 HOUSING AND URBAN DEVELOPMENT					
Section 811 Supportive Housing for Persons with Disabilities	237.0	160.0	250.0	250.0	237.0
Vouchers Targeted to Nonelderly People with Disabilities	30.0	0	30.0	0	50.0
 DEPARTMENT OF TRANSPORTATION					
5310 Program	127.0	133.5	133.5	133.5	133.5
New Freedom Program	87.5	92.5	92.5	92.5	92.5

* House appropriations subcommittees only.

** It is unclear from the House Subcommittee materials how the assistive technology funding is split between the program, the technical assistance and the protection and advocacy programs.

TESTIMONY PROVIDED IN STRONG SUPPORT OF HOUSING BILL

In June, leaders from The Arc and UCP were invited to provide testimony before the House [Subcommittee on Housing and Community Opportunity](#) on affordable housing for people with disabilities. Dr. Ron S. Cohen, Chief Executive Officer of UCP of Los Angeles, Ventura, and Santa Barbara Counties and Tony Paulauski, Executive Director of The Arc of Illinois, gave testimony in strong support of [H.R. 5772, the Frank Melville Supportive Housing Investment Act of 2008](#).

Which Members of Congress Were There?

The hearing was well attended with Representatives Maxine Waters (D-CA) [Chairwoman], Shelley Moore Capito (R-WV) [Ranking Member], Christopher Murphy (D-CT), Judy Biggert (R-IL), Emanuel Cleaver, II (D-MO), Al Green (D-TX), and William Lacy Clay, Jr. (D-MO) in attendance.

What is the Bill About?

H.R. 5772, introduced by [Rep. Christopher Murphy \(D-CT\)](#) and [Rep. Judy Biggert \(R-IL\)](#), aims to increase the amount of affordable, supportive housing available for people with disabilities. The bill has three main components:

- ② **Reform the traditional Section 811 production program by eliminating excessive bureaucratic requirements.**
- ② **Reform the Mainstream Housing Choice Voucher Program.** The bill will shift fiscal responsibility for the Mainstream Housing Choice Voucher Program from the U.S. Department of Housing and Urban Development (HUD) Section 811 program to the Section 8 program where it belongs. Mainstream Housing Choice Vouchers have never created new permanent supportive housing units and are not targeted to people with the most serious and long-term disabilities. By shifting the Mainstream voucher funding to the traditional Section 8 program, funds will be freed up for production of new units.
- ② **Create the Section 811 Project Rental Assistance Contract (PRAC) Demonstration Program.** The PRAC program will “fast-track” and sustain the creation of thousands of new permanent supportive housing units every year.

What Happened at the Hearing?

Members asked a number of questions throughout the proceeding that were indicative of their understanding of the housing crisis and their support for H.R. 5772. No one raised any concerns about the bill and nearly all talked about the need for housing for people with disabilities in their home districts.

A panel of five gave compelling testimony in strong support of the legislation, including Dr. Cohen and Mr. Paulauski.



"Affordable housing is becoming unaffordable to the non-profits who develop affordable housing," stated Dr. Cohen. He explained that it takes 5 - 7 years to build a few units of affordable, accessible housing and described a project he initiated in Burbank. "Our costs increased by 25% for this \$4 million project... that's one million dollars that then had to come out of program services like feeding and bathing." The added costs stem from bureaucratic delays in processing paperwork for HUD's 811 program. "We need to speed up the process," he exhorted.

"In order to access community living in Illinois, the individual with a developmental disability or the family must be in a crisis situation," stated Mr. Paulauski. He described a situation he called, "how terminal is terminal?" by telling the story of Sara, a young woman with significant disabilities whose mother was dying of cancer. "The state needed to ask when the mother was going to die and wanted documentation from the Mayo Clinic... This is the situation in Illinois." He used this and other examples to call for the swift passage of H.R 5772 which would triple the number of new affordable and accessible supportive housing units.



Read the full testimony of all panelists by clicking on their names below:

- 🔗 [Ms. Diane Randall](#), Executive Director, Partnership for Strong Communities
- 🔗 [Ms. Ann O'Hara](#), The Technical Assistance Collaborative
- 🔗 [Mr. Ronald S. Cohen, Ph.D.](#), Chief Executive Officer, United Cerebral Palsy of Los Angeles, Ventura & Santa Barbara Counties
- 🔗 [Mr. Mark Shelburne](#), North Carolina Housing Finance Agency
- 🔗 [Mr. Tony Paulauski](#), Executive Director, The Arc of Illinois

View the archived webcast of the hearing at:

http://www.house.gov/apps/list/hearing/financialsvcs_dem/hr062008.shtml

What's Next?

The [House Financial Services Committee unanimously passed the bill on July 30](#). A vote in the full House may occur in September. Advocates are working on a companion Senate bill.

NEW TICKET TO WORK REGULATIONS GO INTO EFFECT

On July 21, new regulations for the Ticket to Work program went into effect.



What is the Ticket to Work Program?

The Ticket to Work and Work Incentives Improvement Act of 1999 established the Ticket to Work program along with other provisions intended to improve **work incentives** for people with disabilities who receive benefits from the Supplemental Security Income (SSDI) and Social Security disability programs.

The Ticket to Work program is designed to increase the number of service providers, known as **Employment Networks (ENs)**, available to assist beneficiaries with disabilities in acquiring skills and work opportunities to become less dependent on SSI and Social Security disability benefits.

Why Were New Ticket to Work Regulations Issued?

Unfortunately, the Ticket to Work program has never been utilized to the extent advocates had hoped. Critics believe that it was due to flaws in the design of the first set of regulations to implement the program. The recently published revised regulations are designed to address a number of the issues which have arisen in implementation of the program.

What are the Major Changes in the New Ticket to Work Regulations?

Expanded eligibility. The regulations increase the eligibility for the ticket to include beneficiaries who are in the category of **Medical Improvement Expected (MIEs)**. These are individuals who have disabilities that are considered likely to improve, but who have not yet been reviewed for continuing disability. The result is that eligibility has been expanded to all adult beneficiaries between the ages of 18 through 64.

Improved Employment Network (EN) Payment System. The structure of payments to ENs that work successfully with beneficiaries in meeting their vocational goals has been revised. Beneficiaries will be eligible for more services through providers earning **milestone payments** earlier in the Ticket to Work process. It is expected that providers would receive milestone payments for lower levels of beneficiary earnings, which recognizes that some beneficiaries may work for lower wages and/or part time before they become self-supporting. This should give the beneficiary more time to adjust to their employment situation. In addition, the payments for SSI beneficiaries will be approximately the same as those paid for Social Security disability beneficiaries, eliminating any potential disincentives to provider for serving SSI beneficiaries.

Improved Coordination between VR and EN. Finally, the regulations promote coordination of services provided by vocational rehabilitation (VR) agencies and ENs. It will no longer be necessary for VR agencies to have tickets assigned for cost reimbursement. A VR agency working with beneficiaries could provide education and training and,

subsequently, an EN could provide continuing employment supports. The EN and VR agency could both be paid by SSA sequentially for the same individual. According to the *Ticket to Work Proposed Regulations Overview*, SSA believes that these proposed regulations will encourage more organizations to become ENs, increase partnering between organizations, increase services offered to beneficiaries, improve coordination of services to beneficiaries, and increase choices for beneficiaries.

See SSA's new Ticket to Work website for more information on the new regulations:

<http://www.socialsecurity.gov/work/newregs.html>.

What is the Disability Community Doing in Response?



A team of UCP affiliates is currently engaged in a project to develop training materials on the Ticket to Work program and business models for affiliates to use as they consider **becoming employment networks**. [Easter Seals UCP North Carolina](#), [UCP Land of Lincoln](#) and [UCP of Greater Birmingham](#) are the three affiliates. They plan to also research best practices of employment networks and provide help to affiliates who wish to become employment networks. For more information, contact Greg Gonthier, MPA Community Work Incentives Coordinator & UCP Ticket To Work Project, Easter Seals UCP North Carolina, 33 Darlington Ave. Wilmington, NC 28403, 910-794-9488, (F) 910-794-9088.

THE ADA AMENDMENTS ACT (FORMERLY THE ADA RESTORATION ACT)

Despite having 245 co-sponsors in the House, the ADA Restoration Act (ADARA) stalled in the both the House and Senate in the spring. The business community strongly lobbied that the ADARA (H.R 3191, S. 1881), as introduced, was an expansion of the existing law and not simply restoration. Lacking the needed bipartisan support to push the bill through, [House Majority Leader Steny Hoyer \(D-MD\)](#) requested that the disability and business communities attempt to agree upon compromise language.



The disability and business communities began a lengthy series of negotiations in the early part of the summer. Once compromise language was finalized between the negotiators, the House introduced its new, negotiated language as a full replacement of the ADARA. Noting the significant changes to the original bill, the ADARA was renamed the ADA Amendments Act (ADAAA) and passed the House by a margin of [402-17](#) on July 25th, 2008.

What Would the ADA Amendments Act Do?

ADAAA would address much of the weakening of ADA protections created by Supreme Court decisions:

- ⑦ Individuals whose disabilities can be mitigated by medication or adaptive equipment could again be considered a person with a disability no matter how well the disability is managed;
- ⑦ The statute would state that “disability should be broadly construed”;
- ⑦ The bill would reject much of the Supreme Court decision (*Toyota v. Williams*) which makes it difficult people with disabilities to show that they are “substantially limited in a major life activity” and therefore qualify for ADA protection;
- ⑦ “*Substantially limited*” in a major life activity would now be defined as “*materially restricted*,” however this new term remains undefined;
- ⑦ Individuals who are “regarded as” having a disability and discriminated against based on a perceived or real disability would have a wider door through which to qualify for protection. Individuals who come in under this prong would not have to meet the new definition of “substantially limits a major life activity,” but they would not be eligible for reasonable accommodation; and
- ⑦ Several examples of major life activities in the statute reflect activities and bodily functions which can be affected by intellectual and developmental disability.

Are Any Other Groups Expressing Concern about the ADAAA?

While much of the business community now supports ADAAA, the education community has voiced concern. On July 15th, the Senate Health, Education, Labor, and Pensions (HELP) Committee convened a public roundtable meeting entitled, "Determining the Proper Scope of Coverage for the Americans with Disabilities Act." At the roundtable, the education community raised concerns that proposed changes to the definition of disability under ADAAA would trigger an abundance of accommodation eligibility for students in the K-12 system and higher education. A concern for maintaining academic standards was also raised. Proponents of the ADAAA noted that eligibility for service (i.e. qualifying as a person with a disability) doesn't mean that reasonable accommodation is necessary.

Are There Any Other Issues with the Bill?

Yes. It is expected that various additional amendments will be proposed throughout the process. In addition, some members of the HELP Committee are requesting that “materially restricted” be defined in the statute. This would be a difficult negotiation between the various communities affected by the outcome and the Senate. Others are suggesting that the “disability will be broadly construed” language has no precedent and should be removed from the statute. There is disagreement on this interpretation.

Can the ADAAA be Passed This Year?

The ADAAA has a reasonable chance of passing this Congress. Senator [Tom Harkin \(D-IA\)](#), pictured at left, is championing the bill, and Ranking HELP Committee Member [Mike Enzi \(R-WY\)](#), center, and longtime ADA supporter Senator [Orrin Hatch \(R-UT\)](#), right, said they hope to pass “a bill” this year if compromises can be reached.



ADAAA’s success in this Congress hinges on three factors:

- ① **Time.** Given an expected shortened Congressional calendar, there are very few work days left and a growing list of Congressional priorities.
- ② **Consensus.** By the end of September, all parties need to agree upon any changes to the bill.
- ③ **Presidential support.** The Administration recently issued a statement of “significant concern” regarding the House bill as passed. Any changes made in the Senate would have to sway the President about his expressed concern.

NEW PROTECTIONS FOR AIRLINE PASSENGERS WITH DISABILITIES



On May 31, the Department of Transportation (DOT) issued reorganized and updated Air Carrier Access Act (ACAA) regulations. The ACAA, enacted by Congress in 1986, prohibits airlines from discriminating against passengers with disabilities.

To Whom Do the New Regulation Apply?

The new rule will apply to **foreign air carriers** operating flights that begin or end in the United States and to **U.S. air carriers** worldwide. Passengers flying to Europe, Asia, or other destinations on foreign air carriers now will have similar protections against discriminatory policies and be entitled to the same accommodations as passengers flying on U.S. carriers. The Department will now be able to better take enforcement action against a foreign carrier if it discriminates against an individual because of his or her disability on flights to or from the United States.

What Do the New Regulations Do?

The new regulations generally appear to benefit people with disabilities. However, there are a few changes that do not. Gains (+) and losses (-) are summarized below.

		Under the new regulations, carriers are:
Movable arm rests	+	Required to ensure that movable aisle armrests are proportionately provided in all classes of service. For foreign carriers, the requirement applies to new aircraft ordered after May 13, 2009 or delivered after May 13, 2010 (retrofitting has never been required). Further, when carriers remove any of the old seats on existing aircraft and replace them with newly manufactured seats, half of the replacement aisle seats must have movable armrests.
Power Wheelchairs	-	No longer required to carry a power wheel chair in the cabin, even if it could be disassembled to fit on board. Carriers may require that power chairs be transported in the luggage section.
Safety Assistants	-	Allowed to require a “safety assistant” for an individual with a mobility impairment so severe that he/she cannot physically assist in their own evacuation. The previous regulation did not require physical assistance; the ability to provide oral directions was considered sufficient.
Medical Oxygen	+	Required to allow the use of portable oxygen concentrators (POCs) in the passenger cabin. POCs must, however, meet applicable safety, security and hazardous materials requirements for safe use aboard aircraft. Concentrators do not contain compressed oxygen, so are not considered a hazardous material. They provide oxygen from the air in the plane. Passengers planning to use POCs may be required to give advance notice and early arrival, and must carry batteries sufficient to last 150% of longest flight time.
Flight Information	+	Required to include easy-to-read captions for the hearing-impaired in its safety and informational videos. Airlines also must promptly provide the same information to hearing- and vision-impaired passengers that it provides to other passengers in airport terminals or on the aircraft – such as information on boarding, flight delays, schedule changes, weather conditions at the flight’s destination, connecting gate assignments, checking and claiming of baggage, and emergencies. The rule does not specify how carriers should make this information available to passengers who are deaf or hard of hearing.
Service Animals	-	Allowed to require passengers who use emotional support or psychiatric service animals to provide advance notice of their intent to travel and/or supporting documentation– not the case with service animals in general.
Intra-terminal transportation	+	Required to ensure that any intra-terminal transportation (e.g., shuttle vehicles, moving sidewalks) within their area of control is accessible.

Pre-boarding	+	Required to provide pre-boarding to passengers with disabilities for airlines that do not assign seats in advance.
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The full text of new regulations is available at:

<http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=DOT-OST-2004-19482>. It is the last document (1298) listed in docket DOT-OST-2004-19482

When Do the Regulations Go Into Effect?

Generally, the new provisions of the rule will be effective on **May 13, 2009** to give carriers enough time to implement them.

Are these Regulations Final?

Yes. However, DOT intends to seek further comment in a supplemental notice of proposed rulemaking (SNPRM) about whether airlines should be required to provide medical oxygen to passengers upon request. The SNPRM will also address subjects such as accessibility of airline web sites, automated ticketing kiosks, and in flight entertainment systems.

NEW BUS BILL TO BECOME LAW

On July 14, the [Over-the-Road Bus Transportation Accessibility Act of 2007 \(H.R. 3985\)](#) passed the Senate and was cleared for signature by the President. The bill will expand accessibility requirements for transportation provided by an over-the-road bus.

What is an “Over-the-Road Bus”?



An over-the-road (OTRB) bus is characterized by an elevated passenger deck located over a baggage compartment, as shown in the picture at left. They are commonly operated by large terminal to terminal companies (such as Greyhound), charter services, and “curbside” operators (commonly referred to as “Chinatown buses” in the north eastern corridor.)

What Has Been the Problem?

Curbside buses in particular have had a poor track record of meeting Americans with Disabilities Act (ADA) standards, limiting low cost bus travel by people with disabilities. Several newspaper articles have highlighted problems that individuals with disabilities have

encountered in trying to ride curbside buses, including a March 2, 2006 Washington Post investigation, which revealed that 11 companies that operate in the Northeast corridor had violated ADA regulations.

Why Have Some OTRBs Not Faced Consequences of Violating the ADA?

DOT's 1998 regulations require vehicle modifications to accommodate individuals with disabilities - by 2006, 50% of vehicles in the fleet must be accessible, and by 2012, 100% must be accessible.

However, the [Federal Motor Carrier Safety Administration \(FMCSA\)](#), the agency responsible for ensuring that the over-the-road bus industry complies with DOT regulations, did not believe it had the **authority** to consider ADA compliance in licensing.

What Prompted the Bill?

Congressional leaders had urged DOT to fix the problem. When DOT refused, Rep. Peter DeFazio (D-OR), John J. Duncan (R-TN), John Mica (R-FL) and Rep. James Oberstar (D-MN) introduced the bill to give DOT the explicit authority.

What Will the "Over the Road Bus" Law Do?

Impose accessibility requirements. The bill amends federal transportation law to add as a registration condition for motor carriers of passengers that a carrier be willing and able to comply with specified accessibility requirements for transportation provided by an over-the-road bus.

Improve enforcement of regulations. The bill also directs the Secretary of Transportation and the Attorney General to enter into a memorandum of understanding to delineate the specific roles and responsibilities of DOT and the Department of Justice, respectively, in enforcing carrier compliance with such requirements.