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CONGRESS RETURNS, BUT FOR HOW LONG?

The House and Senate ended their August recess and resumed legislative business on Monday, September 8, in what is expected to be a short whirlwind of legislative activity. Given that most Members of Congress want to be home campaigning in October, the House and Senate are expected to wind up critical business by the end of September or early October. Bills likely to pass are those with strong bi-partisan support and those which have already passed in either the House or the Senate.



How Much Longer will the 110th Congress be in Session?

Until very recently, there was no expectation that the 110th Congress would return following the November elections for a lame-duck session, unless there were an unanticipated emergency. In fact, as recently as last week, House Speaker Nancy Pelosi (D-CA) had indicated that she was *not* planning for a lame duck session, and that Congress would adjourn as expected in late September or early October.

However, House Minority Leader John Boehner (R-OH) has indicated that Hurricane Gustav and the issues regarding offshore oil drilling have significantly increased the possibility of a lame duck session. House Majority Whip James Clyburn (D-SC) has also said that a lame duck session is becoming increasingly likely.

September						October						November						December									
	1	2	3	4	5	6				1	2	3	4							1		1	2	3	4	5	6
7	8	9	10	11	12	13	5	6	7	8	9	10	11	2	3	4	5	6	7	8	7	8	9	10	11	12	13
14	15	16	17	18	19	20	12	13	14	15	16	17	18	9	10	11	12	13	14	15	14	15	16	17	18	19	20
21	22	23	24	25	26	27	19	20	21	22	23	24	25	16	17	18	19	20	21	22	21	22	23	24	25	26	27
28	29	30				26	27	28	29	30	31		23	24	25	26	27	28	29	28	29	30	31				

current session

Possible lame duck session

Others on Capitol Hill note that much will depend on the dynamics created by the results of the November elections. The outcome of the Presidential election as well as any change in the Congressional majority-minority ratio will help determine whether a lame duck session is called. Those same dynamics would also impact what legislation might move forward as both parties seek to advance their interests in the situation most favorable to them. In the meantime, current expectations remain that the Congress will adjourn within 3 to 4 weeks.

What Does This Mean for Priority Disability Bills?

There are many important pending disability bills (see following table) in Congress and few, if any, are likely to be signed into law in the very short timeframe left in the 110th Session of

Congress. The one that stands the best chance is the **ADA Amendments Act**, which is expected to be voted on by the Senate in the next couple of weeks.

Federal Disability-related Legislation	Introduced in		Passed by		Passed by Conference
	House	Senate	House	Senate	
Civil Rights					
ADA Amendments Act (S. 3406 , H.R. 3195)	7/26/07	7/31/08	6/25/08		
Community based services					
Community Living Assistance Services & Supports Act (S. 1758 , H.R. 3001).	7/11/07	7/10/07			
Community Choice Act (S. 799 , H.R. 3001)	3/21/07	3/17/07			
Direct Support Workforce					
Fair Home Health Care Act (S. 2061 , H.R. 3582)	9/19/07	9/18/07			
Direct Support professionals & Fairness Act (H.R. 1279)	3/1/07				
Education					
IDEA Full Funding Act (S. 1159)		4/19/07			
Employment					
Small Business Fairness in Contracting Act (H.R. 1873)	4/17/07		5/10/07		
Health Care					
Promoting Wellness for Individuals with Disabilities Act (S. 1050 , H.R. 3294)	8/1/07	3/29/07			
Protecting Children's Health in Schools Act (S. 578 , H.R. 1017)	2/13/07	2/13/07			
Children's Dental Health Improvement Act (S. 739 , H.R. 1781)	3/29/07	3/1/07			
Paul Wellstone Mental Health and Addiction Equity Act (H.R. 1424 .)	3/9/07	1/22/07	3/5/08		
The Medicare Independent living Act (H.R. 1809 , S. 2103)	3/29/07	9/26/07			
Ending the Medicare Disability Waiting Period Act (S. 2102 , H.R. 154)	1/4/07	9/26/07			
A bill to provide for a temporary increase of the Federal medical assistance percentage under the Medicaid program (S. 2620 , H.R. 5268)	2/7/2008	2/8/2008			
Housing					

Federal Disability-related Legislation	Introduced in		Passed by		Passed by Conference
	House	Senate	House	Senate	
Frank Melville Supportive Housing Investment Act (H.R. 5772)	4/10/2008				
Section 8 Voucher Reform Act (SEVRA) (H.R. 1851 , S. 2684)	3/29/07	3/13/08	7/12/07		
Human Services					
Pathways to Independence Act of 2007 (S. 1730)		6/28/07			
Expanding the Promise for Individuals With Autism Act (S. 937 , H.R. 1881)	4/17/07	3/20/07			
Long Term Services and Supports					
Financial Security Accounts for Individuals with Disabilities Act (S. 2743 , H.R. 2370)	5/17/07	3/11/08			
Disabilities Savings Act (S. 2741 , H.R. 2370)	5/17/07	3/11/08			
Prevention					
Advancing FASD Research and Prevention Act (S. 2141 , H.R. 6215)	6/9/08	10/4/08			
Research					
Christopher and Dana Reeves Paralysis Act (H.R. 1727 , S. 1183)	3/28/07	4/23/07	10/15/07		
Transportation					
Passenger Rail Investment and Improvement Act (H.R. 6003 , S. 294)	5/8/07	1/16/07	6/11/08	10/30/07	
Victimization					
Crime Control and Prevention Act (S. 2237)		10/25/07			
Patient Safety and Abuse Prevention Act (S. 1577 , H.R. 3078)	7/18/07	6/7/07			
Local Law Enforcement Hate Crimes Prevention Act (S. 1105 , H.R. 1592)	3/20/07	4/12/07	5/3/07		
Voting					
Vote Integrity and Verification Act (S. 559 , H.R. 811)	2/5/07	2/13/07			

What Happens to All These Bills in the 111th Congress?

Basically, the legislative process has to start all over again. Fortunately, it is much easier to move legislation forward that has already been supported by returning Members of Congress. We can usually count on Members to sponsor, co-sponsor, or vote for bills they supported in a previous Congress.

The Arc and United Cerebral Palsy (UCP) will be working with other disability organizations to begin prioritizing our legislative goals for the 111th Congress. In addition, The Arc and UCP will attempt to influence the transition of the newly elected Administration.

APPROPRIATIONS AND ECONOMIC STIMULUS UNCERTAIN



It is unlikely that Congress will finish the critical business of the appropriations bills needed to keep the federal government and federal programs running after the close of Fiscal Year 2008 on September 30. The appropriations bill for the Department of Defense and Military Construction/ Veteran's Affairs are thought to be the only appropriations bills which might make it through the entire legislative process on time.

Instead, funding for all other federal programs and agencies is expected to be included in an omnibus Continuing Resolution (CR) bill which would fund the vast majority of federal government programs at current levels for a period of time. Observers predict that a CR which carries the government at level funding through March 2009 is most likely scenario, unless a lam duck session is used which would mean a shorter CR timeframe, at least for the immediate future.

Are There any Other "Must Pass" Bills of Interest to the Disability Community?

While it is possible that legislation that we support, such as the ADA Amendments Act might pass, House Democratic leadership support passage of a **second economic stimulus bill**. However, President Bush remains in opposition to another stimulus package.

Why are We Interested in a Stimulus Bill?

We are working with a coalition of Medicaid stakeholders (organizations representing beneficiaries, providers, unions, states and other advocates for low-income individuals) to seek a temporary increase in the federal government's share of Medicaid spending, known as

the FMAP (Federal Medical Assistance Percentage). Other issues such as jobs, food stamps, and low income energy assistance may also be part of a new stimulus package.

Why is a Temporary FMAP Increase Needed?

As in all economic downturns, states are facing significant budget hardships due to decreased tax revenue. According to an August 5, 2008 Center on Budget and Policy Priorities report “At least 29 states plus the District of Columbia, including several of the nation’s largest states, faced an estimated \$48 billion in combined shortfalls in their budgets for fiscal year 2009”.

TABLE 1: SIZE OF FY2009 BUDGET GAPS		
	Amount	Percent of FY2008 General Fund
Alabama	\$784 million	9.2%
Arizona	\$1.9 billion	17.8%
Arkansas	\$107 million	2.5%
California ^{1 2}	\$22.2 billion	21.3%
Connecticut	\$150 million	0.9%
Delaware	\$217 million	6.4%
District of Columbia	\$96 million	1.5%
Florida	\$3.4 billion	11.0%
Georgia	\$245 million	1.2%
Illinois	\$1.8 billion	6.6%
Iowa	\$350 million	6.0%
Kentucky	\$266 million	2.9%
Maine	\$124 million	4.0%
Maryland	\$808 million	5.5%
Massachusetts	\$1.2 billion	4.2%
Michigan ¹	\$472 million	4.9%
Minnesota	\$935 million	5.5%
Mississippi	\$90 million	1.8%
Nevada	\$898 million	13.5%
New Hampshire	\$200 million	6.4%
New Jersey	\$2.5 - \$3.5 billion	7.6 - 10.6%
New York	\$4.9 billion	9.1%
Ohio	\$733 million - \$1.3 billion	2.7 - 4.7%
Oklahoma	\$114 million	1.6%
Rhode Island	\$430 million	12.6%
South Carolina	\$250 million	3.7%
Tennessee	\$468 million - \$585 million	4.2 - 5.2%
Vermont	\$59 million	5.1%
Virginia	\$1.2 billion	6.9%
Wisconsin	\$652 million	4.8%
TOTAL	\$47.6 - \$49.2 billion	9.3 - 9.7%
¹ These states have not yet adopted budgets for FY2009. ² In a special session earlier this year, California adopted measures to close \$7.0 billion of this shortfall. A gap of \$15.2 billion remains to be closed. Assumes that FY08 gap would have carried over to FY09.		

Source: The Center on Budget and Policy Priorities - <http://www.cbpp.org/1-15-08sfp.htm>

State Medicaid budgets shrink as the economy worsens. In addition to lower tax revenues to fund the program, program eligibility and enrollment increase. A recent Kaiser Family Foundation study found that a one percent increase in the national unemployment rate increases enrollment in Medicaid and the State Children's Health Insurance Program (SCHIP) by one million, increasing State spending by approximately \$1.4 billion.

What Legislative Proposals to Increase FMAP are Pending in Congress?

Rep. Frank Pallone (D-NJ), Chairman of the House Energy and Commerce Committee's Health Subcommittee and Rep. Peter King (R-NY), a longtime Medicaid advocate, have introduced legislation ([H.R. 5268](#)) to provide a temporary 2.95% increase to a state's FMAP for a temporary period (through September 30, 2009). States would not be able to decrease eligibility during this period. Sen. John Rockefeller IV (D-WV), Chairman of the Senate Finance Committee's Health Subcommittee, has introduced companion legislation ([S. 2620](#)). How any of these proposals are added to a new stimulus package remains uncertain.

NATIONAL AFFORDABLE HOUSING TRUST FUND ACT ENACTED

The National Affordable Housing Trust Fund Act, which was included in the American Housing Rescue and Foreclosure Prevention Act of 2008, was signed into law on July 30. [Public Law 110-289](#) creates the Trust Fund to be an investment to develop 1.5 million new units of rental housing affordable to very low-income and extremely low-income households. The law:



- Requires at least 90% of the funds to be used for the production, preservation, rehabilitation, or operation of rental housing.
- Allows up to 10% to be used for the following homeownership activities for first-time homebuyers: production, preservation, and rehabilitation; down payment assistance, closing cost assistance, and assistance for interest rate buy-downs.
- Requires at least 75% of the funds for rental housing to benefit extremely low income households and all funds must benefit very low income households.

The National Affordable Housing Trust Fund Act is the first new federal housing production program specifically targeted to extremely low income households since the Section 8 Housing Choice Voucher program was created in 1974.

Why is the Trust Fund So Important to People with Disabilities?

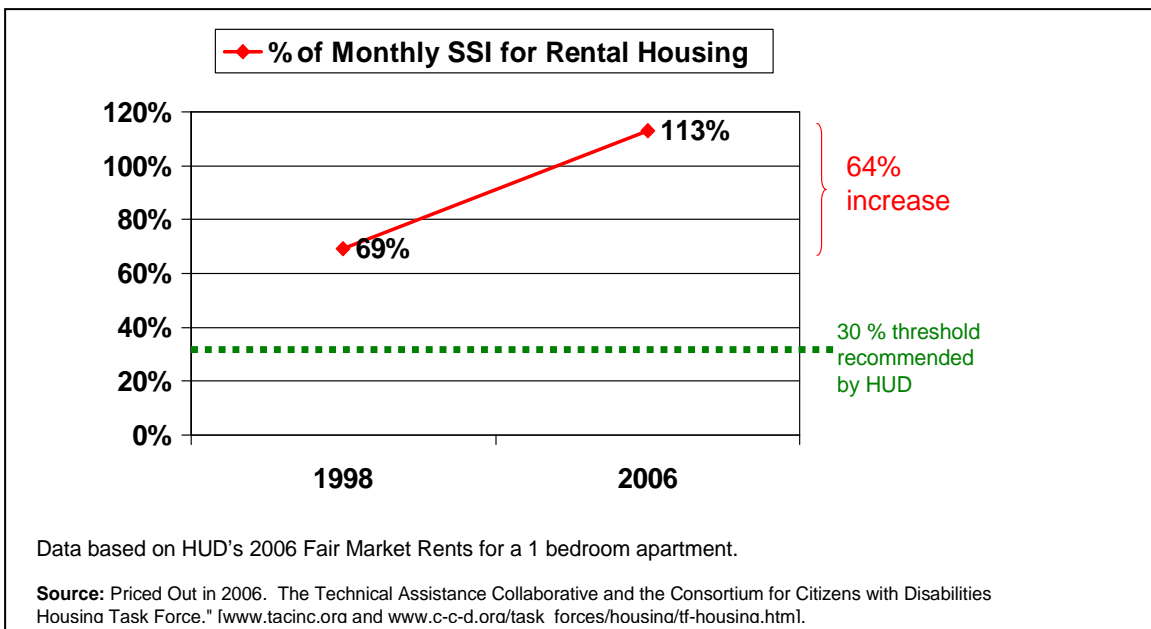
People with disabilities who rely on Supplemental Security Income (SSI) are amongst the poorest of all Americans. Their income is only 18% of area median income. Therefore they

face an enormous crisis in accessing safe, affordable housing in this country. Finding affordable wheelchair-accessible housing is even more difficult.

According to the *Priced Out in 2006*, a report which compares the monthly SSI income of people with serious and long-term disabilities to local U.S. Department of Housing and Urban Development (HUD) Fair Market Rents for modestly priced one bedroom and studio/efficiency rental units:

- the national average rent for a modest one-bedroom unit was \$715 per month -- equal to 113.1 percent of monthly SSI payments (which on a national average were \$632 per month);
- studio/efficiency rents were \$633 per month -- 100.1 percent of monthly SSI income;

Further, the trend in increasing housing costs for people who rely on SSI in the last several years is alarming, increasing by 64% between 1998 and 2006.



Will the New Housing Units be Accessible for People with Disabilities?

Yes. Units built with Trust Fund dollars will be required to comply with the accessibility requirements of Section 504 of the Rehabilitation Act of 1973. If state funding is used in the creation of any units, the accessibility requirements of state law will apply as well. This will dramatically increase the availability of affordable units for people who use wheelchairs and other mobility devices.

How will the Trust Fund be Paid for?

The Housing Trust Fund is a permanent program with dedicated source of funding that is not subject to the annual Congressional appropriations process. Funds for the Housing Trust Fund will come from annual contributions made by Fannie Mae and Freddie Mac

(government sponsored entities) starting in 2010. Prior to 2010 Fannie Mae and Freddie Mac profit contributions will be used for a reserve fund to prevent mortgage foreclosures. However, it is unclear how the recent government takeover of Fannie Mae and Freddie Mac will affect the implementation of the Housing Trust Fund Act in 2010.

HIGHER EDUCATION OPPORTUNITY ACT BECOMES LAW (P.L. 110-315); INCLUDES GROUNDBREAKING PROVISIONS FOR STUDENTS WITH INTELLECTUAL DISABILITIES



On August 14th President Bush signed the [Higher Education Opportunity Act \(H.R. 4137\)](#) into law. This law (P.L. 110-315) reauthorizes the federal government's major student-aid programs and other important postsecondary education initiatives. It enacts the most significant federal efforts to date to assist students with disabilities to access, participate and succeed in postsecondary education programs including groundbreaking provisions for students with intellectual disabilities.

How Does the Law Assist Students with Intellectual Disabilities?

The law authorizes model comprehensive transition and postsecondary programs for students with intellectual disabilities. This is a new program and will require appropriations to begin in FY 2009. Since the appropriations process is stalled, implementation of the program will be delayed.

Funds are to be used to establish or expand high quality inclusive programs that:

- Provide individual supports and services for the **academic and social inclusion** of students with intellectual disabilities in academic courses, extracurricular activities and other aspects of the institutions' regular program.
- Provide a focus on **academic enrichment; socialization; independent living**, including self-advocacy skills; and integrated work experiences and career skills that lead to gainful employment;
- Integrate **person centered planning** in the development of the course of study for each student participating in the model program;
- Partner with one or more local education agencies to support the **participation in the model program** of students with intellectual disabilities who are still eligible for special education and related services under IDEA, including the use of funds available under the Individuals with Disabilities Education Act (IDEA) State Grant (Part B).

- Plan for the **sustainability of the model program** after the end of the grant period; and
- Create and offer a **meaningful credential** for students with intellectual disabilities upon the completion of the model program.

How Does the Law Define Students with Intellectual Disabilities?

For the purposes of the new programs, the law defines a student with an intellectual disability to be a student:

- With mental retardation or a cognitive impairment, characterized by (a) significant limitation in intellectual and cognitive functioning and (b) adaptive behavior as expressed in conceptual, social and practical adaptive skills; and
- Who is currently, or was formerly, eligible for a free appropriate public education under IDEA

Is Financial Aid Available to Assist Students with Intellectual Disabilities To Afford these Educational Programs?

Effective July 1, 2008 students with intellectual disabilities may be able to receive work study, Pell grants and other financial aid if they are enrolled in a comprehensive transition and postsecondary education program as described above and meet other requirements as established by the institution of higher education.

Are There Federal Standards for These Programs?

P.L. 110-315 authorizes the establishment of a coordinating center for institutions of higher education that offer inclusive comprehensive transition and postsecondary programs for students with intellectual disabilities to provide recommendations related to the development of standards and components of the programs, to provide technical assistance and to develop tools to evaluate these programs.

Are There Existing Post Secondary Programs 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.communityinclusion.org/article.php?article_id=178&type=topic&id=7 and <http://www.thinkcollege.net/>.

What Other Provisions Support Students with All Types of Disability in Postsecondary Education?

P.L. 110-315 creates and expands a number of programs to assist students with disabilities to participate and succeed in postsecondary education programs including:

- Reauthorizing the Programs to Ensure Students with Disabilities Receive A Quality Higher Education, including new activities for the development of effective transition practices, improved distance learning strategies and improvements in the overall accessibility of higher education.
- A New Advisory Commission on Accessible Instructional Materials in Postsecondary Education for Students with Disabilities to study and develop recommendations related to instructional materials for students with print disabilities in postsecondary education, focusing on the barriers, systemic issues and technical solutions that affect or may improve the timely delivery of such materials.
- A new Model Demonstration Program to Support Improved Access to Postsecondary Instruction Materials in specialized formats for students with print disabilities is authorized.
- A new National Center for Information and Technical Support for Postsecondary Students with Disabilities to improve the dissemination of best practices related to working with postsecondary students with disabilities, to provide information to assist students and their families select and access appropriate postsecondary educational opportunities and to improve the recruitment, retention and completion rates for students with disabilities.
- A provision modifying the student loan discharge and cancellation right in cases where an individual has or develops a permanent and total disability. The new language replaces the term “permanent and total disability” with individuals who are unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death, has lasted for a continuous period of not less than 60 months or can be expected to last for a continuous period of not less than 60 months. If a person can meet that standard of disability their student loans will be discharged.

How Does the Law Address Teacher Quality and Training?

The reauthorization of the Higher Education Opportunity Act contains numerous provisions to improve teacher preparation and address shortages of faculty and personnel including. Most of the programs are new and will require appropriations in order to be implemented.

There are provisions for:

- Expanding the teacher quality partnership program to improving the preparation of teachers and school administrators who work in preschool, elementary and secondary education to better meet the specific learning needs of diverse learners.
- Calling on teacher preparation programs to better integrate technology into their curricula and instruction consistent with the principles of universal design for learning.

- Providing clinical experiences during pre-service training and induction and mentoring programs for new teachers.
- Providing Grants to institutions of higher education to provide fellowships for individuals pursuing doctoral degrees and intending to subsequently train special educators in institution of higher education.

KERRY-GRASSLEY BILL INTRODUCED TO MAKE IMPROVEMENTS TO THE MEDICAID HOME AND COMMUNITY-BASED SERVICES OPTION

Senators John Kerry (D-MA) and Charles Grassley (R- IA) introduced the [Empowered at Home Act \(S. 3327\)](#) in July to make improvements to the newly established Medicaid Section 1915(i) State Plan Amendment Option for Home and Community Based Services (HCBS), referred to as the “*HCBS option*”



What is the HCBS Option?

It is an opportunity that became available in 2006, through the Deficit Reduction Act of 2005, for states to:

- Expand access to community services without having to apply for a waiver.
- Meet the community services needs of people with disabilities who do not meet the level of care requirements for HCBS *waiver* programs (Section 1915(c)) and institutional-based services.

What Does a State Have to Do to Use the HCBS Option?

- File a Medicaid state plan amendment.
- Establish stricter eligibility (level of care) criteria for institutional services than for community-based services.

Are Many States Using the HCBS Option?

No. While there are many important aspects of the new Section 1915(i) option, **states have been reluctant to use it** due to limitations in:

- 1) The range of services they can cover. Under the current law, states are only allowed to cover about 5% of the approximately 200 different kinds of services covered under HCBS waivers.
- 2) The range of incomes of beneficiaries they can cover. States are only allowed to cover people with annual incomes below 150% of the federal poverty level (\$15,600 for an individual residing in the 48 contiguous states, DC, and outlying jurisdictions).

What Major Improvements Are in the Empowered at Home Act?

Current Law for HCBS options services	Improvements contained in the Empowered at Home bill
Allows states to cover <i>some, but not all, of the services</i> now covered under HCBS waivers.	Allows states to provide <i>the full range</i> of services that can currently be provided under the HCBS waiver (including “other services” approved by the Secretary).
Limits coverage to people with incomes below 150 percent of the federal poverty rate.	Removes the limit on coverage of people with incomes up to 150 percent of poverty and allows the full range of income eligibility allowed for people in facility-based settings.
Allows states to cap the number of people to be served	Removes the authority for states to cap services.
Allows states to maintain waiting lists for these services.	Removes the authority for states to maintain waiting lists for HCBS option services.
Allows states to provide these services in limited areas of the state	Eliminates the states’ ability to limit services to certain sections of the state.
Gives HCBS option beneficiaries who do not meet any new criteria established by the state in the future grandfathering protection for as little as 1 year.	Fully protects those beneficiaries receiving services if the state should change the eligibility criteria in the future.

There are also other important provisions in the law related to:

- **Spousal impoverishment.** The bill ensures that the same spousal impoverishment protections offered for new nursing home beneficiaries will be in place for those opting for home and community based services. In addition, states could allow low-income beneficiaries of HCBS services (both waiver and option services) to keep more of their assets when they become eligible for Medicaid, allowing them to stay in their community as long as possible.
- **Tax benefits.** The bill addresses the financial needs of spouses and family members caring for a loved one by offering a tax credit to support family caregivers and by adding the purchase of meaningful private long-term care insurance to allowable expenditures for flexible spending accounts.
- **Quality of services.** The bill seeks to improve the overall quality of home and community based services available by providing grants for states to invest in organizations and systems that can help to ensure a sufficient supply of high quality workers, promote health, and transform home and community based care to be more consumer-centered.

What Happens Next?

S. 3327 has been referred to the Senate Finance Committee. Senators Kerry (D-MA) and Grassley (R-IA) are both Members of the Finance Committee and Senator Grassley is the Ranking Minority Member of the Committee.

The Arc and UCP will work with Senators Kerry and Grassley to increase support for the legislation and to work for its passage in the 111th Congress, which will begin in January 2009.

DISABILITY COALITION SUBMITS COMMENTS ON PROPOSED IDEA REGULATIONS



On May 13, the U.S. Department of Education issued a set of proposed regulations for Part B of the Individuals with Disabilities Education (IDEA) Act. These proposed rules are intended to implement the IDEA Improvements Act of 2004.

Which Regulations are We Most Concerned About?

The Arc and United Cerebral Palsy are particularly concerned with two portions of the proposed rules which can have a huge impact on the receipt of a free appropriate public education (FAPE) for special education students:

- **Parental revocation of consent for special education and related services;** and
- **Parental representation rights by non attorneys.**

They pose a complex challenge in balancing the interests of parents, their children with disabilities, and the public education system. Both issues are addressed below.

Why Would Parents Want to Revoke Special Education Services for their Children?

The disability community is committed to ensuring that children with special needs receive all the services and supports to which they are entitled though IDEA, yet recognizes that some parents refuse or revoke special education services for a number of reasons including:

- **Dissatisfaction with the quality of services.** The well established lack of sufficient qualified special education teachers across the country often results in services that do not meet children's needs. Other issues related to where the child is educated (placement) and the amount of time the child spends in an inclusive setting can affect personal decisions.

- **Purchase of private educational services.** Those parents with the means to do so sometimes opt to pay tuition for private schooling and other services in place of services made available through the public schools.
- **Social stigma.** As children get older they become more aware of their classmates being pulled for services which can be stigmatizing for students with special needs. (Fortunately, many schools provide special education services in an integrated manner so that children remain in the classroom with their peers.)
- **Denial.** Some parents may not have fully accepted the scope of their child’s disability and/or their need for special education services.

Why Would Parents Want to be Represented by Non-attorneys?

Lawyers are expensive and many families can’t afford them. There are also too few attorneys who are experts on special education law. Publicly funded legal services, such as state Protection and Advocacy Services (P & As), are overwhelmed and simply cannot handle every case.

What Was the Coalition’s Response?

On July 28, 2008 the CCD Education Task Force, in which The Arc and UCP play key roles, submitted comments which attempted to balance the rights, obligations and protections of parents, their children with disabilities and the education system. The full text of comments is available at: <http://www.thearc.org/NetCommunity/Document.Doc?id=1218>

A summary of the comments related to consent and representation are summarized in the table below. Changes to the existing regulations are marked in yellow highlight.

Summary of Proposed Regulation	CCD Comment Summary	CCD Recommendation Summary
<p>§ 300.9 CONSENT -</p> <p>If the parents revoke consent for their child's receipt of special education services after the child has received services, the school system does <u>not</u> have to remove any references to the child's receipt of special education services from the child's educational record.</p>	<ul style="list-style-type: none"> • Maintaining records of students' prior receipt of special education is a protection that belongs to the child, not his/her parent. • Parents can request a hearing to correct misinformation in the child's record. They can also include a written explanation of their position in the child's record. 	<ul style="list-style-type: none"> • Adopt this regulation

Summary of Proposed Regulation	CCD Comment Summary	CCD Recommendation Summary
<p>§ 300.300 PARENTAL CONSENT</p> <p>If the parent of a child fails to respond to a request for, or refuses to consent to, the initial provision of special education and related services, or revokes consent after the child has received special education services school systems—</p> <ul style="list-style-type: none"> • May not use select parts of these regulations to try to obtain agreement or a ruling that the services may be provided to the child; • Will not be considered to be in violation of the requirement to make free and appropriate public education (FAPE) available. • Are not required to convene an IEP Team meeting or develop an IEP. 	<ul style="list-style-type: none"> • This addition is consistent with current interpretations of the law. • States must still continue to identify, locate, and evaluate children with disabilities residing in the State even if the children previously had received, but no longer are receiving, special education services. • CCD disagrees with the Department’s interpretation regarding disciplinary action for children whose parent has refused special education services for them. The Department believes that, under the proposed rules, the school does NOT recognize the child as having a disability. The child would then be treated as if he/she did not have a disability and would face disciplinary action in “the same manner as a non-disabled child.” CCD believes that a child with a documented disability who has been determined to need special education is protected under IDEA and section 504. 	<p>The Department of Education should:</p> <ul style="list-style-type: none"> • Require a collaborative process to ensure that the child is kept at the center of the decision; and the parent revoking consent understands what services will be terminated and the full implications and consequences of his/her action. • Clarify that this does not eliminate the obligation to make FAPE available should a parent subsequently seek or respond to a referral for evaluation, and that the limited exception set forth under IDEA does not apply to the LEA’s obligations under Section 504. • correct and clarify its interpretation regarding disciplinary actions in cases of students whose parents have revoked consent for special education
<p>§ 300.512 HEARING RIGHTS - Addition to section 300.512:</p> <p>(1) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of</p>	<ul style="list-style-type: none"> • This is a significant change from the Department of Education’s position from allowing the use of lay advocates at due process hearings to saying it is a matter of State law. 	<ul style="list-style-type: none"> • Delete the proposed new language. • The Department of Education should identify strategies to ensure that parents have access to free/reduced fee, knowledgeable attorneys to represent them when

Summary of Proposed Regulation	CCD Comment Summary	CCD Recommendation Summary
<p>children with disabilities, except that whether parents have the right to be represented by non-attorneys at due process hearings is determined under state law.</p>		<p>necessary.</p>

COMMENTS SUBMITTED ON ADA REGULATIONS

On August 18th, the Disability Policy Collaboration (DPC), on behalf of The Arc of the United States and United Cerebral Palsy, submitted extensive comments on the Notice of Proposed Rulemaking (NPRM) published by the Department of Justice on changes to the regulations implementing Titles II (State and Local Government Programs) and III (private businesses, hotels, stores, theatres of the Americans with Disabilities Act.

Why are the Regulations Important?

These regulations are one major way the Department of Justice implements the Americans with Disabilities Act. Individuals and organizations covered by the law can look at these regulations for further information about what the law means and how to best comply with it. Covered entities must comply with the regulations.

Why are They Being Published Now?

Three factors influence the timing: the law that requires that regulations be periodically reviewed if they impact a significant number of small entities, the interest in adopting the 2004 Americans with Disabilities Act and Architectural Barriers Act Accessibility Guidelines (2004 ADAAG) and the desire of this Administration to go through the process and finalize the regulations before the next Administration begins. The Bush Administration has been using the regulatory process to implement changes in areas where they have been unable to secure legislative changes.

Why is the Administration Proposing These Changes and Asking These Questions?

The NPRM with appendices is over 1,000 pages long and includes over 100 questions that invite comments from interested parties. Some of these questions are in response to new technologies or changes that have occurred since the original rules were published and

others are related to areas where more information is needed. Many of the changes proposed in the regulations are prompted by the 2004 ADAAG.

How Was the 2004 ADAAG Developed?

The Access Board is the federal agency charged with developing accessibility guidelines for federally funded buildings and to ensure that buildings, facilities, rail passenger cars and vehicles are accessible in terms of architecture and design, transportation and communication. The ADA requires the Access Board to develop Accessibility Guidelines, which only become enforceable when adopted by the Department of Justice through regulations.

For the 2004 ADAAG, an Advisory Committee oversaw the updating and harmonizing of the existing accessibility guidelines. This committee consisted of representatives from the:

- design and construction industry;
- the building code community,
- state and local government entities; and
- individuals with disabilities.

The Access Board sought and received extensive public comment on the accessibility guidelines. The 2004 ADAAG is the result of over 10 years of effort to eliminate inconsistencies among federal accessibility requirements and between federal accessibility requirements and state and local building codes.

What is the Disability Community Response?

Anticipating significant comments from the business community and other covered entities the disability community came together to agree on comments and mobilize response from our grassroots. DOJ received approximately 4,800 comments.

Did We Support the Proposed Rules?

Overall The DPC comments were mixed. The DPC supported some changes such as providing that agencies enforcing Title II may conduct compliance reviews of state and local government agencies when they have information indicating a possible failure to comply with the nondiscrimination requirements of Title II. Additional regulatory language was suggested in a number of areas including effective communication and access to exam tables and internet goods and services. The CCD also responded to many of the questions DOJ posed.

What Issues Did We Focus On?

While our comments exceeded 20 pages, we focused on three particular areas:

1. Protecting and strengthening existing rights for people with disabilities under the ADA;

2. Addressing new issues, products, and systems which have evolved since the ADA was most recently reviewed; and
3. Holding businesses and state and local governments accountable for accessibility standards and procedures.

Our comments, posted at <http://www.thearc.org/NetCommunity/Document.Doc?id=1311>, focused on a range of topics. We responded to questions pertaining to:

- Service animals
- Detention and Correction Facilities
- Effective Communications
- Examinations and Courses
- Access to Internet only Goods and Services
- Medical Exam Tables
- Anticipated Costs or Benefits for Certain Requirements
- Play areas
- Swimming Pools
- Definition of a wheelchair
- Guaranteed hotel reservations
- Accessible seating
- Tickets
- Narrative description of Movies
- Captioning
- Time-shares
- Transient lodging
- Safe Harbor proposals

When Will The Final Rules Come Out?

When the final rules are issued remains to be seen. We can anticipate the Administration will do everything in its power to finalize these rules before mid-January.