

WASHINGTON REPORTS

Congress Tackles Rehab..

by Christopher Button

As this issue of *Word From Washington* goes to press, Congressional staff in both the Senate and House of Representatives are drafting their respective versions of reauthorization legislation for the Rehabilitation Act. Originally scheduled for reauthorization last year, the Act received a one-year extension of current authorities in order to allow sufficient time for the disability community and the Congress to identify needed changes. The past year has seen intensive negotiations and activity from the community, from the Consortium for Citizens with Disabilities (CCD), and from key Congressional staff in an attempt to accomplish this enormous task.

Background

The Rehabilitation Act has provided funds on a formula basis to states since 1920. The primary purpose of the basic state grant program under Title 1 of this Act is to assist individuals with disabilities to enter and/or maintain employment. However, the Act also contains additional authorities to fund programs for independent living, research, training, and projects with industry, which are, for the most part, driven by the values embedded in the Title 1 basic state grant program. Although there have been some significant changes to this basic state grant program since it was originally enacted, many of the provisions (and thus the program) remain the same.

For example, the basis for eligibility for rehabilitation services is "feasibility" for employment, whereby the "potential" of an individual with a disability must be evaluated, and that individual must be determined by the rehabilitation counselor to be "employable". In the years since its enactment, and particularly over the last decade, persons with disabilities have challenged this underlying assumption of inability, which resulted in determinations of nonfeasibility (and thus ineligibility) for rehabilitation services. Amendments were added to the Act in an attempt to address this problem, including the 1973 priority for serving persons with severe disabilities and the 1986 authority establishing the supported employment program. **However, in spite of these efforts, many people with the most severe and multiple disabilities continue to be found non-feasible for employment, substantial numbers remain unemployed, and many who are employed have little control or choice in their employment.**

The Community Calls for Change

With enactment of the Americans With Disabilities Act on July 26, 1990, many individuals with disabilities and their advocates and families have turned their focus to the Rehabilitation Act as a major vehicle to achieving full participation in the social and economic mainstream of our nation. Many, including advocates from UCPA with policy direction from UCPA's Governmental Activities and Advocacy Committee, have challenged Congress to take a hard look at the Act as it is currently written, with a goal of rewriting it to reflect values consistent with the 1990's: so that the programs it authorizes empower persons with disabilities with choice and meaningful employment, and promote independence, productivity and full integration into the workforce and the community—critical components of participation in the fabric of life in our nation.

Key Issues in the Reauthorization

As reauthorization discussions have proceeded, numerous issues quickly emerged as key areas where changes must happen. These include issues related to the values embedded in the Act, accessing the system, choice and control by individuals with disabilities of the services and supports they desire to receive, support for careers versus entry-level jobs, revisions to the supported employment authorities, inclusion of personal assistance services, strengthening the provisions related to assistive technology, as well as others. Numerous UCPA and CCD recommendations relating to Title 1 of the Act are highlighted below. In addition, a summary of key UCPA recommendations for the reauthorization is included on Page 20 of this issue of *WfW*. A complete copy of CCD recommendations for Title 1, currently endorsed by 28 national organizations, is available through the UCPA Governmental Activities office.

1. Accessing the System

Many people, particularly people with severe, multiple or very challenging disabilities, are still denied entry into the rehabilitation system, under the assumption that the severity of their disability would prevent their ability to enter or maintain employment. **Of critical importance in such denials are the concepts of feasibility for employment and employability, which are embedded in the eligibility process for the current system.** In addition to contributing to erroneous determinations of ineligibility, the current eligibility process is lengthy, often irrelevant (such as when someone is moving out of special education and current diagnostic and assessment information is already available, yet the rehabilitation system requires additional, duplicative information be collected), and an inefficient use of limited funds.

UCPA, along with CCD, has endorsed numerous recommendations to remedy these problems, based on the assumption **that all people can become em-**

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ployed, given appropriate services and supports. Inherent in these recommendations is the need to change the value base upon which the Act is built, and replace it with values consistent with a post-ADA system of employment supports. This requires **elimination of standards of employability and feasibility which underlie the eligibility process for the current system, and replacing them with a streamlined process whereby individuals would be presumed eligible for services.** This would eliminate the lengthy eligibility process, and would thus free up funds which are currently spent to deny access, to support people in employment.

2. Transition from School to Work

The need to streamline access into the rehab, system is particularly important for many students with disabilities exiting the schools. Indeed, data indicate that over half of the students exiting special education exit into nothing. There is a need to build on the transition provisions added to the Individuals with Disabilities Education Act (IDEA, P.L. 101-576) by adding requirements of state rehabilitation agencies to ensure that by the time a student is transitioning from the educational system, the rehabilitation system has been involved and has, with the assistance of the student and the IEP transition team, assured appropriate post-secondary school services and supports for students who require additional assistance. Specific recommendations in this area are included on Page 21 of this issue of *WfW*.

3. Empowering Choice for Persons with Disabilities

UCPA strongly believes that persons with disabilities should be empowered with control and choice in all aspects of their lives, including the direction they take in work and career related decisions. **The current structure of the rehabilitation process is a barrier to such a goal, and requires dramatic change.** In order to enable persons with disabilities to significantly impact the way in which rehabilitation services are organized and provided, UCPA has endorsed recommendations to create within each state an advisory board composed of a majority of individuals with disabilities, or their families or advocates. Additional representation should be from other individuals, employers or organizations involved in the provision of rehabilitation services. The Board will have numerous responsibilities which will **significantly influence state rehabilitation programs.**

In addition, UCPA has joined with CCD to recommend amendments to the Individualized Written Rehabilitation Program (IWRP) to specify that it must be developed and agreed to by the individual with a disability, with the goal not just of achieving the employment objective of the individual, **but with the underlying goal of assisting the individual in maximizing his/her employment.** The implications of this proposed amendment **not** only relate to increased control for persons with disabilities in the

development of their IWRP. It is also intended to drive the need to look beyond entry-level jobs to careers.

4. Choice Demonstrations

Important knowledge about ways in which increased control and choice can be given to persons with disabilities can be determined through requiring demonstrations of alternative ways to make rehabilitation services available. **The ultimate control would be through "vouchers or certificates" which give the power of funding to people who will be users of the services.** UCPA has joined with CCD to recommend that such a voucher/choice demonstration authority be added to the Act. This demonstration authority would allow a specified number of states to apply for vouchers or certificates to be used by people with disabilities to purchase their own services. The information gained through these demonstrations will be critical in assisting to shape a refashioned, responsive system of employment supports in the post-ADA world.

5. Supported Employment

Originally authorized in 1986, the supported employment program has grown in every state to become an accepted part of the rehabilitation program for some individuals. However, numerous problems continue to exist with this program. For example, although the program was intended to serve people with the most severe disabilities, data indicate that the majority of persons in supported employment have mild cognitive disabilities. In addition, although estimates vary, **only between 1 - 3% of people in supported employment have cerebral palsy, and persons with physical disabilities often are denied access to this program.** Arbitrary limits on service, such as 6 months duration, or \$2,000, are mandated in many states. People in supported employment are currently not able to access post-employment services available to other individuals who received rehabilitation services.

UCPA staff have worked intensively with CCD members to analyze the Act to identify areas where amendments are required to ensure that supported employment is available to persons with the most severe disabilities, and is not provided only through one model of service or to only one group of individuals with disabilities. **Recommendations for change include ensuring that people with severe disabilities who may not require extended job skill training but require supports in other areas will not be denied access to supported employment.** The Act must specifically prohibit the placing of arbitrary limits on supported employment services. The Act must require the state agency to identify how it will serve an increasing number of individuals with severe disabilities in supported employment under the Title 1 program, and how it will expand supported employment services to unserved and underserved

groups (such as persons with physical disabilities resulting from cerebral palsy). The Act should specifically authorize the use of natural supports which occur at the work site as a source of extended support. The Act should require special demonstrations (under Title **III** and/or **NIDRR**) for unserved and underserved groups, and the use of natural supports.

6. *Reallocation of Unmatched Funds*

Currently, state rehabilitation agencies are required to match their federal funds with state dollars. Any funds not matched are reallocated among the states. However, typically there are some funds which are not reallocated, and revert to the federal treasury. This year, **state rehabilitation agencies returned 33 million dollars in unmatched funds.**

CCD has recommended to Congress that the Act be amended to require such unmatched funds be reallocated to the Title VI-C supported employment program in each state, in order to provide funding for extended, long-term support for individuals in supported employment who otherwise would not have funding for such long-term support, and thus not be able to access supported employment services. Extended support funds should require no state match, thereby enabling every state to benefit from this provision. Priority for accessing these funds should be given to individuals from groups who do not fall under the program authority of any other state agency which offers long-term supported employment assistance.

Congressional Activities to Date

Four hearings have been held by the Subcommittee on Select Education of the House of Representatives, chaired by Rep. Major Owens (N.Y.). These hearings have addressed many of the current issues identified by the community as central to overhauling the Act, as identified above. UCPA witnesses have testified at three of these hearings, addressing issues related to assistive technology, personal assistance services, and supported employment. (See *WfW*, Sept./Oct./Nov. 1991 issue, and Jan./Feb. 1992 issue for UCPA recommendations on technology and PAS.)

At the most recent hearing, held in New York City, Chairman Owens stated that:

"We have carefully reviewed the Act and have concluded that it was groundbreaking legislation and continues to be comprehensive. However, we have noted that there is room and need for change. It is time to strike a blow for integration, independence, and opportunity by making changes that will: ensure that those with the most severe disabilities are served first; support the rights of all individuals with disabilities to engage in productive work; secure transition from school to work for all students; and ensure the participation of minorities and individuals with low-incidence disabilities."

On the Senate front, staff of Senator Tom Harkin (LA), Chairman of the Senate Subcommittee on Disability Policy, has been intensively meeting with representatives of the CCD to develop a reauthorization bill. The Senate Subcommittee has tentatively scheduled hearings in May on their bill, which they will complete shortly.

GAO Reports

In addition to their hearings, the House Subcommittee requested the General Accounting Office (GAO) of the U.S. Government to do several studies of the current rehabilitation system. Two of these studies dealt with (1) the order of selection requirement and (2) the long-term effects of rehabilitation. The results of both of these studies have significant implications for the reauthorization.

Currently the law contains a requirement that state agencies specify an order of selection when they anticipate that the state will be unable to serve everyone requiring assistance. This order of selection must identify and justify how the state will implement the current statutory requirement that **persons with the most severe disabilities will be served first.** However, in spite of the fact that no state can provide service to all eligible individuals, not all states use the order of selection.

The GAO study investigated a number of states - some of which were under an order of selection requirement, and some which were not. **The study found that implementation of the order of selection requirement significantly increased access to rehabilitation services for persons with severe disabilities. In addition, states implementing order of selection reported that it was not administratively burdensome or difficult to implement.** However, the study reported that rehabilitation personnel in the states which did not implement an order of selection were either unaware of the requirement, or **simply chose to ignore it** based on their belief that services to persons with severe disabilities were more "expensive," and that increased numbers of individuals with less severe disabilities could be served instead. **This represents blatant disregard for the law. It also presents a dismal picture of oversight of the law by the Rehabilitation Services Administration which is charged with its implementation.**

A second study by the GAO analyzed the characteristics of the services received, and the employment outcomes of persons with disabilities served through state rehabilitation agencies. Their key findings include:

- (1) There were few differences in disability type between individuals accepted by rehab, and those not accepted.
- (2) Most persons who were served got diagnosis and evaluation of their disability and some counseling; **all other** services were **much less frequent**, with all types of education and training least frequent.

- (3) For individuals who were "rehabilitated" there were **short-term gains** in employment and earnings. However, long-term outcomes were mixed, and the number of individuals with any earnings from actual wages quickly declined to pre-rehabilitation service levels. **Eight years after rehabilitation services were provided, 40 percent of these individuals still had annual earnings that totaled less than the equivalent of working all year at the minimum wage.**

These findings are particularly significant in light of the continued exclusion of individuals from service based on their "nonfeasibility for employment". In addition, the rationale most often used for continuing the current system of providing rehabilitation services is that it is cost effective, returning twenty dollars for every one dollar expended on every person. *The GAO findings seriously challenge the validity of both the structure and outcomes of the existing system, lending additional credibility and support to the outcry from the community for change.*

Next Steps

Proposed reauthorization bills from both the Senate and the House are expected within the next month. The Senate will hold hearings on their version in May. UCPA staff, along with other members of CCD, continue to meet intensively with key Congressional staff to further refine draft legislative language, and resolve issues still pending. This process will undoubtedly continue for at least the next month.

Following additional hearings, both bills will be moved through the Congressional process. UCPA has developed a list of individuals interested in receiving Action Alerts at key points in this process. If you wish to receive such alerts, please contact Gretchen Olson in the UCPA Governmental Activities Department at (202) 842-1266 or 1-800-USA-5UCP. We will update readers of *WfW* in future issues as reauthorization activities proceed. If you have questions, please contact Christopher Button at the above number.

Tax Vetoes and Budget Woes Beget Appropriations No's

by Jenifer Simpson and Allan I. Bergman

In a series of votes between March 20th and April 11th the Congress passed a tax bill which was vetoed by the President, the House defeated a bill to "break the walls" on discretionary spending caps, the House and Senate passed FY 93 budget resolutions and the Senate defeated an attempt to cap federal entitlement spending. All of these actions create **one** uniform outcome for children and adults with dis-

abilities and their families: **BAD NEWS IN FY 93.**

The collapse of the Communist dictatorship in the Soviet Union had raised expectations that a reduction in defense spending, or a 'Peace Dividend', might compel Congressional leadership to rework the November 1990 Budget Enforcement Act. This budget Act set a limit on the total amount that could be budgeted in the Domestic discretionary category, which includes many programs for individuals with disabilities and their families.

President Vetoes Tax Bill

On March 20th, the deadline date which President Bush insisted Congress deliver a tax bill, the House and Senate approved a conference committee report tax package (HR 4210) which was vetoed by the President immediately upon arrival at the White House. Although the bill contained many of the tax changes requested by the President in his January 28th State of the Union address (see *WfW* Jan/Feb. 1992), it also contained a tax increase on the wealthiest Americans to offset the projected lost revenue from the package of tax credits and reductions. The President's veto appears to have stymied any major tax legislation this year since any tax reductions must be offset by tax increases under the terms of the Budget Enforcement Act.

Tax Credit Extensions

The only tax action expected this year will be a bill to extend a dozen or so tax credits scheduled to expire on June 30th. Among the tax credits requiring extensions are the following which impact the lives of children and adults with disabilities and their families:

- Targeted jobs tax credit for employers hiring workers with disabilities (and others "hard to place") up to a maximum of \$2,400 per individual;
- Low-income rental housing credit available over 10 years for investors in low income housing;
- Mortgage bonds and mortgage credit certificates which allow state and local governments to issue tax-exempt bonds and tax credit certificates to help qualified individuals purchase, improve or rehabilitate single family, owner occupied homes;
- Orphan drug credit which provides a 50 percent credit to manufacturers for the costs of clinically testing drugs to treat rare diseases; and benefit potentially as an indirect benefit,
- Tangible property contributions which allow taxpayers to deduct charitable contributions of tangible property, such as artwork, without treating them as a minimum tax preference item.

House Defeats Walls Bill

On March 31, seventy-six House Democrats joined their 162 Republican colleagues to defeat a measure (187-238) that would have removed the so-called "fire walls" between Domestic, International and Defense discretionary spending categories. After