



## Commemorating 40 Years Of Disability Advocacy 1973-2013

July 29, 2013

U.S. Senator Tom Harkin  
Chairman  
Senate Committee on Health, Education,  
Labor & Pensions (HELP)  
United States Senate  
Washington, DC 20510

U.S. Senator Lamar Alexander  
Ranking Member  
Senate Committee on Health, Education,  
Labor & Pensions (HELP)  
United States Senate  
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U.S. Senator Patty Murray  
Member  
Senate Committee on Health, Education,  
Labor & Pensions (HELP)  
United States Senate  
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U.S. Senator Johnny Isakson  
Member  
Senate Committee on Health, Education  
Labor & Pensions (HELP)  
United States Senate  
Washington, DC 20510

Dear Senators:

On behalf of the Employment and Training Task Force of the Consortium of Citizens with Disabilities (CCD), we thank you for your extraordinary leadership in co-sponsoring this reauthorization of the Workforce Investment Act, including the Rehabilitation Act. This kind of bi-partisanship is rare and admirable in this Congress – especially on reauthorization of major legislation. We hope your joint effort will be an inspiration to your colleagues in both the Senate and House.

CCD is a coalition of over 100 national disability rights, advocacy and provider organizations that advocates on behalf of the 57 million people with disabilities and their families. The Employment and Training Task Force follows issues affecting employment opportunities for working age individuals with disabilities.

The task force supports many of the provisions in the legislation, S.1356, Workforce Investment Act of 2013 including:

- Creation of local transition coordinators within the VR system to ensure the effective delivery of pre-employment transition services for all youth with disabilities, including those with significant disabilities and greater linkages between the VR system and special education. We hope that the resources to effectively implement this new provision will be available to the local offices.
- Direct emphasis on the preferred outcomes of competitive integrated employment and post-secondary education for all youth, including youth with significant disabilities.
- Directing that the Independent Living Program be moved from the Department of Education to the Department of Health and Human Services (HHS), specifically to Administration for Community

Living (ACL). The move ensures that the program remain vital to the needs of people with disabilities to be able to live independently and establishes an Independent Living Administration.

- Directing increased coordination between state VR systems and entities responsible for carrying out the Ticket to Work and Self Sufficiency Program.
- Specific requirements that individualized plans for employment contain information concerning Ticket to Work, benefits under Medicaid, benefits planning and assistance and protection and advocacy services for beneficiaries of Title II and Title XVI. These sections should help those on federal disability benefits take full advantage of the return to work supports and services available to them.
- The committee's request for a GAO study of the interaction between the Ticket to Work program and the Rehabilitation Act. Given the difficulties that arose between employment networks (ENs) and state vocational rehabilitation (VR) systems in the early years of Ticket to Work, we are eager for an evaluation of the regulatory changes adopted to address those challenges. We are particularly interested in whether increased collaboration between ENs and state VR has resulted in better employment outcomes for people with disabilities.
- The proposed amendments in Sections 19, 112, and 509 of the Rehabilitation Act reauthorizing the Client Assistance Program (CAP) and Protection and Advocacy of Individual Rights (PAIR) programs. One amendment would allow the establishment of a CAP affiliated with the American Indian Consortium serving the Navajo Nation and Hopi Tribe. This would make the CAP program consistent with the Protection and Advocacy programs. The proposed amendments would also clarify provisions relating to the rights and authorities of the PAIR program and make them consistent with the other Protection and Advocacy programs. These are critical updates that will help the PAIR and CAP programs more effectively assist people with disabilities nationwide.
- Finally, we applaud the authorization of the Office of Disability Employment Policy. It is essential that this office be grounded in statute to ensure its ongoing place in the workforce development system.

In May 2013, the task force submitted to the Committee our consensus recommendations for comprehensive revisions to the Rehabilitation Act. Below we would like to highlight some of our key recommendations for improving the language in the legislation as introduced.

**1. Revise definition under Section 504 (5)(A)(iii) as follows:**

(5) Competitive Integrated Employment

(A) (iii) that is at a location where the employee has the opportunity to interact with other ~~employees~~ **persons** who are not individuals with disabilities (not including supervisory personnel) **to the same extent that individuals without disabilities in comparable positions interact with other persons;**

Rationale: The Task Force agreed to improving the definition to reflect the realities of above minimum wage community jobs (i.e.: food truck worker, mall kiosk worker, building night guard, etc.) who do not have "an opportunity to interact with other employees who are not individuals with disabilities (not including supervisory personnel)" due to the nature of the job - thus not qualifying under the HELP Committee definition.

**2. Move the Assistive Technology Program to the Administration on Intellectual and Developmental Disabilities (AIDD) rather than to the Department of Labor.**

Rationale: The Administration on Intellectual and Developmental Disabilities, under the Administration on Community Living, is the appropriate entity to oversee the Assistive Technology

rather than the Department of Labor. Given the statutory mandates of the AT Act, its programs primarily address education and community living matters and are more appropriately placed within AIDD rather than DOL. Additionally, AIDD currently houses agencies with which the State AT programs frequently interact including the state and territorial Councils on Developmental Disabilities (DD Councils), the Protection and *Advocacy agencies*, and the University Centers for Excellence in Developmental Disabilities Education, Research, & Service (UCEDDs), one-third of which are also located within AIDD. This change would provide for much more effective synergy and collaboration.

### 3. Amend Section 11 as follows:

Sec. 11 Relationship to ~~application of~~ other laws

Sec. 11. (a) The provisions of the Act of December 5, 1974 (Public Law 93–510) and of title V of the Act of October 15, 1977 (Public Law 95–134) shall not apply to the administration of the provisions of this Act or to the administration of any program or activity under this Act.

(29 U.S.C. 708)

**Sec. 11 (b) This Act shall be interpreted in accordance with the Americans with Disabilities Act as amended and the US Supreme Court’s 1999 decision in *Olmstead v. L.C.*... Nothing in this legislation shall be construed as in any way limiting the application of either the Americans with Disabilities Act as amended or the *Olmstead* decision and its progeny,**

Rationale: This provision clarifies that to the extent that anything in Title V is not in conformance with *Olmstead* and ADA, *Olmstead* and the ADA prevail. It may well be helpful in future litigation.

### 4. Revise Section 102 (a) as follows:

a. Under the 513 section of the bill which amends Sec. 102, “(2) Presumption of Benefit.”, “(B) Responsibilities.” our recommended changes are:

“(ii) in the first sentence-

(I) by striking “In making the demonstration required under subparagraph (A),” and inserting “Prior to determining under this subsection that an applicant described in subparagraph (A) is unable to benefit due to the severity of the individual’s disability in terms of an employment outcome from vocational rehabilitation services or that the individual is ineligible for vocational rehabilitation services,”; and”

a. Under the section of the bill which amends Section 102, “(3) Presumption of Eligibility.”, (A) In General.” our recommended changes are:

“(2) in paragraph (3)(A)(ii), by striking “outcome from” and all that follows and inserting “outcome, including supported employment, from vocational rehabilitation services due to the current (as of the date of the determination) severity of the disability of the individual.”;

b. Under the section of the bill which amends Section 102, “(5) Determination of Ineligibility.” our recommended changes are:

“(C) by inserting before subparagraph (B) the following:

“(A) the ineligibility determination shall be an individualized one, based on the available data, and shall not be based on assumptions about broad categories of disabilities or the severity of an individual’s disability;”

Rationale: As the bill seeks to set a high bar for outcomes, it is vital that VR agencies begin the eligibility determination process from the perspective that everyone can benefit from VR services. Unfortunately, both existing law and the bill as introduced permit VR agencies to find people ineligible on the basis of the severity of a person’s disability. As expectations for competitive integrated employment rise, it is important to minimize the risk that people who need services may be denied eligibility because their disabilities are severe. We recommend removing references to the severity of the person’s disability in three places in the section of the bill which amends Sec. 102 of the Rehabilitation Act, “Eligibility and Individualized Plan for Employment.”

**5. Revise Section 303(c)(2)(B) as follows:**

“(B) INDIVIDUAL WITH AN INTELLECTUAL DISABILITY.-In this paragraph, the term ‘individual with an intellectual disability’ means an individual with a ~~cognitive impairment, disability~~ that originates before the age of 18 and is characterized by significant limitations in both intellectual function and adaptive behavior, which covers many everyday social and practical skills.-

~~(i) intellectual and cognitive functioning; and~~

(ii) adaptive behavior as expressed in conceptual, social, and practical adaptive skills.

Rationale: In amending Sec. 303 of the Rehabilitation Act, “Demonstration and Training Programs”, under “National Transition Initiative for Youth with Significant Disabilities,” the bill inserts a definition of “individual with an intellectual disability” that does not conform to the accepted definition developed and promulgated by AAIDD. We recommend changing the definition to conform to the AAIDD definition.

**6. Delete Section 802 Advisory Committee on Increasing Competitive Integrated Employment for Individuals with Disabilities**

Rationale: We do not support the idea of establishing another advisory committee to conduct research and study on competitive integrated employment for individuals with disabilities when this type of work can be conducted by the National Council on Disability.

**7. Revise Section 803 (a) as follows:**

(a) The public education campaign for employers (including small businesses) shall provide information on the abilities of individuals with disabilities, their contributions to the workforce, the workforce needs of businesses, success stories from the perspectives of workers and employers, and help dispel myths regarding the hiring, performance, and retention of individuals with disabilities. The public education campaign may also include information on—

(1) The work opportunity credit under section 51 of the Internal Revenue Code of 1986: and [...]

Thank you again for your efforts in introducing this reauthorization bill. We applaud the Committee's intent to reauthorize the Workforce Investment Act and put forward a plan to ensure that people with disabilities are afforded with the opportunity to work.

Sincerely,

Kelly Buckland, National Council on Independent Living  
Co-chair

Alicia Epstein, SourceAmerica  
Co-chair

Susan Goodman, National Down Syndrome Congress  
Co-chair

Peggy Hathaway, National Association of Councils on Developmental Disabilities  
Co-chair

Paul Seifert, Goodwill Industries International, Inc.  
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