

## Social Security Issues in the Jeffords/Kennedy Bill (July 27 Draft)

### Induced Demand

- **Unintended Incentive:** As written, this bill could provide an incentive for some working individuals to apply for DI benefits. As a DI beneficiary in the OPTIONS program these individuals could (1) buy in to Medicaid (State option), (2) receive cash benefits for their dependents, (3) have the insurance of cash benefits for any month not employed, and (4) accrue time for Medicare entitlement.
- **Additional Disability Determinations:** If SSA is required to make the disability determination, it would **increase administrative costs by \$400 million in the first year and \$150 million in each year thereafter**. SSA estimates that the State DDSs -- which are funded by SSA -- would have to absorb 100,000 more determinations per year.

### Work Incentive Counseling and Assistance Services

The bill requires the Commissioner to establish a community-based work incentive counseling and assistance program to provide accurate information on work incentive programs and related issues. SSA currently does not provide this type of counseling service.

- **Consideration of Existing Programs:** The bill states that SSA can enter into contracts with agencies including State VR agencies, medicaid offices, employment training and placement offices, and educational institutions. Currently, some if not all of these agencies receive federal funding to provide similar counseling services.
- **Contract Requirement:** SSA is instructed to develop contract agreements with the counselors. **SSA estimates this will cost \$200 million per year (e.g., based on a CBO estimate of 440,000 enrollees at \$500/year per enrollee)**. This estimate does not include the prior proposal to include a counselor in every field office.

### Budget — Discretionary Costs

CBO estimated, under the previous draft, that SSA's discretionary costs could rise about \$0.5 billion in FY 2000 and about \$0.3 billion a year thereafter. SSA estimated the increase in discretionary costs could rise about \$0.7 billion in FY 2000 and about \$0.5 billion thereafter. **Even if offsets to mandatory costs are identified, SSA would have to pay for these costs under the discretionary cap.**

### Definition of Disability

SSA supports the definition of "eligible working individual with a disability" (page 6) of the bill, but is concerned that the definition used to describe eligibility for the expanded BBA option (page 19) is too restrictive. The expansion of the BBA option essentially uses the SSI definition, excluding the earnings and resource restrictions. However, the SSI definition is based on five criteria, three of which are linked to ability to work. Moreover, SSA has been directed to further tighten the medical listing. These factors would make the expanded BBA option available to a much smaller population than intended.

# ODCLCA QUICK FAX

**(202)358-6030- Voice/(202 358-6074/6075- Fax)**

**Date:** 7-27

**TO:** DIANA fortuna

*To Joanne Cianci  
3 page fax*

**FROM:** Judy CHESSEER

**COVER + 2 pages**

**COMMENTS:**

*c- SSA's quick  
of K-J. Jeanne  
thought it had a  
lot of errors*

CBO \$50m Yr 2000

SSA Cost

SSA: 7m

**COMMENTS ON LATEST JEFFORD'S/KENNEDY BILL (JULY 27, 1998)**

These comments are listed in order of the way the proposals appear in the draft. These are not in order of importance.

**1. Definition of eligible working individual**

SSA supports the definition in the bill at page 6 which states that an individual who without personal assistance services and/or prescribed drugs would be unable to perform essential functions of their employment; or is at risk of losing an immediate offer of employment.

**2. Induced Applications**

This bill, as written, would encourage an individual with a disability who is employed to stop working, file for and become entitled to SSDI benefits, and then choose to participate in the options program and return to work. This would give the individual: (1) ability to buy into Medicaid; (2) benefits to their dependents; (3) easy back on for benefits for any month not employed; and (4) accrued time for Medicare entitlement. (Pages 6-11)

1/2 2 yr  
71 wty  
P. mid

**NOTE:** We estimate the cost of the above 2 items, if SSA had to make this determination would be an additional \$400 million in the first year, and \$150 million in the years thereafter in administrative costs alone. In addition if SSA had to make these determinations, the DDSs would have to absorb 100,000 more determinations per year which is not possible.

3. The Commissioner is hindered from issuing timely regulations to implement this bill by the need to consult with so many different parties. We prefer the language on the Advisory Panel in the Bunning/Kennelly bill. (p. 7 & 15)

**4. Medicare**

This bill does not provide any Medicare benefits that are not provided today. (P.9)

**5. IRWE for Automobile**

Commissioner would have to define when transportation is available and accessible in regulations and then make determination of that for each beneficiary who is working. (P. 13)

high

- 6. P. 19, line. 13-16. This provision seems to codify that "working disabled" as defined in the BBA is the same definition of disability as ours. However, we do not believe that using the title XVI definition of disability will work. The definition on page 6 seems to more accurately reflect the individuals we want to benefit from the additional services. Using the BBA definition may reduce the number of induced filers for benefits because it may be an easier definition to meet.
- 7. The Commissioner does not want administrative responsibilities of making income determinations for individuals who are not applying for SSI or SSDI. (p.33).
- 8. SSA appears to be barred, in some circumstances, from using IRS data for anything except setting premiums this should be deleted. SSA should be able to use for all program purposes needed; e.g., to recover overpayments (P 34 line 13-18)
- 9. The House passed bill requires SSA to phase in ticket program over a six year period. The Jeffords/Kennedy proposal requires SSA to fully implement the Ticket program in 3 years (p.70). We are concerned that we may not be able to do this timely. Additionally, there will not be any states in which we can test the effect of the 2 for 1 demo alone. This may significantly lower any cost/savings attributable to the ticket.
- 10. Proposal is doubling the size of the advisory panel, and might prove to be too cumbersome. (p 81). Also the handwritten expansion of responsibilities will further hinder our ability to implement the legislation. Finally, this will create a precedent of too many Agencies being involved in each others decision making.
- 11. This bill does not appropriate any funds for employment counselor services (p. 87). Our budget office estimate this will cost \$200 million per year.
- 12. See PNA responsibilities on p. 96, we are concerned that we are paying for individuals to sue us.
- 13. P.99 - Judging by the marginal notes, the demo appears to be restrictive and needs to be explored further by SSA before concurrence. We would suggest keeping the same language as in HR 3433.
- 14. If someone used a ticket and received services then choose to participate in the options program, what are the savings (This will also decrease ticket savings) ????

*Old draft*

*Discretion to do cheaply*

*2) Wk mc sp  
Comptrol; Corps of Wk respec.  
SSA ce's*

*Comm-based, Wk inc Cslg + antice prog  
- dissem accurate info -  
fed, st, loc  
- unclear whether work fr  
- not field offices*

Cynthia -

Diana Fortuna

07/21/98 02:42:40  
PM

Record Type: Record

To: Jeanne Lambrew/OPD/EOP, Anne E. Tumlinson/OMB/EOP, bwilliam @ osaspe.dhhs.gov @ inet

cc:

Subject: definition of disability

I understand this issue a bit better now. It seems pretty tough. It is not so much related the estoppel/lawsuit question per se, as it is to the fundamental nature of SSA's disability test for adults. K-J seeks to help "working adults with disabilities," including those who are currently working and may be facing a crisis in continuing to work because of some problem with their private health insurance. And SSA's definition is indeed very much oriented toward whether you can work -- i.e., it is designed to reject people who can. Of the 5 steps in determining whether someone is disabled, 3 are related to work. Stripping out those 3 presumably doesn't leave you with much left -- i.e., it would be a stricter definition than SSA uses today. Here are the 5 sequential steps:

1. Are you working at an SGA level (substantial gainful activity, or at least \$500/month). If yes, you're rejected.
2. Is your condition severe? If no, you're rejected. I am told this is a pretty easy test to meet.
3. Do you meet or equal SSA's listings of impairments? If yes, you're accepted. But many conditions SSA ultimately accepts are not in SSA's listings, so only some people are accepted here.
4. Residual Functional capacity: how much of your former work can you do? If you can do your former work, you're rejected.
5. Can you do any work in the economy (based on skill level and other things)? If yes, you're rejected.

3 + 5 are the only items that let you into  
SSI/DI. 70% get in on step 3  
30% on step 5