

July 21, 1998

**PRESIDENTIAL TASK FORCE ON EMPLOYMENT
OF ADULTS WITH DISABILITIES**

PROPOSED DIRECTIVES FOR THE END OF JULY

The following list of proposed directives are in descending order of importance to the disabled community. (Directives 1-3 would be considered the most exciting because they have budget implications; 4-11 would be moderately exciting; and 12-18 would be, well, interesting to the community.) Also included are four proposed Presidential "challenges."

Directives with Budget Implications

1. ***The President directs the Department of Health and Human Services, Social Security Administration, Office of Management and Budget, and the Treasury Department to propose for inclusion in the President's FY 2000 budget provisions that would expand Section 4733 of the Balanced Budget Act of 1997, which currently allows states to provide Medicaid coverage to working individuals with disabilities at a premium according to an income-related sliding scale. (This directive is an incremental step or place-holder toward Kennedy/Jeffords. Chris Jennings and others at DPC are diligently working toward a compromise with Kennedy/Jeffords.)***

The disability community is actively involved in efforts to pass the Kennedy/Jeffords legislation which does more to address the needs of employment of adults with disabilities than any current legislative initiatives. And, they would like the Administration to support the bill as well. This directive would support the principles in Kennedy/Jeffords without supporting specifics in the bill and therefore would meet the disability community part-way. The downside is that the disability community may not view this support as adequate.

2. ***The President directs the Department of Treasury to propose, as part of the President's FY 2000 Budget, a tax credit for employers and/or individuals with disabilities who have extraordinary disability-related expenses such as assistive technology or personal assistance services.***

Working adults with disabilities often have a disincentive to work because of the high cost of personal attendant services. Similarly, the cost to employers of hiring an individual requiring personal attendant services can be prohibitive. Therefore, a tax credit for work-related assistance services would have a positive impact on the employment of individuals with disabilities.

3. ***The President directs the Labor Department, Education Department, Social Security Administration, Small Business Administration, Transportation Department, Commerce Department, Health and Human Services Department, and Veterans Affairs Department to propose for inclusion in the President's FY 2000 budget the Building Resources for Individuals with Disabilities to Gain Employment (BRIDGE) program. The purpose of this proposed grants program is to increase the employment rate of adults with disabilities by fostering interdisciplinary consortiums of and service integration by providers of***

Full list - Ceci
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services to adults with disabilities at the state and local level.

Because adults with disabilities often require services and resources from a variety of places (such as health care and transportation), if agencies and departments are not well coordinated it can be difficult for the disabled to have adequate information to obtain and retain employment. This program would help facilitate such coordination by providing planning grants to organizations to create partnerships between the many agencies serving the disabled community.

NOTE: OMB is strongly opposed to including any language which directs the agencies to propose specific items for inclusion in the FY00 budget, as this bypasses the budget process. They would prefer to replace proposals 1-3 with something along the lines of the following:

The President directs all agencies to consider ways of helping adults with disabilities to participate in the workforce as they develop their proposals for the FY2000 budget while recognizing the challenges that agencies and the government face in maintaining fiscal discipline in a manner that is consistent with the guidelines established by the Administration.

Moderately Exciting Directives

4. ***The President directs the Small Business Administration to launch a new outreach campaign to educate Americans with disabilities who own or want to start their own businesses about increased access to the Section 8(a) program and to the untapped advantages of being "a small socially and economically disadvantaged business (SDB)."***

Section 8(a) provides contracting opportunities for disadvantaged businesses. An outreach campaign would improve information to the disabled community about their eligibility for this program. [This option is still be vetted with SBA and OMB.]

5. ***The President directs the Department of Health and Human Services to take all necessary actions to inform Governors, state legislators, state Medicaid Directors, consumer organizations, employers, providers and other interested parties of the new Medicaid buy-in options in the Balanced Budget Act that would assure medical insurance for workers with disabilities and people with disabilities seeking employment.***

This directive is important because many Governors, state Medicaid Directors, consumer organizations, employers and other interested parties are simply unaware of the new provisions in the Balanced Budget Act.

6. ***The President directs all federal agencies and departments to evaluate whether the electronic and information technology they use are accessible to federal employees with disabilities as required by the Administration's proposed reauthorization changes to Section 508 of the Rehabilitation Act of 1973, as amended. Each agency and department***

will submit a report containing this evaluation to the Attorney General by not later than 6 months after the enactment of the new law. The General Services Administration and the Access Board will provide technical assistance to other federal agencies and departments concerning existing technical and functional performance criteria and evaluation tools.

7. *The President directs all federal agencies and departments to make their Internet sites accessible to individual with disabilities by July 1, 1999. The President further directs the Council of Chief Information Officers to provide technical assistance and guidance consistent with the universal design guidelines established through the joint Federal Government-World Wide Web Consortium Web Accessibility Initiative initiated by the White House last year.*

The previous two proposed directives would highlight that the Federal government is committed to making its computer and electronic devises accessible to individuals with disabilities.

8. *The President directs the Office of Management and Budget to inform all federal agencies and departments about the rules governing the budget and personnel status of Schedule A readers, interpreters, or other personal assistance service providers providing reasonable accommodations to federal employees as required by Section 504 of the Rehabilitation Act. The President further directs Office of Personnel Management periodically to distribute and update information on the use of special non-competitive hiring authorities, including those relating to disabled veterans and Schedules A and B for use by federal managers and supervisors with hiring authority.*

Because many departmental and agency officials are unaware of the rules governing the acquisition of special devices and services for the disabled, improving this information would increase hiring of adults with disabilities in the Federal government.

9. *The President directs the Department of Justice and the EEOC to develop a public education campaign to provide information regarding the requirements of the Rehabilitation Act and the Americans with Disabilities Act to employers, employees and others whose rights may be affected, with special attention to under-served constituencies.*
10. *The President directs the EEOC, the Department of Justice, and the Small Business Administration to increase educational outreach to small businesses regarding their obligations under the Americans with Disabilities Act.*

The previous two proposed directives would increase information to employees, employers, and others regarding the rights of individuals with disabilities.

Interesting Directives

11. *The President directs the Department of Labor to assure that America's Job Bank and America's Talent Bank are accessible to individuals with disabilities seeking employment.*

This directive highlights that the Federal government is committed to making its services accessible to individuals with disabilities.

12. ***The President directs the Departments of Labor, Education, Health and Human Services, Veterans Affairs, Transportation, the Small Business Administration, and the Social Security Administration to assure that all appropriate programs relating to the employment of adults with disabilities are integrated into the One-Stop Career Center system.***

Because the interpretation of the principle of universality has been left to the local One-Stop Centers, the disability community concerned that their interests are not adequately represented in many One-Stop Centers. This directive would encourage the One-Stop System to integrate consumers with disabilities into their system.

13. ***The President directs the Veteran's Administration Vocational Rehabilitation and Counseling Service (VR&C), in cooperation with Department of Labor's Veterans' Employments and Training Services (VETS) and State Employment Security Agencies, to conduct a program of training for line service providers in skills related to competent and progressive employment services case management. VR&C and VETS management shall report the results of this training initiative to the Task Force by December 1, 1998.***

This directive attempts to minimize duplication within the Federal government by encouraging two systems that have historically not worked together to do so in order to achieve the common goal of increasing the employability of adults with disabilities.

14. ***The President directs all federal agencies and departments to work with the President's Committee on Employment of People with Disabilities to increase the number of qualified student interns with disabilities who are hired in FY 1999 and beyond.***
15. ***The President directs the Department of Education, the Social Security Administration, the National Council on Disability, and the President's Committee on Employment of People with Disabilities, in cooperation with the Office of Personnel Management, to encourage colleges and universities to increase the number of qualified candidates with disabilities nominated to be hired by federal agencies and departments in FY 1999 under the Presidential Management Interns and Presidential Scholars programs.***

The previous two directives are aimed at increasing the employment of young adults with disabilities in the Federal workplace. Young adults with disabilities are often overlooked and underutilized in activities that relate to opportunities for employment in the Federal government and improved access to these programs would provide them with long-sought opportunities.

16. ***The President directs the Department of Transportation to develop a single point-of-contact and extensive outreach strategy for technical assistance and public information that clearly explains the rights and protections of these Acts.***

17. *The President directs the Department of Transportation to analyze and prepare materials explaining the new Transportation Equity Act's provisions applicable relating to people with disabilities and to include these materials in DOT's outreach and public meetings on the law.*
18. *The President directs the Department of Transportation to address disability-related transportation issues in the deployment of the Intelligent Transportation System.*

The previous three proposed directives highlight the importance of accessible transportation for adults with disabilities. The disability community has been unhappy with DOT's unwillingness to enforce the rights and protections of the ADA, Air Carriers Access Act, and other provisions that they enforce. These proposed directives would ease some of their concerns about DOT, but would fail to address the larger concerns of vigorous enforcement of their rights.

Presidential Challenges

1. ***The President challenges Congress to enact, before adjourning this year, the Ticket to Independence. The Ticket would provide resources for and allow customer choice in the selection and purchase of necessary services to enable adults with disabilities to find and keep gainful employment.***

Both the Administration and the disability community actively support the Ticket to Independence provisions as passed by the House of Representatives last month.

2. ***The President challenges Congress to extend the work opportunity tax credit (WOTC) and the welfare-to-work tax credit through April 30, 2000. The President directs the Labor Department, the Education Department, the Small Business Administration, the Social Security Administration, and the Veterans Affairs Department to provide guidance to their respective systems and other interested parties to maximize opportunities for employers of vocational rehabilitation and Supplemental Security Income recipients to use the Work Opportunities Tax Credit.***

This directive is intended to improve employment outcomes for veterans in vocational rehabilitation by assuring that they are served by staff skilled in case management in a coordinated VA and DOL service delivery system.

3. ***The President challenges Congress to enact, before adjourning this year, a Patients' Bill of Rights. The Bill of Rights would require a choice of providers including provider network adequacy provisions, access to specialist, information disclosure, transitional care provisions; access to emergency room services; participation in treatment decisions including anti-gag clauses and requiring disclosure of financial incentives; protection of the confidentiality of health information; anti-discrimination provisions; and access to an appeals process. All of these issues are relevant to the assessment made by adults with disabilities of whether seeking and remaining in employment will address their need for good-quality, responsive health care.***

Often adults with disabilities are left out of the mainstream debate over managed health care because many mistakenly believe that disabled individuals do not participate in such plans. It would be significant for the President to include the disabled community in this otherwise mainstream discussion of health care.

4. ***The President challenges Congress to reauthorize the Rehabilitation Act of 1973, as amended, before adjourning this year.***

The Rehabilitation Act authorizes provisions of anti-discrimination in the federal sector, and establishes and funds Centers for Independent Living across the country. Presidential support reinforces the Administration's recognition of its importance.

Briefing for Meeting with Secretary Herman and Tony Coelho on President's Task Force on Employment of Adults with Disabilities

Summary

As Chair and Vice-Chair of the new President's Task Force on Employment of Adults with Disabilities, Secretary Herman and Tony Coelho want to brief you on their progress since their work began in March. They also will request that the President do an event in the coming days to commemorate the eighth anniversary of the Americans with Disabilities Act. (The anniversary is July 26.) Their concept is that the President would acknowledge the anniversary at a small event where he would sign some Presidential directives prepared by the Task Force. We are currently vetting these potential directives, some of which have significant budget implications. Moreover, the President may not have time to do such an event in the first place.

We recommend that you listen to their progress report, congratulate them on their work to date, and hear their arguments for an event, but hold open the question of whether an event is possible.

Background

In March of this year, the President signed an executive order creating this Task Force. Its mandate is to determine what the federal government can do to help bring the employment rate of adults with disabilities to a rate "as close as possible" to that of the general population. The Task Force is composed entirely of Administration agency heads, including those at HHS, SSA, Education, Treasury, Commerce, Transportation, SBA, VA, EEOC, OPM, and the National Council on Disability. It has met once so far, although its staff and subcommittees have been quite active.

The Task Force is mandated to issue its first report on November 15, with subsequent reports in 1999, 2000, and 2002. However, Alexis and Tony have decided to issue an early report now, at their second meeting in July, to show that the Task Force will move quickly to address issues so critical to the disability community.

The proposal for the President's signing of the Executive Order grew partly out of the disability community's dissatisfaction with our recent progress on issues important to them. In early 1997, you met with a group of Administration appointees with disabilities, led by Marca Bristo, where the group expressed its strong support for the President but stated that they felt disability issues too often took a back seat to other Administration initiatives. In September 1997, the President met with a group of disability advocates, where he spoke knowledgeably about disability issues, and endorsed the idea of a task force. He signed the executive order in March.

(Tony's role in the Task Force arises from his role as Chair of the President's Committee on Employment of People with Disabilities, as well as his own longstanding interest in this subject as a person with a disability. Alexis and DOL had not previously been very involved in these issues, but have embraced them since we made the decision to have DOL chair the Task Force.)

Specifics of Event Request

Alexis and Tony would like an event in the Roosevelt Room with 25-30 representatives of the disability community. Their proposed format is (1) Alexis and Tony would present the President with their July report; (2) the President would sign some directives they have prepared; and (3) the President would make brief remarks acknowledging the anniversary.

Alexis and Tony submitted an earlier request to Scheduling for a much larger event -- for the President to attend a meeting of the Task Force before an audience of 200. There was little interest here in such an event, and they have now scaled back their request.

Substantive Concerns

There are two unresolved problems with the task force's suggestions for immediate action by the President, and therefore with the concept of an event itself. First, most of their suggestions either cost money that we have not yet agreed to spend, or they are fairly small items that may not rise to the level of a Presidential directive. (See attached summary of suggestions.)

Therefore, we are trying to sort through this hodge-podge to determine whether there is enough meat to warrant a Presidential event, should we decide to hold one. Alexis and Tony are pushing us either to commit money in the FY2000 budget or, at a minimum, to have the President direct agencies to propose specific items for inclusion in the budget. OMB is concerned about boxing in the Administration at this early point, but may be open to a Presidential directive that would direct agencies to consider ways to help adults with disabilities participate in the workforce as they develop their proposals for the FY2000 budget, with the understanding that agencies still must operate within overall budget constraints.

Second, this event would come at an awkward point in the debate on health insurance for people with disabilities who go to work. The disability community's top priority is legislation to allow people to keep Medicaid or Medicare when they leave the SSI or SSDI rolls to return to work. Senators Jeffords and Kennedy have introduced a bill with a cost of \$5 billion over five years that is tremendously popular with the community. In addition to the tremendous difficulty of finding \$5 billion in offsets, we have major policy concerns with the bill (e.g., partial benefit package, means-testing of Medicare, not the most efficient use of resources).

We have been silent about the bill publicly, but are now working quietly with Jeffords and Kennedy on a lower-cost alternative. However, it is highly unlikely that we could reach agreement with the Hill on this issue within the next week or so. OMB strongly opposes any commitment on Kennedy-Jeffords at this juncture.

Alexis and Tony are aware of these issues, but are still optimistic that we will resolve the health issue or find some middle ground. They also believe that it would be worse for there to be no event at all. At the meeting, Tony may push very hard for the President to announce something substantive (like support for Kennedy-Jeffords or its principles) in July, and argue that it is critical for the Task Force to demonstrate early that it can move the Administration on a major issue. However, we could also wait until the Task Force's first official report in November to make any major policy announcements.

Talking Points

- Thank you so much for your hard work on this critical issue in the four months since the President signed the Executive Order in March. I understand that the Task Force has gotten off to a very strong start.
- Thanks especially to Seth Harris [counselor to Secretary Herman, who has organized the work of the Task Force to date] and to Becky Ogle [newly named Executive Director of the Task Force; an activist who handled disability issues for the 1996 campaign].
- In spite of advances in civil rights and technology that should make it possible for more of the 50 million Americans with disabilities to work, I know that far too many do not, especially those with severe disabilities. Determining how to remove barriers to work for people with disabilities is the critical work that we have asked the Task Force to undertake. I assure you of our commitment to work constructively with you and to consider seriously all the recommendations you make.
- Because of the President's busy schedule, it is not clear at this time whether he can do an event. However, I know you have been working productively with staff from Scheduling, DPC, NEC, and OMB. I encourage you to continue to do so over the next few days as we determine whether an event is indeed possible.

[If you are pressed to announce support for Kennedy-Jeffords or one of the other proposals with a budget impact:]

- Unfortunately, at this point we have not completed the process we must go through that would allow us to announce support for a new health initiative or a new tax credit. As I think you know, staff here are very actively engaged in working with you to complete that process. At the same time, we are evaluating several of your other suggestions for Presidential directives that do not raise budget questions. The staff here can say more about that.

My Summary

Suggestions by Task Force for Immediate Presidential Action

Major Proposals with Budget Impact

- New health initiative that is an "incremental step" toward Kennedy-Jeffords. (Anything less than Kennedy-Jeffords itself may not satisfy the disability community.)
- New tax credit for employers and/or individuals with disabilities with extraordinary disability-related expenses, such as assistive technology or a personal assistant.
- New BRIDGE grant program for states and locals to better coordinate assistance for those seeking to return to work.

The task force proposes that the President direct relevant agencies to propose these items for inclusion in the FY2000 budget. An alternative approach is for the President to direct agencies to consider ways to help adults with disabilities to participate in the workforce as they develop their proposals for the FY2000 budget, but recognize the challenges we face in maintaining fiscal discipline and be consistent with budget guidelines established by the Administration. (1)

Other Presidential Directives (still being vetted by OMB and agencies)

- Direct SBA to educate people with disabilities about eligibility for Section 8(a) program.
- Direct HHS to inform states and people with disabilities about a new Medicaid buy-in that the Administration proposed and championed, and that was enacted as part of the Balanced Budget Act last year. It will help people with disabilities keep health coverage under Medicaid as their earnings increase. (This is our answer to Kennedy-Jeffords, but unfortunately no states have yet embraced this state option.) (2)
- Direct federal agencies to evaluate whether the technology they use is accessible to employees with disabilities, as called for in legislation we support. +
- Direct federal agencies to make their Internet sites accessible by July 1999. +
- Direct OMB to ensure that federal agencies know they are no longer under headcount ceilings that formerly served as a disincentive for them to hire people with disabilities who need a personal assistant, such as a reader for a blind employee. ?
- Challenge Congress to extend the Work Opportunity Tax Credit and Welfare-to-Work Tax Credit, and direct federal agencies to publicize that the credit can be used to hire people in the federal SSI and vocational rehabilitation programs. O
- Direct DOJ and EEOC to develop a public education campaign on ADA requirements. O
- Direct EEOC, DOJ, and SBA to educate small businesses about ADA requirements. O
- Direct federal agencies to ensure that people with disabilities are integrated into One-Stop Centers, and that America's Job Bank is accessible to people with disabilities. O
- Direct VA and Labor to work better together to return disabled veterans to work.
- Direct federal agencies to increase the number of student interns with disabilities. (6)?
- Direct agencies to encourage universities to increase the number of candidates with disabilities for the Presidential Management Interns and Presidential Scholars programs. (6)?
- Direct DOT to do a better job on outreach on the ADA and other laws.

Presidential Challenges or Statements

- Challenge Congress to enact "Ticket to Work and Self-Sufficiency" proposal that is based on an Administration proposal and has now been passed by the House.
- Challenge Congress to pass the Patient Bill of Rights, to help people with disabilities who move from the disability rolls to private employment and health insurance.
- Challenge Congress to reauthorize the Rehabilitation Act.

Message

**THE PRESIDENT COMMEMORATES SIGNING OF THE AMERICANS WITH
DISABILITIES ACT BY TAKING ACTIONS TO
INCREASE EMPLOYMENT AND IMPROVE HEALTH CARE FOR
PEOPLE WITH DISABILITIES**

July 29, 1998

Today, in commemoration of the eighth anniversary of the Americans with Disabilities Act (ADA), the President is signing an Executive Memorandum aimed at increasing employment and health care options for people with disabilities. He is also announcing the release of a letter to Medicaid Directors clarifying that the ADA obligates states to offer appropriate community based services. Finally, to build on these actions, the President is also announcing his commitment to work with Senator Jeffords and Senator Kennedy to pass affordable, feasible legislation to help people with disabilities maintain their health care coverage and return to work. Today, the President met with his Task Force on Employment of People with Disabilities and advocates of people with disabilities. In this meeting, the President is:

Signing A New Presidential Memorandum to Increase Employment and Health Care Options for People with Disabilities. While the ADA has been critically important to people with disabilities, significant challenges remain. Since 1993, 15 million new jobs have been created. But the unemployment rate among the 30 million working-age adults with disabilities continues to be much higher than that of the general population -- close to 75 percent for people with significant disabilities. The President signed an Executive Memorandum that will direct the relevant agencies to:

- Expand Public Education About the Americans with Disabilities Act. Although more and more Americans are becoming aware of the ADA, too many employers and employees do not know their rights and responsibilities under the ADA. Today, the President is directing the Attorney General, the Chair of the Equal Employment Opportunity Commission, and the Administrator of the Small Business Administration to expand public education about the requirements of the Americans with Disabilities Act of 1990 to employers, employees, and others whose rights may be affected, with special attention to small businesses and under-served populations.
- Increase Information About New Medicaid Buy-in Option. Many people with disabilities are not able to leave Social Security programs to return to work because they will lose their health care coverage. As part of last year's Balanced Budget Act, the President signed into law a new state option to allow individuals with disabilities who return to work, the ability to purchase critically necessary Medicaid coverage as their earnings increase. Today, the President is directing the Secretary of the Department of Health and Human Services to ensure that Governors, state legislators, and state Medicaid directors work with consumer organizations to take advantage of this important option.

Issuing Letter Clarifying That ADA Obligates States to Offer Appropriate Community Based Services. Recent court cases, including Helen L. vs. DiDario, have interpreted the ADA to require states to provide Medicaid services in the “most integrated setting appropriate” to people with disabilities. Today, the Health Care Financing Administration (HCFA) is sending a letter to all State Medicaid Directors clarifying that under these standards, if an individual living in a facility could live in a community with the right mix of support services, reasonable steps should be taken to provide community based services provided it does not fundamentally alter the state program.

Announcing Support For Policies to Improve Health Options for Working Adults With Disabilities. The President also announced his strong commitment to work with Senators Jeffords, Kennedy, and other Members of Congress to pass affordable, feasible legislation that helps people with disabilities maintain their health care coverage and return to work. The Jeffords-Kennedy proposal would increase Medicaid options and state resources for people with disabilities. It would also allow all Americans receiving Social Security Disability Insurance to retain their Medicare when they return to work, eliminating a provision in current law that often requires people with disabilities to choose between work and health insurance. The President directs the Administration to utilize all of its policy and budgetary expertise at HHS, the Office of Management and Budget, and the White House to work towards the passage of affordable legislation before the Congress adjourns this year, consistent with the Administration’s commitment to preserving the budget surplus.

Q&A on the Commemoration of the Americans with Disabilities Act Event
July 29, 1998

Announcements Today

Q: What did the President announce today?

A: Today the President signed an executive memorandum aimed at increasing the employment of people with disabilities in commemoration of the eighth anniversary of the Americans with Disabilities Act (ADA). In addition, the President announced his commitment to work with Senator Jeffords and Senator Kennedy to pass affordable, feasible legislation to help people with disabilities maintain their health care coverage and return to work. Finally, the President announced that the Health Care Financing Administration is sending a letter to State Medicaid Directors today clarifying that, under the ADA, states must take reasonable steps to provide community-based services to persons with disabilities.

Executive Memorandum Being Signed

Q: What is the President signing today?

A: The ADA is the landmark civil rights law that makes it possible for millions of Americans to participate more fully in society and to do their part to make us a stronger and better country. However, in spite of our strong economy, the unemployment rate among people with disabilities continues to be significantly higher than that of the general population.

To address this problem, last March the President signed an executive order establishing the Task Force on Employment of People with Disabilities, which is charged with recommending policies to help bring the employment rate of adults with disabilities to a rate as close as possible to that of the general population. Next November, the Task Force will issue its first formal report. However, as a result of its preliminary work, the President is taking two actions today to reduce barriers to work for adults with disabilities.

First, the President is directing the Attorney General, the Chair of the Equal Employment Opportunity Commission, and the Administrator of the Small Business Administration to expand public education about the requirements of the Americans with Disabilities Act of 1990 to employers, employees, and others whose rights may be affected, with special attention to small businesses and under-served populations. Although awareness of the ADA is increasing, too many people are still unaware of its requirements.

Second, the President is directing the Secretary of the Department of Health and Human Services to inform Governors, state legislators, state Medicaid Directors, consumer organizations, and others of a new Medicaid option first proposed by the President and enacted as part of the Balanced Budget Act. This new option provides Medicaid coverage for individuals with disabilities who, because of their earnings, would not qualify for Medicaid under current law. This will help address the fact that a lack of adequate private health insurance can often serve as a disincentive to leave Social Security programs for work.

Public Education on the ADA

Q: How is this public education campaign about the requirements of the Americans with Disabilities Act different from what you currently do?

A: This directive reflects an expansion of our efforts to educate Americans about the ADA. In addition, it is the first time that the Department of Justice and EEOC will work collaboratively with the Small Business Administration to educate small businesses about their obligations under the ADA. For example, SBA will make information on the ADA available on-line to small businesses as part of their general outreach to that community. In addition, DOJ and EEOC will target more information to under-served populations that may not already have access to information about the ADA, such as non-English speakers, individuals with mental retardation, and minorities.

Q: Will the public education campaign require a budget increase for the Department of Justice, the EEOC, and the SBA?

A: No, the public education campaign will be funded using allocations in the current budget.

Q: Are businesses complying with the Americans with Disabilities Act?

A: There are no comprehensive surveys on compliance by the more than 600,000 employers covered by the ADA. Clearly large numbers of employers have taken steps to comply voluntarily with the ADA. Both the EEOC and the Department of Justice receive many complaints each year based on the ADA, and Justice Department's ADA Information got 16,000 calls last year from individuals relating instances of potential discrimination. The fact that so many individuals call and file complaints suggest that many people are beginning to understand their rights under the ADA. It also suggests that we need to ensure that employers understand their obligations.

Q: Do we have a reason to believe that small business compliance with the Americans with Disabilities Act is worse than compliance by larger companies?

A: Again, we have no comprehensive surveys on compliance. The fact that small businesses employ most of the private work force and include the vast majority of employers means that it is critical to focus on this group. In addition, there is evidence that many small businesses mistakenly believe they are exempt from the Americans with Disabilities Act. That's why we believe that the collaborative effort among DOJ, EEOC, and SBA is so promising -- because it will combine the ADA knowledge and outreach materials of DOJ and EEOC with SBA's small business network.

Q: Hasn't the ADA not helped -- and even hurt -- people with disabilities by making employers afraid to hire individuals with disabilities because of concern over frivolous lawsuits? (This refers to article in Sunday's Washington Post Outlook Section.)

A: No. The small number of frivolous lawsuits that have been filed are not unique to the ADA, and the EEOC and federal courts have the authority to dismiss claims that lack merit. In the absence of the ADA, people with disabilities would lack tools necessary for combating the myths, fears, and stereotypes that have long excluded them from the workplace and public accommodations.

Health Care

Q: The second directive instructs the Department of Health and Human Services to inform states about the new Medicaid options in the Balanced Budget Act, Section 4733. How many states have opted to use the new Medicaid buy-in options in the Balanced Budget Act?

A: To date, we believe that no state has taken advantage of this option, although some are expressing an interest in doing so. This Medicaid option is very promising because it would enable individuals with disabilities to work without losing their health insurance by allowing them to buy-into Medicaid without having to receive cash assistance. The outreach campaign would increase state awareness of a Medicaid option that promises to increase employment of individuals with disabilities.

Q: What did the President mean when he announced today that Administration officials are working with Kennedy and Jeffords? Is he endorsing the bill they have already introduced? What is the cost of that bill?

A: The President referred to the fact that Administration officials have been meeting with Senators Kennedy and Jeffords staffs in an effort to develop affordable health care legislation that would make it possible for more people with disabilities to go to work through expansion of health coverage options, including the Balanced Budget Act's Medicaid buy-in. We have not endorsed the specific bill they have introduced, which has a cost of \$5 billion over 5 years.

Q: Doesn't it create a burden on states to comply with the ADA by providing more Medicaid services so that people with disabilities can live in the community instead of in nursing homes?

A: Recent court cases, including Helen L. vs. DiDario, have interpreted the ADA to require states to provide Medicaid services in the "most integrated setting appropriate" to people with disabilities. Today, the Health Care Financing Administration (HCFA) is sending a letter to all State Medicaid Directors clarifying that under these standards, if an individual living in a nursing home chooses to live and could live in a community with the right mix of support services, reasonable steps should be taken to provide community based services provided it does not fundamentally alter the state program. The language of this letter clarifies the proper balance between the concerns of states on the one hand, and the fact that people with disabilities should be able to live in their homes and communities if that is their choice.

Task Force

Q: What is the President's Task Force on Employment of People with Disabilities?

A: On March 13, 1998 the President signed an executive order creating the Task Force on Employment of People with Disabilities to develop and recommend federal policies to reduce employment barriers for persons with disabilities. Secretary Herman chairs the Task Force and Tony Coelho, Chairman of the President's Committee on Employment of People with Disabilities, serves as Vice-Chair. The Task Force also includes many other members of President Clinton's Cabinet.

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release

July 29, 1998

July 29, 1998

MEMORANDUM FOR THE ATTORNEY GENERAL
THE SECRETARY OF HEALTH AND HUMAN SERVICES
THE CHAIR OF THE EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION
THE ADMINISTRATOR OF THE SMALL BUSINESS
ADMINISTRATION

SUBJECT: Outreach Actions to Increase Employment
of Adults with Disabilities

As we commemorate the eighth anniversary of the Americans with Disabilities Act of 1990 (ADA), we have much to celebrate. This landmark civil rights law is making it possible for millions of Americans to participate more fully in society -- through employment, access to public facilities, and participation in community and leisure activities -- and to do their part to make us a stronger and better country. At the same time, we are reminded that significant challenges remain. Far too many of the 30 million working-age adults with disabilities are still unemployed, especially those with significant disabilities.

To address employment barriers for people with disabilities, I issued Executive Order 13078 on March 13, 1998, establishing the National Task Force on Employment of Adults with Disabilities. The Task Force will issue in November the first in a series of reports on what the Federal Government can do to help bring the employment rate of adults with disabilities into line with that of the general population. The Task Force already has identified important ways to reduce barriers to work for people with disabilities, and I hereby direct you to act on these findings.

First, although awareness of the ADA is increasing among persons with disabilities, employers, and the general public, too many people still are not aware of their rights and responsibilities under the ADA. There is a particular need to educate the small business community, which employs most of the private work force and includes the vast majority of employers.

I therefore direct the Attorney General, the Chair of the Equal Employment Opportunity Commission, and the Administrator of the Small Business Administration to expand public education regarding the requirements of the ADA to employers, employees, and others whose rights may be affected, with special attention to small businesses and underserved communities, such as racial and language minorities that may not have ready access to information that is already available.

Second, lack of adequate private health insurance options is a disincentive to leave Social Security programs for work. Few private health plans cover the personal assistance and other types of services that make work possible for many people with

more

(OVER)

disabilities. Recognizing this problem, I proposed and the Congress passed a new Medicaid option last year that allows people with disabilities to buy into Medicaid without having to receive cash assistance. A number of States have expressed an interest in offering this new option and the Secretary of Health and Human Services has been working with them to do so. Much more, however, needs to be done to increase the public outreach and education activities about these important laws and options.

I therefore direct the Secretary of Health and Human Services to continue to take all necessary actions to inform Governors, State legislators, State Medicaid directors, consumer organizations, employers, providers, and other interested parties about section 4733 of the Balanced Budget Act of 1997. Section 4733 allows States to provide Medicaid coverage for working individuals with disabilities who, because of their earnings, would not qualify for Medicaid under current law. Additional guidance, letters, technical assistance, and other efforts by the Department of Health and Human Services about the enormous benefits of this option can go a long way in encouraging States to adopt and use this Medicaid buy-in.

This memorandum is for the internal management of the executive branch and does not create any right or benefit, substantive or procedural, enforceable by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

WILLIAM J. CLINTON

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DEPARTMENT OF HEALTH & HUMAN SERVICES
Health Care Financing Administration

Center for Medicaid and State Operations
7500 Security Boulevard
Baltimore, MD 21244-1850

JUL 29 1998

Dear State Medicaid Director:

In the Americans with Disabilities Act (ADA), Congress provided that "the Nation's proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for such individuals." 42 U.S.C. § 12101(a)(8). Title II of the ADA further provides that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs or activities of a public entity, or be the subject of discrimination by any such entity." 42 U.S.C. § 12132. Department of Justice regulations implementing this provision require that "a public entity shall administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities." 28 C.F.R. § 35.130(d).

We have summarized below three Medicaid cases related to the ADA to make you aware of recent trends involving Medicaid and the ADA.

In L.C. & E.W. v. Olmstead, patients in a State psychiatric hospital in Georgia challenged their placement in an institutional setting rather than in a community-based treatment program. The United States Court of Appeals for the Eleventh Circuit held that placement in an institutional setting appeared to violate the ADA because it constituted a segregated setting, and remanded the case for a determination of whether community placements could be made without fundamentally altering the State's programs. The court emphasized that a community placement could be required as a "reasonable accommodation" to the needs of disabled individuals, and that denial of community placements could not be justified simply by the State's fiscal concerns. However, the court recognized that the ADA does not necessarily require a State to serve everyone in the community but that decisions regarding services and where they are to be provided must be made based on whether community-based placement is appropriate for a particular individual in addition to whether such placement would fundamentally alter the program.

In Helen L. v. DiDario, a Medicaid nursing home resident who was paralyzed from the waist down sought services from a State-funded attendant care program which would allow her to receive services in her own home where she could reside with her children. The United States Court of Appeals for the Third Circuit held that the State's failure to provide services in the "most integrated setting appropriate" to this individual who was paralyzed from the waist down violated the ADA, and found that provision of attendant care would not fundamentally alter any State program because it was already within the scope of an existing State program. The Supreme Court declined to hear an appeal in this matter; thus, the Court of Appeals decision is final.

In Easley v. Snider, a lawsuit, filed by representatives of persons with disabilities deemed to be incapable of controlling their own legal and financial affairs, challenged a requirement that beneficiaries of their State's attendant care program must be mentally alert. The Third Circuit found that, because the essential nature of the program was to foster independence for individuals limited only by physical disabilities, inclusion of individuals incapable of controlling their own legal and financial affairs in the program would constitute a fundamental alteration of the program and was not required by the ADA. This is a final decision.

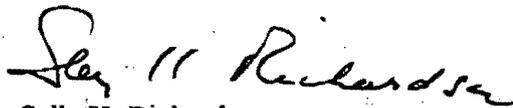
While these decisions are only binding in the affected circuits, the Attorney General has indicated that under the ADA States have an obligation to provide services to people with disabilities in the most integrated setting appropriate to their needs. Reasonable steps should be taken if the treating professional determines that an individual living in a facility could live in the community with the right mix of support services to enable them to do so. The Department of Justice recently reiterated that ADA's "most integrated setting" standard applies to States, including State Medicaid programs.

States were required to do a self-evaluation to ensure that their policies, practices and procedures promote, rather than hinder integration. This self-evaluation should have included consideration of the ADA's integration requirement. To the extent that any State Medicaid program has not fully completed its self-evaluation process, it should do so now, in conjunction with the disability community and its representatives to ensure that policies, practices and procedures meet the requirements of the ADA. We recognize that ADA issues are being clarified through administrative and judicial interpretations on a continual basis. We will provide you with additional guidance concerning ADA compliance as it becomes available.

I urge you also, in recognition of the anniversary of the ADA, to strive to meet its objectives by continuing to develop home and community-based service options for persons with disabilities to live in integrated settings.

If you have any questions concerning this letter or require technical assistance, please contact Mary Jean Duckett at (410) 786-3294.

Sincerely,



Sally K. Richardson
Director

cc: All HCFA Regional Administrators

All HCFA Associate Regional Administrators
for Medicaid and State Operations

Page 3 - State Medicaid Director

Lee Partridge
American Public Human Services Association

Joy Wilson
National Conference of State Legislatures

Jennifer Baxendell
National Governors' Association

Presidential Documents

Title 3—

Executive Order 13078 of March 13, 1998

The President

Increasing Employment of Adults With Disabilities

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to increase the employment of adults with disabilities to a rate that is as close as possible to the employment rate of the general adult population and to support the goals articulated in the findings and purpose section of the Americans with Disabilities Act of 1990, it is hereby ordered as follows:

Section 1. Establishment of National Task Force on Employment of Adults with Disabilities.

(a) There is established the "National Task Force on Employment of Adults with Disabilities" ("Task Force"). The Task Force shall comprise the Secretary of Labor, Secretary of Education, Secretary of Veterans Affairs, Secretary of Health and Human Services, Commissioner of Social Security, Secretary of the Treasury, Secretary of Commerce, Secretary of Transportation, Director of the Office of Personnel Management, Administrator of the Small Business Administration, the Chair of the Equal Employment Opportunity Commission, the Chairperson of the National Council on Disability, the Chair of the President's Committee on Employment of People with Disabilities, and such other senior executive branch officials as may be determined by the Chair of the Task Force.

(b) The Secretary of Labor shall be the Chair of the Task Force; the Chair of the President's Committee on Employment of People with Disabilities shall be the Vice Chair of the Task Force.

(c) The purpose of the Task Force is to create a coordinated and aggressive national policy to bring adults with disabilities into gainful employment at a rate that is as close as possible to that of the general adult population. The Task Force shall develop and recommend to the President, through the Chair of the Task Force, a coordinated Federal policy to reduce employment barriers for persons with disabilities. Policy recommendations may cover such areas as discrimination, reasonable accommodations, inadequate access to health care, lack of consumer-driven, long-term supports and services, transportation, accessible and integrated housing, telecommunications, assistive technology, community services, child care, education, vocational rehabilitation, training services, job retention, on-the-job supports, and economic incentives to work. Specifically, the Task Force shall:

- (1) analyze the existing programs and policies of Task Force member agencies to determine what changes, modifications, and innovations may be necessary to remove barriers to work faced by people with disabilities;
- (2) develop and recommend options to address health insurance coverage as a barrier to employment for people with disabilities;
- (3) subject to the availability of appropriations, analyze State and private disability systems (e.g., workers' compensation, unemployment insurance, private insurance, and State mental health and mental retardation systems) and their effect on Federal programs and employment of adults with disabilities;
- (4) consider statistical and data analysis, cost data, research, and policy studies on public subsidies, employment, employment discrimination, and rates of return-to-work for individuals with disabilities;

(5) evaluate and, where appropriate, coordinate and collaborate on, research and demonstration priorities of Task Force member agencies related to employment of adults with disabilities;

(6) evaluate whether Federal studies related to employment and training can, and should, include a statistically significant sample of adults with disabilities;

(7) subject to the availability of appropriations, analyze youth programs related to employment (e.g., Employment and Training Administration programs, special education, vocational rehabilitation, school-to-work transition, vocational education, and Social Security Administration work incentives and other programs, as may be determined by the Chair and Vice Chair of the Task Force) and the outcomes of those programs for young people with disabilities;

(8) evaluate whether a single governmental entity or program should be established to provide computer and electronic accommodations for Federal employees with disabilities;

(9) consult with the President's Committee on Mental Retardation on policies to increase the employment of people with mental retardation and cognitive disabilities; and

(10) recommend to the President any additional steps that can be taken to advance the employment of adults with disabilities, including legislative proposals, regulatory changes, and program and budget initiatives.

(d)(1) The members of the Task Force shall make the activities and initiatives set forth in this order a high priority within their respective agencies within the levels provided in the President's budget.

(2) The Task Force shall issue its first report to the President by November 15, 1998. The Task Force shall issue a report to the President on November 15, 1999, November 15, 2000, and a final report on July 26, 2002, the 10th anniversary of the initial implementation of the employment provisions of the Americans with Disabilities Act of 1990. The reports shall describe the actions taken by, and progress of, each member of the Task Force in carrying out this order. The Task Force shall terminate 30 days after submitting its final report.

(e) As used herein, an adult with a disability is a person with a physical or mental impairment that substantially limits at least one major life activity.

Sec. 2. Specific activities by Task Force members and other agencies.

(a) To ensure that the Federal Government is a model employer of adults with disabilities, by November 15, 1998, the Office of Personnel Management, the Department of Labor, and the Equal Employment Opportunity Commission shall submit to the Task Force a review of Federal Government personnel laws, regulations, and policies and, as appropriate, shall recommend or implement changes necessary to improve Federal employment policy for adults with disabilities. This review shall include personnel practices and actions such as: hiring, promotion, benefits, retirement, workers' compensation, retention, accessible facilities, job accommodations, layoffs, and reductions in force.

(b) The Departments of Justice, Labor, Education, and Health and Human Services shall report to the Task Force by November 15, 1998, on their work with the States and others to ensure that the Personal Responsibility and Work Opportunity Reconciliation Act is carried out in accordance with section 504 of the Rehabilitation Act of 1973, as amended, and the Americans with Disabilities Act of 1990, so that individuals with disabilities and their families can realize the full promise of welfare reform by having an equal opportunity for employment.

(c) The Departments of Education, Labor, Commerce, and Health and Human Services, the Small Business Administration, and the President's Committee on Employment of People with Disabilities shall work together and report to the Task Force by November 15, 1998, on their work to

develop small business and entrepreneurial opportunities for adults with disabilities and strategies for assisting low-income adults, including those with disabilities to create small businesses and micro-enterprises. These same agencies, in consultation with the Committee for Purchase from People Who Are Blind or Severely Disabled, shall assess the impact of the Randolph-Sheppard Act vending program and the Javits-Wagner-O'Day Act on employment and small business opportunities for people with disabilities.

(d) The Departments of Transportation and Housing and Urban Development shall report to the Task Force by November 15, 1998, on their examination of their programs to see if they can be used to create new work incentives and to remove barriers to work for adults with disabilities.

(e) The Departments of Justice, Education, and Labor, the Equal Employment Opportunity Commission, and the Social Security Administration shall work together and report to the Task Force by November 15, 1998, on their work to propose remedies to the prevention of people with disabilities from successfully exercising their employment rights under the Americans with Disabilities Act of 1990 because of the receipt of monetary benefits based on their disability and lack of gainful employment.

(f) The Bureau of Labor Statistics of the Department of Labor and the Census Bureau of the Department of Commerce, in cooperation with the Departments of Education and Health and Human Services, the National Council on Disability, and the President's Committee on Employment of People with Disabilities shall design and implement a statistically reliable and accurate method to measure the employment rate of adults with disabilities as soon as possible, but no later than the date of termination of the Task Force. Data derived from this methodology shall be published on as frequent a basis as possible.

(g) All executive agencies that are not members of the Task Force shall: (1) coordinate and cooperate with the Task Force; and (2) review their programs and policies to ensure that they are being conducted and delivered in a manner that facilitates and promotes the employment of adults with disabilities. Each agency shall file a report with the Task Force on the results of its review on November 15, 1998.

Sec. 3. Cooperation. All efforts taken by executive departments and agencies under sections 1 and 2 of this order shall, as appropriate, further partnerships and cooperation with public and private sector employers, organizations that represent people with disabilities, organized labor, veteran service organizations, and State and local governments whenever such partnerships and cooperation are possible and would promote the employment and gainful economic activities of individuals with disabilities.

Sec. 4. Judicial Review. This order does not create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

William Clinton

THE WHITE HOUSE,
March 13, 1998.