



108th Congress: Final Report

Status of Federal Legislation Followed by NASHIA

prepared by

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Background

This Final Report is a summary of the status of Federal legislation supported or monitored by the National Association of State Head Injury Administrators (NASHIA) that was filed by the 108th Congress (2003-2004). Through the work of staff and volunteers, NASHIA has provided regular updates to the membership on the status of legislation, sent written letters to Congress, and has joined other organizations in united efforts to support or oppose legislation affecting individuals with disabilities, including traumatic brain injury (TBI).

NASHIA has recently assigned part-time staff the responsibility of monitoring legislation and to work with other partners, particularly the Brain Injury Association of America, to further funding and other legislative efforts that may benefit individuals with traumatic brain injury and their families. NASHIA has also become a member of the Consortium for Citizens with Disabilities (CCD), which is a coalition of approximately 100 national disability organizations that work together to advocate for national public policy that ensures the self determination, independence, empowerment, integration and inclusion of children and adults with disabilities in all aspects of society.

During the annual business meeting held September 11, 2004, NASHIA adopted its public policy platform as recommended by the Public Policy Committee chaired by William Ditto. The recommendations are contained in the document, "Federal Public Policy Platform", that is available at <http://www.nashia.org/pdocfiles/PublicPolicyPlatform.pdf>. The Platform defines NASHIA's public policy efforts in terms of primary involvement, support and monitoring legislation. Primary involvement means that NASHIA lends the majority of its efforts to support Federal legislation, funding and/or regulatory strategies that directly impact service delivery for individuals with traumatic brain injury and their families. This includes initiating, researching or drafting legislative language or funding proposals, educating policy makers, and actively building coalitions to support such initiatives. "Support" means that NASHIA also offers support for Federal legislation, funding or regulatory strategies that directly impact services delivery, but for which there is leadership outside NASHIA to lead and organize these efforts. The Final Report follows the format of the Platform.

For additional information regarding particular legislation see past issues of the Capitol News and/or the Legislative Tracking Grid on the NASHIA website at www.nashia.org.

Primary Involvement

TBI Appropriations

Congress finalized the Fiscal Year (FY) 2005 appropriations for programs within the Departments of Labor, Health and Human Services and Education on November 20, 2004. The funding for the programs authorized by the TBI Act of 2000 is contained in that bill. While the TBI programs administered by the U.S. Health Resources and Services Administration were flat funded, the TBI programs administered by the Centers for Disease Control and Prevention received a \$515,000 increase. However, all Federal discretionary programs, including the TBI programs, are subject to a .83% across the board cut, to pay for any additional spending in non-defense discretionary programs.

The Congressional Brain Injury Task Force circulated a "dear colleague" letter requesting additional funding for all TBI programs. The letter was signed by the Task Force co-chairs Representative Bill Pascrell, Jr. (D-NJ), and Representative James C. Greenwood (R-PA). NASHIA also submitted testimony and letters calling for increases in the State grant program

(\$3.4 million increase), Centers for Disease Control and Prevention (\$3.5 million increase) and for Protection and Advocacy Systems (\$3 million increase) in concert with the Congressional Brain Injury Task Force.

NASHIA board members and staff participated in a legislative day sponsored by the Brain Injury Association of America in May. In the fall of 2004 a New Jersey delegation representing the Brain Injury Association of New Jersey and William Ditto, NASHIA Public Policy Chair and Vice President of NASHIA, met with congressional staff to New Jersey Representative Pascrell to provide information on the needs of individuals with traumatic brain injury, their families, and State government to address those needs.

NASHIA and the Brain Injury Association of America are now working on a strategy for FY 2006 to obtain additional funding to support all States, Territories, District of Columbia, and American Indian Consortium. In addition, the organizations are working on the reauthorization of the TBI Act, as the authority to appropriate funds for the programs established by the TBI Act of 2000 ends in 2005.

Support

Medicaid

Although legislation was not filed by Congress to block grant Medicaid, there have been other attempts toward that goal. One strategy has been to allow States to block-grant Medicaid through the 1115 Waiver process to give States flexibility for their Medicaid programs in exchange for a cap on the Federal contributions to the State Medicaid program. As a result, Senator Max Baucus (D-MT) introduced S. 2222, The Medicaid and CHIP (state's Children's Health Insurance Program) Safety Net Preservation Act of 2004, to protect the entitlement of Medicaid, ensure the public process of Medicaid waiver applications, make clear that CHIP money cannot be used for childless adults, and ensure that EPSDT (Early and Periodic Screening, Diagnosis, and Treatment services for children) cannot be waived by States. However, the bill failed to secure enough bipartisan support to pass.

NASHIA supported S. 2222 and included fact sheets opposing block granting of Medicaid developed by CCD on the NASHIA website.

NASHIA also continued to support and monitor the Medicaid Community Attendant Services and Support Act (MiCASSA), S.971 and H.R. 2032. The proposal allows individuals eligible for Nursing Facility Services or Intermediate Care Facility Services for the Mentally Retarded (ICF-MR), regardless of age or disability, the choice to use these dollars for community-based services and supports. The bill was referred to the Senate Finance Committee.

Expansion of Medicaid Coverage for Children

The Family Opportunity Act (Dylan Lee James Act, S. 622/H.R. 1811) was introduced in the House and the Senate to allow States to offer Medicaid coverage for children with disabilities whose family income is more than the standard for receiving SSI but less than 250 percent of the poverty level (approximately \$46,000 a year for a family of 4). The Senate bill passed unanimously in April. A companion bill was introduced by Representative Pete Sessions (R-TX) and was referred to the Subcommittee on Health of the Energy and Commerce Committee. No action was taken by the Subcommittee. However, Representative Sessions led several efforts to have the bill considered under suspension of the rules bypassing committee action.

The Administration advocated for attaching the Money Follows the Person provision from the New Freedom Initiative Medicaid Demonstrations Act to the bill to be considered under the suspension rule. However, Energy and Commerce Chairman Barton (R-TX) insisted that the legislation have a Medicaid offset --- meaning, having a way to pay for the program. This requirement killed the bill.

Lifespan Respite

The Lifespan Respite Care Act of 2003 (S.538/H.R. 1083) was introduced to increase the availability and coordination of affordable, accessible respite care to family caregivers, regardless of age or type of disability. The bill would have authorized \$90 million in competitive grants to States and other eligible entities to make respite available and accessible to family caregivers. The bill would also help support planned and emergency respite, respite worker training and recruitment, caregiver training, and program evaluation.

The Senate unanimously voted to pass S.538 on April 10, 2003. Representatives Langevin (D-RI) and Greenwood (R-PA) introduced a bipartisan companion bill (H.R. 1083) on March 5, 2003, that had 132 bipartisan co-sponsors. It was referred to the House Energy and Commerce Subcommittee on Health where no further action was taken.

NASHIA signed on to the CCD coalition letter supporting this legislation.

Prevention

Traffic Safety

On September 30 President Bush signed H.R. 5183 (P.L. 108-310) that extends highway construction, highway safety, motor carrier safety, transit, and other programs funded out of the Highway Trust Fund for eight months. Legislation reauthorizing the Transportation Equity Act for the 21st Century had yet to pass. Therefore, H.R. 5183, the Surface Transportation Extension Act of 2004, Part V extends the Highway, Transit, and Highway Safety programs through May 31, 2005. This extension is necessary to give the House and Senate authorizing committees additional time to agree on a multi-year reauthorization bill.

The bill authorizes \$24.5 billion for the Federal-aid Highway program for highway and bridge construction and safety-related infrastructure improvements. \$5.2 billion is authorized for the Federal Transit Administration for grants to State and local transit agencies to reduce congestion and ensure mobility for all Americans in urban and rural areas. The bill authorizes \$200 million for highway safety programs, including programs to encourage seat belt use and to prevent drunk driving. \$287 million is authorized for the Federal Motor Carrier Safety Administration for truck and bus related safety programs.

Preventive Health and Health Services Block Grant

At the request of the Coalition of American Trauma Care NASHIA signed on to the support letter to Senator Specter requesting an increase in the FY 2005 funding for the Centers for Disease Control and Prevention's (CDC) Preventive Health and Health Services Block Grant. State health departments have used Preventive Health and Health Service Block Grant dollars to address a wide variety of public health issues including child safety seat programs, suicide prevention, smoke alarm distribution and fire safety programs, oral health, worksite wellness, emergency medical services, and surveillance needs. However, the program did not receive an increase, but was funded the same level as FY 2004.

Special Education/IDEA Reauthorization

President Bush signed the Individuals with Disabilities Education Act (HR 1350) on December 3, 2004. Among NASHIA's concerns was the proposed elimination of short term objectives. The reauthorization will eliminate this requirement for most students. The law requires schools to provide short-term objectives for students with significant disabilities, and for all students, quarterly reports to parents on their child's progress toward meeting annual IEP (Individual Education Program) goals and how that progress is being measured.

The new law will allow 15 States to apply for pilots that will seek to reduce paperwork. The Secretary of Education is authorized to grant waivers of statutory and regulatory requirements, for a period not to exceed 4 years, to 15 States proposing to reduce excessive paperwork and non-instructional time burdens. In addition, the Secretary of Education is authorized to approve proposals from up to 15 States to allow local school districts to offer, with parental consent, a multi-year IEP, not to exceed 3 years.

The transition process (activities that help a student begin planning for life after high school for a student with a disability) is to now begin at age 16. Parents should request that the student's IEP, when appropriate, include a statement of inter-agency responsibilities and any needed linkages, as this language is no longer in the statute.

The research authority is moved to the new Institute for Education Sciences. And, of a concern to most advocates the law does not provide mandatory full funding. However, the annual amounts authorized to be spent on IDEA would achieve full funding in six years, assuming that these amounts will actually be appropriated by Congress.

New Freedom Initiatives

Money Follows the Person/New Freedom Initiative

The Administration's 2005 budget proposal included a provision for demonstration projects for adult and child respite care, rebalancing the Medicaid system ("Money Follows the Person"), direct care worker support, presumptive Medicaid eligibility, and spousal support. Senator Tom Harkin (D-IA) introduced S. 1394, the Money Follows the Person Act on July 11, 2004, and tried to pass it as part of a tax bill. Subsequently, the Administration transmitted draft legislation to Congress reflecting its budget proposal. Senator Grassley (R-IA), Chair of the Senate Finance Committee, held one hearing. The House of Representatives was close to passing the Money Follows the Person portion of the draft legislation, along with the Family Opportunity Act, however, the efforts were stymied as the result of the "pay as you go" rule.

Monitor

Federal Budget

Overall, the final omnibus spending package for FY 2005 fully complies with the spending targets agreed to by Congress and the Administration, totaling \$821.9 billion in discretionary spending. This represents a freeze or zero percent growth in non-defense discretionary. Total discretionary spending in the bill is \$388.4 billion. All additional spending is paid for by an across the board cut of .83% in all non-defense and non-homeland security spending, a \$300 million rescission in non-war, non-emergency defense funds, and \$283 million from limitations on expenditures from the Crime Victims Fund.

Special Education

Overall, the bill provides a \$1.4 billion increase for the Department of Education, bringing it to a total of \$57 billion. IDEA Part B Special Education Grants are funded at \$11.5 billion, \$415 million below the President's budget request, but \$607 more than was appropriated last fiscal year. This figure falls approximately \$1.5 billion short of the new IDEA authorization level in the bill passed by the Congress the previous day. All other IDEA programs were level funded except for research and innovation grants. Authority for special education research has also been moved from the Office of Special Education Program (OSEP) to the Institute for Education Sciences as a result of the recent reauthorization of IDEA.

Employment

Vocational Rehabilitation State Grants are funded at \$2.6 billion, an increase of \$51.6 million (the statutorily-mandated increase). Congress voted level-fund the Rehabilitation Act Supported Employment Program in spite of the President's recommendation to eliminate it.

The Assistive Technology Act programs are increased by \$4 million to \$30 million. This amount allows all current programs to remain funded.

Workforce Investment/Rehabilitation Act

Both the House and Senate passed bills to reauthorize the Workforce Investment Act and the Rehabilitation Act (WIA). The House passed its bill in May of 2003 and the Senate bill was passed by Unanimous Consent on November 14, 2003. Both bills have the same number, H.R. 1261. The House named its conferees in June, however, Senate Democrats failed to name their conferees. Therefore, the bill did not pass.

Unlike the House version, the Senate bill did not include the provision to shift program costs to support the one-stop centers. Advocates, including NASHIA, opposed the House position that would allow governors to take funds from other programs to pay for costs associated with operating the one-stop system—without any assurance that the money would be used to increase employment and training opportunities for individuals with disabilities.

The Senate bill also emphasized consumer choice in developing vocational rehabilitation plans and better coordination with the Ticket to Work program and Olmstead plans. Also, the Senate included provisions to increase programmatic access, as well as to increase physical access, to the WIA workforce system for individuals with disabilities.

TANF Reauthorization

Congress did not pass legislation to reauthorize the Temporary Assistance to Needy Families (TANF). Instead, Congress passed an extension that will expire on March 31, 2005. This was the eighth extension passed in this Congress.

The House passed its version of the bill, H.R. 4, to reauthorize the TANF program. The CCD opposed the provision that would increase work hours for people on TANF, yet, made little, if any, accommodations for people with disabilities or parents of children with disabilities.

The Senate Finance Committee, chaired by Senator Charles Grassley (R-IA), approved a compromise bill (also referred to as H.R. 4 because it is an amended version of the House bill). During the debate, three amendments critical for the disability community were approved: (1) a provision that allowed for three months of rehabilitation plus another three (total of six months within a 24 month period) if the person is engaged in some work or work-readiness program; (2) a provision that enabled a single parent of a child with a disability or a family member dependent for care to be able to count caregiving as work hours, and; (3) a provision for pre-

sanction reviews to determine what barriers may be preventing the person or family from complying with the law. The bill raised the number of hours required for work from 30 hours to 34 hours. The Senate also approved an amendment offered by Senators Olympia Snowe (R-ME) and Christopher Dodd (D-CT) that would have increased child care funding by \$7 billion over five years.

Housing

The FY 2005 omnibus spending bill contains funding for several important housing programs within the U.S. Department of Housing and Urban Development (HUD), including the Section 8 Housing Choice Voucher program (Section 8 HCVP), the McKinney/Vento Homeless Assistance Act, and the Section 811 Supportive Housing for Persons with Disabilities Program (Section 811). Funding for HUD is \$37.3 billion, more than the President's request (by \$521 million), but \$618 million less than the FY 2004 HUD budget.

Section 8 escaped being block-granted as proposed by the Administration and was funded above the President's recommendations. Current estimates project that this is sufficient funding to ensure that all current Section 8 vouchers are renewed consistent with most existing rules. More importantly, the omnibus bill specifically rejects key provisions in the Administration's "Flexible Voucher" proposal, including efforts to repeal requirements for targeting of vouchers to extremely low-income households and allow housing agencies to increase tenant rents and time limit assistance.

Other than Section 8, most other HUD programs were cut by an average of 4%. Included in these cuts is a \$9 million reduction for the Section 811 – dropping funding for FY 2005 down to \$240 million. The bill allocates as much as \$50 million for Section 811 tenant-based voucher renewals, i.e. renewal funding for 811 vouchers funded in previous years. Programs under the McKinney-Vento Homeless Assistance Act are funded at \$1.241 billion in the omnibus spending bill. This is a \$19 million reduction below the FY2004 level. This includes \$186 million for renewal of expiring housing subsidies under the Shelter Plus Care program. Homeless assistance, Housing Opportunities for Persons with AIDS, Section 202 and 811, CDBG (Community Development Block Grant), Fair Housing, and Lead programs are all less than FY 2004.

Funding for Section 8 is split into two accounts for tenant-based and project-based assistance:

- Tenant-based assistance (vouchers) are funded at \$14.9 billion and are treated as a dollar-based, not unit-based, system.
- Project-based assistance is funded at \$5.34 billion, \$270 million more than FY2004.

Assistive Technology

On October 25, President Bush signed the Assistive Technology Act of 2004 (H.R. 4278). The new legislation eliminates the sunset provision and provides funding to States to support a set of required activities including alternative financing programs, equipment loan programs, training, technical assistance and public awareness. The bill requires States to spend the majority of their funding on activities related directly to connecting individuals with disabilities to technology. The bill also includes authorization for several national activities to address assistive technology needs and transfers the administration of the Federal program from the National Institute on Disability and Rehabilitation Research (NIDRR) to the Rehabilitation Services Administration (RSA).

Note: Information regarding the final status of some of the legislation was taken from the Association of University Centers on Disabilities "Final Report on the 108th Congress".