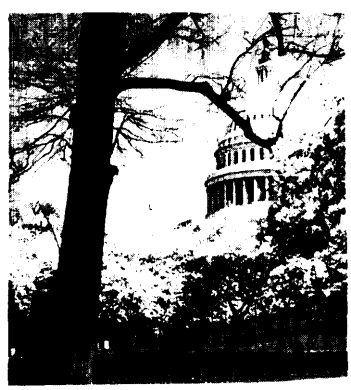
# Executive Summary 1

The Americans with Disabilities Act (ADA) is a watershed in the history of disability rights. It outlaws discrimination against people with disabilities in nearly every domain of public life: employment, transportation, communication, recreational activities, and other accommodations (table 1-1 ). The ADA enjoyed bipartisan support during its legislative sojourn, winning the President's signature on July 26, 1990. Disability rights advocates celebrated passage of the ADA, hailing it as the single most far-reaching legislation ever enacted against discrimination on the basis of disability. Although the news media had largely ignored previous disability rights legislation, it showered attention on the ADA's passage and its early implementation. Executive branch agencies prepared requisite regulations. Businesses geared up for compliance and voiced concerns about the lack of specific guidance, costs, and the risk of litigation associated with this new law. And a new industry emerged, marketing ADA expertise and technical assistance.

At this early juncture in the law's implementation, it is useful to evaluate current efforts under the ADA in the area of psychiatric disabilities and employment, and to review data that may assist future implementation. This study by the Office of Technology Assessment (OTA) examines these issues, at the request of Senator Edward M. Kennedy (D-Massachusetts), Chairman of the Senate Committee on Labor and Human Resources, and several members of the House Working Group on Mental Illness and Health Issues—Congressman Dave Hobson (R-Ohio), Congresswoman Marcy Kaptur (D-Ohio), Congressman Mike Kopetski (D-Oregon), Congressman Ron Machtley (R-Rhode Island), and Congressman Jim McDermott (D-Washington).



| | Brief description | Law's enforcement date | Enforcement jurisdiction |
|---|---|---|---|
| TITLE<br>Employment | Provides that no covered entity shall discriminate against a qualified individual with a disability because of the disability in regard to job application procedures, hiring, advancement, employee compensation, job training, and other privileges of employment. | Effective July 26,1992, for employers with 25 or more employees, and on July 26, 1994, for employers with15 or more employees. Employers with fewer than 15 workers are not covered by ADA | U.S. Equal Employment Opportunity Commission |
| TITLE H<br>Public Services | Provides that no qualified individual with a disability shall be excluded from participation in or be denied the benefits of the services, programs, or activitives of public entities, including transportation facilities. | As of Aug. 26,1990, all new public buses and light and rapid rail vehicles ordered are to be accessible; one oar per train must be accessible by July 26, 1995; key commuter stations must be retrofitted by July 26, 1993; all existing Amtrak stations must be retrofitted by July 26,2010. | Us. Department of Transportation; U.S. Department of Justice |
| TITLE III<br>Public Accommodations | Provides that people with disabilities should have access to existing private businesses that serve the public, so long as required accommodations are 'readily achievable." The list includes hotels, restaurants, theaters, laundromats, museums, zoos, private schools, and offices of health-care providers. | Effective Jan. 26, 1992, for businesses with more than 25 employers; on July 26, 1992, for businesses with 25 or fewer employees and annual revenue of $1 million or less; and on Jan. 26, 1993, for companies with 10 or fewer employees and annual revenue not exceeding $500,000. | U.S. Department of Justice |
| TITLE IV<br>Telecommunications | Amends Title II of the Communications Act of 1934 by adding a section providing that the Federal Communications Commission shall ensure that interstate and intrastate telecommunications relay services are available, to the extent possible, to hearing-impaired and speech-impaired individuals. | By July 26,1993, covered firms should have telecommunications services available 24 hours a day. | Federal Communications Commission |

SOURCE: CQ Researcher, The Disabilities Act(Washington, DC: Congressional Quarterly, Inc., 1991).

What does the ADA require, in terms of employment? Title I bars employers from discriminating against qualified individuals with disabilities.

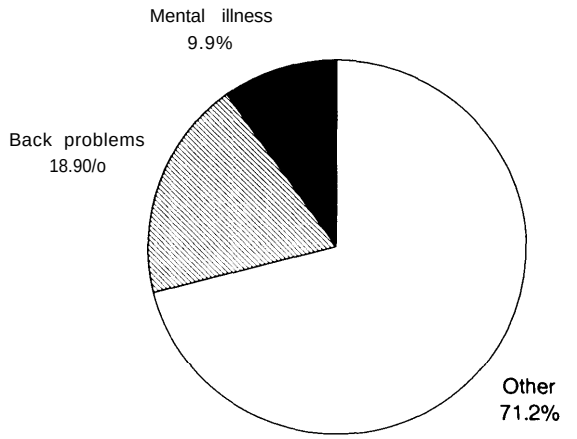
> *No covered entity shall discriminate against a qualified individual with a disability because of the disability of such individual in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment (42* USC *121 12).*

The ADA's construction of discrimination prohibits, among other things, pre-job offer medical examinations or inquiries or the segregation of employees with disabilities. The most important definition of discrimination is an employer's refusal to make a reasonable accommodation. When requested by a qualified applicant or employee with a disability, an employer must provide a reasonable accommodation unless doing so would impose an undue hardship.

In the first 15 months after the ADA went into effect, 17,355 employment discrimination charges were filed with the U.S. Equal Employment Opportunity Commission (EEOC); nearly 10 percent of these charges—1 ,710-related to mental disorders (figure 1-1 ). That mental disorders accounted for the second largest block of charges, as broken down by type of impairment, hints at the importance of the issue of employment to people with psychiatric disabilities. The numerous charges of discrimination that involve mental disorders also signal that employers will not infrequently face issues around psychiatric disability and the ADA.

This assessment has two major goals. The first is to compare the ADA's employment provisions with what is known about mental disorder-based or psychiatric disabilities.[1] The second goal is to review Federal activities relevant to the ADA, em-

FIGURE 1–1: Charges of Discrimination Under the ADA




*Of 17,355 total ADA-related charges filed with the EEOC between July 26, 1992 and October 31, 1993, the second highest percentage—1, 710 charges—were related to mental illness.*

SOURCE U S Equal Employment Opportunity Commission, Dec 1, 1993.

ployment, and psychiatric disabilities. This chapter summarizes major findings of the subsequent chapters and underscores areas of needed research, guidance, and technical assistance.

= Chapter 2 provides an overview of the ADA's requirements and the political and legal antecedents.

- Chapter 3 begins with a discussion of the ADA's definition of disability and its potential impact on people with psychiatric disabilities. A description of psychiatric disabilities, their prevalence, common symptoms and treatment, associated functional limitations, and their impact on employment forms the chapter's second section.
- Chapter 4 considers many of the crucial requirements of Title I of the ADA, including dis-

[1] The report focuses on mental disabilities, a broad rubric. However, some conditions are not discussed, including substance abuse disorders, developmental disabilities such as mental retardation, and other cognitive and neurological impairments. While these impairments and resulting disabilities raise important questions under the ADA—some similar and some distinct from the conditions considered in this study—they are beyond the scope of this report.

closure, qualification standards, reasonable accommodations, and the issue of direct threat. The ADA's potential impact on mental health benefits is also discussed.

. Chapter 5 reviews Federal enforcement, technical assistance, and research support related to the ADA, psychiatric disabilities, and employment.

The ADA represents a significant advance in the history of disability rights. The language of the law, the regulations and guidelines offered by the EEOC, experience with the Rehabilitation Act of 1973, the activities of employers and employees implementing the ADA, and technical assistance efforts all guide the ADA's implementation. Nonetheless, employers and people with psychiatric disabilities have concerns about the law and its implementation. Employers fear the costs of implementation and liability under the law and want more specific guidance as to their responsibilities. People with psychiatric disabilities fear that the language of the law and relevant guidelines often do not speak to their needs. Indeed, OTA concludes that inadequate knowledge of relationships between psychiatric disabilities and employment coupled with few efforts to apply available knowledge to the requirements of the ADA are impediments to the law's implementation. In the absence of further research and guidance, employers and people with psychiatric disabilities are handicapped in exercising their rights and responsibilities under the law.

## DEFINING DISABILITY

Drawing from the Rehabilitation Act, the ADA offers a three-pronged definition of disability. Disabled individuals are:

- those with a physical or mental impairment that substantially limits one or more major life activities,
- those with a record of such an impairment, or
- those who are regarded as having such an impairment.

The first prong of the definition asserts that a disability reflects impairment and functional result. This definition limits the ADA's protection to those individuals with significant or non-trivial impairments. The second and third prongs are based on the widely held belief that disability is the result of an impairment and the way others perceive an individual with an impairment. Since mental disorders commonly provoke negative reactions and attitudes—stigma—these two prongs of the definition are especially important to people with psychiatric disabilities. Part of the ADA's mandate is to make questions about psychiatric disabilities or mental health history things of the past. Title I of the ADA prohibits employers from asking about disabilities or using any information sources that disclose disability status, including voluntary medical examinations, educational records, prior employment records, billing information from health insurance, and psychological tests, prior to a job offer.

Although the law excludes several specific psychiatric diagnoses,[2] the ADA explicitly includes mental disorders under its protection: "(M)ental impairment mean(s). . . (a)ny mental or psychological disorder, such as. . . emotional or mental illness" (29 CFR 1630.2(h)(2)). While the EEOC does not rely on a specific diagnostic framework to identify such impairments, many experts contend that as a practical matter, a DSM-111-R (the Diagnostic and Statistical Manual, 3d edition, revised) diagnosis will be necessary, if not sufficient, to meet the ADA definition. Beyond the problems involved in diagnosis, mental disorders present problems related to relapsing and remitting symptoms and impairing side-effects of medications. EEOC staff, in review of an earlier draft of this report, indicated to OTA that the upcoming compliance manual will state that episod-

[2] Excluded disorders include transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, other sexual behavior disorders, compulsive gambling, kleptomania, pyromania, or psychoactive substance use disorders resulting from current illegal use of drugs.

ic disorders may be ADA disabilities and that side-effects of medications may also be substantially limiting.

Having an impairment does not equal having a disability. Under the ADA, disability is an impairment that "substantially limit(s) one or more of the major life activities." Of the major life activities listed by the EEOC-caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working—working is the only one that really applies to people with psychiatric disabilities, according to some commentators on the ADA. Thus, people with psychiatric disabilities may find themselves in a Catch-22 situation, having to prove that they are substantially limited in working, and yet are qualified for the job-both requirements of the ADA. Others, including the EEOC, note that the list of major life activities provided by the EEOC was not meant to be exhaustive and that mental disorders can limit many of the life activities listed. Importantly, assessment of functioning in mental disorders is not an easy or validated technique (box l-l). Additional guidance from the EEOC and others on how mental disorders may limit now specified and other major life activities would help clarify this issue, as would research into functional assessment.

The above discussion begs the question: What activities do mental disorders commonly limit? A variety of sources point to three major areas of functional limitations related to mental disorders and especially relevant to work: problems in social functioning, difficulty concentrating long enough to complete tasks, and problems coping with day-to-day stress.

This OTA report unveiled substantial disagreement among mental health experts as to the relationship between mental disorders and employment outcome. Some say nearly no correlation exists. Others point to data that show a significant correlation between psychopathology, treatment status, and work performance. Such disparate conclusions point out that existing data are obviously incomplete. Studies have used different measures of psychiatric symptomatology, work performance, and vocational outcome. Furthermore, treatment status and individual ability are almost always ignored, as are traditional labor predictors, the type or amount of vocational services that an individual may have received, job history, changes in demand for labor, and demoralization caused by stigma and discrimination. Resolution of how impairment, functional limitation, and work disability relate to one another awaits further research.

Nonetheless, some conclusions can be drawn about people with mental disorders and work: Research data support a link between symptoms and work performance. Furthermore, data indicate that treatment may significantly improve work functioning and outcome. Thus, even though treatment may not be mandated by the ADA (see later discussion), access to effective treatment will be paramount for some individuals with mental disorder-based disabilities to maintain employment.

The precise relationships among impairments, functional limitations, and work are obscure and complex. Diagnoses do not predict rehabilitation and employment outcomes except in the broadest terms, and there are wide variations in outcomes within diagnostic groups. Moreover, research data support the contention of many working in this field that treatment itself can sometimes result in other functional impairments. One thing that is clear is that prior work performance remains the best predictor of future work performance.

People with psychiatric disabilities are by no means a homogeneous population. Distinct subgroups exist—ranging from people with the most severe mental disorders and others with less severe conditions—whose members can probably expect different things from the ADA.

People with the most severe mental disorders, clearly covered by the ADA's definition of disability, are unlikely to achieve competitive employment by virtue of the ADA alone. They will require a broad range of educational, psychosocial, and vocational services to prepare them to find and keep jobs; to make them "qualified people with disabilities" as required by the ADA.

## BOX 1–1: Assessing Psychiatric Disability

Models of disability and data from research show that identifying a particular diagnosis or symptom is insufficient to determine the severity of disability, required services, or work limitations, In order to qualify for the ADA's protections a person must bean individual with an impairment that "substantially limit(s) one or more of the major life activities. " EEOC investigators, employers, people with mental disorders, and mental health care providers face the challenge of determining who with a mental disorder has a psychiatric disability under the law.

### The Status of Functional Assessment

Questionnaires, interviewing techniques, and observational approaches have been developed to assess disability, and disability assessment has become a standard part of vocational and psychosocial rehabilitation services. The goals of assessment maybe very general, aimed at measuring social skills, the ability to maneuver every-day requirements, and work performance; or very specific, aimed at specific disorders and functions. Recent analyses have documented shortcomings of these disability assessment methods, Following a comprehensive review, one researcher concluded that no one instrument was wholly adequate for assessing functional impairments. Recently this same scholar noted that:

> [B]etter methods of assessment would improve both the interpretation of future evaluations and current clinical practice. Most evaluations use relatively idiosyncratic methods of measuring role functioning. What is needed is an easily administered, low-cost assessment tool that not only measures individuals' impairments and role functioning, but provides information that is directly relevant to treatment decisions,

Similarly, expert reviewers of social functioning measures concluded that modest reliability and the lack of evaluation limit the usefulness of available assessment tools, Furthermore, they concluded, none is simple enough for routine clinical use. These conclusions are in the National Institute of Mental Health's plan for services research, which states that:

> Although [disability]. . . assessment seems logical and straightforward enough, the truth is that the mental health field is still without an adequate arsenal of instruments and techniques to fully accomplish the task. . . No aspect of clinical services-or of research designed to improve such services-can prosper without the availability of meaningful and valid techniques for assessing the status of mentally ill patients, not only in purely clinical terms but also in terms of their everyday functioning in the real world and their strength on which rehabilitation can build. Needed are. . ways to assess general health status and physical functioning, the quality of the patient's life, the nature of the family's burden, and the patient's rehabilitation potential and progress.

### Disability Assessment at the Social Security Administration

The experience of the Social Security Administration (SSA) illuminates the pitfalls of implementing disability assessment. SSA administers two disability income maintenance programs: the Social Security Disability Insurance (SSDI) program and Supplemental Security Income (SSI) program. Eligibility for these programs hinges on the inability to work. The methods used by SSA to assess severe psychiatric disability in the 1980s was said to be difficult to use, too subjective, out of date, and discriminatory, "The essential problem is that it is not possible to construct a set of medical and vocational standards that will distinguish perfectly between those who are able to work and those who are not able to work." The public outcry that resulted from a disproportionate number of people with severe mental disorders being terminated from the programs led Congress to order a revision of SSA's psychiatric disability assessment methods. The new method includes the consideration of diagnosis as well as limitations in four areas of functioning: activities of daily living; social relations; cognitive functioning such as concentration, persistence, and pace; and decompensation or deterioration in work. Consideration of environmental interventions was also provided as an option in the assessment.

## BOX 1–1: Assessing Psychiatric Disability (cont'd.)

SSA's current disability determination is not without its critics: An American Psychiatric Association study of the new guidelines indicates that additional changes may improve the disability determination; the use of this assessment method by psychiatrists and other care providers also warrants improvement; some have criticized the increasing number of people with psychiatric disabilities who now receive SSI or SSDI,

It should be noted that the SSA's disability determination procedure is not appropriate for the ADA, The elaborate hurdle that people with disabilities must vault to receive SSA program benefits would limit unduly the ADA-guaranteed protections against discrimination. In addition, the definition of disability under the ADA obviously is not limited to individuals who cannot work at all.

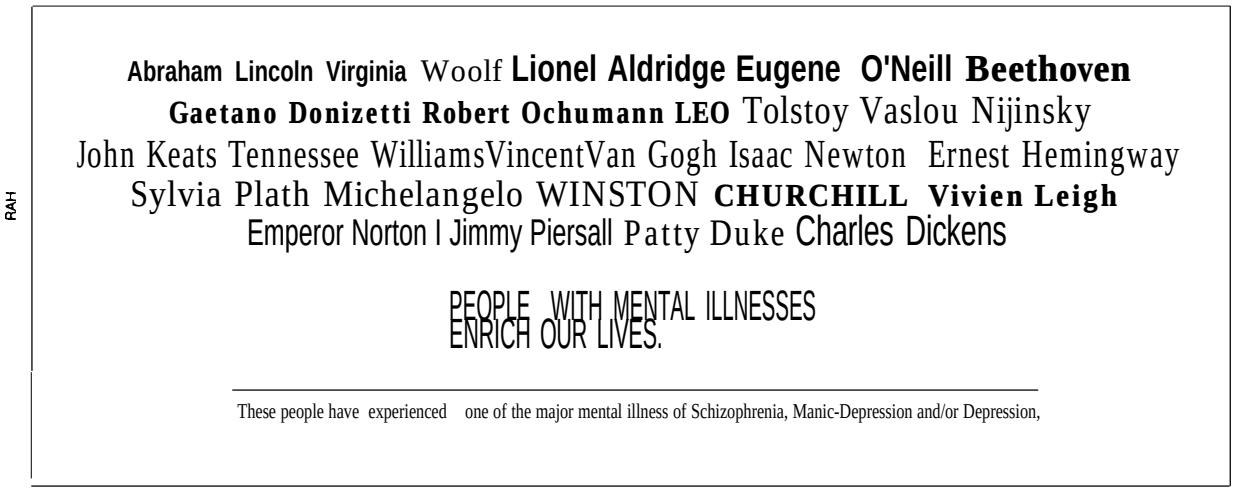
**Functional Assessment and the ADA**

The ADA defines disability in terms of impairment and functional limitations. In general, an applicant or employee discloses the presence of a disability to an employer or covered entity, often providing very limited information. The employer may require confirmation of a disability that is not readily apparent, such as a psychiatric disability. Also, the EEOC must make a determination as to whether an individual is considered disabled under the ADA in the event that a charge of discrimination is filed. To date, in its computerized charge data system, the EEOC simply lists the marginally informative term "mental illness" as the impairment relevant to psychiatric disability, [1]The EEOC will be implementing a new coding system for disabilities in fiscal year 1994 and it will include a category for "emotional/psychiatric impairment, " under which there will be separate entries for anxiety disorder, depression, manic-depressive disorder, schizophrenia, and other emotional/psychiatric condition where none of the above clearly apply. What doesn't exist are guidelines for determining who with a mental disorder has an impairment that substantially limits a major life activi - ty—is disabled under the ADA's definition. Convening a group of experts and interested parties to help fashion guidance for EEOC investigators and others, concerning diagnoses and other assessment criteria relevant to the ADA and employment would be useful. Continued research and the development of functional assessment tools also represent critical needs.

[1] Mental retardation IS appropriately Iisted separately from mental Illness

SOURCES C Koyanagi and H Goldman, *Inching Forward A Report on Progress Made in Federal Mental Health Policy in the 1980s* (National Mental Health Association, 1991 ), U.S. Department of Health and Human Services, *Toward a National P/an for the Chronically Menfa//y ///* (Public Health Service, Washington, DC, 1980), H A Pincus, C Kennedy, and S J Simmens, American Psychiatric Association, Washington, DC, "Study of SSA Methods and Standards for Evaluating Dlsability Based on Mental Impairment, " final report to Social Security Administration (SSA-600-84-01 74), November 1987; H A Pincus, C Kennedy, S J Simmens, et al , "Determlnlng Dlsability Due to Mental Impairment, APA's Evaluation of Social Security Administration Guidelines, *"American Journal of Psychiatry* 1481037-1043, 1991, H.H Goldman, A.E, Skodol, and T R Lave, "Revising Axls V for DSM-IV A Review of Measures of Social *Functlonlng, "American Journal of Psychiatry* 1491148-1156, 1992, C J Wallace, 'Functional Assessment in Rehabilitatiion," *Schizophrenla Bulletin 12604-630, 1987*

Some mental health experts and advocates have suggested that the ADA's impact will be most strongly felt by people with less severe mental disorders, who are already working in a competitive setting. Diagnosable mental disorders and symptoms are common among working-age adults. However, much less is known about the functional limitations of the population with less severe mental disorders, their employment characteristics, accommodation needs, or even who among this group would be covered under the first prong of the ADA's definition of disability, which refers to individuals with serious or nontrivial disabilities. While courts have been expansive in defining mental impairment per se under the Rehabilitation Act, substantially limiting psychiatric impair-




As indicated in this poster from the National Alliance for the Mentally Ill, mental health advocates emphasize the talent and productivity of people with psychiatric disabilities.

ments have sometimes been defined more restrictively. Unless questions are answered concerning these less severe conditions—Which ones are covered? How can such determinations be made?—the ADA is open to excessive subjectivity in claims of psychiatric disability.

## DISCLOSING A PSYCHIATRIC DISABILITY TO AN EMPLOYER

Before an employer provides an accommodation, indeed before the ADA requires that one be provided, an applicant or employee must disclose his or her need. The obvious gateway to disclosure is employee awareness: A person with a disability must know about the ADA's protections before tapping into them. However, a 1993 Harris poll shows that less than 30 percent of people with any disabilities had ever heard or read about the law.

Ignorance of the ADA's provisions is only the first hurdle to disclosure. A person with a psychiatric disability faces what may be a wrenching decision about divulging his or her mental disorder to a current or would-be employer. Lack of awareness that a mental disorder exists or unwillingness to label oneself disabled prevents such self disclosure. Another obstacle to disclosure is the fear that disclosing a condition invites the stigma attached to mental disorders. While attitudes toward mental disorders may be improving, research data continue to show that ignorance and negative attitudes are attached to these conditions. By disclosing a psychiatric disability, an individual risks discrimination, teasing or harassment, isolation, stigmatizing assumptions about his or her ability, and the labeling of all behavior and emotions as pathological. The most pernicious aspect of stigma maybe the way in which it undermines an individual's self-esteem and social interactions.

Disclosure may gamer benefits for the individual with a disability, however. In addition to invoking the protection of the ADA, in the right circumstances, openly admitting a mental disorder may enhance self-esteem, diminish shame, permit supervisors and coworkers to offer support, and even lengthen job tenure.

After making a decision to disclose a mental disorder, a person also must consider what to disclose, to whom, and when. Legally, an employee need disclose only enough information about his or her disability-related work limitations to support the need for accommodation. There is no legal requirement to disclose prior to the need for an accommodation. However, problems may arise if disclosure occurs only when performance problems have been raised or acted upon by the employer. Little guidance is available to assist people with psychiatric disabilities and their employers

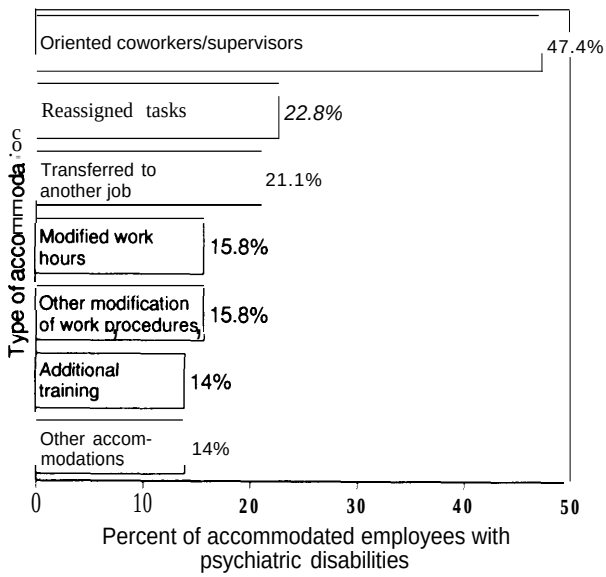
during the disclosure process. With the passage of time and the gaining of experience, the researchers, the EEOC, and other organizations may be able to delineate the methods of disclosure that work well, determine the factors that led to their success, and disseminate this information to employers and people with psychiatric disabilities.

## ACCOMMODATING QUALIFIED EMPLOYEES WITH DISABILITIES

Title I of the ADA requires employers to provide reasonable accommodations to qualified individuals with disabilities, unless these accommodations pose an undue hardship. As the linchpin of the ADA's antidiscrimination requirement, the identification of effective accommodations for people with psychiatric disabilities becomes critical. Because many people construe a disability as a physical disability, such as being in a wheelchair, accommodations are often viewed in physical terms, such as building a ramp. Some changes to the physical environment, such as a private office or secluded work space, may be useful to those with psychiatric disabilities along with other measures, such as restructuring job tasks or schedules. OTA found that several mental health experts and consumer groups have compiled lists of accommodations. In addition, at least one study surveyed businesses as to the accommodations provided to employees with disabilities under the Rehabilitation Act (figure 1-2). Many of the identified accommodations address the functional limitations commonly associated with psychiatric disabilities: difficulties in concentrating, dealing with stress, and in managing interpersonal interactions (e.g., table 1-2).

Lists of commonly desired or used accommodations, while informative, do not supplant the need for case-by-case assessment. Work places and jobs vary, as do people with psychiatric disabilities, who have a broad range of talents, abilities, and functional limitations. Furthermore, more information and guidance are needed about the cognitive, behavioral, and social requirements of jobs. Also, questions about applicability, effectiveness, preference, cost, and impact on the work place of various accommodations are largely unaddressed.

FIGURE 1–2: Most Common Accommodations Provided to Employees With Psychiatric Disabilities




*Data from survey of employers, commissioned by the U.S. Department of Labor indicated that the most frequent accommodation provided to individuals with psychiatric disabilities under the Rehabilitation* Act *was the orientation of supervisors and coworkers,*

SOURCE: Berkeley Planning Associates, *A Study of Accommodations Provided to Handicapped Employees by Federal Contractors,* Vol 1 Study Findmgs (Washington, DC U S Department of Labor, 1982)

Commonly suggested accommodations include those that address treatment needs, such as leave for short-term hospitalization. The need for occasional medical leave raises some difficult issues for employers. Based on experience under the Rehabilitation Act, an employer's duty of reasonable accommodation will almost certainly include the duty to tolerate additional, unpaid absences. However, regular and predictable attendance is commonly viewed as a minimum standard of performance. Differentiating between additional absences as a reasonable accommodation and absences as a performance problem will prove challenging to many employers.

While the EEOC does not require employers to provide treatment to employees as a reasonable

## TABLE 1–2: Accommodations for People With Psychiatric Disabilities*

**Flexibility**
- Providing self-paced workload and flexible hours
- Allowing people to work at home, and providing necessary equipment
- Providing more job-sharing opportunities
- Modifying job responsibilities
- Providing supported employment opportunities
- @@rig-job open and providing a liberal leave policy (e.g., granting up to 2 months of unpaid leave, if it does not cause undue hardship on the employer)
- Providing back-up coverage when the employee needs a special or extended leave
- Providing the ability to move laterally, change jobs, or change supervisor within the same organization so that the person can find a job that is a good fit
- Providing time off for professional counseling
- Allowing exchange of work duties
- Providing conflict resolution mechanisms

**Supervision**
- Providing written job instructions
- Providing significant levels of structure, one-to-one supervision that deals with content and interpersonal skills
- Providing easy access to supervisor
- Providing guidelines for feedback on problem areas, and developing strategies to anticipate and deal with problems before they arise
- Arranging for an individual to work under a supportive and understanding supervisor
- Providing individualized agreements

**Emotional supports**
- Providing ongoing on-the-job peer counseling
- Providing praise and positive reinforcement
- Being tolerant of different behaviors
- Making counseling/employee assistance programs avaliable for all employees
- Allowing telephone calls during work hours to friends or others for needed support
- Providing substance-abuse recovery support group and one-to-one counseling
- Providing support for people in the hospital (e.g., visits, cards, telephone calls)
- Providing an advocate to advise and support the employee
- identifying employees who are willing to help the employee with a psychiatric disability (mentors)
- Providing on-site crisis intervention services
- Providing a 24-hour hot-line for problems
- Providing natural supports

**Physical accommodations at the workplace**
- Modifying work area to minimize distractions
- Modifying work area for Privacy
- Providing an environment that is smoke-free, has reduced noise, natural light, easy access to the outside, and is well-ventilated
- Providing accommodations for any additional impairment (e.g., if employees with psychiatric disabilities have a visual or mobility impairment, they may need such accommodations as large print for written materials, 3-wheel scooter, etc.)

**Wages and benefits**
- Providing adequate wages and benefits
- Providing health insurance coverage that does not exclude preexisting conditions, including psychiatric disabilities, HIV, cancer, etc.
- Permitting sick leave for emotional well-being, in addition to physical well-being
- Providing assistance with child care, transportation, care foraging parents, housing, etc.
- Providing (specialized) training opportunities

**Dealing with coworkers' attitudes**
- Providing sensitivity training for coworkers
- Facilitating open discussions with workers with and without disabilities, to articulate feellngs and to develop strategies to deal with these issues
- Developing a system of rewards for coworkers without disabilities, based on their acceptance and support for their coworkers With disabilities

The items on this list do not necessarily reflect 'reasonable accommodations' as defined by the ADA.

SOURCE: Presidents Committee on Employment of People With Disabilities, 1993

accommodation, other complicated, controversial, and often unanswered questions concerning treatment are sure to arise. Can employees be required to take medication to maintain their jobs? Can employers monitor medications as a reasonable accommodation for employees? Full discussion of these issues—by mental health and legal experts, employers, and people with psychiatric disabilities—is clearly needed.

Accommodating aberrant or unusual behavior, which is sometimes associated with mental disorders, also raises some difficult issues for employers. Most lists of accommodations prepared by advocates and mental health experts recognize that increased tolerance of unusual behavior is desirable. It is noteworthy that the EEOC's guidance on undue hardship goes beyond dollars: "Undue hardship" refers to any accommodation that would be unduly costly, extensive, substantial, or disruptive . . ." However, the EEOC provides no specific guidance on disruptive behavior. Case law under the Rehabilitation Act generally limits the employer's responsibility to accommodate disruptive behavior. While work place training may sensitize supervisors and coworkers to some of these issues, and decrease the stigma against mental disorder, EEOC staff, in comments on an earlier draft of this report, indicated to OTA that it is undecided as to whether coworker training could be a reasonable accommodation. Furthermore, effective work place training, whether required or voluntarily instituted by the employer, is likely to require more than the distribution of pamphlets; a clear work place policy and thoughtful and evaluated educational activities will be vital.

## THE ADA'S DIRECT THREAT STANDARD AND PSYCHIATRIC DISABILITY

Under the ADA, employers may include as aqualification standard "a requirement that an individual shall not pose a direct threat in the work place." The EEOC regulations and guidelines procedurally narrowed the definition of direct threat to include only significant risk of substantial and imminent harm, individually and expertly assessed, which cannot bee] eliminated or reduced by reasonable accommodation.

Clearly, employers and coworkers have legitimate concerns about their safety at the workplace. Still, the ADA's reference to direct threat touches a raw nerve among people with psychiatric disabilities, their families, and other advocates. If any one stereotype of mental illness is most prevalent and damaging, it is that of the homicidal maniac. To counter this stereotype, anti-stigma campaigns typically assert that people with mental disorders are no more violent than the average person. However, a variety of data show a link, albeit a modest one, between mental disorders and violent behavior. In particular, data suggest that a small subset of mental disorders—psychotic disorders, indeed specific aspects of psychosis, when a person feels personally threatened or the intrusion of thoughts that can override self-control—are linked to violence. Many studies show, however, that substance abuse and a history of violent behavior are more tightly correlated to violence in people whether or not there is evidence of psychiatric disability.

On the basis of relevant case law and concerns about employer liability, the EEOC broadened the direct threat provision to include not only a threat to others, but also to one's self. For example, an employee with narcolepsy could be at risk of harming him or herself if he or she fell asleep while operating apiece of heavy machinery. Many disability rights advocates decried this interpretation, however, claiming that it went well beyond the law's language and intent. Neither the ADA nor the U.S. Department of Justice Title II regulations mention direct threat to self. Experts and advocates on both sides concede that the issue likely will be decided by the courts.

## HEALTH INSURANCE FOR PEOPLE WITH PSYCHIATRIC DISABILITIES

The ADA prohibits discrimination against a qualified individual with a disability in regard to the privileges of employment. Among the most valued privileges of employment is health insurance. Health insurance is also among the most impor-

tant issues for people with psychiatric disabilities, as limits are commonly placed on mental health benefits. Employer concerns, however, center around cost. The language of the law, its legislative history, and related regulations and guidelines indicate that the writers of the ADA did not intend a complete revision of insurance industry policy and practice. Thus, while the EEOC regulations that implement the ADA ensure that employees with psychiatric disabilities will not be discriminated against if a health plan is offered; it does not mandate access to mental health benefits.

A key question considered by the EEOC in determining the ADA's influence on mental health benefits is: Is disparate treatment of mental disorders by insurance a disability-based disparate treatment? While excluding treatment for a particular mental disorder, such as schizophrenia, would likely lead to an affirmative response to this question, the EEOC's recent guidance, citing case law under section 504 of the Rehabilitation Act, answers a resounding "no" for mental health benefits in general.

> *[A] feature of some employer provided health insurance plans is a distinction between the benefits provided for the treatment of physical conditions on the one hand, and the benefits provided for the treatment of "mental/nervous" conditions on the other Typically, a lower level of benefits is provided for the treatment of mental/nervous conditions than is provided for the treatment of physical conditions. . . Such broad distinctions, which apply to the treatment of a multitude of dissimilar conditions and which constrain individuals both with and without disabilities, are not distinctions based on disability. Consequently, although such distinctions may have a greater impact on certain individuals with disabilities, they do not intentionally discriminate on the basis of disability and do not violate the ADA.*

## RELEVANT FEDERAL AGENCIES' ACTIVITIES

The ADA requires a variety of Federal activities, including the preparation of implementing regulations and guidelines; the enforcement of the law; the rendering of assistance to those with rights and responsibilities under the law; and the coordination of enforcement and technical assistance among different agencies. Beyond the mandates specified by the ADA itself, the U.S. Congress has required Federal research and service agencies to provide technical assistance and conform services with the ADA's mission. Furthermore, the Federal Government is a principal supporter of disability-related research. OTA surveyed the current efforts of various Federal agencies: the EEOC; the National Institute on Disability and Rehabilitation Research (NIDRR); the Center for Mental Health Services (CMHS); the National Institute of Mental Health (NIMH); and the President's Committee for the Employment of People with Disabilities (President's Committee).

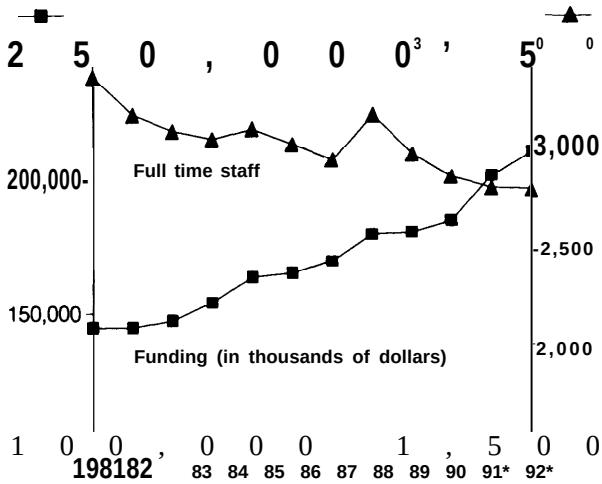
Established by law in 1964, the EEOC enforces Title I of the ADA, as well as Title VII of the Civil Rights Act, the Age Discrimination in Employment Act, section 501 of the Rehabilitation Act, and the equal pay provisions of the Fair Labor Standards Act. Although the EEOC issued ADA regulations as required by the law and provided extensive technical assistance, the regulations, guidance, and technical assistance promulgated by the EEOC provide minimal guidance on many issues specifically relevant to psychiatric disabilities. In fact, OTA's survey of EEOC field offices, where charges of discrimination are received and investigated, found that most personnel lacked any specific training on psychiatric disabilities and employment; indeed they wanted such information. The EEOC traditionally does not focus on any one type of disability. But given the complexity of psychiatric disabilities, the issues sometimes raised in the work place, ignorance of these conditions among the general public, and the relatively high percentage of charges associated with this category of impairment, it appears that specific focus on psychiatric disabilities would be quite useful: People with psychiatric disabilities and employers would better understand their rights and responsibilities under the law. Constraints on resources, especially on trained personnel, however, limit the capacity of

the EEOC to increase guidance and technical assistance for psychiatric disabilities (figure 1-3).

Technical assistance by other Federal agencies—NIDRR, CMHS, the President's Committee, and NIMH—includes distributing brochures, posters, and manuals; sponsoring conferences and training; setting up toll-free help lines and computer bulletin boards; and making public and video presentations. The targets for these efforts are businesses and people with psychiatric disabilities. Although the EEOC's technical assistance efforts have not focused on psychiatric disabilities, the other agencies' efforts have. However, by most estimations, the impact of this technical assistance and education seems inadequate, since data from various surveys reveal considerable ignorance about the ADA and psychiatric disabilities.

OTA's analysis found the Federal Government psychiatric disability research enterprise to be sparse and splintered. The principal supporters of research relevant to psychiatric disabilities and employment include NIDRR, CMHS, and NIMH, who together spend approximately 1.3 percent of their total annual budgets on this topic, less than $15 million (table 1-3). As with disability research in general, psychiatric disability is not a priority with any Federal agency, and mechanisms for interagency communication and cooperation lie moribund (box 1-2).

FIGURE 1-3: EEOC Funding and Staff: Fiscal Years 1981 to 1992




**Although total funding to the U.S. Equal Employment Opportunity Commission experienced a real, average annual rate of increase of 8.3°/0 since 1981, full time staff positions declined by approximately 17%.**

**● includes supplemental for ADA.**

SOURCE U S Equal Employment Opportunity Commission, 1993

## IMPLICATIONS FOR TECHNICAL ASSISTANCE AND RESEARCH

Despite increasing attention on the part of Federal agencies, OTA's analysis indicates that the current level of guidance, technical assistance, and research activities are unlikely to optimally assist employers and people with psychiatric disabilities in implementing the ADA. The need for gathering and distributing information reflects several factors: Psychiatric disabilities are still poorly understood and greatly stigmatized in our society. These conditions can be complex; they can be difficult to assess in an objective fashion, and, with their impact on behavior and social interactions, they sometimes raise difficult issues for employers. Limited Federal resources and the low priority historically assigned to the topic of employment and mental disorders also have constrained research and technical assistance efforts. From the information drawn together in this report, OTA suggests a technical assistance and research agenda.

People with psychiatric disabilities and employers are the ultimate targets of guidance, technical assistance, and education. How can these audiences be reached? Organizations already providing technical assistance to businesses and people with disabilities—including the EEOC, NIDRR (box 1-3), and the National Council on Disabilities---can better incorporate information on psychiatric disabilities. OTA's research highlights several other specific targets:

ŽMental health advocacy organizations: All mental health advocacy organizations, assert the importance of employment or meaningful activity for people with psychiatric disabilities. Expand-

TABLE 1-3: Key Federal Supporters of Psychiatric Disability Research

| institute | Principal mission | Funding mechanisms | Total funds specifically related to psychiatric disability and employment (in millions) | Percent of total budget |
|---|---|---|---|---|
| National Institute on Disability and Rehabilitation Research | Supports research and technical assistance for all disabilities | Supports training and research centers; field-initiated research projects; and a technical assistance resource center | $3.5[a] | 5.6 percent |
| Center for Mental Health Services | Administers block grants to States for mental health services and supports research | Supports training and research center; demonstration projects; consumer self-help centers | $1.5[a] | 0.36 percent |
| National institute of Mental Health | Supports mental disorders research | Funds investigator-initiated studies and research centers | $9.3[b] | 1.5 percent |

[a]Fiscal year 1993.
[b]Fiscal year 1992.

SOURCE: Office of Technology Assessment, 1994.

ing on current ties with consumer groups, the Community Support Program funded by the CMHS, the two Rehabilitation Research and Training Centers supported jointly by NIDRR and the CMHS, the two national consumer self-help centers funded by the CMHS, and the DEPRESSION Awareness, Recognition, and Treatment (D/ART) program funded by NIMH could provide information on the ADA in the form of materials and training sessions.

• *Employee assistance programs (EAPs) and other human resources professionals;* Many mid- and large-sized companies have EAPs and/or other human resource offices, whose responsibilities include health education, the provision of or referral for counseling services, disability management, and ADA implementation. These managers and service providers clearly need and are prime targets for information on psychiatric disabilities. NIDRR, with its grant to the Washington Business Group on Health, and NIMH's D/ART program have already begun targeting these groups. Continued and expanded efforts could build on this foundation.

■ *Private– and state -affiliated care providers;* Mental health care providers and advocates, in the private sector and State mental health and protection and advocacy agencies interact with individuals with psychiatric disabilities and they are a potentially useful conduit for information about the ADA. OTA's research reveals a considerable lack of knowledge about the ADA among these care providers and advocates. Federal mental health agencies could develop professional training materials and disseminate them at national and regional meetings sponsored by the Federal Government and professional societies. Also, materials and information could be disseminated in cooperation with State mental health and protection and advocacy agencies through the granting mechanism of the CMHS.

OTA identified another critical target requiring information on psychiatric disabilities: the EEOC field offices. Many lack any information on psychiatric disabilities. Federal mental health agencies, especially the CMHS, could assist the EEOC by providing baseline information and by linking field offices with resources in State and communi-

## BOX 1–2: Interagency (Non)Communication About Psychiatric Disability and Employment

Effecting communication among agencies that share responsibilities and interests is a common bureaucratic dilemma. Several Federal agencies, as described in this chapter and report, have authority over research, technical assistance, program administration, and policy enforcement relevant to psychiatric disability and employment. Despite jurisdictional overlap, each agency has a unique culture and functional role. Many observers believe that this heterogeneity is healthy, permitting distinct and potentially useful approaches to flourish. However, redundant or conflicting Federal policies and activities may also flourish in the absence of meaningful communication. While individuals in different agencies informally interact, formal mechanisms of interagency communication lie moribund.

Public Law 102-321 created a new Center for Mental Health Services (CMHS) within the Substance Abuse and Mental Health Services Administration (SAMHSA) of the Public Health Service, Department of Health and Human Services (DHHS), thus separating this mental health service agency from the principal mental health research agency—the National Institute of Mental Health (NIMH). That law requires cooperation and consultation between the CMHS and the NIMH in a variety of areas. Such communication clearly could help the CMHS move forward with demonstration projects, technical assistance, and services solidly based on research supported by NIMH. Also, NIMH's research expertise could assist in program evaluation at the CMHS Conversely, the CMHS could assist NIMH in promoting research relevant to current practices, policy needs, and real world demands. While NIMH and CMHS indicate that they are working together on a report to the U.S. Congress on effective methods of providing mental health services to individuals in correctional facilities, to date, no general mechanism has been elaborated to animate the congressional mandate for Information exchange between the CMHS and NIMH.

The U.S. Congress established the Interagency Committee on Disability Research to promote communication and funding coordination among the committee's 27 member agencies, which include. the National Institutes of Health (including NIMH), SAMHSA (including CMHS), the National Science Foundation, and offices in the U.S. Departments of Health and Human Services, Education, Labor, and Veterans Affairs, and the National Aeronautics and Space Administration. In existence since 1981, the committee has not met at all during the last year and has never focused directly on psychiatric disability.

*(continued)*

ty mental health centers and advocacy groups. These local resources could then provide seminars for the field offices in their communities, and perhaps more importantly, form a network of local experts to which EEOC investigators could turn when specific cases arise.

Several topics identified by this OTA report require further guidance from the EEOC as well as experts, representatives of businesses, and people with psychiatric disabilities:

- the impact of and mechanisms for disclosing a psychiatric disability;
- the identification of behavioral and social requirements on the job;
- accommodating difficult or threatening behavior; and
- issues surrounding access to and potential requirement of psychotropic medication or other treatment.

Workshops focused on such topics would be a useful first step. A fair and full exploration of these specific topics would include the perspective and expertise of legal experts and the EEOC, experts in psychiatric disabilities, people with psychiatric disabilities, and employers. The workshop discussions could inform ongoing technical assistance activities as well as official EEOC guidance and research.

**BOX 1–2: Interagency (Non)Communication About Psychiatric Disability and Employment (cont'd.)**

In April of 1993, the CMHS replaced the NIMH as a cosigner with the Rehabilitation Services Administration (RSA) and NIDRR on a renewed Memorandum of Understanding (MOU). In effect since 1979, the MOU sets out guidelines for interagency collaboration on service delivery, staff training, and evaluation activities related to the rehabilitation and employment of people with psychiatric disabilities, Representatives from each agency serve as members of a liaison group responsible for informing each other about their agency's activities, exploring possible cooperative efforts, recommending cooperative activities to the chief executives of their agency, and developing and implementing a work plan to carry out approved cooperative activities. The MOU specifically mentions as one of its goals the "provision of technical assistance on implementing the Americans with Disabilities Act for persons with psychiatric disabilities, " Also, it helps coordinate the cofunding by CMHS and NIDRR of the National Rehabilitation and Research Centers at Boston University and Thresholds Institute in Chicago, Illinois. While proponents contend that the MOU can and has been an important catalyst for interagency cooperation, several experts and advocates commented to OTA about its current ineffectiveness, And no efforts have focused on the ADA to date,

The National Task Force on Rehabilitation and Employment for People with Psychiatric Disabilities (NTREPPD) has tried to promote collaboration among RSA, NIDRR, NIMH, CMHS, and the Social Security Administration. NTREPPD is composed of representatives of professional organizations, service providers, consumers, family members, research and training organizations, advocacy groups, Federal, State, and local government agencies, and others, Its central function is to advise the RSA and NIDRR on policy and research priorities related to rehabilitation and employment issues for people with psychiatric disabilities, The group originated as the RSA Task Force on Vocational Rehabilitation for Persons with Long-Term Mental Illness. In 1991, it became an independent entity and was chartered as NTREPPD. The members of NTREPPD had been meeting quarterly in Washington, DC to share information and develop recommendations about legislation and regulations, research priorities, training and service delivery issues; many observers considered the group vital. More recently, however, many members have desisted meeting attendance, complaining about NTREPPD's voluntary nature and its limited impact on policies,

SOURCE, Office of Technology Assessment, 1994

Finally, this OTA report identifies many research questions (table 1-4). These questions require different types of research approaches, including:

- descriptive research, aimed at ascertaining current issues and practices (e.g., typical approaches to disclosure; the prevalence of violence and mental disorders in the work place);
- evaluation studies, which would assess the effectiveness and costs of interventions or procedures (e.g., the impact of coworker education or disclosure; the net costs of accommodating psychiatric disabilities; the effectiveness of stress reduction techniques in accommodating people with psychiatric disabilities); and
- hypothesis-driven research aimed at clarifying such issues as the confluence of factors involved in the path from impairment to work disability, and validity of functional assessment techniques.

Clearly, this research agenda falls under the jurisdiction of NIDRR, NIMH, and CMHS. Workable communication among agencies is required to avoid overlap, to assist in collaboration, and to ensure that new information flows among the research agencies as well as to those enforcing the law and providing technical assistance.

## BOX 1–3: Disability and Business Technical Assistance Centers

The National Institute on Disability and Rehabilitation Research (NIDRR) has funded 10 regional Disability and Business Technical Assistance Centers—DBTACs—since 1992. The 10 DBTACS represent one of the Federal Government's principle sources of ADA technical assistance. They aim at providing employers, people with disabilities, and others with responsibilities under the ADA with information, training, technical assistance, and referrals to local sources of ADA information and expertise. These centers currently are funded with 5-year grants, but NIDRR's aim is to develop a system whereby the regional centers eventually Will be regarded as State and local resources and affiliated with State and local governments. For this reason, the DBTACs are encouraged to establish relationships with State and local agencies throughout their regions.

To help identify needs and coordinate activities, the DBTACs have organized regional, State, and local advisory committees made up of representatives from small and large businesses, State and local service providers, citizens with all types of disabilities and their family members, and disability support and advocacy groups. To reach as many people with an interest in the ADA as possible, the DBTACs are developing mailing lists of people with disabilities, employers, personnel and recruitment agencies, business groups such as chambers of commerce, small business associations, better business bureaus, minority business associations, and others; State and local government agencies; disability advocacy groups; and service providers. The mailing lists are used for direct-mail campaigns to draw attention to the provisions of the ADA and the DBTACs resources, and to generate information for data bases and reference guides on local sources of ADA information and expertise. Each of the DBTACs provides a toll-free technical assistance hot line for information and referrals. Also, the DBTACs provide training sessions, including regional conferences, and State and local workshops, and presentations.

Several DBTACs have focused to some extent on psychiatric disabilities. Their advisory committees and mailing lists include individuals with psychiatric disabilities and advocacy/consumer groups representing this constituency. One DBTAC in Washington State helped to craft language for the 1993 State Civil Rights Act barring discrimination in employment for people with mental disabilities, and helped to develop training about workplace accommodations for people with psychiatric disabilities. Another DBTAC is working cooperatively with IBM to develop a self-paced software program about Title I of the ADA with situational examples that will include accommodating people with psychiatric disabilities in the work place. The Northeast DBTAC in Trenton, New Jersey is developing a televised panel discussion, "Making the ADA Work: Reasonably Accommodating People with Mental Illness, " which features a successful employee with a psychiatric illness, an employment specialist, and an employer. The Southwest DBTAC is working with the Texas Rehabilitation Commission to develop a model training program on the ADA and people with psychiatric disabilities.

Technical assistance hot-line requests concerning psychiatric disabilities generally form only a small percentage of total requests, however. This suggests that employers and the general public do not yet see the ADA as being related to psychiatric disabilities or they do not see the DBTACs as providing such information. The majority of those requests for information are from individuals with psychiatric disabilities or their employers, followed by mental health agencies, therapists, and rehabilitation counselors. People with psychiatric disabilities typically ask how to approach employers about an accommodation, whether it is necessary to document psychiatric disability, how such documentation is used, and the procedure for deciding an appropriate and reasonable accommodation. Employers usually ask whether they can request documentation of a psychiatric disability, what types of accommodation are appropriate, and how to determine the existence of a direct threat.

SOURCE Off Ice of Technology Assessment, 1994

## TABLE 1–4: Unanswered Questions for Research

- What are the usual positive and negative consequences of disclosing a psychiatric disability for an individual with a psychiatric disability? For the supervisor and employer? Coworkers?
- What types of Information concerning a psychiatric disability are relevant and/or useful to employers?
- How does timing of disclosure influence the Individual with a psychiatric disability, the employer, and the work place?
- How do gaps in employment history, a criminal or arrest record affect the employment of people with psychiatric disabilities?
- How can current job analysis methodology better assess cognitive, behavioral, and social factors?
- which functional assessment approaches reliably predict work performance and are useful under the ADA?
- How frequently do emotional outbursts, insubordination, threats, and other erratic behavior arise at the work place in relation to psychiatric disability? How can managers and coworkers best deal with such behaviors when they occur?
- How effective in permitting work and improving work performance are the accommodations commonly listed as useful to people with psychiatric disabilities?
- What are the specific and net costs-Including possible redistribution of workload and changes in benefit uses-of these accommodations to employers?
- What Is the Impact of providing an accommodation to an employee with a psychiatric disability on that employee? Coworkers? Supervisors?
- What impact does coworker training on psychiatric disabilities have on individuals with these conditions and ADA implementation in the workplace?
- What kinds of information would assist supervisors in providing effective accommodations for employees with psychiatric disabilities?
- What can be learned about accommodating people with psychiatric disabilities from businesses that makeaccommodations for all of their workers?
- How does psychiatric disability relate to violence in the work place?
- How can the threat of violence in the workplace, as it may relate to psychiatric disabilities, be predicted? Abated or diminished?

SOURCE: Office of Technology Assessment 1994.