

Appendix B.— Legislative Overview

There is legislation, at both the State and Federal levels, that pertains to most, if not all, aspects of the disabled individual's existence. Much of the legislation is broadly drawn to include a range of policies that go beyond affecting only disabled people. A significant part of this body of law, however, is aimed directly and solely at issues of specific relevance to the disabled people. To list or even summarize completely the myriad laws, related regulations, administrative actions, or pertinent court decisions is beyond the scope of this overview.

According to a series of studies prepared for the Office of Handicapped Individuals (OHI), there are 11 general policy areas that encompass 52 specific legislative categories (58,62). * Those general policy areas are:

- education;
- health;
- income maintenance;
- rights;
- transportation;
- miscellaneous (Internal Revenue Code, Copyright Act, etc.);
- employment;
- housing;
- nutrition;
- social services; and
- vocational rehabilitation.

Many of the laws contained in these policy areas are only peripherally related to the needs of disabled people. A few of the laws, though, are directly concerned with major issues that dramatically affect the lives of the disabled people. Examples of these laws are:

- Developmental Disabilities Assistance and Bill of Rights Act—Public Law 88-164; Public Law 91-517; Public Law 94-103; and Public Law 95-602.
- Vocational Education Act of 1963—Public Law 88-210; Public Law 90-576; Public Law 94-482; and Public Law 95-40.
- The Rehabilitation Act of 1973—amended by Public Law 93-516; Public Law 94-230; and Public Law 95-602 (the Rehabilitation, Comprehensive Services and Developmental Disability Amendments of 1978).**

*The three studies prepared for OHI that are relied on for this discussion are Key Federal Regulations Affecting the Handicapped, 1977-78, A Summary of Selected Legislation Relating to the Handicapped 1977-78 and Summary of Existing Legislation Relating to the Handicapped. Any of three studies especially the last, will provide a much more thorough account of the relevant legislation or regulations involved in this area.

** Public Law 95-002 is especially noteworthy and relevant to this study. Among the many areas of rehabilitation policy and administrative focus that

- The Architectural Barriers Act and Amendments—Public Law 90-480 and Public Law 90-480 and Public Law 91-205.
- The Housing and Community Development Amendments—Public Law 95-128 and Public Law 95-557.
- The Education of the Handicapped Act and Amendments—Public Law 94-142; Public Law 95-49; and Public Law 95-561.
- The Comprehensive Employment and Training Act Amendments—Public Law 95-44 and Public Law 95-524.
- The Social Security Act Amendments—Public Law 95-171; Public Law 95-216; Public Law 95-291; Public Law 95-600; and Public Law 96-265.

OHI points out that the numerous legislative initiatives summarized in its reports represent "only the most salient regulation (legislation) with the broadest implications for [disabled] children and adults" (62). It goes on to point out that "this summary is intended to offer a brief overview of Federal policies affecting [disabled] citizens issued during 1977 and 1978" (62). One must keep in mind that there is an equal, if not greater, body of law at the State and local levels that relates to disabled persons. The sheer volume of legislation in this area is awesome. Not only is the amount formidable, but the laws can vary from State to State and may be similar or contradictory to the Federal initiatives. Increasingly though, the States are trying to become synchronized with the Federal legislation in order to qualify for Federal moneys. This tendency might be decreased if programs for disabled persons are decentralized or converted to block grants (whereby the individual States would be far less limited in how the funds are used). An example of an area where this bilevel approach to legislation has resulted in unclear program definitions and goals are the programs serving disabled children. In other areas, such as due process procedures and the administration of the Rehabilitation Act, the Federal-State relationship is fairly consistent.

Charles Bubany of Texas Tech Law School has described the Federal and State laws as falling into three general categories (21):

- special protective legislation and programs provided by law to compensate persons for disability;

It affirmed and initiated are the creation of the National Institute of Judicial Appeal Research, establishment of the National Council on the Handicapped, the 501, 502, 503, and 504 sections under title V that established and confirmed a number of civil rights for disabled people the creation of the Independent living centers grant programs and the employment provisions of title VI (214)

- restrictions imposed either directly or indirectly by law which discourage participation of the disabled in "normal" community life [quotation marks added]; and
- affirmative action to provide the opportunity or encouragement for full participation in community life.

The rehabilitation system has had an inconsistent, overlapping, and piecemeal collection of programmatic goals grafted on to it over the years. Traditionally, most rehabilitation programs are directed towards serving those who were thought to be most readily employable. The remainder of the disabled population was largely ignored. The broadening of definitions and goals by the recent legislation in the independent living area has expanded the scope of the habilitation system to include a wider range of disabled people. However, these changed definitions have largely applied only to the independent living programs. The bulk of the legislation though still serves specified categories of individuals. It is too early to tell whether these remaining categories and areas of legislation will also be broadened in scope and definitional boundaries.

The relationship of the disabled population, in all its variations, to society in general is changing in numerous ways. Public policy is shifting away from the paternalistic "taking care of" approach to addressing handicap-related issues. Increasingly, the country is moving towards an approach where assistance or protection (in the civil rights sense) is provided to individuals in an effort to equip them with the necessary tools to move into a more independent environment. These general policy directions are fairly clear, yet the supporting systems to assure their implementation are still being formed. However, it is possible to provide a sense of where and how Federal legislation will affect the disabled population and the rehabilitation system. A good place to start is with the "civil rights" sections of the Rehabilitation Act of 1973 and its 1978 amendments. *

Section 504 of the Rehabilitation Act, as amended, contains an explicit provision protecting the rights of persons with disabilities in this country. The purpose of this section is to (113):

prevent discrimination against all disabled individuals . . . in relation to Federal assistance in employment, housing, transportation, education, health services, or any other federally-aided programs

The foundation of section 504 is almost identical to the antidiscrimination language of section 601 of the

Civil Rights Act of 1964 and section 901 of the Education Amendments of 1972 (113). Section 503 of the same law requires affirmative action in the employment and advancement of qualified disabled individuals by many federally funded contractors. For the definitional purposes of section 504, a "handicapped" person is anyone who:

- has a physical or mental impairment that substantially limits one or more major life activities;
- has a record of such an impairment; or
- is regarded as having such an impairment.

The dark side of this legislative progress is the slowness and confusion that has characterized the Federal Government's efforts at implementing these provisions. Each Federal department is responsible for carrying out the responsibilities included in these laws. It took the Department of Health, Education, and Welfare (now Health and Human Services) 4 years (1973-77) to announce regulations for its programs. It also had responsibility for the development of guidelines for other departments in their implementation of section 504 requirements. It took 5 years (1973-78) to announce guidelines for the *process of developing regulations* for the other departments and agencies (113). It should be mentioned, however, that no funds were authorized or appropriated for the implementation of section 504. And the Department of Health, Education, and Welfare is not an isolated example of the problems and delays involved in implementing the goals and programs required by these provisions.

A piece of legislation that preceded the Rehabilitation Act is the Architectural Barriers Act of 1968 (amended in 1976). Without the implementation of the goals set out in this legislation, subsequent civil rights measures, employment acts, or transportation laws lose their effectiveness very quickly. One of the most fundamental barriers to disabled individuals' full participation in society is accessibility or the lack thereof to the buildings and facilities they must use. Without access, they are in effect subjected to the most severe form of discrimination. The mandate of the Architectural Barriers Act was to ensure that (113):

Every building designed, constructed, or altered after the effective date of a standard issued under this chapter which is applicable to such building, shall be designed, constructed, or altered in accordance with such standards.

In essence, the general goal of the legislation was to open up federally owned or operated buildings and facilities to disabled people. The law excluded privately owned buildings or facilities unless they were related to a federally funded operation. The direction and general administration of this act comes from the General Services Administration, the Department of Health and Human Services, the Department of Hous-

* Kent Hull, in his book *The Rights of Physically Handicapped People*, is the source of a significant portion of the discussion related to the specific legislative initiatives in this area (113). This book provides an extensive and illuminating analysis of the legislative, administrative, and judicial issues revolved.

ing and Urban Development, the Postal Service, and the Department of Defense. Each has various jurisdictional concerns for which it is responsible. The legislation in this area receives much of its criticism over three general points: definitional issues, uneven interpretation and use of discretionary powers, and implementation efforts that proceed at glacial speeds.

Education, transportation, and employment are also areas of intense concern that have been addressed by Congress. The focus on education of disabled children dates back many years. The most recent initiatives are updates and summaries of those previous efforts. The Education for All Handicapped Children Act of 1975 and its amendments, Public Law 95-49 and Public Law 95-561, are the primary sources of Federal aid to State and local school systems for instructional and support services to disabled children. This legislation has stimulated the debate over what should be the “least restrictive environment” for disabled children in school systems.

In the area of transportation, a number of amendments to the Urban Mass Transportation Act of 1974 (Public Law 91-453, Public Law 93-87, Public Law 93-503, and the most recent—Public Law 95-599) have provided authorization to eligible local jurisdictions to plan and design mass transportation facilities to serve, or be usable, by the elderly or the disabled. These authorizations did not mandate action, but the arrival of section 504 of the Rehabilitation Act of 1973 did so. Dramatic battles have been in progress since that date. The employment picture is similar. There are the Comprehensive Employment and Training Act of 1973 (CETA) provisions that classify disabilities in

the eligible column for CETA training programs—job corps, Employment Demonstration Programs, etc. There are also provisions in the Small Business Act of 1953 (amended by Public Law 92-595 and Public Law 95-89) that award assistance to nonprofit sheltered workshops and that assist disabled individuals who want to set up businesses, if such funds are not available from other sources. There is an extensive Federal-State system of vocational rehabilitation that is designed to provide disabled persons the appropriate training, support services, etc., and help place them into remunerative employment. Other than vocational rehabilitation programs, the remainder of the Federal efforts are fairly passive. Once again, sections 501, 503, and 504 of the Rehabilitation Act of 1973 changed the Federal Government’s relationship to the disabled population. These sections continue to be instrumental in moving the Federal Government and a portion of the private sector towards ending discriminatory employment practices in this area. These sections also mandate an affirmative hiring approach in the employment areas covered by the legislation.

The changes in the law and in society over the last decade have been many and significant. Actions have been taken at the local, State, and Federal levels. But there is still a long distance to travel before the country even approaches the goals established by these various pieces of legislation. The political, hence societal, policy agenda has been established for bringing the population with disabilities into the flow of American society. Putting in place adequate mechanisms and systems to implement the legislation, however, is a task that remains.