

NCIL Position Paper on the Reauthorization of the Rehabilitation Act

The National Council on Independent Living and the Rehab Act Subcommittee are proud to present to you the NCIL Position Paper on the Reauthorization of the Rehabilitation Act.

NCIL advocates will note that there is a consistent theme of consumer control throughout the document. Consumer control over our lives; consumer control over our programs and services; consumer control over the IL network in each of our states; consumer control over RSA.

The development of this document also represents the best in consumer control. It's YOUR paper and the product of literally thousands of hours of work. The subcommittee began asking you to tell us about your issues at the last NCIL Conference. We suggested solutions at several regional meetings and led debates at APRIL and the SILC Congress. We then presented you with a final draft for comment, and debated your observations in a series of lively internet-based forums and teleconferences.

The introduction of this paper embraces many of the themes of the New Freedom Initiative. Swift implementation of Olmstead and Ticket to Work, the removal of perverse disincentives to community-based living and eliminating discrimination based on disability. Centers for independent living are uniquely prepared to be the centerpiece of a nationwide infrastructure required to take on such a daunting task, and the NCIL position calls for a commitment from the President, Congress, and YOU to build a network that will make a difference.

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Take the Initiative: Invest in Freedom

NATIONAL COUNCIL ON INDEPENDENT LIVING (NCIL)

Position on the Reauthorization of The Rehabilitation Act of 1973, As Amended

Introduction

The National Council on Independent Living (NCIL) is a national membership organization comprised of Centers for Independent Living, State Independent Living Councils, persons with

disabilities, independent living advocates, and organizations supporting the principles of independent living.

The mission of NCIL is to advance the independent living philosophy and advocate for the human rights of, and services for, people with disabilities to further their full integration and participation in society.

NCIL was founded in 1982 by a group of directors of Centers for Independent Living and their supporters for the purpose of advocating for national policies, which would enhance the lives of people with disabilities. These policies included civil rights, housing, transportation, personal assistance, air travel, communication, architectural accessibility, and, most particularly, reform of the federal and state vocational rehabilitation systems.

NCIL has been an active grassroots organizer, advocating for passage of the Fair Housing Amendments Act, the Air Carriers Access Act, the Civil Rights Restoration Act, the Americans with Disabilities Act (ADA), and most recently, the Rehabilitation Act Amendments of 1998. NCIL's position on the reauthorization of the Rehabilitation Act demonstrated its continued commitment to placing the authority over disability-related programming into the hands of persons with disabilities.

The Center for Independent Living (CIL) network itself has, with the support of the federal and state governments, experienced strong growth in recent years. Since the first federal funding of centers was appropriated in 1979, the number of centers has increased from the original 10 to over 600 federally and state funded centers and satellite centers meeting fixed standards of performance. Today, many view the independent living movement and its CILs and Statewide Independent Living Councils (SILCs) as the operating arm of the disability rights movement.

Working from a premise that society, not people with disabilities, needs to be fixed, independent living (IL) advocates have demanded that people with disabilities have control over both the options and methods which bring them the greatest independence and control over their own lives. This includes greater authority over both administration and services designed to benefit people with disabilities. CILs became the first group of private, non-profit organizations to exemplify this principle, known as consumer-control.

In recent years, there have been several positive changes resulting from the actions of advocates for independent living. These actions have begun to make a difference in the policies and practices of the traditional rehabilitation system.

Consumers have been given greater control of the services and programs designed to assist them. Title I vocational rehabilitation (VR) consumers have a greater role in the development of their individualized plan for employment, and in Title VII, consumer-controlled SILCs have been partners in designing the IL networks in each state.

- Movement through the rehabilitation system of education, services, and support has been simplified. Applicants for VR assistance now face shorter time lines, less complex enrollment procedures, and fewer duplicative and unnecessary bureaucratic barriers to overcome before receiving services. Assistance from CILs may now be received virtually without delay because of relaxed regulations governing the application process -- with cost savings re-directed to consumer services and assistance.
- Stronger linkages exist between VR and IL programs in many states because of shared resources, crossover representation on various councils, and a greater respect for the role of the consumer in the oversight and peer review processes which guide development and implementation of both programs.

The Need for Additional Changes

“The world moves, and ideas that were good once are not always good.”

President, Dwight D. Eisenhower

In spite of considerable advances in education and technology, people with disabilities remain woefully unemployed, and all too often, unnecessarily housed in nursing homes and other institutional settings. The ADA, Workforce Investment Act, Ticket to Work and Work Incentives Improvement Act, and the Olmstead decision have opened doors for people with disabilities, yet many have been unable to take advantage of these changes, which guarantee their freedom.

President Bush, in his New Freedom Initiative, pointed out that there are more than 7.5 million Americans with disabilities receiving benefits under federal disability programs while 72 percent of adults with disabilities want to work. However, because of perverse disincentives in federal law, less than one percent of those receiving disability benefits enter the workforce.

On February 1, 2001, the President signed an Executive Order to Support Effective and Swift Implementation of "Ticket to Work". The Executive Order directs federal agencies to swiftly implement the law giving Americans with disabilities the ability to choose their own support services and to maintain their health benefits when they return to work.

In the Olmstead case, the Court concluded that, "unjustified isolation is properly regarded as discrimination based on disability." President Bush acknowledges in his New Freedom Initiative

that Olmstead has yet to be fully implemented, and that community-based care is critically important to promoting maximum independence and to integrating individuals with disabilities into community life.

On February 1, 2001, President Bush signed an Executive Order Supporting Swift Implementation of the Olmstead Decision. The Order supports the most integrated community-based settings for individuals with disabilities, pursuant to the Olmstead decision, and calls for the identification and removal of barriers to community placement.

The challenge which now confronts us is how best to address the needs outlined in the New Freedom Initiative. NCIL believes that CILs are uniquely qualified to meet these needs, but lack the nationwide infrastructure required to take on such a daunting task.

- According to the 1998 State Data Book on Long Term Care Program and Market Characteristics, the average cost of nursing home services across the US is \$34,938/person/year. A 1999 report from the National Conference of State Legislatures found that the average cost for community based services is \$14,902 / person/year. In 1999, as a result of Centers, almost 2,300 people were able to leave nursing homes and 15,000 were able to remain in our communities.
- Although the provision of vocational training and placement services is not traditionally among the core services of Centers, the provision of vocational supports has proved to be essential to successful work experiences. Critical support in the use of technology, in work site adaptation, removal of perverse disincentives, and transition through one-stop systems have turned people with disabilities into taxpayers. Last year, Centers helped 16,000 persons receive employment services.
- Compared to other programs assisting people to be more independent, centers are a bargain. Assistance from CILs is provided at an average cost of \$1,262 per person in public dollars.

- According to The Rural Institute on Disabilities, each CIL today covers approximately 5.7 counties. Forty percent (40%) or 1,230 of our nation's counties receive no service whatsoever from a CIL, and for many others, the coverage is only superficial.
- Current funding for Centers through Title VII Part C of the Rehabilitation Act of 1973 is \$58 million, which supports 286 centers and 44 satellites.
- The Independent Living Research Utilization program has found that it costs approximately \$250,000 to establish a Center for Independent Living. The average federally funded CIL receives \$163,285.

The Independent Living Foundation

NCIL believes that there are certain principles upon which meaningful changes to the Rehabilitation Act must be based. The steady application of these principles throughout reauthorization ensures a consistent approach as issues are addressed.

GUIDING PRINCIPLES OF NCIL

Disability is an expected natural condition of life. Therefore, NCIL believes that:

The rights & empowerment of people with disabilities should be promoted and NCIL will advocate for procedures, policies, systems, regulations and legislation that promote their civil and human rights.

People with disabilities, no matter the type of disability or their age, have the right to live in the community of his or her choice and to fully participate in any and all aspects of the community.

People with disabilities have the right to live outside of institutions and/or nursing homes.

People with disabilities have the right to receive personal assistance services when living outside of an institutions and/or nursing home.

Discrimination of people based on disability must not be tolerated.

Federal, State or Local governments must enforce and implement all civil rights laws that protect the rights and freedoms of people with disabilities.

People with disabilities have the right to control their own destiny, therefore, they must be provided with all the information regarding all options in order to make informed choices.

People with disabilities have the right to live in the setting of their choice; therefore, they must have access to accessible, affordable, integrated housing options.

Consumer-control over programs and/or services, as well as a cross-disability orientation, which assures that persons with all types of disabilities receive equitable services, must be incorporated into any system that promotes full integration and participation of people into society.

People with disabilities have the right to move freely throughout their community; therefore they must have access to affordable transportation that is accessible.

People with disabilities have the right to economic self-sufficiency and must have the opportunities and resources to use their talents and abilities to reach their career potential. People with disabilities have the right to quality and affordable health care, therefore, the health care system must provide:

- A) a comprehensive basic benefits package; and
- B) individualized services related to specialists, durable medical equipment, prescription drugs and wellness programs.

The issues that persons with disabilities have in common override the issues that mark their differences.

Children and young people with disabilities are the future of America, therefore they must have access to quality education that includes the services and programs that allows them to fully participate in an integrated educational system.

Those organizations, which share NCIL's values and promote the rights and empowerment of persons with disabilities, should actively participate as NCIL members.

There should be a nationwide network of Centers for Independent Living, which assures that persons with disabilities have ready access to centers.

Centers for Independent Living are:

Consumer-controlled, cross disability, community based, not-for-profit corporations which are nonresidential.

Organizations that offer the four core services: Systems and Individual Advocacy, Information & Referral, Peer Support and Independent Living Skills Training.

Committed to the inclusion of diverse cultural and ethnic populations.

NCIL values Statewide Independent Living Councils as the organizations that are directly responsible for advocating for expanding the network of CILs and the CILs' ability to fully serve their communities.

In summary, advocates for change in the current rehabilitation program find that the principles described above provide a sound foundation to further build on the achievements of recent years.

NCIL Recommendations

The following are NCIL's recommendations for change in the 2003 reauthorization of the Workforce Investment Act including the Vocational Rehabilitation Act of 1973, as Amended. Each recommendation will be preceded by the identification of the Issue which warrants the change.

WORKFORCE INVESTMENT ACT

Issue: Inaccessibility of One-Stop Job Centers

CILs need to play a greater role in systems change efforts within One-Stop Job Centers to promote greater accessibility and the provision of quality services to people with disabilities. Congress needs to authorize Title I funding to further program accessibility.

Solution:

Amend CHAPTER 3, Sec. 121 (b) One-Stop Partners (1) change required partners to include Independent Living Centers as a required One-Stop Partner.

In Chapter 6, General Provisions - Subtitle D--National Programs, Section 174 - AUTHORIZATION OF APPROPRIATIONS needs to establish a national Technical Assistance program to improve services to people with disabilities. Establishment of this national program needs to include a provision designating \$76 million dollars per year, for each year covered in reauthorization, for CILs to conduct accessibility assessments and to provide technical assistance to One-Stop Centers. CILs will work to increase the knowledge of people with disabilities concerning the services available through One-Stop Job Centers. CILs would also be responsible for training One-Stop Job Center staff to better understand the requirements of Section 188 of WIA.

Issue: Lack of accessible transportation to One-Stop Job Centers

Many One-Stop Job Centers are inaccessible to people with disabilities because they are not located on a transit route served by accessible mass transit vehicles. Transit stops, that are accessible, should be located within a one-block radius of One-Stop Job Centers. The provision of accessible transportation needs to be included as a required service in WIA Title I programs and in the Welfare-to-Work Act.

Solution:

Amend SEC. 134. USE OF FUNDS FOR EMPLOYMENT AND TRAINING ACTIVITIES, (d) Required Local Employment and Training Activities, (3) Intensive services, (C) Types of services to include accessible transportation to people with disabilities as a required intensive service to assist people with disabilities in entering the workforce.

Amend CHAPTER 1--STATE PROVISIONS, SEC. 112. (b) --The State plan shall encourage the development of new One-Stop Job Centers on accessible transit routes and pedestrian rights-of-way in areas where mass transit services are available.

Amend CHAPTER 2, SEC. 118. (a) (b) --The local plan shall include--(1) an identification of an assurance that all local One-Stop Job Centers will be located within a one-block radius of a transit stop served by an accessible transit vehicle.

Issue: Lack of involvement of people with disabilities on Workforce Investment Boards

The Workforce Investment Act was written in an attempt to develop Workforce Investment Councils and local boards that represented the state and local community. However, four years later people with disabilities are still not involved in shaping workforce development policy because they are not adequately represented on Statewide Councils or Local Workforce Investment Boards.

Solution:

Amend CHAPTER 1, SEC. 111. (b) Membership to read that two members of the State Workforce Investment Board will be people with disabilities.

Amend CHAPTER 2, SEC. 117 (b) Membership.--(2) Composition.--(A) shall include-- two members of local Workforce Investment Boards will be people with disabilities.

Amend Title II of the Rehabilitation Act of 1973, SEC. 405. RESEARCH AND TRAINING Sec. 200, the purpose of this title needs to be expanded to include the education and training of people with disabilities to increase their capacity to serve on Workforce Investment Boards. For each fiscal year, the Commissioner and the Director of the National Institute on Disability and Rehabilitation Research shall reserve 1% of the funds appropriated for programs that train people with disabilities to serve on Workforce Investment Boards.

Issue: The WIA Title I block grant system is confusing and does not allow for innovative approaches.

Funding WIA Title I programs through block grants creates a confusing system of service delivery that is inconsistent in meeting the needs of people with disabilities. Block grants seem to limit creativity rather than promote it. In the absence of clear direction from the federal government, state and local programs become more rigid than innovative and flexible.

Solution:

Amend CHAPTER 4, SEC. 127 (b) Allotment Among States-- (C) States--(II), (ii) Formula language to a national model similar to the Rehabilitation Act of 1973, as amended. WIA Title I youth programs need to operate within a universal design to assure a consistent level of quality services across the country.

Amend CHAPTER 5, SEC. 132. (b) Allotment Among States.-- (B) States.-- (ii) Formula language to a national model similar to the Rehabilitation Act of 1973, as amended. WIA Title I adult programs need to operate within a universal design to assure a consistent level of quality services across the country. A WIA universal design would require:

- A referral process for potential recipients of services;
- An application process with a designated amount of time in process;
- A clear eligibility determination process, not to exceed 45 days;
- A listing of specific employment and training services that could be available will be provided to each individual and innovative services will be designed to meet the unique needs of each person served;
- Services would be delivered according to an Individualized Plan for Employment;
- Services will be individualized and based on Informed Choices made by each individual being served;
- Employment goals, and services, will be career focused;
- Closure will be determined only after 180 days of successful employment; and

Post Employment services will be available to each person served to keep him or her on the job.

Issue: Many State Vocational Rehabilitation agencies do not serve as advocates to get WIA partners to improve services to people with disabilities.

Many State Vocational Rehabilitation agencies fail to either understand, or embrace, their two-pronged role of WIA partner and advocate for people with disabilities to ensure that they are receiving services from all WIA partners in a fair and equitable manner. Resistance on the part of some Vocational Rehabilitation agencies to be collocated in One-Stop Job Centers has lead them to use inaccessibility as an excuse to not participate as a partner agency.

Solution:

Amend TITLE I--VOCATIONAL REHABILITATION SERVICES, PART A, SEC. 101. (11) (A) Cooperative agreements with other components of statewide workforce investment systems to read the State plan shall provide an assurance that the designated state unit will serve as an advocate for people with disabilities to ensure that they are receiving the services required by all WIA partners.

Issue: The Rehabilitation Services Administration is not consumer directed.

People with disabilities are the best equipped to oversee programs that assist them. This concept is known as "consumer control", and has proved to be a highly effective way of managing programs that serve people with disabilities, such as centers for independent living,

statewide independent living councils, and state rehabilitation councils. The concept of consumer control has worked effectively at the state level and should now be implemented at the federal level by giving people with disabilities a voice over the Rehabilitation Services Administration.

Solution:

Title IV of the Workforce Investment Act should be amended to include the following:

(a) There shall be established a Rehabilitation Services Administration Council to direct the activities and oversee the operations of the Rehabilitation Services Administration

(b) Composition and Appointment

(1) The Council shall be composed of [9] members as follows:

(A) Three members appointed by the President;

(B) Three members appointed by the Speaker of the House of Representatives, in consultation with the Chairman of the Education and the Workforce Committee of the House of Representatives;

(C) Three members appointed by majority leader of the Senate, in consultation with the Chairman of the Committee on Health, Education, Labor & Pensions of the Senate.

(2) The Council appointees shall include:

(A) At least two of the three appointees from each branch of government must be individuals with disabilities and at least one of them must have been a recipient of services funded through titles I, VI, or VII of the Rehabilitation Act of 1973, as amended.

(B) The remaining appointee from each branch of government may include representatives from private businesses, representatives from organizations that provide assistance to individuals with disabilities, and advocates for individuals with disabilities.

(C) The Council shall be composed of individuals:

(i) who are individuals with a broad range of disabilities;

(ii) who do not work for a state or federal agency;

(iii) who represent traditionally unserved or underserved populations; including but not limited to, representatives of project carried out under section 121;

(D) A Chairperson shall be elected biennially by the members of the council.

(3) Term Limits

(A) Each member shall be appointed for a term of 6 years and shall not serve for more than one term.

(B) Members shall be appointed not later than 90 days after the date of the enactment of this Act, Initially;

- (i) one-third of each appointing body's appointments will be for a two-year term;
- (ii) one-third of each appointing body's appointments will be for a three-year term;
- (iii) one-third of each appointing body's appointments will be for a four-year term.

(4) Vacancies.--Any member appointed to fill a vacancy occurring before the expiration of the term for which the member's predecessor was appointed shall be appointed only for the remainder of that term. A member may serve after the expiration of that member's term until a successor has taken office. A vacancy in the Council shall be filled in the manner in which the original appointment was made within 90 days of the vacancy.

(c) Duties

(1) The Council will act as a policy-making board, oversee operations, and direct the activities of the Rehabilitation Services Administration, including but not limited to, oversight of:

- (A) the hiring and supervision of the Commissioner;
- (B) the assessment of need requiring assistance under the Act,
- (C) the assessment of satisfaction of recipients of services under the Act;
- (D) the development and implementation of Rehabilitation Services Administration goals and objectives;
- (E) the development of tools to assess the financial and programmatic success of the Administration's goals;
- (F) provide to the Secretary periodic reports on the activities of the Administration; and
- (G) other activities which impact individuals receiving services under the Act.

(d) Authorization of Appropriations

"The Secretary shall reserve such sums as may be necessary to carry out the activities of the Council."

SECTION 17

Issue: CILs are unable to carryover funding from the prior year

The Rehabilitation Services Administration, because of a restrictive interpretation of Section 17(a)(1) on the forward funding of Title VII programs, does not allow the opportunity to carryover Title VII C funds from one fiscal year to the next according to congressional intent.

Solution:

Amend SEC. 17. (a)(1) to incorporate the following language:

“Carryover”

Sec. 17. (a) In General. – Except as provided in subsection (b), and notwithstanding any other provision of law—

(1) any funds appropriated for a fiscal year to carry out any grant program under part B of title 1, section 509 (except as provided in section 509(b)), part B of title VI, part B or C of chapter 1 of title VII, or chapter 2 of title VII (except as provided in section 752(b))

(2) any amounts or program income, including reimbursement payments under the Social Security Act (42 U.S.C. 301 et seq.), received by recipients under any grant program specified in paragraph (1) that are not obligated and expended by recipients prior to the beginning of the fiscal year succeeding the fiscal year in which such amounts were received, shall remain available for obligation and expenditure by such recipients during such succeeding fiscal year, or in the third year following appropriation for programs under this title that are forward funded.

TITLE I

Issue: State Rehabilitation Council (SRC) Authority

In 1998, Congress created the State Rehabilitation Councils (SRCs) to provide input into the planning and operations of the Title I program, in much the same manner as the statewide independent living councils (SILCs). The major difference between the councils lies in the legal authority vested with the SILC. People with disabilities have demonstrated in the SILCs that they possess the ability to provide the leadership and direction needed to move the vocational rehabilitation program into the 21st century.

Solution:

Give the State Rehabilitation Council (SRC) full authority for developing and overseeing the implementation of the state plan for vocational rehabilitation, including all programs and operations under titles I and III. Recognizing the substantial investment each state makes in the operation of the Title I program, the director of the designated state unit would be a full voting member of the SRC. All other representatives of state agencies serving individuals with disabilities would be non-voting members of the councils.

Issue: People with disabilities do not know what services are available through Vocational Rehabilitation Many individuals with disabilities feel that the services available to them from VR are unclear and that they are not given a full list of available services.

Solution:

When VR does intake and orientation with consumers, a full menu of services should be provided to all consumers with a full explanation of the range of services including innovative services that address the unique needs of each individual. VR should also post a list of these available services in all VR offices. All VR counselors should be required to sign documents certifying that the consumer has seen the full menu of available services.

Amend SEC. 102. ELIGIBILITY AND INDIVIDUALIZED PLAN FOR EMPLOYMENT (b) to read:

(b) Development of an Individualized Plan for Employment –

(1) Options for developing an individualized plan for employment --If an individual is determined to be eligible for vocational rehabilitation services as described in subsection (a), the designated State unit shall complete the assessment for determining eligibility and vocational rehabilitation needs, as appropriate, and shall provide the eligible individual or the individual's representative, in writing and in an appropriate mode of communication, with information on the individual's options for developing an individualized plan for employment, including--

(2) a description of the full range of components that shall be included in an individualized plan for employment, and a full listing of possible services available as indicated in Section 103 along with an assurance to provide innovative services to meet the unique needs of each individual;

Issue: Eligibility determinations need to be expedited.

Too many instances are reported where counselors delay eligibility determinations because they have 60 days within which a decision can be reached.

Solution:

Amend Section 102. ELIGIBILITY AND INDIVIDUALIZED PLAN FOR EMPLOYMENT, (a) Eligibility to read:

(6) Timeframe for making an eligibility determination--The designated State unit shall determine whether an individual is eligible for vocational rehabilitation services under this title within a reasonable period of time, not to exceed 30 days, after the individual has submitted an application for the services unless--

(A) exceptional and unforeseen circumstances beyond the control of the designated State unit preclude making an eligibility determination within 30 days and the designated State unit and the individual agree to a specific extension of time; or

Issue: Education of VR Counselors on customer choice and control.

Many VR counselors lack understanding of what true consumer choice and control means.

Solution:

Require all VR staff to attend yearly classes and workshops on consumer choice and control. These workshops and classes should be conducted by CILs and individuals with disabilities. In addition, all rehabilitation counseling degree programs should be required to have all graduates complete an internship at a CIL.

Issue: Employment of People with Disabilities

Many people with disabilities believe VR counselors to be insensitive to the barriers facing them in their efforts to enter the workforce. Historically, few VR counselors have been people with disabilities, which has led many in the disability community to feel that VR does not understand or represent the needs of people with disabilities. Also, state vocational rehabilitation agencies are more credible in the minds of employers when they see that the agency reflects its mission by employing people with disabilities.

Solution:

Require that a majority of VR staff, including management, and VR counselors be qualified individuals with disabilities. This should be accomplished through a phased in approach with a deadline of no later than 2008.

Amend Section 101, STATE PLANS to read:

(a) Plan Requirements --

(6) Methods for administration --

(A) In general --The State plan shall provide for such methods of administration as are found by the Commissioner to be necessary for the proper and efficient administration of the plan.

(B) Employment of individuals with disabilities --The State plan shall provide that the designated State agency, and entities carrying out community rehabilitation programs in the State, who are in receipt of assistance under this title shall require that a majority of staff, and management, are qualified individuals with disabilities.

Issue: Some VR Agencies do not follow the national regulations

In some states, VR agencies and VR counselors do not seem to understand the national regulations related to VR. Also, some state regulations seem to contradict the national regulations.

Solution:

Require a more thorough review by RSA of state compliance with federal mandates, and require that RSA report to congress their findings of how states are complying with national regulations. Each State Rehabilitation Council should be given a copy of the results of a RSA review.

Develop a statewide review team consisting of consumers, CIL staff, and Rehabilitation Council members to conduct audits of each state VR agency and compliance with the national regulations and how each agency puts the regulations into practice.

Issue: Some Client Assistance Programs (CAPs) have a conflict of interest

Seven state Vocational Rehabilitation agencies and Vocational Rehabilitation Agencies for the Blind also house their states Client Assistance Programs creating a conflict -of-interest. People with disabilities do not believe a Client Assistance Program within a state agency will vigorously advocate on their behalf when they are employees of the agency delivering vocational rehabilitation services.

Solution:

Require all CAPs to be independent agencies or non-profit organizations.

Amend Section 112, CLIENT ASSISTANCE PROGRAM to read:

(c)(1)(A) The Governor shall designate a public or a private agency to conduct the client assistance program under this section. The Governor shall designate an agency which is independent of any agency which provides treatment, services, or rehabilitation to individuals under this Act. If there is an agency in the State which has, or had, prior to the date of enactment of the Rehabilitation Amendments of 1984, served as a client assistance agency under this section and which received Federal financial assistance under this Act, the Governor shall, within eighteen months following enactment of this title, designate an agency which does not provide treatment, services, or rehabilitation to individuals with disabilities under this Act to function as the client assistance program.

Issue: The 90 day period for successful closure is too short

In many instances, ninety days following placement in a job, services to people with disabilities stop with VR considering the person successfully employed. Many people lose their jobs shortly after the 90 day period, however VR still reports them being successfully employed. Too many times, with a successful closure time of 90 days, a person is closed from receiving VR services before they have worked at a place long enough to determine if the job is right for them. Also, very few consumers are aware of their options to receive services under post employment services.

Solution:

Change closure period to 180 days, with a requirement to place individuals in an extended period of post employment services for the first year.

Amend Section 103 VOCATIONAL REHABILITATION SERVICES to read:

(a) Vocational Rehabilitation Services for Individuals --

Vocational rehabilitation services provided under this title are any services described in an individualized plan for employment necessary to assist an individual with a disability in preparing for, securing, retaining, or regaining an employment outcome that is consistent with the strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the individual, including--

(18) specific post-employment services necessary to assist an individual with a disability to, retain, regain, or advance in employment shall be available up to seventy-two months following successful closure.

Amend Section 102, (b) (3) to read:

Mandatory components of an individualized plan for employment --Regardless of the approach selected by an eligible individual to develop an individualized plan for employment, an individualized plan for employment shall, at a minimum, contain mandatory components consisting of--(G) as determined to be necessary, a statement of the availability of post-employment services for a period up to seventy-two months following successful closure.

TITLE II

Issue: Dissemination of Research Findings to Non-Researcher Stakeholders

Disability research has been a scientific exercise, based on academic procedures applied in an area of health care. People with disabilities have learned, however, that underlying values and assumptions have guided research in ways that are not necessarily important or helpful to them as the ultimate beneficiaries.

People with disabilities do not participate in setting research agenda's on federal or project levels, nor are they seen as important consumers of information of research findings. This sense of exclusion from both the participation and consumption sides of research has produced a striking lack of regard among those who would most benefit from research findings and who should be its most vocal supporters.

Remarkably, Title II of the Rehabilitation Act contains extraordinarily strong language concerning substantial involvement of consumers in planning research agendas for NIDRR as well as participating in the planning of individual NIDRR-funded projects. It also has very

strong language requiring its funded programs to disseminate findings to consumers, family members, service practitioners and educators.

Moreover, Title II is unequivocal in its specification of NIDRR's responsibility to promote and coordinate efforts for disseminating widely research findings and education materials from research and demonstration projects to non-researcher stakeholders. The language used in Title II is remarkably explicit and emphatic:

Nonetheless, the perception of NIDRR-funded disability research by many people with disabilities is that it is irrelevant, to issues of importance to many people with disabilities, out of touch with the real needs and concerns of people with disabilities, and is staffed by people with little, if any personal experience with disability.

If NIDRR and its funded research projects are fulfilling the mandates so explicitly stated in the Rehab Act, it is simply not evident to the disability community at large. What may be missing is a formal, explicit method of determining whether or not such activity is being accomplished, the extent to which such activity is effective, and an application of significant negative action if such activity is not undertaken or is poorly accomplished. Simply stated, NIDRR needs a process to determine its effectiveness in meeting Title II mandates.

Solution:

NIDRR should prepare and implement a plan for assuring effective dissemination of research information to non-researcher stakeholders. The plan must:

- Specify action steps NIDRR will take to fulfill its responsibilities for coordinating and promoting dissemination efforts.
- Specify methods for measuring success in achieving the goals, both quantitative and qualitative measures. NIDRR should engage an outside evaluator to measure the target audience of non-researcher stakeholders' satisfaction and recommendations for improvements.
- Describe steps NIDRR will take to assure accountability and steps it will take to remedy lapses.
- Specify how it will reach out to leading disability-focused organizations to obtain assistance in preparing and reviewing its plan and how it will ensure its funded projects do the same.

- Detail how it will accommodate the special needs of people with visual impairments and people for whom English is a second language.
- Require its funded projects to prepare and implement a similar plan for widely disseminating research information to non-researcher stakeholders. This plan should be developed in conjunction with representatives of major disability rights and independent living organizations the plan should include an external evaluation of the project's success in this effort.
- Describe steps it will take to address its funded projects failure to meet its dissemination goals, including withholding of funding.
- Be developed with the participation of research utilization specialists and, most importantly, representatives of major disability rights and independent living
- Organizations such as NCIL, APRIL, Justice For All, AAPD, ADAPT, and ILRU as well as the National Council on Disability and representatives of other non-researcher stakeholders specified in Title II.
- Be made available for public comment as a publication in the Federal Register and revised to reflect those comments prior to finalization.
- Be distributed for Web-site postings on NCDRR, NARIC, NCHRTM, NCIL, etc., as well as on NIDRR's Web site.

In addition, an annual report on NIDRR's progress in meeting the plan -- e.g., to what extent its goals were met, what problems were encountered and what steps were taken to address them, and what actions are planned for the next year, should be prepared and disseminated to the public each year and reviewed by national organizations that are consumer-controlled. This report should also be distributed for Web site postings.

Issue: Researching Consumer Satisfaction with VR Services

Sec.202 (b)(9), NIDRR has responsibility for conducting research on consumer satisfaction with vocational rehabilitation services for the purpose of identifying effective rehabilitation programs and policies that promote the independence of individuals with disabilities and achievement of long-term vocational goals.

Solution:

NCIL endorses the purpose of the provision and supports keeping it in Title II so long as the following conditions are met:

- key staff members of the study are people with disabilities
- representatives of leading disability rights organizations and protection and advocacy programs are significantly involved in planning, and
- results of the study are widely disseminated.

Issue: Maintenance of Effort re: ADA

In Section 202 (b)(11), NIDRR has the responsibility of coordinating activities with the Attorney General regarding the provision of information, training, or technical assistance regarding the Americans with Disabilities Act of 1990 to ensure consistency with the plan for technical assistance required under section 506 of the Act.

Solution:

NCIL strongly recommends that this responsibility be maintained and that under no circumstances should any effort to relax activities related to the ADA be accepted. In addition, NIDRR must hire or promote people with disabilities to administer its ADA-focused programs.

Issue: Peer Review of Grant Applications

Section 202 (e)(1) addresses peer reviews for all NIDRR competitions for research grants and programs. The director of NIDRR is required to include in peer review, groups people who are experts from the independent living field and knowledgeable people with disabilities, their family members, and advocates. To select individuals to serve on the peer review groups, the director is required to solicit nominations from the public and to publish the names of individuals selected.

Solution:

NCIL recommends that this provision be maintained. In addition, NCIL recommends that NIDRR use more aggressive methods to recruit as peer reviewers knowledgeable people from the independent living and disability rights fields who understand the consequences of disability. In addition, it must provide appropriate accommodations for people with disabilities, especially for people who are blind or have significant visual impairment, have multiple chemical sensitivity, or have a disability, which makes writing difficult. All materials must be made available in alternate formats, including electronic, and the reviews must be conducted in environmentally safe locations. Applicants for peer reviewer positions should be notified periodically regarding their status as a peer reviewer. NIDRR must also take steps when reviewing applications for continuation grants to assure that applicants have demonstrated a commitment to consumer participation and consumer responsiveness.

To identify such knowledgeable people with disabilities, NIDRR should request consumer-led organizations such as NCIL to assist in disseminating information about the peer review application process.

Issue: Another Issue Involving Peer Reviews:

There is a very serious flaw in the NIDRR procedure for making grant awards. It appears that one of the major factors in determining which proposal to fund is the set of scores from the peer review panel. If an irregularity occurs in the peer review process, which causes a proposal not to be awarded a grant, the irregularity cannot be challenged in time for corrective action to occur. A losing applicant can obtain peer review comments only after a grant award has been made. Thus if an applicant believes that an irregularity has occurred which unfairly affected the scoring, it is too late for NIDRR to do anything about it. It is, in fact, just too bad.

Solution:

NIDRR must institute a policy for appeal. It must also prepare a set of guidelines for NIDRR staff who have responsibility for administering the peer review process which include safeguards against irregularities including a provision that allows for the removal of high or low scores which are significantly inconsistent with those of the other reviewers. In addition, it must institute a peer reviewer selection process, which assures no conflict of interest--

personal as well as professional. It must also publish this appeal process and the peer review guidelines in order to obtain public comment.

Issue: Development of Research Plan

In Section 202 (g)(2), (3), the NIDRR director is responsible for developing and submitting to Congress a long-range plan to identify rehabilitation research to be conducted respecting the full inclusion and integration into society of people with disabilities and to determine funding priorities for research activities. Section 202 (g)(4) stipulates further that the plan be developed after full consideration of the input of individuals with disabilities and their parents, service providers, organizations representing individuals with disabilities, and rehabilitation researchers.

Solution:

NCIL supports this provision and is pleased to see the research goal of full inclusion and the value placed on consumer input in this critical process. However, NIDRR needs to make explicitly clear how such input will be obtained, and take steps to ensure that input is received from traditionally underserved populations, such as individuals who experience multiple chemical sensitivity, mental illness and cognitive disabilities. Additionally, not only should independent living and consumer input be obtained prior to development of the plan, it should also be obtained after a draft of the plan has been prepared and funding priorities set.

Issue: Alternate Formats

In Section 202 (g)(5), the NIDRR director is required to specify plans for widespread dissemination of research results in accessible formats to rehabilitation practitioners, individuals with disabilities, and the parents, family members, guardians, advocates, or authorized representatives of the individuals.

Solution:

NCIL endorses this provision for accessible formats; however, NIDRR needs to define accessible. The definition needs to include Braille, audiotapes with tone indexing, large print, electronic formats, and alternate languages, such as Spanish.

Issue: Consumer Input about Interagency Coordination

In Section 203, the Interagency Committee on Disability Research, is to promote coordination and cooperation among federal agencies conducting rehabilitation research programs, is mandated to obtain input from people with disabilities, their family members, and advocates.

Solution:

NCIL endorses this provision; however, NIDRR needs to specify how this input will be obtained, and needs to require that such input will be obtained both before and after preparation of the coordination strategy. Also, the National Council on Disability, Access Board, and other entities that have a solid record of advocacy on behalf of traditionally underserved populations must be included as members of the committee.

Issue: Awarding of RTC Grants

Section 204 (b)(2)(N) provides that when RTC applicants seek renewal of a grant, NIDRR is to take into account past performance regarding the RTC and will obtain input from people with disabilities and their family members.

Solution:

NCIL agrees with the provision to consider past performance; however, it has concerns about the process NIDRR will use to obtain input from people with disabilities. It is recommended that the Act require NIDRR to acquire assistance from consumer-based organizations, such as centers for independent living, in order to develop procedures for obtaining such input. Procedures should address consumer control, consumer involvement, programmatic and architectural access, and ties to consumer groups and organizations, including those populations which are traditionally underserved.

Issue: Consumer Representation on Rehabilitation Research Advisory Council

In Section 205 (c), a 12-member Rehabilitation Research Advisory Council is established to advise the director of NIDRR about research priorities as well as development and revision of the long-range rehabilitation research plan. It stipulates that at least one-half of the members shall be people with disabilities and their family members.

Solution:

NCIL strongly recommends that at least 51 percent of the council be composed of people with disabilities, including members from traditionally underserved populations and recipients of government support--and that family members and guardians be counted among the other 49 percent. Further, it is recommended that the council be re-named the Research Council and be given sign-off authority on all plans developed by the NIDRR director.

One last issue concerning Title II: NIDRR must issue regulations for this title within a reasonable amount of time--certainly before the next reauthorization.

TITLE III

Issue: Training for IL Staff

According to Section 301(a), the primary purpose of this title is to provide training grants (1) to ensure that skilled personnel are available to provide rehabilitation services to people with disabilities through a variety of rehabilitation programs, including CILS; (2) to maintain and upgrade basic skills and knowledge of personnel employed in such programs; and (3) to provide training and information to people with disabilities and others to develop skills necessary for people with disabilities to access the rehabilitation system.

Clearly, this section obligates RSA to ensure availability of skilled CIL and SILC personnel. However, a review of the last several years of RSA's requests for proposals for training programs under this title indicates that RSA has insufficiently addressed the needs of present and future staff of CILS and SILCS.

Solution:

It is imperative that RSA establish a minimum annual number of training programs targeted to personnel employed by CILS and SILCS, that no less than 20 percent of funding for training offered by rehabilitation continuing education centers and community rehabilitation programs

funding be committed to training of CIL and SILC personnel, that train-the-trainer methods and various multi-media formats are utilized, that such training programs be designed by independent living personnel and consumers, and that such programs be funded on an on-going basis.

It is also imperative that RSA's reviewers be knowledgeable about disabilities, disability rights, consumer empowerment, CILS and SILCS, accommodations, and the peer model of advocacy and service provision.

Issue: Training People with Disabilities to Be Qualified Vocational Rehabilitation Personnel

Title III addresses training to prepare individuals in becoming qualified rehabilitation services providers. No particular emphasis is placed on recruiting people with disabilities as trainees. If the federal rehabilitation program is committed to providing the recipients of its services with the proven advantages of peer mentoring and support, RSA must have an unwavering resolve to recruiting and training people with disabilities to become qualified rehabilitation personnel.

Solution:

Grants that are made to programs to train rehabilitation personnel must include a requirement to aggressively recruit trainees with disabilities.

Also, a minimum percentage of trainees with disabilities should be established and required of each grantee and be a major factor in evaluating proposals and in awarding continued funding of existing training programs.

In addition, a date should be set for the goal of having at least 51 percent of all trainees be people with disabilities, and progress toward meeting this goal should be a major component in the evaluation of RSA and its training programs.

Issue: Recipients of Scholarships

Section 302 (b)(3)(A)(I) stipulates that an individual who receives a scholarship under this program must maintain employment in a nonprofit rehabilitation agency for a given period of time.

Solution: NCIL recommends that this section makes it clear that a CIL or SILC may serve as one of these "agencies" and that RSA encourages college placement programs to refer graduates to CILS and SILCS.

Issue: Determination of Personnel Shortages

In Section 302 (e), the RSA commissioner is required to collect information on training needs of and shortages of qualified personnel. The commissioner is then required to prepare a report to Congress on use of Title III funds, justifying in detail how these funds will be allocated and how findings on personnel shortages justify the allocations.

Solution:

The procedure used for collecting this information should be fully described, and affected constituencies should be provided formal opportunity to comment on the procedure. Also, prior

to preparation of the report, the findings on training needs and personnel shortages should be made available to the public through publication in the Federal Register or, at the very least, posting on RSA and other key Web sites, with announcements of its availability disseminated to RSA's various constituencies.

In addition, prior to submitting the report to Congress, RSA should be required to have it reviewed and commented on by people working in the various fields to which Title III applies.

Issue: Special Demonstration Programs

Section 303 (b) addresses availability of funding for "programs that expand and improve provision of rehabilitation and other services authorized under the Act." Section 303(b)(5)(A) identifies three priority areas. Need currently exists for special demonstration programs relating to implementation of provisions resulting from the Olmstead decision.

Solution:

Give highest priority consideration to Olmstead-focused demonstration programs.

Issue: Recreational Programs

Section 305 (a)(2) restricts grants to a maximum of three years, and this is considered too short a period to establish and operate such a program.

Solution:

Extend the grant cycle to five years.

TITLE IV

Issue: People with disabilities do not know about the National Council on Disability

The National Council on Disability is an advisory council to the President of the United States on all matters relative to people with disabilities. Most people with disabilities, when asked, will draw a blank when asked about the National Council on Disability. People with disabilities should know about the National Council on Disability and the excellent work that they do on behalf of Americans with disabilities.

Solution:

Funding for the National Council on Disability should be increased and should be used to inform people with disabilities about the Council and their work.

TITLE V

Issue: Title V is not being enforced

Sections 501, 503 and 504 of the Rehabilitation Act of 1973 require that entities that receive federal financial assistance not discriminate on the basis of disability. Yet IL advocates report that the federal agencies who are charged with enforcing Sections 501, 503 and 504 of the Rehabilitation Act of 1973 are not doing so. They further report that covered entities are

confused as to whom is covered by Title V of the Rehabilitation Act. Finally they note (with some exasperation) that the Office of Federal Contract Compliance is neglecting their responsibilities in complying with their 503 responsibilities.

Solution:

Each federal agency should streamline their regulations to make them more "consumer friendly" and write clear "easy to understand" technical assistance manuals for Title V. Federal agencies responsible for enforcement should do a public awareness campaign explaining to covered entities their responsibilities under Title V.

The National Council on Disability should conduct an examination of the Office of Federal Contract Compliance and evaluate their performance on enforcing section 503. Federal funding should be withheld from agencies that are not in compliance with the provisions of the act.

Issue: Accessibility for People with Multiple Chemical Sensitivity/Electrical Sensitivity

Although most entities that receive federal support meet standards of access which are regarded as suitable for the general public, many are not accessible to people who experience electrical sensitivity or multiple chemical sensitivity. The use of many pesticides, chemical cleaners, carpet glues, and paints create barriers which prevent access to the facilities. In addition, some lighting and elevators are electronic barriers to people with electrical sensitivity.

Solution:

The Access Board, with the input of people who experience multiple chemical sensitivity/electrical sensitivity, must develop standards of accessibility which address the needs of all people with disabilities and continued receipt of federal funding must be contingent upon meeting those standards.

Under the Section on the Access Board (Section 502)

(3) establish and maintain

(E) standards of accessibility which address the needs of people who experience multiple chemical sensitivity/electrical sensitivity.

TITLE VII

Issue: CILs are subject to a number of fiscal constraints which impair their ability to maximize their fiscal resources

CILs are required to use cost allocation methodology to apportion costs across all programs. This reduces their ability to attract other sources of funding as required by the standards and assurances of Section 725. Also CILs receiving less than \$300,000 in federal funding are not allowed to charge to their Title VII C grants costs related to independent audits required by federal, state, local or private funding sources.

Solution:

Amend Section 725, (7),(C) Assurances, (7) to incorporate the following provisions

- Notwithstanding the provisions of Office of Management and Budget Circular A-122, in order to enhance their ability to attract diverse sources of funding, Centers for Independent Living shall not be required to develop cost allocation plans, and are authorized to use federal funds for administrative support or overhead costs for programs and projects supported by other public and private sources of funds.
- Notwithstanding the provisions of the Single Audit Act, Centers for Independent Living with less than \$300,000 of federal funds may expend funds received under this Title for independent audits.

Issue: Title VII B should be consumer controlled and directed

There are two problems with direct independent living service provision by vocational rehabilitation agencies: (1) by definition, a non-consumer controlled organization is not qualified to deliver independent living services; and (2) when the vocational rehabilitation agency is both a provider of services and a signer of the State Plan for Independent Living, it has a conflict of interest.

Solution:

Eliminate authority of vocational rehabilitation agencies to deliver independent living services with Part B funds. Delete Section 713(1) and renumber following sections.

Issue: State vocational rehabilitation agencies should collaborate with their SILCs in developing their funding applications for Chapter 2 services for older blind individuals.

In Title VII, Chapter 2, State vocational rehabilitation agencies are required to assure that their applications for funding are consistent with the State Plan for Independent Living (SPIL); however, there is no requirement for participation or involvement of the SILC.

Solution:

Require that State Independent Living Councils certify that Chapter 2 applications are consistent with State Plans for Independent Living. This will assure that there is participation by consumers and their representatives in development of state funding proposals. Amend Section 752(i)(2)(C) to replace the words "an assurance" with the words, "certification by the State Independent Living Council".

Issue: Appointment of the director of centers for independent living to SILC.

During the 1992 reauthorization, governors were granted the authority to make appointments to the councils. The directors of the centers for independent living in each state, however, were given the authority to choose "at least one director" to represent them on the council. In some states, this conflict has caused confusion and resulted in unnecessary delays in the appointments to the council.

Solution:

Amend Section 705(b)(1) Appointments – "Except as noted in Section 705(b)(2)(A)," members of the Council shall be appointed by the Governor.

Issue: The consumer-directed SILC must have sole authority for designing the statewide network of centers for independent living.

While the Rehabilitation Services Administration is required to take state priorities into account when making funding decisions, RSA has funded entirely different priorities than those set by the SPIL's design for the establishment of a statewide network of Centers for Independent Living.

Solution:

Provide that the State Plan for Independent Living be the highest priority for funding centers for independent living. Amend Section 722(e) to add "Following the priorities for funding set forth in this section, the State Plan for Independent Living shall identify a plan for the development of a statewide network of centers for independent living, and the Commissioner shall be guided by the SPIL in allocating funds among centers for independent living within a state. RSA will follow

all recommendations of the state plan including, but not limited to base funding, the number of CILs, CIL satellites and/or branch offices to be established in the state, as well as the area(s) within the state that the SPIL identifies as a priority for establishing a CIL, satellite and/or branch office."

Issue: Entities which received Part C funding through a competitive process should not have to reapply for those same funds.

Centers which were originally created as entities by a parent center must relinquish the funds used to support them during development if they choose to compete for a grant to become a center under Part C.

Solution:

Amend the law to permit entities which fulfill the definition of center for independent living to assume that status and retain their funding under Part C by amending the Act as follows:

722 (e)(1)(A)

(A) If a center has applied for and received funds allocated under Part C for the establishment of an entity which provides services in an unserved or underserved geographic community and meets the standards and assurances set forth in Sec. 725, the Commissioner shall, with the agreement of the SILC, designate the entity as a center for independent living and transfer the funds allocated under Part C accordingly.

Issue: SILC Authority

Since first becoming established in 1992 as an entity with true decision-making authority, statewide independent living councils have demonstrated that they can provide the leadership and direction needed to develop a network of independent living programs, services, and centers. SILCs have been granted incrementally greater authority and earned the right to assume total control over the development of the SPIL.

Solution:

Remove all references to the joint development and implementation of a statewide plan for independent living. Amend Section 704 (a)(2) to read "Development.—the plan under Paragraph 1 shall be developed and signed by the chairperson of the Statewide Independent Living Council, acting on behalf of and at the direction of the Council as indicated by a vote of the SILC."

Issue: No Appeals Process on State Plans for Independent Living

Title VII has no method for a Center for Independent Living to appeal the State Plan if they believe it has not been developed according to Section 704 requirements. Centers for Independent Living need to be involved in decisions that impact the network of centers. Centers are at the core of advocacy in a state, and there is no protection against SILCs and DSUs from joining to seek retribution due to a center's advocacy. Centers have their own boards of directors and are supposed to be community-based. As such, they must be responsive to the needs of their local community. SILCs, on the other hand, are statewide and should not be able to make decisions that override the needs of the local jurisdictions.

Solution:

Amend Section 706. Responsibilities of the Commissioner to include:

`` (b) Appeal of a State Plan.--

(1) A Center for Independent Living, or a group or association of centers that meet the requirements of section 725, may file an appeal with the Commissioner to review the State Plan to determine if it was developed and agreed upon in a manner consistent with the Independent Living philosophy and principles and is truly consumer driven. The appeal must be submitted within thirty days following signature by the Chairperson of the State Independent Living Council.

(2) The appeal must demonstrate how the state plan runs counter to the preponderance of public testimony received on the plan; and

(3) How the plan denies consumer direction based on the unique needs of persons in a local area served by a Center for Independent Living; or

(4) Any manner by which the plan undermines the role of the Board of Directors of a local Center for Independent Living to best serve individuals with disabilities in accordance with the centers strategic plan; and

(5) Demonstrate any financial hardships faced by a center if the plan is implemented according to the plan submitted and signed by the SILC Chairperson.

(c) Appeal Decisions.

The Commissioner will assign RSA staff to work with affected parties to address the issues cited in the appeal consistent with the principles of consumer-control and community-based services intended to meet the unique needs of communities served by Center for Independent Living. Independent Living Services will continue in the state under the previous State Plan until the affected parties reach an agreement. If agreement cannot be reached within 120 days, the Commissioner will direct RSA staff to contract with an independent Mediator to bring the affected parties together to reach a conclusion.

(d) (1) Grievances of a Center for Independent Living; hearing and arbitration; non-compliance by state or federal departments and agencies; complaints by a Center for Independent Living; arbitration -

(a) Any Center for Independent Living that is dissatisfied with any action arising from the operation or administration of the State Plan for Independent Living may submit to a Designated State Unit a request for a full evidentiary hearing, which shall be provided by such

agency. If such Center for Independent Living is dissatisfied with any action taken or decision rendered as a result of such hearing, the center may file a complaint with the Secretary who shall convene a panel to arbitrate the dispute pursuant to section 706(d)(2) of this title, and the decision of such panel shall be final and binding on the parties except as otherwise provided in this chapter.

(b) Whenever any Center for Independent Living determines that any department, agency, or instrumentality of the United States that has control of the State Plan for Independent Living is failing to comply with the provisions of Title VII or any regulations issued thereunder such Center for Independent Living may file a complaint with the Secretary who shall convene a panel to arbitrate the dispute pursuant to section 706(d)(2) of this title, and the decision of such panel shall be final and binding on the parties except as otherwise provided in this chapter.

706(d)(2) Arbitration

(a) Notice and hearing -- Upon receipt of a complaint filed under section 706(d)(1) of this title, the Secretary shall convene an ad hoc arbitration panel as provided in subsection (b) of this section. Such panel shall, in accordance with the provisions of subchapter II of chapter 5 of Title 5, give notice, conduct a hearing, and render its decision which shall be subject to appeal and review as a final agency action for purposes of chapter 7 of such Title 5, United States Code.

(b) Composition of panel; designation of chairman; termination of violations

The arbitration panel convened by the Secretary to hear complaints filed by a Center for Independent Living shall be composed of three members appointed as follows: (A) one individual, designated by the Center for Independent Living; (B) one individual, designated by the Designated State Unit, department, agency, or instrumentality controlling the State Plan for Independent Living over which the dispute arose; and (C) one individual, not involved in developing or administering the plan or programs over which the dispute arose who will act in an impartial and objective manner in resolving the dispute, who shall serve as chairperson, jointly designated by the members appointed under subparagraphs (A) and (B). If any party fails to designate a member under subparagraph (2) (A), (B), or (C), the Secretary shall designate such member on behalf of such party.

(2) If the panel appointed pursuant to paragraph (1) finds that the acts or practices of any such department, agency, or instrumentality are in violation of Title VII, or any regulation issued thereunder, the head of any such Designated State Unit, department, agency, or instrumentality shall cause such acts or practices to be terminated promptly and shall take such other action as may be necessary to carry out the decision of the panel.

(a) Publication of decision in Federal Register: The decisions of a panel convened by the Secretary pursuant to this section shall be matters of public record and shall be published in the Federal Register.

(b) Payment of costs by the Secretary: The Secretary shall pay all reasonable costs of arbitration under this section in accordance with a schedule of fees and expenses he or she shall publish in the Federal Register.

Issue: Centers for independent living which have been recently funded have no assurance of funding in subsequent years

Each time the Act is reauthorized, the grand fathering provision has been updated to the most recent year prior to amendment. By removing reference to a particular fiscal year, it would no longer be necessary to update this provision.

Solution:

Current law “grandfathers” Centers funded prior to September 30, 1997. Change this provision to assure funding to Centers funded in the prior fiscal year.

- Amend Section 722(c) to replace “1997” with “of the preceding fiscal year.”
- Amend Section 723(c) to replace “1997” with “of the preceding fiscal year.”

Issue: The four core services need to be updated.

Solution:

The four core services of CILs should be changed to separate systems change advocacy and individual advocacy into two separate services. Moving people with disabilities out of nursing homes and other institutions should be added to the current core services as well as preventing people with disabilities from moving into nursing homes or other institutions.

Issue: Eligibility determination process is too bureaucratic.

Solution:

Replace the current eligibility process with one of self-declaration, i.e. “I have a disability and I need CIL services”.

Issue: Significance of an individual’s level of disability is an unnecessary distinction.

The term “significantly disabled” has no technical definition and suggests that others have insignificant disabilities.” This distinction also makes necessary a determination of disability with a “medical model” approach which is inconsistent with IL philosophy. The important question is whether, because of disability, an individual needs independent living services.

Solution:

Delete all reference to significance of disability from Title VII of the act.

- Delete “significant” wherever it appears as a modifier of the term “disability” throughout Title VII.

(b) Delete section 7(21)(b) in the definitions portion of the Act.

Issue: Outreach requirements in the Act do not address all un-served or underserved populations.

Minority groups and urban and rural populations are specifically addressed in current

State Plan for Independent Living outreach requirements. This implies no other outreach is necessary.

Solution:

Require State Plan for Independent Living outreach provisions to address age and type of disability. Amend Section 704(l) to add older and younger individuals and specific disability groups.

Issue: Compliance reviews by Rehabilitation Services Administration are random in timing and do not always assure consumer control of reviews.

The Act currently requires a “random basis” for selection of 15% of centers for independent living for review annually. It also allows Rehabilitation Services Administration to use reviewers “knowledgeable about the provision of independent living services,” but does not specify what constitutes such knowledge.

Solution:

Require that Rehabilitation Services Administration review each Center for Independent Living every five years, and that a majority of each compliance review team be comprised of individuals who have experience working in or receiving services from Centers for Independent Living.

- Amend Section 706(c)(1) to require centers for independent living be reviewed every five years.
- Amend Section 706(c)(2) to require that Rehabilitation Services Administration perform compliance reviews using fully qualified individuals with knowledge of local operation of Centers for Independent Living.

Issue: Language regarding appointment of State Independent Living Council chairs creates confusion about governors’ appointment powers in some states.

References to veto power by the governor regarding SILCs being responsible for electing their own chairs have proved confusing and led to the this provision not being implemented by RSA as it was intended by congress.

Solution:

Delete reference to designation of chair by chief executive officer.

- Amend Section 705(b)(5)(A) to delete “Except as provided in subparagraph (B)”.
- Delete subparagraph 705(b)(5)(B) in its entirety.

Issue: Direct funding for SILCs and State Rehabilitation Council

When Statewide Independent Living Councils were created in the act, they were not funded. Instead, there were other sources of funding identified that could be used to fund the SILC’s. The sources of funds and the amounts are negotiated during the development of the State Plans. Because no additional funding was provided, in many states the development of the State Plans has become more of a fight over money than a productive process to further the independence and employment of people with disabilities.

Solution:

An additional appropriation should be made from Title I innovation and expansion monies to provide a minimum funding base of \$250,000 per Council. This should be a separate appropriation dedicated solely to the funding of SILCs and RCs and should not reduce the amount of funding that has already been negotiated in the SPILs without the approval of the SILC. Funding should go directly from RSA to each individual SILC rather than flowing through the state VR agencies. In order to receive funding a SILC would need to be a consumer controlled, autonomous entity.

Issue: Governors are not making appointments to SILCs or State Rehabilitation Councils in a timely manner

Governors in many states are taking 1-2 years to appoint new SILC and SRC members to fill vacancies left by resignations or expiring terms. This has made it very difficult for some SILCs and SRC's to continue to function.

Solution:

Language should be added to the act that allows nominees to assume appointment for the position and term they were nominated to fill, if the governor does not appoint within 90 days of receiving the SILC's or SRC's recommendations for appointments. The SILC Membership Committee and the SRC Membership Committee will provide Governors or the appointing authority with a slate of candidates along with their recommendation on which candidate should be appointed.

Issue: There is a need to monitor and evaluate SILCs.

RSA evaluates and monitors CILs utilizing a system of standards and indicators to evaluate whether the CIL is in compliance with the law and regulations. Such a process does not exist for SILCs.

Solution:

Standards and indicators should be developed to evaluate whether a SILC is consumer controlled and autonomous. The indicators should include, the SILC directing it's own activities, having a 51 percent consumer-controlled council, developing it's own budget, hiring and firing its own staff, etc. RSA needs to develop standards and indicators pertinent to SILCs in partnership with consumer controlled national organizations.

Issue: Need to revise list of IL services in SPIL inconsistent with IL Philosophy.

Most civil rights movements evolve according to the current needs of the people they represent. The same is true for the Independent Living Movement. RSA's current list of Independent Living services is lengthy and is not reflective of the IL Philosophy and

actually is more closely related to the medical model, i.e. mental restoration and therapeutic services, which is contradictive of the IL Philosophy.

Solution:

Slim down the list of services and eliminate all references to medical model, such as mental restoration. List the following services: peer counseling, information and referral, Independent Living skills instruction, self-advocacy, systems advocacy, assistive technology, de-institutionalization and prevention of institutionalization.

Issue: To meet the needs of people with disabilities Independent Living funding must be increased.

As stated in the beginning of this document, the Rural Institute on Disabilities research findings states that each Center for Independent Living today covers approximately 5.7 counties. Forty percent (40%) or 1,230 of our nation's counties receive no service whatsoever from a Center for Independent Living, and for many others, the coverage is only superficial. Many existing centers are woefully under-funded.

Solution:

**Increase funding for Title VII , Part C by amending Title VII , PART C--
CENTERS FOR INDEPENDENT LIVING, SEC. 721. PROGRAM
AUTHORIZATION, (c) to read:**

(c) In General.--

(1) States.--

(A) Funding for programs and services under Part C of this title shall be appropriated, and funded, at an amount not less than 10% of the amount appropriated for Title I of the Rehabilitation Act.

(B) Maintenance of 2003 amounts, --Subject to the availability of appropriations to carry out this part, the amount of any allotment made under subparagraph (A) to a State for a fiscal year shall not be less than the amount of financial assistance received by centers for independent living in the State for fiscal year 2003 under part B of this title, as in effect on the day before the date of enactment of the Rehabilitation Act Amendments of 2003.

(C) Increased Appropriations, -- (a) 50% of the total of all newly appropriated funds will be distributed equitably among the states and territories. (b) The remaining 50% of the total of all newly appropriated funds shall be divided among the states in an amount bearing the same ratio as the population of the state bears to the population of all states. (c) Receipt of all funds from this Part shall be contingent upon the continuation of funding by the states equal to or exceeding the previous year's level.

THIS PAPER IS DEDICATED TO THE MEMORY OF:

Chester Helms

Jay Johnson

Larry Robinson

and

Phil Stinebuck

Whose philosophy and ideals are reflected in these positions.