



NEW LAWS PASSED BY THE 1997 LEGISLATURE

Each year there are new laws that affect people with developmental disabilities that we need to know about, as they can impact our lives. **Some of the bills which affect people with disabilities and their families include:**

- ✓ **HB 1432** sponsored by Representative Tokuda modifies adoption support agreements between the state and adoptive parents, if the child is found to have greater needs than were determined at the time of adoption, due to a pre-existing condition.
- ✓ **HB 1573** sponsored by Representative Dunn, authorizes schools to rent, sell or transfer assistive technology when the student for whom it was designed leaves the school. Social service agencies and schools are also instructed to work together to provide needed assistive technology.
- ✓ **HB 3901** sponsored by Representative Cooke, is the Welfare Reform bill that ends welfare as we know it in the state of Washington. Five year-life time limits, food stamp cuts, and many other new laws are imposed, including new more restrictive rules for children on SSI. Approximately 1,200 children in Washington could lose their coverage.
- ✓ **SB 5009** sponsored by Senator Long provides for out-of-state adoption supports for special needs children.

As we go to press, the following bills are waiting for the Governor's signature or in conference committees awaiting final action:

- ✓ **HB 1491** sponsored by Representative Cody, affirms the civil right to have a service animal with his or her owner at all times and changes references from service dogs to service animals.
- ✓ **HB 1588** sponsored by Representative Mulliken, adds hearing aids to the list of medical items exempt from sales and use taxes.
- ✓ **HB 1771** sponsored by Representative Mitchell, requires the establishment of the certification of professional guardians by the courts.
- ✓ **HB 1850** sponsored by Representative Dyer, provides long term care service protections to people living in state-funded residences. It also calls for a study of an office of ombudsman, with three ombudsman programs under it, Mental Health, Developmental Disabilities and Aging.
- ✓ **HB 2189** sponsored by Representative McDonald, calls for a study of the financing of elderly and disabled housing.
- ✓ **SB 5710** sponsored by Senator Hargrove, moves the administration of services for children in foster care to the Division of Developmental Disabilities and establishes a new procedure for families and children to work with the courts that is not as intrusive and punitive.
- ✓ **SB 5768** sponsored by Senator Horn, provides incentives for supported employment opportunities in state government.



1997-1999 DDD BUDGET IN GOOD SHAPE

The 1997-1999 budget for the Division of Developmental Disabilities (DDD) looks relatively good. There were no major cuts and several enhancements to the budget. Overall DDD received a 7.3% increase, (which does not include the vendor rate increase for all providers in the community and state facilities).

DDD had several enhancements to the budget for the next two years:

- **+\$1.908 million** in the DDD budget and **\$4.1 million** in the Division of Vocational Rehabilitation budget was added to provide employment and day programs for an estimated 900 high school graduates, 1997-1999.
- **+\$5.492 million** is added for a community protection initiative begun during the first 6 months of 1997. Secure residential settings were developed to provide 24-hour supervision for 40 persons with histories of physical or sexual abusive behavior or arson, who are thought to be at risk of re-offending, at an average cost of \$76,000.00 per year, per person.
- **+\$1.386 million** is included for the closure of a 57 bed nursing facility run by UCP of King-Snohomish Counties. Residents will move to small community residences. This change will save taxpayers \$6,000 per person per year, but there is a temporary additional cost until closure occurs.
- **+\$1.371 million** is budgeted to enhance the quality of adult family homes (AFH) through additional case management staff to monitor and assist AFH providers. Also funding for added hours of specialized training for AFH providers who take people with developmental disabilities is included.
- **+\$1.1 million** is assigned to Yakima Valley School to operate a nursing community outreach project and a 16 bed respite program.
- **+\$50 million** is added to the Department of Social and Health Services budget to provide a one time vendor rate increase of 3%, as of July 1, 1997.
- **+\$5 million** is added to the Capital budget for safe and affordable housing for people with developmental disabilities.

DDD took only three cuts to their on-going budget:

- **-\$584,000** cut to administrative supports (6.5% cut in central office a 6% cut to community technical assistance and demonstration projects)
- **-\$2.440 million** reduction in Medicaid Personal Care (MPC). This limits payments to parents caring for adults or children with DD in their family home to \$564.00 per month, rather than the \$863.00 maximum reimbursement which is available for someone living alone. This cut affects 375 families who currently receive the exceptional rate.
- **-\$1.846 million** is cut from the assumed growth in the cost of Medicaid Personal Care (MPC) over the next two years. The number of children receiving MPC services is budgeted to increase by an average of 23% per year, and the number of adults receiving MPC to increase by 11% per year. The budget provides that the average cost per person is to remain at the 1997 level, rather than increasing 2% as proposed by DDD. If this does not occur, or the caseload grows more than DDD projected, they must adjust eligibility criteria and/or service levels to remain within the budgeted level.

Emerging Policy Issues

by Janet Adams



As the 1997 legislature draws to an end, we must look toward emerging issues for the coming year. Although there has been some movement in the right direction, much still remains to be done.

- Waiting lists for services and supports continue to grow at an alarming rate. Family support alone has a waiting list of 800+ families, with 70 new families being added each month, and **there is no new money in the budget to provide additional families with family support.** The Division of Developmental Disabilities (DDD) is piloting "Family Support 1997" in an attempt to spread the dollars further by offering less financial assistance and more connection to generic community resources.

- Another issue that has come to the front is **the plight of elderly care givers and their loved ones.** Many families who have cared for their adult family member at home are now aging and can no longer provide that care. Other than down-sizing and the new community protection funding for 40 additional people that's in this year's budget, we've had no new residential funding since the mid-eighties. Adult family homes have grown at an alarming rate because of the need for some kind of placement (whether it's adequate or not).

- There is significant interest in moving the system that we now know from a provider-driven system, to **a consumer-driven system.** There have been many pilots begun state-wide to attempt to learn how to do this in a way that gives consumers power over the resources spent on them, while at the same time not hurting the providers of supports.

- The Division of Developmental Disabilities has an acting director,

Tim Brown, who has been at the helm for four short months. **Dr. Brown will eventually be replaced by a permanent director** and this could have far-reaching implications.

- Lyle Quasim, Secretary for the Department of Social and Health Services, has proposed putting together a work group from the community and institutions, to look at the services offered by the Division and make a **long range plan** for better use of those services. He has offered to take the plan that is developed by that group to the Governor and advocate for its passage. Right now plans are underway for the formation of that group and the topics that will be covered.

- **Community protection from people with disabilities who are dangerous** and predatory remains a high priority agenda for DSHS. This year the largest enhancement went to this issue. The 40 people served are just a few of those who do need supports. Much thought must be given to the supports needed for these people. While expensive programs are needed by people with these issues, we must realize that they create longer waiting lists for families who are caring for their own and do not have emergency needs.

- **The place of institutional care in today's world,** continues to be a controversial subject in this state. Many states have either chosen to close all of their institutions, or are in the process of doing so. This is an issue that we hope can be resolved in the near future.

- We are beginning to see a **backlash against students who receive special education services** because of a perceived inequity in the treatment of

disruptive students and the added costs to special education. Bills were introduced this session to limit special education laws and regulations. This appears to be a national problem, and just the beginning of the problem.

- **Health care in Washington** state was again cut back. After having the promise of health care for all, we have moved steadily back from it, and the health care system for people with disabilities is in crisis. The state is attempting to implement managed care for all people on SSI and who use Medicaid Personal care. This must be monitored very carefully to protect the rights of people with developmental disabilities.

- **Managed care** is also being looked at in many states, as the tool for providing long term care services as well as medical services. Giant conglomerate health care agencies, are beginning to look at this as a possible place to expand. While some of the principles of managed care could be very useful, much of the philosophy is not conducive to quality care. We need to become conversant with this issue and be in control of its entry into Washington, not waiting for it to happen to us.

- We were unsuccessful in our attempt to pass legislation requiring a **D.D. Ombudsman.** It is extremely important to have a watch-dog program (outside DSHS) in place as community placements continue to grow and are many times inadequately funded.

- **Birth to three issues remain critical,** as some schools chose not to continue these programs this last year. We still need to have in place guaranteed funding for programs for these early formative years.

Legislation on the Federal Scene...

Washington state was well-represented at the Arc's National Governmental Affairs conference in Washington D.C. in April.

The featured issues were:

- Supplemental Security Income and Social Security Disability Income programs;
- Using Medicaid to balance the budget;
- Fiscal Year 1998 budget & appropriations;
- Low Income Housing; and
- Individuals with Disabilities Education Act (IDEA).

(Copies of position papers outlining these issues are in the state and local Arcs for those of you who wish to obtain copies.)

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Congress is still far behind on its budget schedule. Talks continue in the hope of getting closer to agreement, but they have not passed the budget resolution which was supposed to happen by April 15th.

Administration and congressional sources have said they are getting closer together on tax cut issues and could be nearing some

sort of deal.

Related to this, the White House has agreed to bring its Medicare "savings" up to 100 billion dollars over the next five years.

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Forty-one governors sent a letter to President Clinton and congressional leaders, urging limited cuts to Medicaid and no per capita cap.

This is a critical issue, since cutting Medicaid and/or establishing a per capita cap could severely jeopardize access to health care and long term support services for people with disabilities.

The Arc's Governmental Affairs office continues to urge Congress and the Administration to keep Medicaid off the budget cutting table since it was placed there by President Clinton.

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The House Banking Committee began marking up HR2, which will overhaul the nation's public housing

system.

As proposed, HR2 will give public housing authorities (PHAs) much greater ability to designate housing as "elderly only," exacerbating an already severe nationwide housing crisis facing people with disabilities.

The Arc is working on amendments which will probably not be brought up until the bill goes to the House floor.

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Bi-partisan staff working on IDEA have essentially completed their negotiations. Key members of Congress have endorsed their

efforts.

The plan is to try to complete action on IDEA prior to late May.

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The National Council on Disability (NCD) has begun its series of "Return to Work" Social Security hearings.

A one-day field hearing will be held at the SeaTac Holiday Inn, May 31, 10am-4pm. Please call Connie Allison at 360-754-2085.

The Arc's Governmental Affairs office continues to urge Congress and the Administration to keep Medicaid off the budget cutting table.

Legal Briefs

Supreme Court Affirms Liability for Failing to Protect Persons with Developmental Disabilities

The Supreme Court of Washington recently upheld a lower court decision that a group home was liable for the actions of a male group home staff member who repeatedly raped a young woman with a mental age of five years and cerebral palsy. (*Niece v. Elmview Group Home*, 1997.)

In its ruling, the court set out the standard of care for Washington programs serving persons with developmental disabilities. If the group home or other service provider has been

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"entrusted with the well-being of another," the service provider must take reasonable care to prevent foreseeable harm.

In *Niece*, the male staff member was alone caring for the residents from 3pm to 7pm. The court held that, even though the group home did not know of any dangerous characteristics of that particular employee, "sexual assault by a staff member is not a legally

unforeseeable harm."

The court stated "Profoundly disabled persons are totally unable to protect themselves and are thus completely dependent on their caregivers for their personal safety."

The same principles might well be applied by later courts to non-residential programs serving persons with substantial disabilities. Thus, recreational and supported employment programs may have the same duty to protect their most vulnerable clients from foreseeable harm.



