

Disability Act's First 10 Years And the Challenges Ahead

By David Nather, CQ Staff

A bumper sticker sums up the positive view most people with disabilities have of the changes wrought by the 1990 *Americans with Disabilities Act*: "To boldly go where everyone else has gone before."

To business owners, however, these changes have come at a price. Just ask Clint Eastwood. Angered by a lawsuit that claimed his Mission Ranch Hotel in Carmel, Calif., was not accessible to people with disabilities, the actor urged Congress to crack down on attorneys he believes have gotten trigger-happy filing ADA lawsuits over problems that could have been easily fixed.

"These lawyers cloak themselves under the guise they're doing a favor for the disabled when they really are doing a disservice," Eastwood said at a May 18 House Judiciary hearing. "They end up driving off in a big Mercedes and the disabled person ends up riding off in a wheelchair."

Civil rights landmark or lawsuit mill? Ten years after President George Bush signed it into law, the ADA (PL 101-336) is under fire: A House bill would require people to give businesses 90 days' notice before suing, and the act faces a constitutional challenge before the Supreme Court this fall.

Fearing a backlash that could undermine the law, a familiar face has stepped in. Former Senate Majority Leader Bob Dole, R-Kan. (1968-96) -- who lost the use of one arm in World War II and was one of the law's strongest supporters as minority leader in 1990 -- has been circulating a proposal to his former colleagues that would let businesses obtain advisory opinions from the government to determine whether they are in compliance before they get sued.

"I don't want to short-circuit [the ADA] . . . I worked too hard to get it done," Dole, now special counsel to a Washington law firm, said July 19. "It just seems to me that there ought to be some kind of middle ground."

As they prepare to mark the 10th anniversary of the law's signing July 26, supporters in Congress and the disability community want Americans to focus on the good things they say the law has accomplished. The ADA, they say, merely lets individuals with disabilities lead the same kind of lives as everyone else.

"Members of Congress don't remember what it was like when we couldn't get around," Patrisha A. Wright, director of governmental affairs for the Disability Rights Education and Defense Fund, said July 18. "They hear a lot from businesses, but they don't hear a lot from real people."

Their voices will have to be heard if they want Congress to tackle the remaining challenges people with disabilities face. Just as racial issues became more complex and the targets more abstract after the passage of the 1964 Civil Rights Act, disability policy has become more complicated since the passage of the ADA.

Those brewing issues range from health care and personal attendant services to special education, transportation and housing costs. Some groups are also concerned about the

other "digital divide" -- the one that locks many people with disabilities out of the technological revolution.

"Civil rights was the first barrier. You'd literally get to the door and the employer would say, 'Sorry, we don't need you,' " said Tony Young, manager of governmental affairs for NISH, an organization that helps people with severe disabilities find jobs.

Now, Young said July 13, "the targets have become more difficult."

The Next Steps

There is not another bill on the same scale as ADA looming in the future, but there are other issues on the congressional agenda that could affect people with disabilities -- as well as issues disability groups say are not on the agenda but should be.

· Health care. Sens. Charles E. Grassley, R-Iowa, and Edward M. Kennedy, D-Mass., are sponsoring a bill (S 2274) to let the parents of children with disabilities buy into Medicaid.

It is a sequel of sorts to last year's Ticket to Work and Work Incentives Improvement Act (PL 106-170), which is supposed to ensure that adults with disabilities keep federal health insurance after they go to work. The law allows people with disabilities to stay on Medicare longer and allows states to create an option for them to buy into Medicaid. (1999 CQ Weekly, p. 2762)

The new bill, the Family Opportunity Act, would help parents who often quit jobs to meet Medicaid's strict income limits by giving their children another track into the program, which offers more generous coverage for children with special needs than many private health plans. The bill would encourage parents to obtain private insurance first and then use Medicaid as a "wraparound" benefit to pay for services their private plan does not cover.

About 850,000 children are eligible for Medicaid coverage through the Supplemental Security Income program.

The bill is unlikely to move this year, but the Senate Budget Committee gave it a boost with a July 12 hearing. Eventually, Grassley told reporters, he expects it to have as much bipartisan support as the Work Incentives legislation did last year.

"The government forces these parents to choose between work and their children's health care," Grassley said at the hearing. "That's a terrible choice."

· Personal attendants. A big priority for the disability community is the Medicaid Community Attendant Services and Supports Act (S 1935), proposed by Sen. Tom Harkin, D-Iowa, who sponsored the ADA.

The bill would let Medicaid recipients get long-term care at home rather than in nursing facilities. It would help people with disabilities pay for community-based attendant services -- help with activities such as eating, dressing and moving from the wheelchair to the bed -- so they could live independently.

Supporters say the legislation would correct a biased system that requires Medicaid to pay for nursing homes but not for the kind of home-based care that gives people with disabilities the freedom they want. To offer community-based care under Medicaid, states now have to apply for waivers from the federal government.

"You're employing somebody to help you . . . when you're in a very vulnerable position," said Max J. Starkloff, president of Paraquad, an independent living center in St. Louis. "You really have to be able to trust people and know you can count on them. And to do that, you have to be able to pay them."

The legislation is opposed by many of the nation's governors, who say it would create an expensive new entitlement.

Harkin does not buy that argument. "On the average, it will be cheaper. There will be some severely disabled people for whom it will be more expensive," he said July 12. "But even if it's a wash, we should do it because it will bring Medicaid into compliance with the letter and spirit of the ADA."

- The other digital divide. When President Clinton and members of Congress talk about closing the "digital divide," they generally mean the gap between people who can afford computers and those who cannot.

There is another divide, however, between people with disabilities who need accommodations to use computers -- often expensive ones -- and those who do not.

According to a March study by the Disability Statistics Center at the University of California in San Francisco, only 23.9 percent of people with disabilities have access to a computer at home and only 11.4 percent are able to connect to the Internet. By comparison, 51.7 percent of people without disabilities have home computers and 31.1 percent connect to the Internet.

The gap has several causes, but the biggest is that people with disabilities tend to be less able to afford computers or specialized software and hardware, says Bonnie O'Day, who handles technology issues for the National Council on Disability. The council is a federal agency that advises Congress and the president on disability policy.

People who are blind or visually impaired, for example, may need a screen reader, which translates text in a synthesized voice; a Braille display that uses a set of pins to convert screen text into raised dots; or a screen magnifier.

Such devices are not cheap -- a screen reader or magnifier can run \$500 to \$800 and a Braille printer may cost \$2,000 to \$3,000. That is why O'Day says Congress should consider passing legislation to offer low-interest or no-interest loans to help people with disabilities get technology they need.

"You can have all the technology you want," said O'Day, "but if you can't afford it and you don't have the training to use it, you're still no better off than if it didn't exist."

Congress already has taken a first step to narrow the divide. The 1998 Rehabilitation Amendments Act (PL 105-220) requires the federal government to make electronic and information technology accessible to people with disabilities. As of Aug. 7, individuals with disabilities will be able to sue the government if they have access problems. A debate already has started about whether there should be accessibility standards for Internet sites.

- Employment. Congress eventually will have to address the issue of how to help more people with disabilities enter the work force because the Social Security Administration's Disability Insurance (SSDI) program is running out of money.

The program, which provides benefits to about 4.9 million people who have paid into Social Security and can no longer work because of severe and long-term disabilities, is under just as much stress as the rest of Social Security. Its caseload has grown by 67 percent over the past 15 years, according to the General Accounting Office, and its benefit payments have nearly tripled in that time. In seven years, the SSDI trust fund will be paying out more than it takes in, and by 2023 it will not be able to pay full benefits.

The Basics

In 1990, supporters of the ADA simply wanted to end discrimination.

The law that eventually passed requires employers to make "reasonable accommodations" for workers with disabilities as long as they do not create an "undue hardship" for the businesses. Public services such as mass transportation and all kinds of private businesses that serve the public -- hotels, restaurants, bars, movie theaters, retail stores and shopping centers -- have to be just as accessible to people with disabilities as they are to able-bodied people. (1990 CQ Almanac, p. 447)

"It has opened up great new worlds compared to where we were 10 years ago," said Harkin. "Now people with disabilities have a lot to back them up. It makes them feel like they're powerful."

Dole agrees. "I think generally the law has worked pretty well," he said. "It's helped a lot of people who couldn't have gotten into a restaurant before because they were in a wheelchair."

Mostly, people with disabilities say the law has changed the nation's attitudes and made businesses and governments more willing to eliminate the hundreds of indignities they face every day.

"When I go to work and make phone calls, I use the telecommunications relay services enacted by the ADA," Kelby Nathan Brick, an attorney in Greenbelt, Md., who is deaf, wrote in an e-mail exchange July 18. "In the afternoon I go to the doctor's office and am able to communicate with my doctor because the ADA has required the presence of a sign interpreter. . . . The ADA [has] had a major impact on almost every facet of my life."

Another person who believes the ADA has made a big difference in attitudes is **J. Marque Moore**, who worked as a law clerk this summer in the Office of Personnel Management.

Paralyzed from the neck down in a bull-riding accident 10 years ago, Moore found an eager employer in OPM, which is trying to serve as a role model for how the private sector should put the ADA to use. The law, Moore said in a July 14 interview, "provides an environment in which people are more willing to work with you."

The biggest expense OPM had was a personal assistant, at a cost of \$480 a week, to help Moore with everything from taking notes and running office errands to such basic needs as helping him periodically adjust his position in his wheelchair.

The rest of the accommodations were relatively easy. To get started every morning, the 28-year-old University of Texas law student needed someone to punch in the security code, open the door to his office and put on his headset so he could make phone calls. He used voice-recognition software to dictate memos and e-mails and manipulated a special stick placed in his mouth to dial phone numbers and open applications on his computer.

"Once you get past the physical access" of being able to get into the building, into elevators and into offices, Moore said, "the rest of the costs aren't that high."

According to a survey by the Job Accommodation Network, an ADA service run by the federal government, businesses reported spending an average of \$943 on accommodations for each worker with a disability since the law took effect in 1992. For every dollar employers spent, they estimated they got almost \$35 back in other benefits, such as retaining a qualified employee and saving on workers' compensation costs.

While business groups agree the law has had numerous benefits, they say there is another side of the story.

"The difficulty is that the ADA is written in such a vague and ambiguous way that businesses never know whether they've complied with the law completely until they wind

up in court," Mary Leon, a lobbyist with the National Federation of Independent Business, said in a July 11 interview.

State governments have joined the fight. In October, the Supreme Court is scheduled to hear oral arguments in *University of Alabama Board of Trustees v. Garrett*, a lawsuit that challenges the constitutionality of ADA lawsuits against states over discrimination in employment and public services.

If the court strikes down that part of the law, "it could not help but encourage the people who would like to repeal the whole thing," Justin Dart, former vice chairman of the National Council on Disability, said July 10.

Disability groups say the threat of lawsuits is overblown and that most people with disabilities have neither the will nor the money to sue anybody. They get what they need, the groups say, simply by mentioning the ADA, a gentle but effective reminder that the law is on their side.

That is why Congress and the disability groups keep talking past each other on the ADA subject of the moment -- how to help businesses comply with the law and stay out of court.

Fair Warning?

The bill that brought Eastwood to Capitol Hill, and has alarmed the disability community, is the ADA Notification Act (HR 3590). The proposal by Reps. Mark Foley and E. Clay Shaw Jr., Florida Republicans, would require people to give 90 days' notice before filing a lawsuit under the ADA.

To Foley and the bill's supporters, it is a simple, common-sense measure that would help well-meaning business owners comply with the law by giving them time to fix whatever accessibility problems they have.

"This is simply about fairness, not weakening the ADA," Foley said in a July 19 interview. "All we're saying is, let's not start active litigation until they've been notified of the problem."

To disability groups, it is a harmless-sounding first step toward chipping away at the ADA's protections.

The issue is so sensitive that some disability groups recently fired off a series of e-mails warning that Republicans wanted to slip the bill through the House quietly as a suspension item, a designation normally reserved for such non-controversial measures as renaming post offices.

Foley wants to pass the bill as a suspension item, but he said that is to ensure that it could not be amended on the House floor to weaken the ADA in other areas. "Unless it's a suspension, I will not let it go to the floor," Foley said. "I don't want the 90-day notice badly enough to have the ADA go down in flames."

'Drive-by Lawsuits'

The problem, according to the law's critics, is not the government lawsuits but the private ones. The Equal Employment Opportunity Commission, which enforces the employment discrimination protections, filed 369 lawsuits between fiscal 1992 -- the year the law went into effect -- and fiscal 1999. The Justice Department's Civil Rights Division, which enforces the public accommodations and public services provisions, had filed or intervened in 202 ADA lawsuits as of July 7.

The federal government does not track private suits. Business groups say it is impossible to estimate how many they have faced, but they believe the number is growing.

At the May 18 subcommittee hearing where Eastwood testified, Christopher G. Bell, an attorney and former EEOC employee, said the law has produced a blizzard of "drive-by suits" in South Florida and other areas.

In one case, Bell said, his Minneapolis law firm defended a business owner who was sued because the toilet paper dispenser in the men's room was an inch off the accessibility standards.

If the Foley bill had been law at the time, Bell said, "the owner presumably would have taken a screwdriver and lowered the toilet paper dispenser by an inch rather than face a lawsuit."

Lee Culpepper of the National Restaurant Association, which supports the Foley bill, agrees. "The goal [of ADA] was to reach some common-sense accommodations with litigation really being the last option," he said. Now, "lawsuits have become the first option."

That argument has worn thin with disability groups. "The act is 10 years old. People have had lots of notice," said Stephanie Thomas, a national organizer for the disability rights group ADAPT, in a July 17 interview.

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