



HEALTH SERVICES AGENCY
ADMINISTRATION

COUNTY OF SANTA CRUZ

HEALTH SERVICES AGENCY

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May 21, 1998

AGENDA: June 9, 1998

BOARD OF SUPERVISORS
County of Santa Cruz
701 Ocean St., Fifth Floor
Santa Cruz, CA. 95061

Re: Support for Federal Legislation to Create Work Incentives for Persons with Disabilities (HR 3433 and S1858)

Dear Members of the Board:

Background:

Existing federal **Medi-Cal** and Social Security Disability Benefit laws and regulations contain unintended disincentives to persons with chronic, severe, or chronic illnesses wanting to return to work. These disincentives inhibit many disabled citizens from even attempting work because of the threat of lost health coverage and/or permanent withdrawal of disability benefits. Many advocacy groups representing disabled individuals have been working with the federal government for the past decade to create supports and incentives **for work** rather than against work. HR3433 and S1858 address these issues and enjoy bipartisan support.

Basic health costs for citizens with disabilities can be astronomical and the fear of loss of health coverage and ability to pay for essential medications and care is the biggest obstacle that HR 3433 and S1858 address. In addition, the legislation recognizes the reoccurring nature of some illnesses, allowing persons to go on and off benefits without the difficulties currently encountered. The bill also includes incentives for employers who hire the disabled.

These changes can result in increased independence and improved quality of life for individuals with disabilities and also **reduce burdens** on the taxpayer.

Recommendations:

It is, therefore, RECOMMENDED that your Board:

1. Adopt the attached resolution supporting HR 3433 and S1858, and communicate this support to federal legislators representing the district and state.

Sincerely,



Charles M. Moody
Health Services Administrator

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Attachments

RECOMMENDED



Susan Mauriello
County Administrative Officer

- cc:
- Auditor Controller
 - County Administrative Office
 - County Counsel
 - HSA Administration
 - Community Mental Health
 - Congressman Farr
 - Congressman Campbell
 - Senator Boxer
 - Senator Feinstein

BEFORE THE BOARD OF SUPERVISORS
OF THE COUNTY OF SANTA CRUZ, STATE OF CALIFORNIA

RESOLUTION NO.

On the motion of Supervisor
duly seconded by Supervisor
the following resolution is adopted:

RESOLUTION SUPPORTING THE PASSAGE OF HOUSE OF REPRESENTATIVE
BILL 3433 AND SENATE BILL 1858

WHEREAS, current Social Security law includes many disincentives to work for disabled persons; and

WHEREAS, maintaining health coverage is a critical component for assisting disabled persons in returning to work; and

WHEREAS, financial incentives to employers are an important element in creating job access for persons with disabilities; and

WHEREAS, House of Representatives Bill 3433 and Senate Bill 1858 address many of these disincentives to work and has broad support from the disabled community; and

WHEREAS, this legislation would have significant benefits for disabled citizens of Santa Cruz County,

NOW, THEREFORE, BE IT RESOLVED that the Santa Cruz County Board of Supervisors hereby urges federal legislators to support passage of these bills,

PASSED AND ADOPTED, by the Board of Supervisors of the County of Santa Cruz, State of California, this _____ day of _____, 1998, by the following vote:

AYES: SUPERVISORS
NOES: SUPERVISORS
ABSTAIN: SUPERVISORS

JANET K. BEAUTZ, Chairperson
Board of Supervisors

AI-TEST: _____
Clerk of said Board

APPROVED AS TO FORM

Henry A. Obesherman III
County Counsel

Social Security and SSI Advocates
March 31, 1998

6. HOUSE AND SENATE INTRODUCE WORK INCENTIVES BILLS.

Disability advocates have been working with Members of Congress to remedy the disincentives to work which exist in the Social Security and SSI disability program. To remove the main barriers to the employment of persons with disabilities, advocates have recommended that proposed legislation include: (1) extension of health benefits, i.e., Medicaid and Medicare; (2) making work pay by removing financial penalties for going to work; (3) enhancing consumer choice of vocational services and providers; and (4) to increase work opportunities, providing employer Incentives to hire persons with disabilities.

Two bills were recently introduced in the U.S. House of Representatives and Senate that would provide work incentives to Social Security disability beneficiaries. The → bills, H.R. 3433 and S. 1858, have bipartisan support and take different approaches to addressing the problems, with neither addressing all of the identified barriers.

a. House bill

The "Ticket to Work and Self-Sufficiency Act of 1998," H.R. 3433 (copy attached), was introduced on March 11, 1998, by Jim Bunning (R-KY), chair of the House Ways and Means Subcommittee on Social Security, and Barbara Kennelly (D-CT), Ranking Minority of the Subcommittee. It has four components described below:

- **Ticket to Work.** The Ticket to Work would allow SSI and Title 11 disabled beneficiaries to obtain employment, vocational rehabilitation (VR), or other support services from either a public or private employment network of the beneficiary's choice who is willing to provide services. Payments would be made to the provider through an outcome based and milestone/outcome-based system, paying 40% of the average disability benefit for each month that a beneficiary does not receive a benefit payment due to work activity.
- **Extension of Medicare coverage.** The bill extends Medicare coverage for two additional years, for a total of six years (before buy-in at full Part A premium) from the time of the first work attempt.
- **Tax credit.** The Internal Revenue Code would be amended to provide a tax credit up to \$5000 for impairment-related work expenses. It would cover attendant care services at the place of employment and other expenses in connection with the work place which are necessary to enable the individual to work.

• Earned income offset. SSA would be required to conduct demonstration projects to evaluate a program for Title II beneficiaries under which benefits are reduced by \$1 for each \$2 of earnings above a level set by the Commissioner. This is similar to the way that earned income is treated in the SSI program.

The Social Security Subcommittee held a hearing on March 17, 1998. Witnesses included SSA, several disability advocates, a disability beneficiary, and public and private VR providers. Attached is SSA's written testimony which generally supports the bill but opposes the demonstration project mandate regarding the income offset. Also attached is the written testimony of the Consortium for Citizens with Disabilities which analyzes the bill and measures it against the benchmarks mentioned above.

The Social Security Subcommittee approved the bill by voice vote on March 25, 1998, and referred it to the full House Ways and Means Committee where it is expected to be taken up after the Spring Congressional recess.

b. Senate bill

On March 25, 1998, S. 1858 was introduced, "The Work Incentives Improvement Act of 1998," sponsored by Sens. Jeffords (R-VT), Kennedy (D-MA), and Harkin (D-LA). S. 1858 takes a different approach to removing employment barriers. Unlike H.R. 3433, the Senate bill includes neither a "ticket to work"/voucher program nor a tax credit. Provisions include:

• Medicare Part A would be available at no cost for those who return to work up to 250 percent of poverty. At that point, a buy-in would be available based on 10% of earned income above 250 percent of poverty. A new "State Work Options Program" to pay for personal assistance services and prescription drugs would be offered to states as an option. The bill also strengthens current State Medicaid Waiver projects that provide health and support services to persons with disabilities who want to work.

• Demonstration projects. Like the House bill, S. 1858 supports the development of demonstration projects that gradually phase out the loss of cash benefits as earned income rises.

**Summary
of the
Work Incentive Improvement Act of 1998**

March 25, 1998

On March 25, 1998 Senators Jeffords and Kennedy will introduce the Work Incentive Improvement Act of 1998 (**WIIA**). Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI) beneficiaries' lose cash benefits and health insurance when they become employed. WIIA creates incentives for these beneficiaries to **work** by continuing access to health insurance and providing other incentives compatible with employment. It will also assist individuals who would be eligible for cash benefits and federal insurance coverage but work, to have access to affordable health coverage when they wish to work.

The legislation contains costs by allowing individuals to buy-in to Medicare under certain circumstances; reduces escalating expenditures in the SSI and SSDI programs; and gives the States the **option** of providing key services connected to employment to provide greater opportunities to its disability populations, which will reduce the strain on State public assistance programs.

Background

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Social Security Disability Insurance Recipients. Under current law an individual receiving SSDI and Medicare may return to work and receive cash benefits for a 9 month Trial Work Period (**TWP**), working at the level of Substantial Gainful Activity (SGA): defined as **\$500/month**, plus a 3 month "grace period." Also, an SSDI beneficiary who waits 24 months **from** the "onset of a disability," becomes eligible for Medicare, Parts A and B. **In the** 13th month of work: (a) the individual loses cash benefits; (b) Medicare Part A benefits that provide acute illness and injury coverage continue at no cost; and (3) the beneficiary may purchase Medicare Part B Hospital Insurance benefits for 39 months following the end of the TWP at the same rate as retired, uninsured Medicare beneficiaries: about **\$43/month**.

At the completion of the 39 month period, the beneficiary pays for both Part A and Part B at the same rate as retired and uninsured Medicare beneficiaries, more than **\$375/month**. This is too expensive for many persons with disabilities. In fact, out of the more than 3.5 million SSDI beneficiaries, only 114 individuals took advantage of the buy-in during fiscal year 1996. In addition, some of the most important services to enable a person with a disability to return to work are not available to them under current law, such as personal **assistance services** and prescription drug coverage.

Supplemental Security Insurance Recipients. Under current law an individual receiving SSI and Medicaid may begin or return to work and receive cash benefits under the Section 1619 Program administered by Social Security. Cash benefits are reduced on a sliding scale based on

a formula that reduces the monthly cash benefit check by \$1 for every \$2 earned above SSI's SGA level: defined as **\$85/month**, with a \$20 monthly **earnings** disregard. The beneficiary is also able to continue receiving Medicaid with net earnings up to 250% of **poverty**.

THE OPTIONS PROGRAM

An Opportunity to Fully Integrate Through Occupations

When an eligible SSDI beneficiary has identified an employment opportunity, they would be eligible to enter the Opportunity to Fully Integrate Through Occupations (OPTIONS) Program. A Work Incentive Counseling and Assistance Program would educate and guide the beneficiary through the process.

Under the **WIAA**, SSDI beneficiaries, with the help of Social Security Field Office personnel, would be able to sign an OPTIONS form. Long-term beneficiaries (those who have been SSDI beneficiaries for longer than 24 months) would not suspend their cash benefits but would remain under the restrictions of SGA of **\$500/month** in earnings in order to continue to receive cash benefits. An OPTIONS form would be available at SSA, Vocational Rehabilitation, job training and referral centers and other federal and state offices that are responsible for elements of existing disability programs. SSDI beneficiaries may sign at any time following a determination of eligibility.

Those individuals requesting OPTIONS participation and in need of job training, vocational rehabilitation or other services to facilitate their reentry to the **workforce** would, upon request, be immediately referred (as under current law) to State or private vocational rehabilitation providers, or to other job training services. Those SSDI long term beneficiaries who are ready to return to work would be eligible for Medicare Part A and Part B coverage on the month following their eligibility determination and signing a form. As an OPTIONS participant, the individual would also be eligible for services established under a State Medicaid buy-in option.

16 19 A and B participants would be considered for benefits under OPTIONS without having to enter the program, as 16 19 A and B is considered the "work options program" for SSI beneficiaries.

Following determination of eligibility under SSDI, new beneficiaries (those receiving cash assistance but in the 24 month waiting period for Medicare) would be offered eligibility to the OPTIONS program. Upon **choosing** to be an OPTIONS participant, health benefits included under the State Medicaid buy-in program would be made available, **as long as the participant meets the state's definition of "eligibility"**.

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Note: if an OPTIONS participant in the 24 month waiting period ceased working, or did not begin working, s/he would return to their prior benefits eligibility status before exercising OPTIONS. Thus, if an OPTIONS participant was eligible for cash benefits, signs up for

OPTIONS, and leaves work for any reason, the individual would return to cash benefit eligibility.

Effects of the Legislation

*There are four categories of persons with disabilities who would benefit. **

1. **Work-eligible individuals who are between 16 to 65 years old.** SSDI or SSI beneficiaries who intend to begin **or** return to work, and are in need of Personal Assistance Services (PAS) and prescription drug coverage.
2. **Individuals who are receiving SSDI cash benefits, but have not completed the initial waiting period of 24-months for Medicare benefits.**
3. **SSDI beneficiaries who are receiving cash benefits and are covered by Medicare.**
4. **Working persons with disabilities.** Individuals who are determined by the State to need PAS or prescription drugs in order to be able to work. This category **does not** include individuals who are currently receiving SSDI, but **does** include those individuals who are currently in SSI's 1619 program and need PAS.

How the Incentives Would Work for Each of the 4 Categories

1. **Work-eligible individuals who are between 16 to 65 years old.** States would have the option to offer personal assistance services and prescription drug coverage to non-working SSDI or SSI beneficiaries who intend to begin or return to work as defined by the state, under a new State Medicaid work incentive option called State Work Options Program (SWOP). States would have the option to establish a co-payment for each service for participants who have incomes 150% above poverty. States would be required to give priority to those 16-25 years of age.
2. **Individuals who are receiving SSDI cash benefits, but have not completed the initial waiting period of 24-months for Medicare benefits.** Following determination of eligibility under SSDI, newly determined beneficiaries would be offered eligibility to the OPTIONS program when they have identified an employment opportunity. If a new beneficiary chooses to participate, the State provides PAS and prescription drugs under SWOP if the new beneficiary meets the State eligibility criteria. A State may require participants to pay a copayment if their earned income is above 150 percent of poverty.

If the participant terminates employment for any reason during the waiting period for Medicare, they would resume their former status in the waiting period, with credit given for time worked toward the 24 month waiting period requirement for Medicare coverage.

3. **SSDI beneficiaries who are receiving cash benefits and are covered by Medicare.**

For those persons receiving SSDI cash benefits for more than 24 months, who enter the OPTIONS program, cash benefits would cease, but the individual would be eligible for:

- Medicare Part A for **free** up to 250% of poverty (earned net income). Beyond this, Part A premiums will be based on a sliding-scale of **10** percent of amounts in excess of 250% of poverty (earned net income).
- Medicare Part B for the regular premium amounts paid.
- Any available State Medicaid buy-in (as established by the WIIA under SWOP or under current State waiver authority).
- An ability to deduct from the level of earned income (gross), the costs of “those items necessary for traveling to and **from** work”, “durable Medical Equipment @ME”, and costs associated with the purchase of an automobile in an area where the Commissioner of Social Security determines that public transportation is not readily available. *New*

** Provisions regarding the \$500 SGA suspension of cash benefits following 13 months of work still apply in order to maintain cash benefits.

4. **Working persons with disabilities**

- By joining the **OPTIONS** program, working persons with disabilities who are determined by the State to need PAS and /or prescription drugs in order to work, and meet the State’s definition of work, would be able to purchase these services under the State’s Medicaid Work Option Program (SWOP), if available.
- SSI beneficiaries who are participating in 16 **19** A and B will be able to purchase PAS under **the** SWOP, **without having to enroll in the OPTIONS program**, if these benefits are not currently available under the Medicaid State plan.

*** **It is required throughout the bill that all OPTIONS participants must enroll in employee-sponsored health insurance in order to be eligible for this program.**

Medical Insurance Coverage under the OPTIONS Program

Medicare Buy-In. For Medicare Part A, if an OPTIONS participant’s adjusted net income reaches 250% **of poverty**, s/he would pay a portion of the Part A premium, based on 10% of the monthly net earned income above **250%** of poverty. Premium amounts would be capped at the premium rate for **65+** Medicare beneficiaries. This Medicare Part A buy-in program would be

available as long as the individual remained working above SGA. For Part B the recipient would continue to pay the same level of premiums as required under the law.

Amounts would be paid monthly and reconciled at the end of the year by the beneficiary based on 10 percent of net earned income above 250% of poverty. Refunds or obligations to the beneficiary would be calculated and distributed by the IRS. All beneficiaries would have to enroll in employer-sponsored health insurance in order to be eligible for the OPTIONS program.

Medicare Coverage Continuation/Termination. All OPTIONS participants with earned income under 250 percent of poverty would receive free Medicare Part A, and Part B for the regular premium amounts paid. Coverage would begin no later than one month following the signing of an OPTIONS form.

If the beneficiary fails to pay premiums for Medicare coverage following a 90 day grace period, and for **180** days where the Secretary determines that there was good cause for failure to pay, Medicare coverage will be terminated on the first day of the month following the periods above.

Private Plans First, Medicare and Medicaid as Payor of Last Resort. OPTIONS participants would be required to utilize employer-sponsored health insurance plans (when available). Medicare and Medicaid would always be considered the payers of last resort.

Note: In the event that there are exclusionary periods in the employer-sponsored health plan, the obligation to subsidize Medicare premiums would remain a responsibility of the employer during that exclusionary period.

Prohibitions

- **Work activities will not trigger a Continuing Disability Review.**
- **Work activities cannot be used as evidence that a disability has ceased.**
- **Termination of work activities does not presume an inability to work.**

State Work Options Program (SWOP)

OPTIONS participants, SSI/SSDI nonworking persons who are “preparing to work,” and 16 19 A and B participants, who are in need of additional services drugs would be able to buy-in to a SWOP under Medicaid. If States choose to set up a SWOP, at a minimum PAS and pharmaceutical benefits would be required. Any cost-sharing above 150% of poverty would be in accordance with State policy.

If an OPTIONS participant leaves employment for any reason, coverage would continue under the SWOP consistent with State policies and procedures.

Waivers

Requirement for Response by HCFA to State Waiver Proposals. HCFA would be required to respond to State 1115 waiver requests for programs that encourage a **return** to work by persons with disabilities no later than 90 days from the date of receipt by HCFA.

Broadening HCFA Criteria for Approval of Section 1115 Waivers.

Language Reads:

“In determining budget neutrality under the provisions of Medicaid Section 1115 waivers which are for the purpose of reducing work disincentives for persons with disabilities, the Secretary [of HHS] shall take into account reductions in payments made to persons with disabilities under Title II and Title XVI of the Social Security Act and other reductions in federal expenditures made to, or on behalf of, such individuals when such reduced expenditures are a result of earnings by such persons with disabilities.”

Such language would better reflect the cost-savings involved when Section 1115 waivers meet the medical needs of persons with disabilities.

Expansion of Deductible Items Under the Impairment Related Work Expenses

For those OPTIONS participants who are still receiving cash benefits, Impairment Related Work Expenses (IRWEs) would be **expanded** to include items connected with “preparation for, and traveling to and from work, orientation and mobility services, and Durable Medical Equipment.”

The expansion of items (automobiles, wheelchair motors, etc.) falling under the deduction would provide an incentive for long term beneficiaries to return to work. These individuals would be more **likely** to remain below the SGA level and continue to receive cash payments until their income level rises such and cash assistance becomes unnecessary.

Work Incentive Counseling and Assistance Program

The bill directs the Commissioner of Social Security to establish a Work Incentive Counseling and Assistance Program at the community level, to assist in the outreach for and coordination of the OPTIONS program.

SSA will educate and provide ongoing personnel development to new and existing work counselors in the community, including public and private providers and counselors in vocational rehabilitation, independent living centers, social services centers, and the Social Security field offices. Identified counselors will advise the individual in choosing whether to participate in the OPTIONS program as well as assisting in the coordination and interaction of the new work

who will pay

incentives, the disabled consumer, available V.R. and job training services and Social Security to facilitate the individual's eventual **return** to work.

Demonstration Program: Sliding Scale Cash Benefit Offset for SSDI Beneficiaries* **

The Commissioner of SSA may conduct demonstrations to determine the most effective methodology for implementing an earned income offset for SSDI benefits that result in a gradual decrease in cash assistance as earnings increase that are: national in scope; conducted on a State, regional, or national level; conducted by public agencies or private, not-for-profit organizations; using calculations made on other than a monthly basis; **using** calculations in increments larger than \$1 loss in benefits for each \$2 in earned income, e.g., \$50 reduction in cash assistance for \$100 in earnings; using electronic funds transfer and other information technology to streamline the administration of such offset; and offering beneficiaries information and advice regarding such sliding scale offset through personal computer software.

The all-or-nothing design of the SSDI program prevents most beneficiaries **from** attempting to go to work. Unlike the SSI program, where recipients who attempt work and lose only \$1 in cash assistance for every \$2 in earned income and can continue receiving Medicaid acute medical care, personal assistance, and prescription medication coverage (up to State limits), SSDI beneficiaries lose all cash assistance after earnings reach \$500 per month (assuming in this example that the Trial Work Period has expired). Further exasperating the situation, SSDI beneficiaries receive **free** Medicare (which, because it does not cover personal assistance and prescription medications is a lesser benefit than Medicaid) for only 36 months. After then, **they** pay the **full** Part A premium, currently \$330 **monthly**, to continue coverage.

The result is that the vast majority of SSDI beneficiaries **find** that working **to their** maximum capacity under the current SSDI work incentives rules is so costly they financially cannot afford to work. They are financially and medically rewarded for remaining on benefits and punished for attempting work. A **difficulty** remains in administering the existing sliding scale benefit offset in the SSI program. The demonstrations conducted under this authority shall determine the most effective way of implementing sliding scale benefit offsets using variations in the amount of the offset as a proportion of earned income; the duration of the offset period; and the method of determining the amount of income earned by beneficiaries. Demonstrations shall use state-of-the-art information technology and electronic funds transfer technology to streamline the reporting of data and the implementation of the offsets. In addition, personal computer software shall be developed and made available to beneficiaries, their families, guardians, and advocates, to inform beneficiaries of these new work incentives and to assist beneficiaries in making informed decisions regarding work.

***** This will permanently authorize Social Security Demonstration Project Authority for the States.**

Evaluation of the OPTIONS Program

Report and Recommendations to Congress. Not later than 12 months after the date-of enactment of the act, the Commissioner of Social Security and the Secretary of HHS shall jointly evaluate and report to Congress on the incentive program and the demonstration projects. Included in this evaluation would be recommendations to Congress for administrative and/or legislative changes to better enable individuals with disabilities to enter or reenter the workforce.

Maintenance of Data/Mandate to Report to Congress the Success of “Option” Incentives.

No later than three months (establishment), again at five months (progress report) and seven months (recommendations as to permanently authorizing the program), Social Security, National Council on Disability in consultation with the Secretary of Health and Human Services and stakeholders would report to Congress data detemining the success of the “OPTIONS” work incentives.

Effective Date/Implementation

Social Security is required to begin to offer these incentives no more than twelve months from the date of enactment into law.

Sunset

This legislation is a ten-year entitlement program and will sunset in ten years if it is not permanently authorized.