



Final Report for the Second Session 112th Congress

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The 2012 presidential election resulted in a victory for President Barack Obama. The Democrats retained control of the Senate, increasing the number of Democrats by 2, now 53 – 45 with two independents that caucus (and usually vote) with the Democrats. The House of Representatives continues to be led by a Republican majority, 233 to 200 with two vacancies at the time of this report. Additionally, Congress is still divided and any bill that is not bipartisan will be very difficult to move. Cornerstone Government Affairs prepared a [Comprehensive Analysis of the 2012 Elections](#) that was shared with the network.

The First Session of the 113th Congress began on January 3rd, 2013 with 96 freshman members. Below is a summary and final report on legislative issues that impact people with disabilities in the second session of the 112th Congress.

Budget & Appropriations

The 112th Congress adjourned without completing any of the FY 2013 appropriations bills. The current continuing resolution is set to expire on March 27. The next self-imposed fiscal policy deadline is the March 1 date set for the automatic across-the-board discretionary program cuts (sequester) of approximately five percent if the Congress takes no action to delay or pass a deficit budget plan that avoids the trigger. So far, there is no indication that Congress has a plan that will garner the bipartisan support needed to pass both Houses of Congress. If the sequester is triggered, AUCD network programs should expect an at least five percent cut for FY 2013. It is still unclear how the federal agencies will apply such cuts. AUCD continues to press Budget Committee members and the Administration to find a long-term balanced approach to deficit reduction that would not harm those who depend on government programs to assist them in daily living activities and to avoid poverty.

Meanwhile, even without FY 2013 appropriations finalized, federal agencies are working on the outlines of the President's FY 2014 Budget which is expected to be delayed until end of February. AUCD is working with its community partners who have now formed a large coalition of research, education, and service programs that may be affected by the deficit reduction negotiations to advocate for a balanced approach that includes revenues, not just spending cuts. AUCD and other advocates are extremely concerned about the impact of further deficit reduction on mandatory and discretionary programs that impact people with disabilities. As co-chair of CCD's Fiscal Policy Task Force, AUCD continues to take a leadership role in developing strategy going forward in the fiscal policy debate.

Health Care Reform

Both the Congress and state Governors continue to react after the Supreme Court's ruling that upheld the constitutionality of the Affordable Care Act (ACA) (see [July 2nd In Brief](#)) in late June. In particular, the Supreme Court's ruling effectively made the Medicaid expansion an option for states, leaving many states in a quandary. Under the provision, the ACA mandates that states expand Medicaid eligibility to adults under age 65 who earn up to 138 percent of the federal poverty level which would provide coverage for some 17 million Americans who otherwise do not qualify for Medicaid. However, governors from various states – including Florida, Louisiana, Mississippi, South Carolina and Wisconsin have indicated they will not expand Medicaid because of the associated cost. The Federal government pays 100% of the newly eligible for the first three years; states will have to pay 10 percent share (FMAP) after that. In addition to ideological opposition to the ACA, many governors cite fear that the enhanced FMAP will be lowered as a part of Federal deficit reduction negotiations. At this time about 20 states (including the District of Columbia) have adopted it, 14 have rejected it (including Alabama, Texas, Louisiana, South Carolina, Maine – unfortunately the states that would seem to benefit from it the most), and the others remain undecided. Additionally, in August 2012, the Government Accountability Office (GAO) released a [report on the states' implementation of the Medicaid expansion within the Affordable Care Act](#). This report was shared with the network. Two Republican governors from conservative states, Arizona's Jan Brewer and New Mexico's Susan Martinez, indicated in early January that their states will adopt the expansion. Advocates see this as a move that other conservative states will follow, rather than give up the lucrative federal match associated with the expansion.

As for the state insurance exchanges, the announced deadline is February 15th and at the time of this report 25 states decided not to run their own exchange, 19 have chosen to run their own, and six have decided to partner with the federal government. The Obama administration has conditionally approved plans for exchanges in 19 states and the District of Columbia, which means they can begin operation this October. In an effort to have more states agree to run their own exchanges or partner with the federal government, HHS has given states the ability to change their option at any time.

AUCD continues to work with the CCD Health Task Force, the Coalition for Health Funding, Advance CLASS and a number of other advocacy groups to support ACA funding and implementation. AUCD also signed onto numerous comments prepared by the CCD Health Task Force on proposed rules, most recently on rules for the health care exchanges, and Medicaid eligibility.

Unfortunately, as part of the deal to avert the “fiscal cliff”, Congress and the President have officially repealed the CLASS program. Instead, a new long term care commission will be established to come up with recommendations establish a national policy. AUCD sent letters of recommendation on behalf of two network leaders. AUCD continues to update [AUCD’s health reform hub](#) with information and resources related to ACA implementation.

Education

Elementary & Secondary Education Act

Due to the deep partisan divide between the House and Senate, Congress was not able pass a bill to reauthorize the Elementary and Secondary Education Act (ESEA, “No Child Left Behind”) in the 112th Congress. Although reauthorization bills were introduced in both chambers, none advanced beyond committee passage. These bills will likely be the starting point for negotiations in the new Congress.

Meanwhile, the Obama Administration has continued implementing its ESEA flexibility plan to grant waivers to states from some of NCLB’s requirements. So far, 34 states and the District of Columbia have been approved for flexibility waivers. The Department of Education created a [webpage](#) with detailed information, including the approved waiver requests and related documents. While many believe that the protections contained in the approved waivers are stronger than the proposed ESEA reauthorization bills, state implementation will be the key to ensuring the continued inclusion of students with disabilities in state accountability systems. With over 40 different state plans, the Department of Education will have the challenge of overseeing and enforcing the conditions it established in return for flexibility. The few states that do not apply for the waiver will still have to meet the requirements under current law. AUCD continues to work with the CCD Education Task Force to provide input on the Administration’s waiver policies.

Restraint & Seclusion in Schools

The Senate Health, Education, Labor and Pensions (HELP) Committee, chaired by Senator Tom Harkin (D-IA), held a hearing on creating positive learning environments through alternatives to restraint and seclusion in July; at which Dan Crimmins, PhD, Past-Past President of AUCD and Director of the Center for Leadership in Disability at Georgia State University, testified. The excellent testimony from all witnesses focused on positive alternatives and success stories in reducing restraint and seclusion in schools. Senator Harkin introduced the Senate version of the Keeping All Students Safe Act (S. 2020) last fall, but the bill has no additional cosponsors. At the end of the 112th Congress, the House bill (H.R. 1381), re-introduced by Rep. George Miller (D-CA), had not received attention from the House Education and Workforce Committee but does have bipartisan support. Some lawmakers have expressed reservations about the bills because of a report by the American Association of School Administrators (AASA) promoting restraint and seclusion as necessary practices to protect students and school personnel. AUCD hopes that the bills can be reintroduced in the 113th Congress with bipartisan support and continues to work with the CCD Education Task Force and the Alliance to Prevent Restraint, Aversive

Interventions and Seclusion (APRAIS) to educate Congress about this issue and advocate for federal legislation to limit restraint and seclusion in schools.

Chairman Harkin has also stated his intention to make the ESEA reauthorization a priority for the 113th Congress. Also on his priority list are the reauthorizations of the Workforce Investment Act, Higher Education Act, and Child Development Block Grant. While the Individuals with Disabilities Act (IDEA) and the Developmental Disabilities Act (DD Act) are priorities for the Committee, several staff have indicated they are unlikely to be a priority in the first year of the 113th Congress. Senator Harkin also intends to reintroduce the Keeping All Students Safe Act and several bills to expand employment opportunities for people with disabilities (see Employment below). AUCD and other disability advocates will have to focus on developing new champions on the House Education and Workforce Committee.

Employment

Draft legislation to reauthorize the Workforce Investment Act (WIA), including the Rehabilitation Act, introduced by Senators Harkin (D-IA) and Mike Enzi (R-WY), has not moved forward since June 2011. In the House, Democratic and Republican WIA bills were introduced, and the Republican-backed measure ([H.R. 4297](#)) was approved by the Education and Workforce Committee without bipartisan support in June. The bill never advanced beyond the committee. AUCD continues to work with the CCD Employment and Training Task Force to advocate for increased employment opportunities for people with disabilities and reauthorization of the Rehabilitation Act.

In spite of no legislative action, there has been some movement around the employment issue. In July, Senator Harkin issued a report, *Unfinished Business: Making Employment of People with Disabilities a National Priority*, explaining his vision to enhance employment opportunities for people with disabilities and outlining important initiatives that have been implemented within the last few years. In the beginning of his Administration, President Obama signed an executive order with a goal of hiring an additional 100,000 federal workers with disabilities by 2015. Additionally, in December of 2011, the U.S. Department of Labor issued a proposed rule calling on federal contractors to take steps to ensure that at least 7 % of their workforces are made up of people with disabilities. The issuance of the proposed new regulation has the potential to spur federal contractors, who employ over 20 percent of the U.S. workforce, to expand employment opportunities for people with disabilities. With the approval of new regulations, federal contractors would be held accountable for recruiting, retaining and advancing workers with disabilities in a similar manner to how they are currently held accountable for conducting affirmative action for woman and minorities when it comes to employment. White House officials are not sure when a final rule will be published.

Senator Harkin also plans to introduce a series of bills designed to improve outcomes in competitive, integrated employment for young adults transitioning from school to adulthood, increase contracting opportunities for disability-owned businesses; and create incentives for States to develop and test innovative initiatives that can lay the foundation for modernizing our largest programs. Additionally, he

will work to ensure implementation of the ACA creates opportunities for states to integrate children and adults with disabilities to participate in Medicaid because it is the only program that meets their needs. The elimination of pre-existing condition exclusions and lifetime caps on benefits have the potential to make private health insurance much more meaningful for Americans with disabilities, helping to address one of the barriers that has kept people from leaving the disability benefit rolls. AUCD staff continues to monitor these efforts and work with the HELP committee staff to provide assistance with these goals.

Finally, Governor Jack Markell of Delaware, as 2012 chair of the National Governor's Association, chose to focus on increasing disability employment. Late August, AUCD signed onto a [letter](#) to the Chairman in support of his new initiative, "[A Better Bottom Line: Employing People with Disabilities](#)." The initiative is intended to be a public-private partnership aimed at creating a blueprint for businesses and states that identifies best practices and outlines steps to increase employment opportunities. It also will launch a campaign to help governors put these practices in place. An employment roundtable discussion was held in late September with the Governor, disability employment experts, and Secretary of Labor Solis to discuss successful strategies and programs; several CCD members attended. Governor Markell intends to engage Governors in all states and provide peer –to-peer learning from mini policy teams sent to each state. This phase will be followed by implementation and sustainability of the initiatives.

WIPA/PABSS

The Work Incentives Planning and Assistance (WIPA) and Protection and Advocacy for Beneficiaries Social Security (PABSS) programs provide valuable services to disabled beneficiaries, particularly in helping them return to work. However, because of a delay in the reauthorization process, as of September 30, 2012, funding for Work Incentives Planning Assistance (WIPA) and Protection and Advocacy for Beneficiaries of Social Security (PABSS) programs has ceased, leaving many Social Security recipients without return to work assistance and other services. In August, Representative Sam Johnson (R-TX), Chairman of the House Ways and Means Subcommittee on Social Security, requested an opinion from the Government Accountability Office (GAO) regarding whether the Social Security Administration (SSA) has the authority to continue two grant programs. The GAO report found that the Social Security Administration (SSA) has the legal authority to fund WIPA/PABSS with FY12 discretionary funds. AUCD signed onto a letter submitted by the CCD Social Security and Employment task forces urging SSA use that avenue to continue funding the programs. Following the GAO's decision, the Office of Management and Budget (OMB) then submitted the issue to DOJ for review. As of the end of the 112th Congress, AUCD has not received any further information about the status of this review from either the DOJ or OMB.. Meanwhile, the PABSS grantees still continue negotiating with SSA over requests for no-cost extension.

ABLE Act

The Achieving Better Life Experiences (ABLE) Act amends the Internal Revenue Code to establish tax-exempt disability savings accounts or “ABLE accounts” to assist an individual with a disability to save tax-free for qualified disability expenses (similar to “Section 529” education savings accounts). These accounts allow individuals with disabilities and their families to save for the future without affecting eligibility for benefits, enabling full, productive lives in the community. At the end of the 112th Congress, while the ABLE Act of 2011 ([S. 1872/HR 3423](#)) did not pass in either the House or the Senate, the bill had 236 co-sponsors in the House and 41 in the Senate. Now, in the 113th Congress, the legislation, as is, is now set to be re-introduced by House and Senate co-sponsors early in the new Congress.

Autism Policy

Having accomplished the reauthorization of the Combating Autism Reauthorization Act in First Session of the 112th Congress, AUCD monitored its implementation and worked with appropriators to ensure that the law was fully funded. Given that the Combating Autism Reauthorization Act was only reauthorized for three years (to 2014) and still has a sunset provision, AUCD will have to begin work in reauthorizing the law again soon.

AUCD also monitored bills that would provide additional services to youth and adults with autism. The most recent activity has been related to insurance coverage for behavioral health treatment for dependents of military personnel. In the House of Representatives, John Larson (D-CT) offered an amendment to the House Defense authorization bill that was approved. The amendment, which includes the major components of the Caring for Military Kids with Autism Act (H.R. 2288), mandates coverage under TRICARE, the military's health care program, include behavioral health treatments for autism, including applied behavioral analysis (ABA). It also removes the insurance cap on ABA.

Senator Kirsten Gillibrand (D-NY) offered a similar amendment in the Senate during committee markup. AUCD and its CCD partners worked successfully with Senators Patty Murray (D-WA) and Gillibrand to modify the amendment to require coverage of physician-prescribed ABA for all children with developmental disabilities. Research has shown that applied behavioral analysis (ABA), in particular, is effective in reducing self-injurious behaviors in people with the most significant disabilities. Unfortunately, during the conference committee, the conferees ceded to the House bill that included treatment, including ABA, for those on the autism spectrum only. The National Defense Reauthorization Act was passed by the House and Senate the week of Dec. 20.

Convention on the Rights of Persons with Disabilities

AUCD staff was actively involved over the past year, working with the CCD International Task Force and the U.S. International Council on Disabilities, to gather support for the Convention on the Rights of Persons with Disabilities (CRPD). Unfortunately, on December 4th, by a [vote of 61-38](#) (five votes short),

the Senate rejected ratification of the treaty. The outpouring of media attention, expressing public dismay over the vote, caused Senate leaders to suggest they will take up the treaty again in early 2013.

AUCD will continue to work with the USICD to get this treaty passed in the 113th Congress and has already met with the CCD International Task Force to discuss next steps involving taking advantage of the recent media coverage of the vote, writing to new members of the Senate about this issue and importance of ratification, developing new fact sheets and op-eds, and a new social media strategy.

The 113th Congress will also see change in leadership that impacts the CRPD. Senator John Kerry (D-MA), the former Foreign Relations Committee chairman, was confirmed as the new Secretary of State. Senator Menendez (D-NJ), the next highest ranking member in the Democratic Party, will likely be the new chairman. AUCD is confident leadership under Senator Menendez will remain strong and supportive of the treaty.

Civil Rights

There were numerous attempts in the second session of the 112th Congress to weaken the Americans with Disabilities Act. Various bills were introduced in the House that would deprive the Department of Justice (DOJ) of the authority to enforce its own regulations concerning accessibility of swimming pools, and/or weaken the standards imposed by these regulations. In June, 2012, a House Judiciary Committee held a hearing on a pending “ADA notification” bill, which would have required a notice period before lawsuits may be brought against businesses under Title III of the ADA.

In the Lame Duck session, the House planned to mark-up Representative Barney Frank’s bill that would make it more difficult for P&As to bring class action lawsuits concerning people with intellectual disabilities in ICF/MRs, and for the DOJ to take actions on behalf of these individuals. AUCD and other CCD advocates helped to stop the mark-up. Despite Representative Frank’s retirement this year, there is still the possibility that the bill may be reintroduced by a current co-sponsor or new member of the House, or the new chair of the Judiciary Committee, Bob Goodlatte (R-VA). AUCD will continue to work with the CCD Rights Task Force to prevent reintroduction of the bill in the new Congress.

The CCD Rights Taskforce has also started to partner with the DOJ, and meet on a monthly basis with Disability Rights Section officials to discuss various civil rights matters that affect individuals with disabilities – including not only Olmstead and community integration issues, but also education and employment desegregation efforts. AUCD staff has attended these meetings in the past and will continue these visits in the new Congress to assist the DOJ in informing them of our network’s work around these issues and how we can align with them on certain initiatives.

National Forum on Disability Issues

AUCD was one of several national organizations that led the effort to organize a successful 2012 National Presidential Forum on Disability issues which was held on September 28th in Columbus, Ohio. AUCD has supported a similar forum in 2008. President Barack Obama and Republican nominee Mitt Romney, as well as Ohio U.S. Senator Sherrod Brown and Ohio State Treasurer Josh Mandel were invited. Over 80 local and national organizations co-sponsored the forum. Five hundred disability advocates attended the NFDI in person, and approximately 3,000 tuned in to the live webcast of the event in Columbus, Ohio. Edward M. "Ted" Kennedy, Jr., and Rep. Cathy McMorris Rodgers (R-WA) spoke on behalf of their respective parties and presented their campaigns' positions on matters relating to disabilities. AUCD was very pleased to have recruited the very capable Frank Sesno, a former CNN White House Correspondent and also a sibling, as moderator.

AUCD was very pleased by the outcome of the event, whose purpose was to inform voters about the candidate's position on disability issues as well as to energize voters with disabilities and their allies to get educated and get out and vote. AUCD's two Ohio Centers supported the effort with time, money and energy. Additionally, many of our network members sent invitations to the candidates and helped promote the event. An archived video and the transcript of the event are now available on the Forum website: www.nfdi.org and pictures from the event are available on the [Forum's Facebook page](#) (and the page continues to be updated by Crystal Pariseau at AUCD on a weekly basis to continue the momentum and support for voter engagement]. AUCD staff developed sample letters to the editor at the request of the Legislative Affairs Committee based on the transcript of the event. Kristina Majewski, AUCD's current policy fellow also contributed a blog post about the forum which summarized the candidate's views on key disability issues which is available on AUCD's fellowship homepage.