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# The Employment Opportunities for Disabled Americans Act: Legislative History and Summary of Provisions

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This article describes the legislative history of Public Law 99-643, the Employment Opportunities for Disabled Americans Act, and contains a summary of the provisions of the new law. The intent of this legislation is to enhance the work incentives for the disabled and blind under the supplemental security income (SSI) law. The law makes permanent and improves section 1619 of the Social Security Act, provisions that were enacted as a temporary demonstration project in 1980. These provisions encourage disabled and blind individuals who are eligible for SSI benefits to make work attempts by providing special SSI payments and Medicaid coverage while they do so.

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On November 10, 1986, President Reagan signed into law H.R. 5595 (Public Law 99-643), the Employment Opportunities for Disabled Americans Act. The President's signing statement described the legislation as "the culmination of a 6-year demonstration project which has shown that appropriate work incentive features in the SSI program can encourage disabled and blind beneficiaries to make work attempts and therefore gain a greater degree of independence from income maintenance programs." The major provisions that affect disabled and blind beneficiaries under the supplemental security income (SSI) program who make work efforts are as follows:

- (1) Makes permanent the work incentive provisions of section 1619 of the Social Security Act. These provisions were originally enacted in 1980 as a 3-year demonstration project and were extended temporarily through June 30, 1987. Section 1619(a) provides cash benefits and Medicaid coverage to certain SSI recipients who continue to work despite their impairments. Section 1619(b) continues SSI recipient status for Medicaid purposes to disabled and blind individuals whose earnings preclude SSI or 1619(a) cash payments.
- (2) Makes improvements to section 1619 in the areas of:

**Eligibility.** Allows free movement between regular SSI status and status under 1619(a) and 1619(b); repeals the trial work period and extended period of eligibility in SSI law; requires continuing disability review within 12 months after the first month of eligibility under section 1619.

**Reinstatement.** Simplifies reinstatement to benefits under section 1611 (regular SSI status) or section 1619, as appropriate, based on the recipient's earnings and other income.

**Eligibility for Medicaid protection (Section 1619(b)).** Establishes new rules for determining whether an individual's earnings could provide the equivalent of his or her publicly funded disability and health care benefits.

- (3) Requires notification to disabled and blind SSI recipients of their potential eligibility under section 1619 at certain specified times.
- (4) Protects Medicaid coverage of section 1619 individuals in those States whose Medicaid plans previously did not specifically cover such individuals.

These provisions, as well as the other provisions of H.R. 5595, are dealt with in more detail later in this article.

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## Background and Legislative History

### Development and Enactment of the Original Section 1619 Provisions

#### Action in the House (1978–79)

In 1978, the Subcommittee on Public Assistance and Unemployment Compensation of the House Committee on Ways and Means devoted time to a consideration of the SSI program's disability provisions. During the 95th Congress, the subcommittee heard testimony regarding the problems the disabled face in attempting to enter the labor market and how the SSI program presented disincentives for those disabled individuals who wanted to seek gainful employment. In SSI, where the payment amount was (and is) based on an explicit standard of need, it seemed particularly harsh to terminate payments based on disability when individuals engaged in substantial gainful activity (SGA) despite their impairments and remained in financial need—that is, their countable income was low enough to meet the needs test. (Substantial gainful activity means doing work for pay or profit that involves significant and productive physical or mental duties. Currently, average earnings of \$300 or more a month are indicative of SGA; the level was more than \$260 a month in 1978.)

In 1978, the House passed a bill designed to remedy this situation by increasing earnings limitations under SSI and providing an income disregard for work-related expenses and attendant care costs. However, the 95th Congress adjourned before the Senate could take action.

Interest in improving the situations of disabled SSI recipients remained high, however, and on April 3, 1979, the Subcommittee on Public Assistance and Unemployment Compensation began hearings on Administration proposals that would remove work disincentives in the SSI disability program.<sup>1</sup> Following these hearings, the subcommittee held its markup sessions and developed a "clean" bill, H.R. 3464, which was introduced in the House on April 5, 1979, and referred to the Committee on Ways and Means the same day. One of the provisions contained in this bill is of particular significance to the development of the section 1619 work incentive provisions. This provision would have increased the SGA level in the SSI program to the dollar level at which countable earnings equal the applicable SSI payment standard—that is, the dollar level at which SSI benefits would no longer be payable. On April 10, the House Ways and Means Committee reported H.R. 3464 to the House. This bill passed the House on June 6, 1979, by a vote of 374–3 and was sent to the Senate.

<sup>1</sup>These proposals were contained in H.R. 2854, a bill introduced on March 13, 1979, by Representative J.J. Pickle (D., TX), chairman of the Subcommittee on Social Security of the House Committee on Ways and Means.

### Overview Statement

President Reagan has stated, "People with disabilities can lead full and rewarding lives. They ask only to be given the same opportunities to compete and achieve as everyone else. To provide them with this opportunity is not only fair but makes available to society a rich pool of talents and ambitions that would otherwise be lost."

The enactment of Public Law 99–643, the Employment Opportunities for Disabled Americans Act, takes a major step toward realizing President Reagan's goal. It will enable the disabled or blind individual with the desire to attempt work to do so without fear of losing vital financial and medical support.

The most important change made by this bill is that it makes permanent section 1619 of the Social Security Act, which provides special SSI benefits and Medicaid coverage to disabled and blind individuals who work. Important changes also were made in the structure of section 1619 and in the way its provisions relate to other features of the SSI program. These modifications will significantly improve the effectiveness of the work incentive provision by making it easier to administer and to understand.

Other changes will deal more realistically with that portion of an individual's income that is used to pay certain impairment-related work expenses or to provide special services necessary to carry out the work effort. The disabled or blind individual who works will automatically be notified of the protections offered by section 1619. Finally, for the disabled or blind recipient who is protected by section 1619's provisions, but requires short periods of treatment in public medical or psychiatric treatment facilities, the bill provides additional months of section 1619 benefits to enable him or her to maintain his or her permanent residence.

These changes will assure that the Social Security Administration will be able to play a larger role in the vital task of enabling disabled and blind individuals to realize their full potential in our society. Further, the bill will enhance efforts being made in both the public and private sectors to encourage and assist disabled and blind people to take advantage of work opportunities that will permit them to live fuller and more rewarding lives.

DORCAS R. HARDY,  
Commissioner of Social Security

#### Action in the Senate (1979–80)

In early October 1979, the Senate Finance Committee held public hearings on the proposed disability legislation

included in H.R. 3464 and other bills. Stanford G. Ross, then Commissioner of Social Security, testifying for the Administration, discussed the growth of the social security disability program and warned that its cost would rise from \$15 billion to \$30 billion within 10 years unless major legislative changes were made. He also spoke against the provisions of H.R. 3464 that would have changed the earnings level for determining SGA in the SSI program because they would change the definition of disability in SSI. If this were done, a person who applied for disability benefits under both the social security and SSI programs could be found not disabled for social security but disabled for SSI—that is, engaging in SGA for purposes of social security but not doing so for purposes of SSI. This result, he stated, would be clearly inappropriate.

Later in October 1979, the committee held markup sessions and amended and consolidated provisions of several House-approved bills, including H.R. 3464. The provisions were marked up and agreed upon as H.R. 3236, a disability bill that had been introduced on March 27, 1979, by the Subcommittee on Social Security of the House Committee on Ways and Means.

This bill, as reported by the Senate Finance Committee, differed from the House-passed bill in the area of work incentives in the SSI program by containing, instead of a provision mandating an increase in the SGA level, a provision that would add a 3-year demonstration project extending special benefits to disabled SSI recipients whose earnings equal or exceed the SGA level until their countable income reaches the Federal breakeven point (the dollar level at which SSI benefits would no longer be payable). Recipients of the special benefits would be eligible for Medicaid and social services on the same basis as regular SSI recipients. States would have the option of supplementing the special benefits. Medicaid and social services would continue to be available to individuals whose earnings precluded payment if they could not keep working without the services these programs provide and their earnings were insufficient to purchase such services.

On November 8, 1979, the Senate Finance Committee reported H.R. 3236 to the full Senate.

On December 5, 1979, the Senate began its floor debate on H.R. 3236 and on January 31, 1980, the Senate passed the bill by a vote of 87–1.

## House-Senate Conference Committee

Following the appointment of the House-Senate conferees, the Conference Committee, chaired by Representative Al Ullman (D., OR) (then chairman of the House Committee on Ways and Means), convened on March 27, 1980, and began its deliberations on H.R. 3236. These deliberations continued throughout April and May. The conferees agreed to the Senate provision regarding the work incentive demonstration project in section 1619. On May 13, 1980, the House-Senate Conference Committee

reported the bill. H.R. 3236, as agreed to by the conferees, was passed on May 22, 1980, by the House of Representatives by a vote of 289–2, and on May 29, 1980, by the Senate on a voice vote. On June 9, 1980, H.R. 3236 was signed by the President and became Public Law 96–265, the Social Security Disability Amendments of 1980.<sup>2</sup> The law became effective January 1, 1981.

## Summary of the Provisions of Public Law 96–265

The section 1619 provisions in Public Law 96–265 provided special SSI payments and eligibility for Medicaid and social services. Beginning January 1981, and for 3 years thereafter, persons who completed the trial work periods and continued to earn in excess of the SGA amount would be provided special cash payments. These payments would be calculated in the same manner as are SSI disability payments. Individuals receiving the special payments would continue to be eligible for Medicaid and social services on the same basis as regular SSI recipients. In addition, blind or disabled SSI recipients who worked would continue to be eligible for Medicaid and social services even if their income caused them to stop receiving cash payments, as long as they:

- continued to be blind or to have the disabling condition that caused them to be considered disabled;
- would be entitled to cash payments except for their earnings;
- would be seriously inhibited in continuing employment if they lost eligibility for Medicaid and social services; and
- did not have earnings high enough to allow them to provide a reasonable equivalent of the SSI payments, Medicaid, and social services they would have in the absence of earnings. (The reference to social services was deleted from this provision in 1981, as a result of conforming changes made when title XX, under which social services were provided, became a program of block grants to the States.)

These changes were designed to determine whether it might be possible to provide SSI disability recipients with the assurance that working would not disadvantage them without incurring too great a cost to the SSI program. Their cash payment would be reduced only gradually to reflect increases in their earnings (or other income) and their medical and other services would continue even after cash payments stopped if their continuation was needed to continue the work effort.

<sup>2</sup>For the provisions of Public Law 96–265, see “Social Security Disability Amendments of 1980: Legislative History and Summary of Provisions,” *Social Security Bulletin*, April 1981, pages 14–31.

## Extension of the Section 1619 Demonstration Project

Over the period 1981–83, substantial activity occurred in the social security and SSI disability programs as the various work incentive and other provisions of the 1980 disability amendments were being implemented. In particular, there was a great deal of public and congressional concern, which culminated in further major disability legislation in 1984, over many aspects of the social security disability programs, such as the continuing disability reviews under the social security (title II) disability program. Continuing interest was also apparent in the question of possible work disincentives contained in the disability programs.

### Action in 1983

**Subcommittee on Public Assistance and Unemployment Compensation, House Committee on Ways and Means.** The 3-year section 1619 demonstration project was not due to expire until December 31, 1983, but before that date Congress was receiving information from organizations which dealt with the disabled that SSA field office personnel did not understand, or had little knowledge of, the work incentive provisions of section 1619. The Subcommittee on Public Assistance and Unemployment Compensation held field hearings at several locations throughout the United States. Advocacy groups expressed the opinion that the temporary nature of the provisions worked both to dissuade SSA from expending the time and money to provide clear and complete information to possible beneficiaries of the provisions and to make disabled individuals less willing to attempt work under the provisions because of fear of what might happen to them when the program expired.

On August 3, 1983, the subcommittee held a hearing in Washington, D.C., to discuss the SSI disability provisions of a bill, H.R. 3074, that had been introduced by Representative Fortney H. Stark (D., CA) on May 19, 1983. One of the provisions of this bill would have made section 1619 a permanent part of the SSI program. Paul B. Simmons, then the Social Security Administration's Deputy Commissioner for Programs and Policy, stated that the Administration opposed making section 1619 permanent.

During questioning, Mr. Simmons encountered criticism from both Chairman Harold Ford (D., TN) and Robert T. Matsui (D., CA) for the lack of data concerning the provision. Mr. Matsui suggested that perhaps there had not been a fair test of the program's effectiveness and that a continuation might permit such a test. Mr. Simmons replied that if the program were extended for an additional period, the Social Security Administration would like to have explicit authority to carry out research included in the language authorizing such a continuation.

On September 20, the subcommittee considered a disability reform bill that had been developed by the staff of the House Ways and Means Committee's Subcommittee on Social Security, largely based on H.R. 2987, the Social Security Disability Reform Act of 1983, which had been introduced in May 1983. This bill had been marked up by the Subcommittee on Social Security and introduced as a "clean" bill, H.R. 3755, by Mr. Pickle on August 3, 1983. The bill eventually became Public Law 98–460, the Social Security Disability Benefits Reform Act of 1984.<sup>3</sup>

In its report on the bill to the Committee on Ways and Means, the subcommittee mentioned several SSI proposals that had been discussed by the subcommittee but not finally decided on. One of these provisions was Chairman Ford's amendment to permanently provide SSI payments to individuals who perform SGA despite severe medical impairments. The bill was referred to the full committee on September 22, 1983.

**House Committee on Ways and Means.** On September 27, the full committee completed markup of H.R. 3755 and ordered the bill reported to the House. The committee did not include the Ford amendment regarding the 1619 program in its bill but agreed that it would be offered as a committee amendment on the House floor, altered, however, so as to extend the program to June 30, 1986, rather than make it permanent. In the report accompanying the bill, the committee stated that the Administration had agreed to an extension of section 1619 with the understanding that more complete data would be collected and available by mid-1985 for further evaluation of the program. The report went on to specify the type of information that should be obtained.

On October 20, the House Committee on Ways and Means agreed to include the provisions of H.R. 3755 in an omnibus tax bill (H.R. 4170, the Tax Reform Act of 1983) that had been introduced by Representatives Dan Rostenkowski (D., IL) and Barber Conable (R., NY) that day. The disability amendments were included under title IX of that bill. On October 21, the committee reported H.R. 4170, which included the modified Ford amendment to extend the 1619 program that the committee had previously agreed would be offered on the House floor.<sup>4</sup> However, on November 17, 1983, the House voted to defeat the rule for floor consideration of H.R. 4170 and no further action was taken on the bill in 1983. This vote was related primarily to the tax provisions of the bill rather than its social security and SSI provisions.

Although another attempt was made to extend the 1619 program through a Senate amendment added to H.R.

<sup>3</sup>For the provisions of this law, see Katharine P. Collins and Anne Erfle, "Social Security Disability Benefits Reform Act of 1984: Legislative History and Summary of Provisions," *Social Security Bulletin*, April 1985, pages 5–32.

<sup>4</sup>Technically, the full committee did not vote to report the Ford amendment but rather voted to seek a rule guaranteeing a floor vote on it.

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3391, a trade adjustment bill that had been passed by the Senate on November 18 and returned to the House, the Congress adjourned without taking further action to extend the provisions.

### Administrative Extension of 1619 Provisions

On December 31, 1983, section 1619 expired. However, both House and Senate leaders wrote to the Secretary of Health and Human Services urging that the section 1619 program be continued. Therefore, under Secretarial authority in section 1110 of the Social Security Act, relating to demonstration projects, the Social Security Administration temporarily continued benefit payments and Medicaid coverage to individuals who were eligible under the provisions of section 1619 in the month of its expiration.

### Action in 1984

**House action.** On February 2, 1984, in floor action on H.R. 3391, the House passed the bill, thus agreeing to the extension of the 1619 program. The provision that mandated extension of the program also required outreach and training efforts on the part of the Social Security Administration. The bill was then returned to the Senate for further consideration. (The Senate, expecting to move quickly on general disability legislation, took no further action on H.R. 3391.)

On March 14, the House Committee on Ways and Means ordered reported H.R. 3755, the Social Security Disability Reform Act. The bill as reported contained the disability provisions that were previously part of H.R. 4170 but that had been deleted from that bill by the committee on March 5. H.R. 3755, with the modified Ford amendment included, passed the House on March 27, 1984, by a vote of 410-1.

**Senate action.** On March 15, 1984, Senator Carl Levin (D., MI) submitted an amendment to S. 476, the Disability Amendments of 1983, which had been introduced in the early months of 1983 and which, as the Senate counterpart to H.R. 3755, contained many of the same provisions as that bill. Senator Levin's amendment provided for a 3½-year extension of section 1619, among other things.

On April 12, 1984, Senator Robert Dole (R., KS), then Chairman of the Senate Finance Committee, agreed that that Committee would mark up S. 476 and report it to the full Senate by early May. Senator Dole noted that Senator Howard Baker, Jr. (R., TN), the majority leader, had agreed that the bill would be scheduled for floor action during May.

On May 15 and 16, the Committee on Finance marked up a major disability bill offered by Chairman Dole as an amendment in substitution for S. 476 and, on May 16, voted 18-0 to report this bill to the Senate. One of the

provisions of the bill extended the section 1619 program through June 30, 1987.

On May 22, 1984, the Senate substituted the language of S. 476 as reported by the Committee on Finance and passed H.R. 3755 by a vote of 96-0.

**House-Senate Conference Committee.** A House-Senate Conference Committee met on July 26 and tentatively agreed on all but seven provisions of the bill. These seven provisions related to various major issues under the disability program, such as the standard of review for title II disability benefits and periods of disability, the evaluation of pain, the combined effect of multiple impairments, notices concerning reconsideration, prereview, and demonstration projects, and the continuation of disability benefits during appeal. Among those provisions that were agreed to was the Senate provision to extend the 1619 program through June 1987.

From July 26 to September 14, no formal meetings of the conferees were held although several compromise agreements were exchanged informally. On September 18, the conferees reached agreement on the final seven provisions.

On September 19, 1984, the House, by a vote of 402-0, and the Senate, by a vote of 99-0, approved the conference report on H.R. 3755; President Reagan signed the bill into law (Public Law 98-460) on October 9, 1984. Under this law, the 1619 provisions were reauthorized from January 1, 1984, through June 30, 1987. It was informally agreed by Committee staff that the report on section 1619 should be submitted by mid-1986 rather than mid-1985 as had been requested originally by the House Committee on Ways and Means.

### Permanent Authorization of the Section 1619 Program

#### Action in 1985

Advocacy groups were expressing their concern that the temporary nature of the section 1619 program was a deterrent to work attempts by disabled individuals who feared the consequences of becoming involved with a program that had no guarantee of becoming permanent. They strongly supported making section 1619 a permanent part of the SSI program and wanted to see the program improved and simplified.

On April 15, 1985, Representative Steve Bartlett (R., TX), believing that the section 1619 program was an effective work incentive and was saving Federal dollars, introduced H.R. 2030, the Employment Opportunities for Disabled Americans Act. (Representative Bartlett had introduced a similar bill, H.R. 6263, in September 1984, but no action had been taken on it.)

As introduced, H.R. 2030 contained the following provisions affecting section 1619 of the Social Security Act:

- Permanently authorized sections 1619(a) and (b) of the Social Security Act and made revisions to improve the operation of the provision.
- Required that the Secretary of Health and Human Services establish and implement procedures to notify disabled individuals about section 1619 benefits when they first become SSI recipients and again when their earned income exceeds \$200 a month.
- Required, in determining eligibility under section 1619(b), consideration of whether loss of social services as well as Medicaid (already stipulated in law) would inhibit individuals' ability to continue work and whether their earnings are sufficient to provide a reasonable equivalent of benefits so lost.
- Required that in determining whether individuals' earnings are sufficient to provide the equivalent in Medicaid and SSI benefits, income necessary to achieve a plan for self-support (for blind and disabled beneficiaries) and impairment-related work expenses (for the disabled) would be excluded and that the information upon which such determinations are made be updated no less frequently than annually.
- Permitted section 1619 benefit eligibility for people who, because they received an unusual and infrequent or irregular amount of income, were not eligible to receive regular SSI, State supplementary, or special Federal or State payments in the preceding month. Such individuals would have been deemed to have received one of these payments if the irregular income was received in the month immediately preceding the month of ineligibility, or in that month and one or more additional months in a period of consecutive months.
- Required the General Accounting Office to conduct a study of the operation of section 1619 to evaluate the program's effectiveness.

The bill also would have made changes in the Rehabilitation Act to provide grants for employers retaining and reemploying disabled workers and for States to develop and secure employment for SSI and social security disability program beneficiaries. The bill was referred to both the House Committee on Education and Labor and the House Committee on Ways and Means.

**Subcommittee on Select Education, House Committee on Education and Labor.** On October 17, 1985, the Subcommittee on Select Education of the House Committee on Education and Labor held hearings on H.R. 2030. Representative Bartlett, in a prepared statement, said that he believed that programs which encourage the disabled to seek employment benefit not only those disabled individuals who use the programs but also benefit the taxpayers by reducing the Federal expenditures necessary to pay various disability benefits.

Patricia M. Owens, then the Social Security Administration's Associate Commissioner for Disability, appeared as a witness and expressed the Administration's concern that disabled individuals be encouraged to engage in work efforts but recommended that no legislative changes be made to the section 1619 program until various studies that the Social Security Administration had underway were completed. (As it has been indicated, at the request of the House Committee on Ways and Means, the Department of Health and Human Services was conducting a study to evaluate the effectiveness of section 1619 in increasing work incentives and to determine the characteristics of individuals benefiting from its protection. The Social Security Administration issued the report on the section 1619 program on July 20, 1986.<sup>5</sup>)

### Action in 1986

On March 19, 1986, Representative Bartlett introduced a revised bill, the Employment Opportunities for Disabled Americans Act, which became H.R. 4450. This bill was a companion to S. 2209, an identical bill that was also introduced on March 19, 1986, by Senator Dole.

Representative Bartlett's bill, while similar in focus to the previous year's H.R. 2030, contained, in addition to the provisions in H.R. 2030, the following new provisions:

- Provided eligibility for inmates of public institutions, for the first 2 months (only) throughout which individuals were inmates of a public institution, provided they were eligible for payments under section 1619 in the preceding month and had not been eligible by reason of this new provision in the 24 preceding months. The benefit rate would have been based on the full Federal benefit rate and the coverage would have applied to individuals in Medicaid institutions. (Under SSI law, individuals in Medicaid facilities are subject to a reduced payment rate of no more than \$25 per month.)
- Required the designation of a section 1619 specialist in Social Security Administration field offices if the office is of "sufficient size."
- Protected the Medicaid eligibility of individuals who are over age 18 and who receive SSI payments based on a disability that began before age 22 but who became ineligible for SSI because of entitlement to (or an increase in) child's insurance benefits under title II. This protection would continue so long as the individuals would, but for the entitlement to (or increase in) the child's insurance benefits, be eligible for SSI payments.

<sup>5</sup>For the full report and some of the appendix material, see "Implementation and Analysis of Public Law 98-460—Section 1619 (The Social Security Disability Benefits Reform Act of 1984)," *Social Security Bulletin*, November 1986, pages 11-45.

The bill was referred to the Subcommittee on Public Assistance and Unemployment Compensation.

**Subcommittee on Public Assistance and Unemployment Compensation.** On March 20, 1986, Representative Bartlett appeared at a hearing held by the Subcommittee on Public Assistance and Unemployment Compensation. Representative Bartlett described H.R. 4450 and stressed the bipartisan support the bill had garnered.

Also, on March 20, 1986, Representative Fortney Stark (D., CA) introduced H.R. 4471, the SSI Improvement Amendments of 1986. This bill contained provisions affecting various parts of the SSI program and included with those, as title II of the bill, were provisions affecting the section 1619 program. These provisions would have:

- made section 1619 a permanent part of the Social Security Act;
- allowed individuals to retain section 1619 eligibility even if they have unusual one-time income (other than earnings) that makes them otherwise ineligible for SSI;
- required that certain social services provided under title XX (as well as title XIX) of the Social Security Act be included in determining whether individuals' earnings are sufficient to replace benefits provided under section 1619(b); and
- required notification to SSI applicants and recipients of their potential eligibility for section 1619 payments at the time of their initial eligibility and again when their earnings reach \$200 a month.

**Subcommittee on Social Security and Income Maintenance Programs, Senate Committee on Finance.** On July 30, 1986, the Senate Finance Committee's Subcommittee on Social Security and Income Maintenance Programs held a hearing on S. 2209, Senator Dole's companion bill to H.R. 4450. The Commissioner of Social Security, Dorcas R. Hardy, appeared as a witness at this hearing. In her prepared testimony, Commissioner Hardy stated the Administration's strong interest in work incentives and in enabling disabled persons to become economically independent and its support for making the provisions of section 1619 a permanent part of the Social Security law. The bill was reported to the Senate Committee on Finance.

**Senate Committee on Finance.** In preparation for Finance Committee markup of S. 2209, committee staff undertook an intensive review of the provisions of section 1619 with a view toward making the provision easier for the public to understand and for the Social Security Administration to administer.

Subsequently, on September 10, 1986, the Finance Committee met to mark up S. 2209. The committee staff presented its proposed improvements. These were accepted, and S. 2209 was then ordered reported to the Sen-

ate. The bill, as approved by the committee, contained the following provisions:

- *Eligibility.* Disabled individuals could be eligible for regular SSI disability or section 1619 payments for any month subsequent to the month of initial eligibility under the regular SSI disability program based on their earnings and other income. (The provisions in the SSI law that provide a trial work period and an extended period of eligibility would be repealed as they no longer served any useful purpose.) A formal determination concerning SGA and medical disability would not be a prerequisite for continuing eligibility for a regular SSI payment or for eligibility under section 1619. However, a continuing disability review would be required within 12 months after the first month an individual becomes eligible under section 1619(a).
- *Reinstatement.* Reinstatement to benefits under section 1611 or section 1619, as appropriate, would be possible without a new application or continuing disability review for individuals who have been eligible for benefits under section 1611 or 1619 within the last 12 months and who meet all nondisability-related eligibility requirements.

However, a continuing disability review would be immediately undertaken (with no delay in payments to the individual) for individuals who, within the last 12 months, had been eligible under section 1619(b) and had earnings alone that would have precluded an SSI payment.

- *Determination of section 1619(b) eligibility.* The value of publicly funded attendant care would be considered in the determination of whether individuals' earnings could provide a "reasonable equivalent of benefits" and the data used in determining reasonable equivalents would be updated at least annually. In addition, income associated with impairment-related work expenses and plans for achieving self-support would be disregarded in determining such reasonable equivalents.
- *Outreach.* The Social Security Administration would be required to notify disabled SSI recipients of potential eligibility under section 1619.

In addition, other provisions of the bill would:

- Provide that individuals, who in the month before admission to a public medical or psychiatric institution were eligible under section 1619, will be eligible for the first 2 months throughout which they are in such institution providing that the institution agrees that it will not require the individuals to use such benefit to offset the cost of care.

- Provide for continued Medicaid coverage for individuals who lose their eligibility for SSI because they become eligible for, or receive an increase in, social security benefits as “disabled adult children.”
- Provide that the Medicaid coverage of SSI recipients residing in States that do not use SSI criteria in making Medicaid eligibility determinations and do not specifically provide Medicaid coverage to individuals in section 1619(b) status, who are receiving Medicaid, will continue if those individuals become eligible under section 1619.

**Subcommittee on Public Assistance and Unemployment Compensation, House Committee on Ways and Means.** On September 17, 1986, the Subcommittee on Public Assistance and Unemployment Compensation marked up H.R. 4471, the SSI Improvement Amendments of 1986. The subcommittee added the language of S. 2209 to H.R. 4471. Thus, H.R. 4471 contained two titles. Title I contained various SSI improvement amendments, including an amendment offered by Representative Pickle regarding treatment of certain couples in Medicaid institutions and an amendment offered by Representative Beryl Anthony (D., AR) regarding payment of benefits due deceased SSI beneficiaries to certain family members. (The title I provisions are described in appendix A, which follows this article.) Title II contained the provisions from S. 2209 largely relating to the section 1619 program.

The bill was forwarded to the full committee on September 19.

**House Committee on Ways and Means.** On September 23, 1986, the House Committee on Ways and Means marked up H.R. 4471 and on September 25, unanimously ordered the modified bill reported as a “clean” bill, H.R. 5595. The provisions relating to section 1619 contained in H.R. 5595 are identical to those in H.R. 4471 reported by the Subcommittee on Public Assistance and Unemployment Compensation on September 19, 1986.

The committee further voted to have the bill placed on the suspension calendar (a House procedure that allows no floor amendments and requires a two-thirds vote for passage). On September 30, the House passed H.R. 5595, the SSI Improvement Amendments of 1986, by voice vote.

**Floor action in lieu of conference.** On October 8, the Senate, by voice vote, amended and passed H.R. 5595. During floor debate, the Senate agreed to strike both titles of the House-passed version and substitute the language of the Senate Committee on Finance approved version of S. 2209. The Senate also changed the title to the Employment Opportunities for Disabled Americans Act.

On October 15, the House began consideration of the Senate passed version of H.R. 5595 and agreed to it with the addition of two of the provisions that had been previously passed by the House but not included in the Senate bill:

- Representative Pickle’s provision to permit States not to follow the SSI rule that members of a couple sharing a room in an institution be considered as two individuals if following that rule would disadvantage either member of the couple in determining eligibility for any other program under the Social Security Act; and
- Representative Anthony’s provision to permit the paying of benefits due a deceased beneficiary to the surviving spouse or, if the beneficiary was a blind or disabled child, the parents, if the spouse or parents were living with the deceased beneficiary within 6 months immediately preceding his or her death.

On October 18 (the last day of the 99th Congress), the Senate concurred in these amendments and cleared H.R. 5595 for the President’s signature. On November 10, 1986, President Reagan signed H.R. 5595 into law (Public Law 99-643).

## **Summary of Provisions of Public Law 99-643**

### **Permanent Authorization of Program of Benefits Under Section 1619**

Makes permanent the provisions of section 1619, which provides for special cash benefits and Medicaid coverage to individuals who work despite severe impairments. This provision is effective upon enactment. The provisions of section 1619 were established as a demonstration project and were due to expire July 1, 1987.

**Improvements to section 1619 program.** Provides as follows:

- **Eligibility.** Disabled individuals would be eligible for regular SSI or section 1619 benefits for any month subsequent to the month of initial eligibility under the regular SSI program based on their earnings and other income. The provisions in the SSI law that provide a trial work period and an extended period of eligibility would be repealed. A continuing disability review would be required within 12 months after the first month of individuals’ eligibility under section 1619(a).
- **Reinstatement.** Reinstatement to benefits under section 1611 or section 1619, as appropriate, would be possible without a new application or continuing disability review for individuals who have been eligible for benefits under section 1611 or 1619 within the last 12 months and who, at the time of reinstatement, meet all nondisability-related eligibility requirements.



However, a continuing disability review would be immediately undertaken (with no delay in payments to the reinstated individual) for individuals who, within the last 12 months, had been eligible under section 1619(b) and had earnings alone that precluded an SSI payment.

- *Determination of 1619(b) eligibility.* The value of publicly funded attendant care would be considered in the determination of whether individuals' earnings could provide a "reasonable equivalent of benefits" and the data used in determining reasonable equivalents would be updated at least annually. In addition, income associated with impairment-related work expenses and plans for achieving self-support would be disregarded in determining such reasonable equivalents.

These provisions, effective July 1, 1987, allow relatively free movement between the various eligibility categories of SSI. The provisions recognize that severely impaired individuals who make work attempts may not be able to follow a steady progression from status under section 1611 to status under section 1619(a) and then to section 1619(b). Often these individuals need to reestablish eligibility for an earlier category of payments. The provisions also simplify administrative tasks by eliminating the trial work period and the 15-month reentitlement period, which are no longer needed since the benefits of 1619(a) and (b) and the ability to move freely among 1611, 1619(a), and 1619(b) statuses provide greater protections than these former provisions did.

**Notification to applicants and recipients.** Provides that the Secretary shall notify individuals receiving SSI payments on the basis of disability or blindness of their potential eligibility for benefits under section 1619 at the time of the initial award if the recipients are aged 18 or older, and shall notify all disabled and blind SSI recipients at the time that their earnings reach \$200 or more a month and periodically thereafter. This amendment will be effective July 1, 1987.

This provision will help ensure that disabled and blind SSI recipients are aware of the protection of section 1619 benefits should they decide to attempt work and will act as an incentive for working recipients who may wish to increase their work efforts.

**Medicaid eligibility for certain recipients of cash payments under section 1619.** Provides Medicaid coverage for individuals in section 1619 status in those States that previously did not specifically cover section 1619 individuals. (Section 9404 of Public Law 99-509, the Omnibus Budget Reconciliation Act of 1986, provides similar protection, but for section 1619(b) individuals only.) This amendment will become effective July 1, 1987, except in those States that require State legislation to implement changes to the State Medicaid plan required

to carry out the changes in this section. In those States, the effective date may be no later than 60 days after the close of the first regular session of the State legislature that begins after the date of enactment.

This provision allows blind or disabled individuals who reside in States whose Medicaid plans use eligibility rules that were in effect in December 1972 rather than SSI eligibility rules (a so-called "section 209(b) State"), and who were eligible for Medicaid in the month before the month in which they become eligible under section 1619, to continue to be eligible for Medicaid as long as they remain qualified for a benefit under section 1619.

**Eligibility for certain disabled or blind individuals for payments during initial 2 months in certain institutions.** Provides that individuals who in the month prior to admission to a public medical or psychiatric institution were eligible under section 1619 will be eligible for payments based on the full Federal benefit rate for the first 2 months throughout which they are in such an institution, provided that the institution agrees that it will not require the individuals to use such payments to offset the cost of care. This provision is effective July 1, 1987, except in those States that require State legislation to implement changes to the State Medicaid plan required to obtain the necessary agreements from institutions. In those States, the effective date may be no later than 60 days after the close of the first regular session of the State legislature that begins after the date of enactment.

The effect of this provision is to permit individuals who are hospitalized for short periods of time to continue to receive SSI payments. This will provide those individuals with a cushion of payments that may help them avoid the disruption caused by short periods of institutionalization.

**Loss of SSI payments upon entitlement to child's insurance benefits based on disability.** Provides for continuation of Medicaid coverage for individuals in States that use SSI criteria for categorical Medicaid eligibility, who lose their eligibility for SSI because of entitlement to, or an increase in, social security benefits they receive as "adult disabled children." This amendment will become effective July 1, 1987.

This provision, in effect, creates a new group of individuals whose Medicaid eligibility is protected even though they are no longer eligible for cash assistance. Before this change, these individuals could become ineligible for Medicaid because of the loss of SSI eligibility.

**Payment of benefits due deceased recipients.** Provides that benefits due a deceased recipient may be paid to the surviving spouse if the spouse and recipient were living in the same household within the meaning of the lump-sum death payment provision of the Social Security Act at the time of the recipient's death or within 6 months immediately preceding his/her death, or to the parent of a disabled or blind child recipient if the child was living with the parent within 6 months immediately before the child's

death. This provision is effective with respect to benefits payable for months after May 1986.

Previously only an eligible spouse could have been paid amounts due a recipient at the time of his or her death. An eligible spouse is defined as an aged, blind, or disabled individual who is the husband or wife of another aged, blind, or disabled individual and has not been living apart from such other individual for more than 6 months. The amendment does not change the provision in prior law; it merely provides that ineligible spouses and parents also may receive the unpaid benefits of deceased recipients.

**Treatment of certain couples in medical institutions.**

Provides that States not be required to follow the SSI rule that members of a couple sharing a room in a Medicaid institution be considered as two individuals if following

the SSI rule would disadvantage either spouse in determining eligibility for any other program under the Social Security Act. The provision is effective on enactment.

SSI policy treats each member of a couple sharing a room in a Medicaid institution as an individual after 6 continuous months in the institution. While couples eligible for SSI are advantaged by the policy because the SSI resource limits for two individuals are greater than those for a couple, some members of couples have lost their Medicaid eligibility as a result of using the SSI rule because their incomes exceeded special Medicaid income limits for individuals in institutions. An existing provision of Medicaid law generally requires the use of cash assistance program income rules even for persons not eligible for cash assistance; the amendment makes a specific exception to the general provision.

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## **Appendix A: Summary of the SSI Improvement Amendments Contained in Title I of H.R. 4471 as Reported by the House Committee on Ways and Means**

### **Subtitle A—Treatment of Income and Resources**

**Sec. 101.** Would have required that temporary nonrecurring income received in the initial month of eligibility or reeligibility by SSI recipients may not be counted more than once under the retrospective monthly accounting process.

**Sec. 102.** Would have provided for excluding from countable income certain unearned income received in the form of real or personal property that would not be counted as a resource in the following month.

**Sec. 103.** Would have provided that if an individual transferred an asset for less than fair market value and the uncompensated value of that asset was less than or equal to \$3,000 there would be no effect on eligibility. In addition, in cases where there would otherwise be a denial of benefits, the Secretary could waive the denial to the extent necessary to avoid undue hardship.

### **Subtitle B—Provisions Relating to Eligibility**

**Sec. 111.** Would have provided for payment of benefits on behalf of a deceased SSI recipient to the ineligible spouse and to the parent of a disabled or blind child. (Cur-

rent law provides that only an eligible spouse may receive that payment that was due a deceased SSI recipient.)

**Sec. 112.** Would have provided for Medicaid coverage for those individuals who lose their eligibility for SSI when their income increases because they have been required to file for early widows' or widowers' social security benefits.

**Sec. 113.** Would have expanded the limitation on aliens' eligibility for SSI to preclude SSI eligibility for 3 years after entry into the United States if the alien was sponsored for entry by an agency or organization unless the agency or organization was bankrupt or no longer in existence.

### **Subtitle C—Provisions Relating to Emergency Assistance**

**Sec. 121.** Would have expanded the provision under which States may be reimbursed from individuals' retroactive SSI checks for amounts of assistance it provided to the individuals between the time of their application for SSI and payment of benefits to include cases where the State has provided funds to SSI recipients whose benefits were suspended or terminated and who are subsequently found eligible for those benefits. Would have applied also to cases where the State has provided emergency assistance because of lost or stolen SSI checks.

**Sec. 122.** Would have provided that emergency assistance payments that can be paid directly by a district office of the Social Security Administration to those in need of immediate subsistence be increased from a maximum of \$100 to a maximum of the monthly regular SSI payment and State supplementary payment, if any.

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## **Subtitle D—Provisions Relating to Group Living Facility Standards**

**Sec. 131.** Would have repealed the provision of current law that requires that Federal SSI payments be reduced dollar for dollar for any payments made by a State to provide medical or remedial care on behalf of an SSI recipient who is in an institution that is not approved as meeting relevant State standards.

**Sec. 132.** Would have directed the Department of Health and Human Services (HHS) and the General Accounting Office to analyze alternative methods of promoting the establishment and effective enforcement of standards for group living facilities.

## **Subtitle E—Provisions Relating to the Blind**

**Sec. 141.** Would have required HHS to provide SSI recipients who are blind with the option of receiving special notice, either by phone or by certified mail, of official action that may affect their SSI payment rights. Also would have required the Secretary of HHS to conduct a study to determine the feasibility of providing special notices to other individuals who may have difficulty in reading printed notices.

**Sec. 142.** Would have provided that blind SSI recipients would, as is the case for disabled SSI recipients, be allowed to continue to receive vocational rehabilitation services funded through the SSI program even if there is an improvement in their medical condition that results in their no longer qualifying for SSI.