

LEGISLATIVE HISTORY OF THE SOCIAL SECURITY DISABILITY INSURANCE PROGRAM

HISTORY BEFORE 1952

1935 Report to the President of the Committee on Economic Security

The report recognized the problems of earnings lost during periods of eligibility, but the report did not specifically consider problems of permanent and total disability.

Excerpt from *Social Security and the "D" in OASDI: The History of a Federal Program Insuring Earners Against Disability* (by John R. Kearney), pp. 3-4 (citations omitted)

The Controversy over Disability Insurance: Why It was Omitted from the 1935 Act

Debate about the enactment of a disability program centered on two issues: the administrative difficulty of determining whether or not an applicant was too disabled to work and the potential cost of the program. Much of the concern surrounding these issues was due to the empirical experience of private insurance companies in providing disability insurance. At that time, evidence concerning permanent and total disability insurance revealed that private insurance companies providing such insurance were experiencing serious losses.

Insurance companies began to offer disability insurance during the latter part of the 19th century. The policies generally provided only accident protection and were limited both in the amount of the benefit payable and the length of time that benefits were paid. Policies usually allowed the insurance company to cancel the policy or increase the premium on relatively short notice. In 1916, the first noncancellable and guaranteed-renewable policies were offered; this was considered a revolutionary innovation at that time.

After World War I, the disability insurance industry grew significantly, and many policies included liberal definitions of disability, something that many companies would later regret. Since many of the policies were written by companies with skills in life insurance rather than disability insurance, important protections for the companies were sometimes missing from the policies. For example, some of these policies increased the benefit the longer the policyholder remained disabled, thereby creating a disincentive for the person to return to work.

During the Great Depression of the 1930s, the number of disability insurance claims rose dramatically, and the length of time the policyholders remained disabled increased. Losses in the disability insurance industry were substantial, particularly for companies that had written policies with expansive definitions of disability. Many companies stopped selling disability insurance, others failed financially, and the remainder made changes in their rating or underwriting practices to make themselves less vulnerable to loss.

Sales of disability insurance began to increase after 1940, but the policies were very restrictive. The typical disability insurance policy had a definition of disability that was strictly determined by the

policyholder's ability to work in any occupation, paid no more than \$200 per month, and was time-limited to no more than 2 or 3 years.

One side of the federal disability insurance debate among planners was advanced by I.S. Falk, a public health expert with the Social Security Board's Research and Statistics Division. He believed that disability insurance in the private sector had fared so poorly because companies had failed to develop appropriate actuarial data or to set adequate rates. Private disability insurance also suffered from "adverse selection" and "moral hazard."⁴ Falk argued that compulsory coverage would eliminate the problem of adverse selection and that effective administration would address the issue of moral hazard.

On the other side of the debate were concerns about the cost of a disability program. In particular, insurance companies disagreed that the industry had used poor business practices and did not believe that federal bureaucracy could do a more effective job of administering a disability insurance program. They also argued that moral hazard could not be avoided without the discipline of the profit motive.

Adding support to the insurance industry's concern with the high costs of a federal program were the Social Security Board actuaries W.R. Williamson and Robert Myers. The actuaries were concerned that disability insurance would be an expensive and uncontrollable program. However, in the face of the numerous predictive uncertainties, the Social Security Board actuaries were at a loss to produce cost estimates to contribute to the disability program discussions.

1938 Report of the Advisory Council on Social Security to the Senate Committee on Finance

The Council recognized the desirability of providing benefits to insured persons who become totally and permanently disabled and to their dependents. However, there was not a consensus about when to introduce such benefits.

- *Immediate Introduction of Benefits:* Some Council members believed in immediately introducing benefits to permanently disabled persons. These members believed that persons who become permanently and totally disabled were the only "permanent social casualties" who receive no insurance or assistance under the Social Security Act.
- *Further Study:* Other Council members favored further study, as they were concerned that the costs would be unpredictable; and envisioned that such a program would be difficult to administer and would require a skilled staff to make disability determinations and to prevent abuses.

Annual reports of the Social Security Board from 1940 to 1950

Throughout this period, the Social Security Board (later, the Social Security Administration) recommended paying social insurance benefits to permanently and totally disabled persons. Some specific proposals were:

- Benefits should be payable only after a *6-month waiting* period and then only if the disabled person had been in covered employment within a reasonably recent period, for a reasonably substantial time, and with reasonable substantial income.
- Benefits should be paid to *dependents* of disabled workers.

- *Vocational rehabilitation* for beneficiaries should be financed from the trust fund.

In addition, the Board proposed a ***definition of disability***. Specifically, the Board stated that “permanent” disability should not mean lifetime disability, requiring a medical prognosis of permanency. Instead, benefits should be paid for loss of earnings after a suitable waiting period (6 months) and while the individual was totally incapacitated.

1948 Report of the Advisory Council on Social Security to the Senate Committee on Finance

The Council recommended paying benefits to the permanently and totally disabled, regardless of age, as part of the social insurance system. (Two Council members disagreed with this recommendation. They believed that *State assistance programs*, aided by Federal grants, should protect against total disability.) Council recommendations included:

- To be eligible, the individual would need to show recent and substantial attachment to the labor market (e.g., *40 quarters of coverage*).
- ***Proposed definition:*** *Any disability which is medically demonstrable by objective tests, which prevents the worker from performing any substantial gainful activity, and which is likely to be of long-continued and indefinite duration*
- *6-month waiting period* (such a period is “sufficiently long to permit most essentially temporary conditions to clear up or show definition signs of probable recovery”)
- *No benefits for dependents*
- Benefits suspended where *workmen’s compensation* was payable
- *Integration of disability and old-age and survivors benefits*—i.e., protecting an individual’s insured status and benefit amount for purposes of old-age and survivors insurance (disability “freeze”)
- *Rehabilitation services* would be provided and paid by the trust fund.

Social Security Act Amendments of 1950

In late 1949, the House of Representatives passed a bill establishing disability insurance benefits under title II of the Social Security Act based largely on the recommendations of the 1948 Advisory Council. However, the Senate rejected the disability insurance provisions of the House bill. As passed, the Social Security Act Amendments of 1950 did extend State-Federal public assistance programs to the permanently and totally disabled by providing grants-in-aid to the States for such individuals who are in need. (*Note: This program, called Aid to the Permanently and Totally Disabled, would later be replaced by the federally-administered Supplemental Security Income program in 1974.*)

THE BEGINNING OF THE DISABILITY INSURANCE PROGRAM (1952-1956)

Social Security Act Amendments of 1952

The 1952 amendments included a disability “freeze” provision. The American Medical Association joined the insurance industry and the Chamber of Commerce in bringing pressure on Congress not to adopt the disability freeze. A compromise was reached with the suggestion that the States be assigned the responsibility for making disability decisions. In another complex compromise, however, the “freeze” from the 1952 amendments never went into effect.

Social Security Amendments of 1954 (The Disability “Freeze”)

In 1954, the Congress established the first operating disability program under the Social Security Act. The 1954 amendments established a disability “freeze” for disabled workers—i.e., excluding a disabled worker’s periods of disability when calculating retirement benefits. The 1954 law *defined disability* as:

- Blindness, or
- *The inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or to be of long-continued and indefinite duration*

Eligibility was limited to persons whose:

- Disability had lasted for at least *6 months*, and
- Earnings record demonstrated a *strong and recent connection* to the workforce—i.e., 20 quarters of coverage in a 40-quarter period

Other features of the new disability program were:

- *State agencies*, under agreement with SSA, would make disability determinations, reimbursed through the trust funds
- Disabled persons would be referred to State rehabilitation agencies for *rehabilitation services*.

Excerpt from *Social Security and the “D” in OASDI: The History of a Federal Program Insuring Earners Against Disability* (by John R. Kearney), pp. 10 (citations omitted)

Legislative Debate 1955–1956: SSA Disability Cash Benefits for Workers Aged 50 and Older

The “piecemeal” implementation approach adopted after 1950 led Social Security administrators to focus on incremental implementation of disability provisions rather than advocate for a comprehensive disability insurance initiative. From this strategy emerged a 1955 plan that proposed cash benefits to disabled workers only when aged 50 years and older.

Even with this limiting age concession, however, disability cash benefits remained a highly controversial

issue and there was strong opposition to providing them to workers of any age. DHEW Assistant Secretary Perkins, who had supported the 1954 disability freeze as a rehabilitation recruitment tool, was opposed to the enactment of cash benefits. She believed in rehabilitation and was not convinced of a link between cash benefits and rehabilitation.

Legislation was drafted in the House of Representatives that provided cash disability benefits with the provision that all applicants would be referred for vocational rehabilitation, and it passed easily. All participants recognized that there would be a legislative fight for passage in the Senate. The debate had strong opinions on both sides. On the one hand, the bill faced substantial opposition from the American Medical Association, which was convinced that passage of the legislation would inaugurate a move toward socialized medicine and require physicians to report to government workers. On the other hand, supporters of the proposed legislation cited several factors in favor of moving to a cash benefit program. First, over 100,000 determinations had been made under the disability freeze, which lent credence to the proposition that SSA could effectively administer a disability program. Second, the Social Security trust funds were solvent and the economy was healthy, suggesting that the nation could afford to provide disability benefits. Finally, the measure enjoyed strong support from a united labor movement.

Both sides lobbied hard. The Senate Finance Committee had deleted the disability provisions from the House-passed Social Security bill. During the debate in the Senate, however, these provisions were restored by the close vote of 47 in favor and 45 opposed.

Social Security Amendments of 1956 (Establishing Monthly Benefits)

In 1955, the House passed a bill that would provide monthly cash benefits to disabled persons. However, the Senate Finance Committee deleted the disability provisions from the House-passed Social Security bill. In opposing benefit payments, the committee considered: (1) the difficulty in making disability determinations; (2) the availability of other assistance; (3) significant advances in vocational rehabilitation; (4) uncertain future costs of a cash disability insurance program; and (5) the need for time to study and evaluate existing disability programs.¹

When the bill was debated on the Senate floor, the Senate adopted an amendment providing for disability insurance benefits. Shortly thereafter, in 1956, Congress passed the Social Security Amendments of 1956, which established monthly cash benefits for eligible disabled workers. In signing the bill into law, President Eisenhower said, “We will ... endeavor to administer the disability [program] efficiently and effectively, [and] ... to help rehabilitate the disabled so that they may return to useful employment I am hopeful that the new law ... will advance the economic security of the American people.”

The 1956 amendments:

- ***Defined disability*** using the definition in the 1954 amendments
- Provided benefits for *workers aged 50-64*

¹ S. Rept. 2133, 84th Cong., 2d. sess. (1956), pp. 3 and 4.

- Provided benefits for *disabled dependent children* of a retired or deceased insured worker if the child was disabled before age 18
- Included a *6-month waiting period*
- Required *insured status* (20 quarters of coverage in a 40-quarter period), *and* required the individual to be *currently insured*
- Established that the *amount of the disability benefit* was equal to “his primary insurance amount as though he became entitled to old-age insurance benefits in the first month of his waiting period”
- Provided for *reduced benefits* if an individual was receiving another Federal disability benefit or a State workmen’s compensation payment
- Required that individuals applying for disability benefits “shall be promptly referred” for *vocational rehabilitation services*
- Continued requiring *States* to make disability determinations
- Established a *disability trust fund*
- Required SSA to *monitor a disability beneficiary’s continued eligibility*²

EXPANSION OF THE DISABILITY PROGRAM (1958-1972)

In establishing disability insurance benefits in 1956, Congress had established the program on a conservative basis. Consequently, in 1958, the disability insurance program showed a definite actuarial surplus. Beginning in 1958, Congress began expanding the scope of the disability program.

Social Security Amendments of 1958

- Provided benefits for *dependents, spouses, and children* of disabled workers
- *Repealed the offset* for beneficiaries of workers’ compensation or other federal disability benefits
- Provided for *12 months of retroactive payments*

² “Sec. 225. If the Secretary, on the basis of information obtained by or submitted to him, believes that an individual entitled to benefits under section 223 ... may have ceased to be under a disability, the Secretary may suspend the payment of benefits ... until it is determined (as provided in section 221) whether or not such individual’s disability has ceased or until the Secretary believes that such disability has not ceased.”

- Liberalized insured status requirements by no longer requiring that the individual must be currently insured

Social Security Amendments of 1960

- Established benefits for disabled workers *under age 50*
- Introduced a *trial work period* to allow beneficiaries to try working without losing benefits right away

Social Security Amendments of 1965

- Placed a limit on attorneys' fees to protect claimants from unreasonable contingency agreements
- Restored offsetting disability insurance benefits for payments received under workers' compensation and federal disability benefits (under a different calculation than the previous offset)
- ***Amended the definition of disability*** by changing the durational requirement from *long-continued and indefinite duration* to *expected to last for a continuous period of not less than 12 months*

Congress amended the durational requirement to expand the number of individuals who would be eligible for disability benefits. According to a Committee on Ways and Means report, eliminating the *indefinite duration* requirement would help a substantially large group of disabled workers who, though totally disabled for an extended period, can be expected to eventually recover.³ The committee also expressed its expectation that “procedures will be utilized to assure that the worker’s condition will be reviewed periodically.”⁴

Social Security Amendments of 1967

- Introduced benefits for disabled widow(er)s beginning at age 50
- ***Clarified the definition of disability*** by specifying that *a person must not only be unable to do his or her previous work but also be unable, considering age, education and experience, to do any work that exists in the national economy, whether or not such work exists in the general area in which he lives or whether he would be hired to do such work*

Congress made this clarification because it perceived that the courts were “eroding” the definition of disability. A Committee on Ways and Means report stated that “there is a growing body of court interpretations [that], if followed ... could result in substantial further increases in costs in the future.”⁵ According to the committee, courts were placing the burden on SSA to

³ H.R. Rpt. No. 213, 89th Cong. 1st Sess. (Mar. 29, 1965), pp. 88-89.

⁴ *Id.* See also S. Rpt. 404, 89th Cong. 1st Sess. (June 29, 1965), p. 99.

⁵ H.R. Rpt. No. 554 (Aug. 7, 1967), p. 29.

identify jobs for which the individual might have a reasonable opportunity to be hired, rather than ascertaining whether jobs exist in the economy which the individual can perform. Courts were also narrowing the geographic area in which the jobs the person can do must exist. In addressing these court decisions, the committee report noted:

- *It is not intended, however, that a type of job which exists only in very limited numbers or in relatively few geographic locations would be considered as existing in the national economy. While such factors as whether the work he could do exists in his local area, or whether there are job openings, or whether he would or would not actually be hired may be pertinent in relation to other forms of protection, they may not be used as a basis for finding an individual to be disabled under this definition. It is, and has been, the intent of the statute to provide a definition of disability which can be applied with uniformity and consistency throughout the Nation, without regard to where a particular individual may reside, to local hiring practices or employer preferences, or to the state of the local or national economy.*⁶

Social Security Amendments of 1972

- Reduced the *waiting period* before disability benefits could be paid from 6 months to 5 months
- Increased the age ceiling for entitlement and reentitlement to *childhood disability benefits* from age 18 to age 22
- Extended *Medicare* protection to disability beneficiaries after 24 consecutive months of benefit entitlement⁷
- Created the *Supplemental Security Income* program, which was implemented in 1974

THE 1970s

Excerpt from *Social Security and the "D" in OASDI: The History of a Federal Program Insuring Earners Against Disability* (by John R. Kearney), pp. 13-14 (citations omitted)

Program Growth, Administrative Problems, and Increasing Costs

Benefit increases, liberalization of program requirements, and changes in the economy resulted in an unanticipated, but significant, increase in program costs. Efforts to bring rising costs under control

⁶ *Id.* at p. 30. See also S. Rpt. No. 744 (Nov. 14, 1967), pp. 48-49.

⁷ A Senate Committee on Finance Report noted that “[t]he disabled, as a group, are similar to the elderly in those characteristics—low incomes and high medical expenses—which led Congress to provide health insurance for older people. They use about seven times as much hospital care, and about three times as much physicians’ services as does the nondisabled population. In addition, disabled persons are often unable to obtain private health insurance coverage.” S. Rpt. No. 92-1230 (Sept. 25, 1972), p. 37.

created further problems for SSA.

The Price of Expansion in the Disability Program

During the 1970s, the number of persons insured for disability benefits increased by more than one-third. Between 1970 and 1980, contributions to the disability trust fund almost tripled, due in part to increases in the disability program's tax rate allocation, and trust fund assets peaked at \$8.1 billion by 1974.

However, the number of disability beneficiaries in 1980 was almost double what it had been in 1970. Outgoing benefit payments increased by a multiple of five. Given the growth in beneficiaries, after its peak in 1974, the trust fund assets declined to \$2.7 billion in 1982. Congress became concerned about the financial outlook as early as 1975.

A number of factors led to the growth in disability program costs during the first half of the 1970s. One important factor was the high inflationary economy of the times. To preserve the financial viability of beneficiaries, Congress legislated ad hoc benefit increases between 1970 and 1974. These benefit increases ranged between 10 percent and 20 percent annually, with benefit increases occurring in 4 of these 5 years.

[....]

A scarcity of administrative resources also contributed to the increase in disability awards and a decline in terminations due to medical recovery. Before 1972, SSA reviewed 70 percent of the state allowances before effectuation of the award. If SSA questioned the determination, the state usually reversed itself. However, SSA did not have the resources to maintain this process and reduced the proportion of allowances it reviewed to 5 percent during the early 1970s. The agency also reduced the percentage of continuing disability reviews from 10 percent of beneficiaries to 5 percent during the same period. This reduction contributed to a decline in recoveries from 30 per thousand in 1967 to 15 per thousand in 1976. Another factor was the increased tendency of denied applicants to appeal the decision. While the number of disability awards made at the initial level increased by about half between 1969 and 1974, the number of awards made at the reconsideration and hearing levels more than doubled.

Addressing Rising Costs: The Social Security Amendments of 1977 and 1980

The first effort to bring the rising cost of Social Security disability benefits under control was the "decoupling" provision of the 1977 Social Security Amendments. The intent of this provision was to stabilize replacement rates for all OASDI programs by changing the formula for determining the amount of benefits a person would receive. Under the revised formula, the initial benefit would be based on indexing the worker's earnings to changes in average wages so that benefit protection would rise with wages during working years and with the CPI after entitlement. Under the old law, the replacement rate for the average earner would have risen to 68 percent by 2050; under the new law, it would remain stable at 43 percent.

This provision was only the beginning of a concerted effort to reduce program expenses. Spurred by the rising program costs, members of the Carter Administration, including Department of Health, Education and Welfare Secretary Joseph Califano and Social Security Commissioner Stanford G. Ross, believed that the disability program was in disarray and was heading toward bankruptcy. An opposing opinion was held by others, such as former HEW Secretary Wilbur Cohen and former Commissioner Robert Ball, who

were convinced that the Social Security trust funds would enjoy a period of surplus during the 1990s and that legislation to address a temporary problem would lessen the adequacy of the program. With much debate on both sides, the 1980 Social Security Amendments were eventually passed by both Houses of Congress and signed into law in June 1980.

SOCIAL SECURITY AMENDMENTS OF 1980

A 1979 Senate Committee on Finance Report on disability legislation described a number of concerns about the disability program, including:

- *The disability insurance program has grown in caseload size and cost well beyond what was originally estimated. In part, the growth of the program reflects legislative changes which have expanded coverage and benefits. Much of the growth, however, must be ascribed to other causes such as de facto liberalization as a result of court decisions, weaknesses in administration, and greater than anticipated incentives to become or remain dependent upon benefits.*⁸
- *Social Security Administration actuaries attempted to assess the reasons for the increase in incidence rates Their analysis points to a variety of factors, including increases in benefit levels, high unemployment rates, changes in attitude of the population, and administrative factors.*⁹
- *One administrative factor mentioned is the multi-step appeals process, which enables the claimant to pursue his case to what the actuaries term as the “weak link” in the hierarchy of disability determination. ... The actuaries claim that by the very nature of the claims process, the cases which progress through the appeals process are likely to be borderline cases where vocational factors play an important role in the determination of disability. ... To the extent that vocational factors are given higher weight as a claim progresses through the appeals process, the chances of reversal of a former denial is increased.*
- *At the same time that there have been increases in disability incidence rates, there have also been decreases in disability termination rates.*
- *One of the major criticisms ... is that there is not uniformity of decisions and that different State agencies have been making decisions using different criteria.*

The committee report noted that many of the concerns surrounding the disability insurance program also applied to the SSI disability program. Accordingly, the committee report noted that the bill was intended to strengthen “the integrity of the disability programs by ... providing

⁸ S. Rpt. No. 96-408 (Nov. 8, 1979), p. 19.

⁹ *Id.* at p. 28.

possible incentives, as well as removing disincentives, for SSI and DI beneficiaries to return to work; and improving accountability and uniformity in the administration of the programs.”

The 1980 Amendments:

- Instituted new *work incentives*, including—
 - Deducting *impairment-related work expenses* from earnings
 - Providing a 15-month *automatic reentitlement period* following impairment-related cessation of substantial gainful activity
 - Continuing *DI benefits* after medical recovery for persons in approved vocational rehabilitation programs, and waiver of the 24-month waiting period for Medicare for persons who became reentitled to DI benefits
- Established *performance standards* for State DDSs that emphasized performance criteria, fiscal control procedures, and other standards designed to ensure equity and uniformity in disability determinations
- Required *periodic reviews* (at least once every 3 years) of all beneficiaries whose disabilities were not permanent (*Note*: The 1980 amendments did not include a CDR waiver provision)
- Required *federal preeffectuation reviews* of State DDS allowances and continuation determinations to ensure greater consistency and uniformity of decisions made by the states.
- Required SSA to initiate own-motion reviews of decisions by ALJs (*Bellmon* review)
- *Prohibited the introduction of new evidence* after a decision was made at the hearings level (preventing the claimant from introducing new evidence while the appealed claim was being reviewed).

REACTION TO THE 1980 AMENDMENTS AND FURTHER REFORM EFFORTS

Excerpt from *Social Security and the “D” in OASDI: The History of a Federal Program Insuring Earners Against Disability*, pp. 15-16 (citations omitted)

The reaction to the 1980 Amendments was so intense that Congress eventually reversed some of the provisions of that legislation. However, efforts to streamline the program and improve public service, while keeping program expenditures under control, have continued since that time.

State, Judicial, and Congressional Reactions to Accelerated Continuing Disability Reviews

It was the responsibility of the state Disability Determination Services to conduct the continuing disability reviews. With the negative stories in the press, many state officials felt uncomfortable about

the position in which they had been placed, in part because of the excessive workload. Disability Determination Services were accustomed to reviewing 21,000–30,000 cases per quarter; now they were expected to conduct 100,000–150,000 reviews per quarter. But there were other reasons as well. The states regarded the reviews as repeating work they had already done, and there were allegations that SSA had created a quota system by establishing a target number of beneficiaries who should be removed. The states were also concerned about the financial consequences, since many of the DI and SSI beneficiaries taken off the disability rolls would fall back on General Assistance, a state-funded program. A study conducted in Maryland found that one-third of the persons removed from the disability rolls in 1984 went on General Assistance, at a cost of \$2.3 million to the state.

In 1983, Massachusetts and New York refused to continue conducting the reviews. The National Governors Association passed a resolution in support of a proposal pending in Congress that would force SSA to use a medical improvement standard in conducting the reviews. Many other governors then suspended the reviews in their states.

To the extent that beneficiaries removed from the disability rolls had been previously awarded benefits at the hearings appeal level, the Administrative Law Judges considered the reviews to be a rebuke of their decisionmaking. The Association of Administrative Law Judges filed a suit against SSA that alleged harassment of judges with high reversal rates. The Administrative Law Judges were also overwhelmed with work: requests for hearings reached a new high of 281,737 in 1981, and a backlog of 128,764 cases was expected by the end of that year.

There were numerous court decisions that challenged SSA's disability determination policies in the early 1980s. In *Finnegan v. Mathews* (1981), the Ninth Circuit Court of Appeals held that an individual's disability benefits could not be terminated on the basis of medical factors absent a finding of clear error in the previous determination of disability or evidence of medical improvement sufficient to establish that the individual was no longer disabled. The DDSs had been conducting reviews as if each was a new case and basing their determinations on current evidence alone. Since the entire case was not considered, a beneficiary could be found not disabled even though his or her condition had not improved since the initial allowance.

Another practice of SSA that the court found objectionable was "nonacquiescence." This meant that SSA would pay benefits to an individual who successfully appealed removal from the disability rolls, but the agency would not revise its policies throughout a judicial circuit to reflect a circuit court decision reversing the removal. Eighth Circuit Court of Appeals Judge McMillan threatened to bring contempt proceedings against Health and Human Services Secretary Margaret Heckler if this practice was not changed. In January 1984, District Court Judge Jack Weinstein ruled that SSA had violated the law in reviewing the cases of persons with mental impairments, and the New York State Attorney General threatened to initiate proceedings against SSA for contempt. By the summer of 1984, 50,000 Social Security cases were pending in federal courts and SSA estimated that the number of new court cases would reach 28,000 by the end of 1984.

There was also a good deal of concern on the part of Members of Congress because of the stories in the press and the complaints from their constituents. In the spring of 1982, Senators William Cohen of Maine and Carl Levin of Michigan, both of whom were members of the Senate Subcommittee on Oversight of the Governmental Affairs Committee, held a hearing on the disability reviews. In total, Congressional committees held 27 hearings on this issue at different locations across the country. A general feeling emerged from these hearings that Congress would have to initiate new disability

legislation.

In June 1983, Secretary Heckler announced a package of major reforms of the continuing disability review process. The reforms included

- a temporary moratorium on the review of most mental impairment cases pending a thorough review of the standards for evaluating certain mental impairments;
- a substantial increase in the percentage of beneficiaries classified as having permanent disabilities and exempt from normal periodic review;
- selection of cases for review on a random basis instead of using profiles; and
- acceleration of a top-to-bottom review of standards, policies, and procedures affecting the evaluation of disability.

SOCIAL SECURITY DISABILITY BENEFITS REFORM ACT OF 1984

By 1983, governors or Federal courts ordered 18 State DDSs to provide evidence of *medical improvement* before terminating disability benefits. Eight more governors ordered DDSs to discontinue processing benefit terminations. As the year progressed, this situation worsened, and on December 7, 1983, SSA advised all State DDSs to temporarily stop processing benefit terminations. Due to this moratorium, a backlog of pending CDRs began to develop.¹⁰

A 1984 Committee on Ways and Means Report on pending legislation expressed deep concern “about the erosion of public faith and confidence in the social security disability programs, and in the agency.”¹¹ The committee noted that the overall purpose of the 1984 amendment was—

- *First, ... to insure that no beneficiary loses eligibility for benefits as a result of careless or arbitrary decision-making by the Federal government*
- *Second, ... to provide a more humane and understandable application and appeal process for disability applicants and beneficiaries appealing termination of their benefits*
- *Finally, ... to standardize [SSA]’s policy-making procedures through the notice and comment procedures of the Administrative Procedures Act, and to make those procedures*

¹⁰ U.S. General Accounting Office. “Social Security Disability: Implementation of the Medical Improvement Review Standard.” Dec. 1986, at 8.

¹¹ H. Rpt. 98-618 (Mar. 18, 1984), p. 2.

*conform with the standard practices of Federal law, through acquiescence in Federal Court of Appeals rulings*¹²

Moreover, the committee report expressed specific concerns on a wide range of issues, including—

- (Standard of review during CDRs) *[T]he re-examination of large numbers of current disability beneficiaries has resulted in termination of benefits for many beneficiaries whose medical condition has not changed substantially since they were allowed benefits. ... The committee recognizes that the problems with the current review have arisen, at least in part, because the criteria for termination of benefits ... were left unstated in the law.*
- (Evaluating pain) *While it may well be the case that pain, in and of itself, regardless of its cause, can result in inability to work, there is apparently still no way to verify the existence of such pain through objective medical testing. The committee is therefore reluctant at this time to allow determinations of disability to be based on such subjective criteria.*
- (Multiple impairments) *In cases where a person has several impairments, none of which meet the standard for “severe”, he is judged not disabled, without any further evaluation of the cumulative impact of his impairments on his ability to work. The committee believes that this does not represent a realistic policy with respect to persons with several impairments which may in many cases interact and effectively eliminate the person’s ability to work. ... [T]here are plainly many cases where the total effect of a number of different conditions can safely be characterized as disabling, even if each by itself would not be.*
- (Mental impairments) *Serious questions have been raised ... about the adequacy of SSA’s Listing of Mental Impairments and the appropriateness of SSA’s current methods for assessing residual functional capacity and predicting ability to work in individuals with mental impairments.*

The 1984 amendments:

- Provided disability benefits could not be terminated unless (1) there has been medical improvement (related to the individual’s ability to work); (2) the beneficiary is capable of performing substantial gainful activity because of medical/vocational therapy or technology; or (3) the initial determination was in error.
- Required SSA to consider the *combined effect of multiple impairments* in determining whether an individual can perform substantial gainful activity;

¹² *Id.*

- Established that a claimant’s statement regarding *pain* or other symptoms would not be conclusive evidence of disability; medically accepted findings of a medical condition were required;
- Required SSA to appoint a commission to study the evaluation of pain in determining disability
- Required SSA to revise the criteria under the *Mental Disorders* category in the *Listing of Impairments*, and prohibited SSA from conducting continuing disability reviews in mental impairment cases until it published such rules
- Allowed an individual whose benefits had been terminated to continue receive payments through the hearing process
- Required SSA to establish uniform standards for determining disability for all levels of adjudication
- Required SSA to issue rules establishing standards to determine the frequency of continuing disability reviews

DI LEGISLATION SINCE 1984

The Social Security Independence and Program Improvements Act of 1994 and the Contract With America Advancement Act of 1996

- The early 1990s brought another period of rapid growth in the disability program. Congress was especially concerned about disability payments going to drug addicts and alcoholics (DA&A). The independent agency legislation effective introduced new restrictions on DA&A payments beginning in 1995.
- Furthermore, the “Contract With America Advancement Act of 1996” prohibited any payment to individuals whose DA&A was material to their disability and required complete new medical determinations for affected beneficiaries. This Act also authorized the special 7-year CDR funding that enabled SSA to become current again on CDRs in 2002.

Ticket to Work and Work Incentives Improvement Act of 1999

Excerpt from *Social Security and the “D” in OASDI: The History of a Federal Program Insuring Earners Against Disability*, p. 20.

In 1999, Congress decided to take a more comprehensive approach to encouraging beneficiaries to return to work. It enacted the Ticket to Work and Work Incentives Improvement Act of 1999 (P.L. 106-70). Its primary purpose was a Ticket to Work and Self-Sufficiency Program that would allow disability beneficiaries to seek the employment services, vocational rehabilitation services, or other support services needed to regain or maintain employment and reduce their dependence on cash benefits.

The Ticket to Work Act:

- Permitted eligible disability beneficiaries to receive a “ticket” for obtaining vocational rehabilitation, employment, or other support services from an approved employment network or state vocational rehabilitation agency of their choice
- Allowed service providers to be reimbursed for success, receiving a portion of the benefit that would have been payable to the beneficiary
- Expanded Medicare coverage even longer to people who work and permitted states to offer a buy-in for Medicaid coverage for working-age persons with disabilities
- Established *expedited reinstatement of benefits* to allow persons whose benefits had been terminated as a result of work activity to request reinstatement without filing a new application.
- Exempted beneficiaries who were using a ticket from being subject to a continuing disability reviews. Evidence of work would not be used to demonstrate medical improvement.
- Provided the Commissioner with DI program demonstration authority for 5 years and directed SSA to conduct several demonstration projects, including one that would test reducing DI benefits by \$1 for each \$2 that a beneficiary earns over a certain amount